

Seniors v. Crime Project, liability of volunteers

Number: INFORMAL

Date: March 29, 2001

Mr. Vern C. Thornton
Post Office Box 627
Lake Worth, Florida 33460-0627

RE: VOLUNTEERS--DEPARTMENT OF LEGAL AFFAIRS--NONPROFIT CORPORATIONS--
civil liability of volunteers to Seniors vs. Crime Project. ss. 768.1355, 110.501-110.504, Fla. Stat.

Dear Mr. Thornton:

As Chief Executive of the Seniors vs. Crime Project, you have asked for assistance in determining whether volunteers for the Seniors vs. Crime Project are covered by the provisions of section 768.1355, Florida Statutes, and sections 110.501-110.504, Florida Statutes.

In 1988 the Attorney General established a special statewide task force to investigate crimes against the elderly. This action led to the creation of Seniors vs. Crime, Inc., a nonprofit organization incorporated in 1993. The corporation, which operates the Seniors vs. Crime Project, utilizes the assistance of volunteers who investigate and help combat illegal business activities directed at older citizens. These volunteers are designated "Senior Sleuths" and their duties include helping state and local prosecutors and police agencies conduct undercover stings and investigations to identify, prosecute and punish criminals. According to information provided to this office, "Senior Sleuths" volunteer at the direction of a local county coordinator. These coordinators are usually law enforcement officers or are assigned to a law enforcement agency.

Section 768.1355, Florida Statutes, is known as the "Florida Volunteer Protection Act." [1] The act was created as a general volunteer immunity statute, providing immunity from civil liability for acts or omissions resulting in personal injury or property damage by persons who perform volunteer services for nonprofit organizations. [2] Under the terms of the act:

"Any person who volunteers to perform any service for any nonprofit organization, including an officer or director of such organization, without compensation, [3] except reimbursement for actual expenses, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under such volunteer services. Such person shall incur no civil liability for any act or omission by such person which results in personal injury or property damage if:

- (a) Such person was acting in good faith within the scope of any official duties performed under such volunteer service and such person was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- (b) The injury or damage was not caused by any wanton or willful misconduct on the part of such person in the performance of such duties."

For purposes of this statute a "nonprofit organization" is an "organization which is exempt from taxation pursuant to 26 U.S.C. s. 501, or any federal, state, or local governmental entity." [4]

Information you have submitted indicates that the corporation, Seniors vs. Crime, Inc., had an exemption from Florida sales or use tax which expired on February 23, 2000. In the absence of any other exemption from taxation, the corporation does not qualify as a nonprofit organization within the scope of 768.1355, Florida Statutes, the "Florida Volunteer Protection Act."

You have also asked whether the provisions of Part IV, Chapter 110, Florida Statutes, would apply to volunteers for the Seniors vs. Crime Project. Part IV, Chapter 110, Florida Statutes, relates to volunteers who provide goods or services to state departments or agencies or nonprofit organizations. Pursuant to section 110.501(1), Florida Statutes:

"Volunteer" means any person who, of his or her own free will, provides goods or services, or conveys an interest in or otherwise consents to the use of real property pursuant to ss. 260.011-260.018, to any state department or agency, or nonprofit organization, with no monetary or material compensation. . . .

Volunteers for purposes of the act may be either "regular-service volunteers" who engage in activities on an ongoing or continuous basis or "occasional-service volunteers" who provide a one-time or occasional voluntary service. [5]

The scope of the act is set forth in section 110.502(1), Florida Statutes:

"Every state department or state agency, through the head of the department or agency, secretary of the department, or executive director of the department, is authorized to recruit, train, and accept, without regard to requirements of the State Career Service System as set forth in part II of this chapter, the services of volunteers, including regular-service volunteers, occasional-service volunteers, or material donors, to assist in programs administered by the department or agency."

