

DOCUMENT RESUME

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[Settlement of Claims Arising from the Negligent or Tortious Acts of Members, Officers, and Employees of the Senate]. July 13, 1977. 3 pp. + 2 enclosures (9 pp.).

Testimony before the Senate Committee on Rules and Administration; by John J. Higgins, Associate General Counsel.

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Congressional Relevance: Senate Committee on Rules and Administration.

Authority: Federal Tort Claims Act; Legislative Reorganization Act of 1946, title IV (60 Stat. 812; 28 U.S.C. 1346). 28 U.S.C. 2672. 26 Comp. Gen. 891. B-127343 (1976).

There is no objection to a proposed Senate resolution concerning the settlement of claims arising out of the negligence or tortious acts of members, officers, and employees at the Senate. The resolution would clearly provide that settlement of such claims should be made by the Sergeant at Arms. Findings/Conclusions: The Federal Tort Claims Act waived the immunity of the United States from suits arising out of the negligent or tortious acts of employees of the Government committed within the scope of their office or employment. In a decision issued in 1976, GAO concluded that although the Senate would not ordinarily be characterized as a "Federal agency," its employees were employees of the United States, and there appeared to be no reason for excluding them from the operation of this act. This same decision examined the question of where responsibility for the administrative adjustment of claims with regard to Senate employees would reside; it concluded that settlement could be made by the Sergeant at Arms. The decision advised that settlements of \$2,500 or less could be made from the Senate contingent fund and that settlements in excess of \$2,500 should be referred to GAO for payment out of its permanent indefinite appropriation for the payment of judgments, awards, and compromise settlements. Any awards or settlement over \$25,000 must be approved by the Attorney General. (SC)

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United States General Accounting Office
Washington, D.C. 20548

FOR RELEASE ON DELIVERY
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STATEMENT OF JOHN J. HIGGINS, ASSOCIATE GENERAL COUNSEL
OFFICE OF GENERAL COUNSEL
BEFORE THE
COMMITTEE ON RULES AND ADMINISTRATION
UNITED STATES SENATE

Mr. Chairman and Members of the Committee:

We are pleased to meet with you today to present our views on a proposed Senate Resolution concerning the settlement of claims arising out of the negligent or tortious acts of members, officers and employees of the Senate.

Mr. Chairman, as you know, the Federal Tort Claims Act waived the immunity of the United States from suits arising out of the negligent or tortious acts of employees of the Government committed within the scope of their office or employment. A question arose, however, regarding the definitions of "employee of the Government," and "Federal agency," as employed in the Act, as to whether or not employees of the legislative branch were intended to be covered.

We have twice considered this question. In 1947 we concluded that the Library of Congress was a Federal agency within the meaning of the Act, and that consequently its employees were employees of

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the Government covered by the Federal Tort Claims Act. (26 Comp. Gen. 891). In the second case decided in 1976, involving Senate employees, we stated that the Act applied to all employees of the legislative branch. Insurance on Senate Vehicles, B-127343, December 15, 1976. Our decisions in both cases were based on an examination of the Act and its legislative history, wherein nothing could be found to indicate that it was the intent of the Congress to exclude any Federal agencies or employees from the operation of the Act. In our decision of last year we concluded that although the Senate would not ordinarily be characterized as a "Federal agency," its employees were employees of the United States, and no reason appeared for excluding them from the operation of the Act.

Section 2672 of title 28 of the United States Code places responsibility for the administrative adjustment of claims with the head of each Federal agency. The question also arose, therefore, where such responsibility would reside with regard to Senate employees. In our 1976 decision we recognized that settlement could be made by the Sergeant at Arms. We also indicated that settlements of \$2500 or less could be made from the Senate contingent fund, and settlements in excess of \$2500 should be referred to our Office for payment out of our permanent indefinite appropriation for the payment of judgments, awards, and compromise settlements, as is done presently with all such cases throughout the Government. Of course under the Federal Tort Claims Act

any awards or settlement over \$25,000 must be approved by the Attorney General.

We understand that the proposed Senate Resolution would clearly provide that the settlement of claims against the United States arising out of the negligent or tortious acts of members, officers, and employees of the Senate be made by the Sergeant at Arms. Payments of settlements of \$2500 or less are to be made out of the Senate contingent fund, and payments in excess of this amount are to be referred to the General Accounting Office.

