



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

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STEVE CLARK
ATTORNEY GENERAL

OPINION NO. 85-79

March 13, 1985

Honorable Jay Bradford
Senator, 28th District
P. O. Box 8367
Pine Bluff, AR 71611

Dear Senator Bradford:

This letter is in response to your recent request for an opinion regarding Volunteers in Court, Jefferson County, Inc. (VIC).

Your question is whether any liability would result if one of VIC's referrals were injured or caused injury to someone else while on the job. For purposes of this opinion, it is understood that your concern is tort liability under State law.

While the general rule of law is that one is liable for injuries proximately caused by his conduct which does not meet the standards imposed by law, certain exceptions exist which appear relevant because of the nature of VIC's activities.

VIC is a non-profit, charitable corporation approved by the Jefferson County Circuit Court, Ex Parte #77-121. Its Articles of Incorporation state VIC's purposes include establishment of an organization for working as voluntary probation officers with local courts to train, educate and counsel referrals from the courts and to supervise persons on probation to prevent repeat offenses. In practice, local judges enter orders in particular cases for defendants to perform a specific number of hours of community service work. VIC, pursuant to these orders, assigns the referrals to a specific organization. The organizations for whom the work is performed include a variety of local private and possibly governmental entities. VIC receives partial funding of its budget from the city and county. VIC is non-profit and its earnings cannot benefit any private person. Amended Articles of Incorporation, §3 and §9.

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Judges have a common law absolute immunity from tort liability for acts done within their jurisdiction. Huston v. State, 171 Ark., 1132, 287 S.W. 398 (1926). Because VIC acts pursuant to court orders, combined with its arguable quasi-governmental status attributable to its sources of funding and articulated purposes, it could be held to enjoy an extension of the judicial immunity. See Young v. Peoria Housing Authority, 479 F. Supp. 1093 (C.D. Ill. 1979).

In addition, VIC may also claim charitable immunity. Purposes which qualify an organization as charitable include promotion of governmental purposes, Restatement, Trusts 2d §368, and aiding enforcement of the law generally or a specific type of legislation as well as assisting those convicted of a crime. Gogert, Trusts & Trustees, 2d Ed. Rev. §§ 378, 379. It appears that the purposes of VIC promote such charitable purposes and qualify VIC for charitable immunity.

Such immunity exempts the organization from the negligence of its agents and employees. Cabiness v. City of North Little Rock, 228 Ark. 356, 307 S.W.2d 529 (1957). This status is conditioned upon the organization being created and maintained exclusively as a charity. J. W. Resort v. First American National Bank, 3 Ark. App. 290, 625 S.W.2d 557 (1981). We assume VIC is so maintained and as such it would appear to be able to claim charitable immunity from tort liability for the negligence of its agents and employees.

Whether a particular organization for whom a referral performs community service work may be liable is dependent upon various facts not stated in the request. Therefore, we cannot address that issue without additional facts.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Thomas S. Gay.

Sincerely,


STEVE CLARK
Attorney General

JSC:TSG:jk