The statute provides that volunteers are not subject to state employment laws, collective bargaining agreements or any laws relating to hours of work, rates of compensation, leave time and employment benefits. [6] Nor are persons working for state agencies pursuant to this part entitled to unemployment compensation. [7] The statute specifically provides that "[p]ersons working with state agencies pursuant to this part shall be considered as unpaid independent volunteers[.]" [8] State agencies are encouraged to "develop meaningful opportunities for volunteers involved in state-administered programs." [9]

Volunteer benefits are detailed in section 110.504, Florida Statutes, and include such things as meals, [10] lodging, [11] and transportation [12] under certain circumstances. Section 110.504(5), Florida Statutes, provides that volunteers are covered by workers' compensation laws under Chapter 440, Florida Statutes. [13] In addition, "[v]olunteers shall be covered by state liability protection in accordance with the definition of a volunteer and the provisions of s. 768.28." [14]

Section 768.28, Florida Statutes, constitutes a limited waiver of immunity from tort liability for the state "and for its agencies or subdivisions" to the extent provided in the act. The statute provides

in part:

"Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for injury of loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant, in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act." [15]

The waiver of immunity is limited to \$100,000 on any claim or judgment by one person or \$200,000 for all claims arising out of the same incident or occurrence. [16]

"State agencies or subdivisions" are defined for purposes of the statute to include "independent establishments of the state; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities" [17] Section 768.28(9)(a), Florida Statutes, provides that the exclusive remedy for injury or damages suffered as a result of any act, event, or omission of an officer, employee, or agent of the state or its subdivisions shall be by action against the governmental entity.

Volunteers for projects with Seniors vs. Crime, Inc., appear to come within the scope of section 110.501(1), Florida Statutes. Thus, volunteers who are acting within the scope of their function on behalf of Seniors vs. Crime, Inc., appear to be protected from individual liability for torts by s. 768.28(9), Florida Statutes, unless they act "in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." [18] As this office has noted, "[p]ublic officers and employees are particular kinds of state agents, but it would appear that all agents of the state share the immunity of the sovereign for acts committed within the scope of their agency." [19]

A critical feature of an agency relationship is the right of the principal to control the actions of the agent with regard to the details of the task to be accomplished. An agency relationship is created by consent of the parties and does not require consideration or compensation to the agent. Thus, Attorney General's Opinions have concluded that volunteer private institutions acting on behalf of state agencies and subject to their monitoring and control were agents of the State of Florida. [20]

While any definitive resolution of a liability question would require an examination of the facts of the particular case, these informal comments are offered in an effort to provide you with general guidance regarding the liability of volunteers acting at the direction of Seniors vs. Crime, Inc.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] See s. 768.1355(4), Fla. Stat.

[2] See Final Bill Analysis and Economic Impact statement, CS/HB 21, House of Representatives Committee on Judiciary, June 22, 1993.

[3] See s. 768.1355(1)(b)2., Fla. Stat., stating that for purposes of the act, the term "compensation" does not include "a stipend as provided by the Domestic Service Volunteer Act of 1973, as amended (Pub. L. No. 93-113), or other financial assistance, valued at less than two-thirds of the federal hourly minimum wage standard, paid to a person who would otherwise be financially unable to provide the volunteer service."

[4] Section 768.1355(1)(b)1., Fla. Stat.

[5] See s. 110.501(2) and (3), Fla. Stat., defining "regular-service volunteer" and "occasional-service volunteer."

[6] Section 110.502(2), Fla. Stat.

[7] Section 110.502(4), Fla. Stat.

[8] *Ibid.*

[9] *And see* Op. Att'y Gen. Fla. 92-36 (1992), concluding that the Department of Elder Affairs could accept the services of a volunteer in the position of chief internal auditor for the department.

[10] Section 110.504(1), Fla. Stat.

[11] Section 110.504(2), Fla. Stat.

[12] Section 110.504(3), Fla. Stat.

[13] Section 110.504(5), Fla. Stat.

[14] Section 110.504(4), Fla. Stat.

[15] Section 768.28(1), Fla. Stat.

[16] Section 768.28(5), Fla.. Stat.

[17] Section 768.28(2), Fla. Stat.

[18] Section 768.28(9)(a), Fla. Stat.

[19] See Ops. Att'y Gen. Fla. 90-83 (1990) and 76-188 (1976).

[20] See Op. Att'y Gen. Fla. 76-188 (1976) (volunteer private institutions not acting in bad faith, maliciously, or in manner exhibiting wanton and willful disregard of human rights, safety, and property entitled to protection under s. 768.28, Fla. Stat.). Cf. Ops. Att'y Gen. Fla. 90-83 (1990) (volunteers acting for county tourist development councils and tourism promotion agencies not personally liable for torts for acts within scope of their function; rather, exclusive remedy under section 768.28, Fla. Stat., for such injury is action against county); 86-65 (1986) (volunteer transporting students and equipment to school activities who is not under direction and control of school board or superintendent is not governmental employee or agent for purposes of s. 768.28(9)(a), Fla. Stat.