The settlement and payment of tort claims as provided in the proposed Resolution would comport with our decision concerning the applicability of the Federal Tort Claims Act to Senate employees and the administration of the Act within the Senate. Accordingly, we would have no objection to the proposed Resolution.

Mr. Chairman, that concludes my prepared statement. We will be pleased to respond to any questions that you and other members of the Committee may have.

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-127343

DATE: **DEC 15 1976**

MATTER OF: Insurance on Senate Vehicles

- DIGEST:** (1) By enactment of Federal Tort Claims Act, United States appears to have waived sovereign immunity from suit for torts committed within scope of their employment, by employees of legislative as well as executive branches, since legislative history of Act establishes that definitions for terms "Federal agency" and "Employee of the government" contained therein, were not intended to exclude any agency or employee of the United States, unless excluded by specific exception. Therefore, Senate employees who are negligent while operating Senate-owned vehicles in course of employment are protected against claims for damage or injury under Federal Tort Claims Act, since they are "Employee[s] of the government" within the broad meaning of the Act.
- (2) Possible Government liability for torts committed by Senate employees while operating Senate-owned vehicles within course of their employment should not be covered by insurance from commercial sources since settled policy of United States is to assume its own risks, and unless expressly provided otherwise by statute, funds for support of Government activities are not generally considered available for purchase of insurance to cover such risk.
- (3) Senate may make payments of \$2,500 or less from contingent fund to cover settlements under Federal Tort Claims Act for accidents caused by Senate employees while operating Senate-owned vehicles in course of employment. Settlements in excess of \$2,500 should be referred to Comptroller General for payment in accordance with procedures provided in Act, 28 U.S.C. § 2672.

This is in response to an inquiry from the Sergeant at Arms, United States Senate, concerning whether, and to what extent, Senate employees who are involved in automobile accidents while operating

Senate-owned motor vehicles in the course of their employment are protected against liability for damage or injury by the United States. Our advice is requested as to what steps, if any, should be taken to provide full and adequate liability coverage for such personnel, including the possible purchase of insurance from commercial sources.

We have been informally advised that, in the past, claims arising out of the operation of Senate-owned vehicles have been settled and adjusted by the Sergeant at Arms. The voucher for payment has then been presented to the Senate Committee on Rules and Administration for approval. When approved, payment was made from the contingent fund of the Senate. A similar procedure has apparently been followed in the House.

It is suggested, however, that the United States has not waived its sovereign immunity from suit for torts committed by employees of the legislative branch of Government. If this were true, payments out of the contingent fund or any other fund would have been made where no actual risk of loss rested on the United States. Moreover, if redress were not provided by the Senate, the claimant's only remaining cause of action would be against the Senate employee in his individual capacity. Cf. Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682, 686-687, reh. den., 338 U.S. 840 (1949). The Sergeant at Arms is therefore concerned about the resulting "grave *** exposure to risk of Senate personnel who drive these automobiles."

The Federal Tort Claims Act was enacted as title IV of the Legislative Reorganization Act of 1946, approved August 2, 1946, ch. 753, 60 Stat. 812. The Act provides, in pertinent part, as follows, 28 U.S.C. § 1346(b) (1970):

"(b) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

The terms "Employee of the government" and "Federal agency" are defined in the Act at 28 U.S.C. § 2671 (1970), which provides in pertinent part, as follows:

"As used in this chapter and sections 1346(b) and 2401(b) of this title, the term 'Federal agency' includes the executive Departments, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States but does not include any contractor with the United States.

"'Employee of the government' includes officers or employees of any federal agency, members of the military or naval forces of the United States, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation." (Emphasis supplied.)

The Senate Committee report on the 1946 legislation, S. Rep. No. 1400, 79th Cong., 2nd Sess., 31 (1946), explained these definitions, as follows:

"This section [402] defines the terms used in the title and makes it clear that its provisions cover all Federal agencies, including Government corporations, and all Federal officers and employees, including members of the military and naval forces * * *." (Emphasis supplied.)

