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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, 685-687, 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.
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> "'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.
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> "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. 793, 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 75 (1970)).

R.F. KELLER

[illegible] Comptroller General
of the United States