S. Rep. No. 1400, supra at 29, also states as follows:

"This title [IV-Federal Tort Claims Act] waives, with certain limitations, governmental immunity to suit in tort and permits suits on tort claims to be brought against the United States. It is complementary to the provision in title I banning private bills and resolutions in Congress, leaving claimants to their remedy under this title."

In McNamara v. United States, 199 F. Supp. 879, 880-881 (D.D.C. 1961), the court rejected the view that the Federal Tort Claims Act applied only to the executive branch, stating, in pertinent part:

"* * * It is obvious that the purpose of that definition [Federal agency] was to make certain that government-owned corporations and government-controlled corporations should be included as branches of the government for the purpose of the Federal Tort Claims Act. The Court is unable to see any other purpose of that clause.

"Finally, there is no legislative history indicating any desire or intention to limit the statute in the manner contended in this case. It is the view of this Court that to adopt such a narrow limitation would defeat a part of the beneficent purposes of the statute. For this reason, the Court adheres to its ruling that the statute applies to all three branches of the government."

But cf., Cromelin v. United States, 177 F.2d 275, 277 (5th Cir. 1949), cert. denied, 339 U.S. 944 (1950). */

We are unaware of anything in the legislative history indicating that it was the intent of the Congress to exclude the activities of any employee of the Government except by specific mention. Thus, we indicated in 26 Comp. Gen. 891 (1947) that no agencies or employees of the United States are excluded from the operation of the Act, except as enumerated in 28 U.S.C. § 2680. It was held, therefore, that the Library of Congress, a legislative establishment, was subject to the Act.

While the Senate would not ordinarily be characterized as a "Federal agency," its employees are employees of the United States, and no reason appears for excluding them from the operation of the Act.

/ While the opinion in Cromelin states flatly that a Federal judge is not an employee of the United States within the meaning of the Tort Claims Act, the claim involved related to alleged "malfeasance, misfeasance, and nonfeasance" on the part of a judge in the conduct of a proceeding before him. Clearly this claim would, in any event, have been excepted from the Act since it was " * * based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty * * * whether or not the discretion involved was abused." See 28 U.S.C. § 2680(a). Thus, in view of the limited factual context, we do not read Cromelin as a precedent for the blanket exclusion of judicial branch officials and employees from the coverage of the Tort Claims Act and in any case are not compelled to extend this holding to the legislative branch.

Accordingly, it is our view that the United States is subject to suit for torts committed by Senate employees who are involved in automobile accidents while operating Senate-owned vehicles within the scope of their employment.

Pursuant to 28 U.S.C. § 2679(b) (1970), tort suits against Government employees in their individual capacities for injury or loss of property or personal injury or death, resulting from operation of a motor vehicle while acting within the scope of their office of employment, are precluded, and the injured party's exclusive remedy is against the United States. Thus, the employee is immune from suit and the Federal Government is the only party subject to liability for the employee's negligence. Skrocki v. Butler, 324 F. Supp. 1042 (E.D. Mich. 1971); Kizer v. Sherwood, 311 F. Supp. 809, 811 (D. Pa. 1971). Accordingly, it appears that the subject employees are fully and adequately protected while driving Senate-owned automobiles within the scope of their employment, and the risk of loss falls exclusively on the Government.

In this regard, it is a long-standing policy of the Government to self-insure its own risks of loss. As far back as February 9, 1892, the first Comptroller of the Treasury so advised the Department of State. This policy has been restated and followed in numerous decisions ever since that time. See, e.g., 13 Comp. Dec. 779 (1907), 21 Comp. Gen. 928, 929 (1942); B-59941, October 8, 1946. In this connection, we have stated that:

"It is a settled policy of the United States to assume its own risks and the established rule is that, unless expressly provided by statute, funds for the support of Government activities are not considered applicable generally for the purchase of insurance to cover loss of or damage to Government property. * * * It is not sufficient that there is no law specifically providing that the United States shall not insure its property against loss, but rather that there is some law which specifically authorizes it. * * * The basic principle of fire, tornado, or other similar insurance is the lessening of the burden of individual losses by wider distribution thereof, and it is difficult to conceive of a person, corporation, or legal entity better prepared to carry insurance or sustain a loss than the United States Government. As to this policy of the Government to assume its own risks, no material distinction is apparent between assumption of risk of property damage and assumption of risk of tort liability." 19 Comp. Gen. 798, 800 (1940).

The purchase of insurance from commercial sources by the Government would not, therefore, be necessary or desirable.

Finally, the question arises as to the applicability of 28 U.S.C. § 2672, concerning administrative adjustment of claims, to the instant situation. This section reads, in pertinent part, as follows:

"Any award, compromise, or settlement in an amount of \$2,500 or less made pursuant to this section shall be paid by the head of the Federal agency concerned out of appropriations available to that agency. Payment of any award, compromise, or settlement in an amount in excess of \$2,500 made pursuant to this section or made by the Attorney General in any amount pursuant to section 2677 of this title shall be paid in a manner similar to judgments and compromises in like causes and appropriations or funds available for the payment of such judgments and compromises are hereby made available for the payment of awards, compromises, or settlements under this chapter."

Pursuant to this section, payment of settlements in amounts over \$2,500 is to be made in a manner similar to judgments and compromises in like causes, which are required by 28 U.S.C. §§ 2414 and 2517, and 31 U.S.C. § 724a, to be made upon settlement by our Office, where the amount does not exceed \$100,000. B-135984, May 21, 1976.

Therefore, payment of awards or settlements of \$2,500 or less could continue to be made from the Senate contingent fund. Settlements in excess of the \$2,500 limitation contained in 28 U.S.C. § 2672 should be referred to our Office for payment in accordance with the above-described procedures. However, payments out of the contingent fund in excess of \$2,500, authorized by the Senate Committee on Rules and Administration, could not be questioned by our Office (see 2 U.S.C. §§ 68 and 95 (1970)).

R.F. KELLEN

Comptroller General
of the United States

Hence, it was there said that the *in loco parentis* status may not have its inception after adulthood; and in that view of the matter, there also would appear to be no proper basis for concluding that there may be a completion of the required "continuous period of not less than 5 years" after attainment of majority.

Accordingly, it may not be considered that the *in loco parentis* status required by the pertinent statute has been established in the present case and, therefore, you are not authorized to make payment on the voucher submitted with your letter. Said voucher, together with the other papers submitted with your letter, is being retained in this office.

(B-33734)

FEDERAL TORT CLAIMS ACT—APPLICABILITY TO AGENCIES IN OTHER THAN EXECUTIVE BRANCH OF GOVERNMENT

The definition of the term "Federal agency" by section 402 (a) of the Federal Tort Claims Act as including "the executive departments and independent establishments" of the Government is not to be regarded as excluding any agency (except as otherwise specifically provided) from the operation of said act, so that the authority provided thereby for the administrative settlement of property damage, personal injury or death claims is applicable to the Library of Congress, which is a legislative establishment.

Comptroller General Warren to the Librarian of Congress, May 22, 1947:

Reference is made to your letter of April 21, 1947, as follows:

A question has arisen regarding the applicability to the Library of Congress of the Federal Tort Claims Act (Title IV, Legislative Reorganization Act of 1946, Public Law 291, 70th Congress).

Part 2 of the Act confers "upon the head of each Federal Agency" authority "to ascertain, adjust and settle any claim . . . when the total amount of the claim does not exceed \$1,000 . . ." Part 1, Section 402 of the Act states that the term "Federal Agency" includes the executive departments and independent establishments of the United States" but makes no reference to legislative agencies. Since it has been repeatedly held by the Comptroller of the Treasury and the Comptroller General (4 Compt. Treas. 125, 14 Compt. Treas. 674, 21 Compt. Treas. 68, 21 C. G. 987) that the Library of Congress does not fall within either of these categories but is a legislative establishment, it would appear that the Library of Congress is not subject to the provisions of Part 2, Title IV of the Tort Claims Act.

A decision as to the validity of our interpretation is requested.

The Federal Tort Claims Act, 60 Stat. 842, by section 403 (a), 60 Stat. 843, confers upon the head of each Federal agency, or his designee for the purpose, acting on behalf of the United States, authority to consider, ascertain, adjust, determine, and settle (where the total amount of the claim does not exceed \$1,000), and, by section 410 (a), 60 Stat. 843, upon the United States district court for the district wherein the plaintiff is resident or wherein the act or omission complained of occurred, including the United States district courts for the Territories and possessions of the United States, sitting without a jury, exclusive jurisdiction to hear, determine, and render judgment

... and claim against the United States, for money only, accruing on and after January 1, 1945, on account of damage to or loss of property or on account of personal injury or death . . . caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred.

With respect to the terms "Federal agency" and "employee of the Government" section 402, 60 Stat. 842, 843, provides as follows:

(a) "Federal agency" includes the executive departments and independent establishments of the United States, and corporations whose primary function is to act on, and while acting as, instrumentalities or agencies of the United States, whether or not authorized to sue or be sued in their own names: *Provided*, That this shall not be construed to include any contractor with the United States.

(b) "Employee of the Government" includes officers or employees of any Federal agency, members of the military or naval forces of the United States, and persons acting on behalf of a Federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.

While only the executive departments and independent establishments of the United States are mentioned specifically in the definition of a Federal agency, an examination of the entire act and its legislative history requires a conclusion that no agencies or employees are excluded from the operation of the act save in the case of the specific exceptions enumerated in section 421 thereof, 60 Stat. 845.

In the first place, the Federal Tort Claims Act waives the sovereign immunity of the United States for the negligent or tortious acts of its employees generally and provides that the United States shall be liable therefor "to the same extent as a private individual under like circumstances." Nothing is found in the act or in its legislative history indicating that it was the intent of the Congress to exclude the activities of any employee of the Government from its coverage except by specific mention. On the contrary, a complementary provision in section 181 of the Legislative Reorganization Act of 1946, 60 Stat. 812, 821, bans the correlative system under which congressional committees in the past have considered private claim bills, discontinuing or completely such legislative relief in tort cases and leaving claimants to a sole remedy under the new act. Hence, the jurisdiction granted to administrative agencies and to the courts to pass upon tort claims appears to be identical and coextensive, save for the \$1,000 limitation in the case of the former, there being no logical reason to deny jurisdiction to any agency of the Government.

Moreover, the Federal Tort Claims Act was enacted as Title IV of the Legislative Reorganization Act of 1946, *supra*, an act dealing primarily with the legislative branch of the Government; and such fact appears satisfactorily to explain the statement in section 402 (a) that the term "Federal agency" "includes the executive departments and

independent establishments." The obvious purpose of the language employed is to ensure, under the circumstances, an all-inclusive meaning for the said term, which otherwise might be regarded as failing to include executive departments and independent establishments of the Government, and Government corporations.

Finally, that the term "Federal agency" is intended to include every Federal agency is shown clearly in the legislative history. See page 31 of Senate Report No. 1400, 70th Congress, made by the Special Committee on the Organization of Congress, explaining the objectives of section 412 as follows:

This section defines the terms used in the title and makes it clear that its provisions cover all Federal agencies, including Government corporations, and all Federal officers and employees, including members of the military and naval forces.

In the light of the above, there can be no reasonable doubt that the Library of Congress is a Federal agency within the meaning of the Federal Tort Claims Act.

(B-66032)

PROHIBITION AGAINST USE OF RECORDING CLOCKS—WASHINGTON NATIONAL AIRPORT

The prohibition in the act of February 24, 1950, against the use of recording clocks in the executive departments in Washington, has reference to the use of such devices in Washington, only, and does not preclude the purchase from otherwise available appropriated funds of time recording clocks for use at the Washington National Airport which, by reason of the act of October 31, 1945, as ratified by the Virginia General Assembly, establishing the District of Columbia-Virginia boundary, is to be regarded as located within the Commonwealth of Virginia.

Comptroller General Warren to Ann A. Poe, Department of Commerce, May 26, 1947:

There has been received by reference from the Office of the General Accounts Service, your letter of April 28, 1947, in which you request an advance decision as to whether you properly may certify for payment a voucher submitted therewith in favor of the E. C. Cush Co., in the gross amount of \$423, covering claim for payment of three time recorders furnished the Washington National Airport under contract No. Ccanna-121, dated January 16, 1947.

It appears from your letter that the three time recorders are to be installed at the Washington National Airport in order to record the hours of service of the maintenance and custodial personnel on duty at various locations at the airport. It appears further that the installation of the recorders has been determined to be in the best interests of the Government on the basis that their use will materially increase the efficiency of supervisors and result in some increase in the amount of work performed by the employees concerned. You