

Sovereign immunity, attorney fees

Number: INFORMAL

Date: February 12, 2003

Ms. Denise M. Dytrych
Palm Beach County Attorney
Post Office Box 1989
West Palm Beach, Florida 33402-1989

Dear Ms. Dytrych:

Thank you for your letter of support and accompanying request for reconsideration of Attorney General Opinion 00-22. This office understands your concerns that a county may be prejudiced by the limitations on its ability to enter into indemnification or attorney's fee agreements, especially when it is contracting with private entities.

The conclusions in Attorney General Opinion 00-22, however, are consistent with a long line of opinions issued by this office holding that a state agency or subdivision of the state may not waive any defense of sovereign immunity or increase the limits of its liability when entering into a contract with another party.[1] While there have been instances where courts have awarded attorney's fees to the prevailing party that exceed a county's statutory limits of liability, such action was ultimately found to violate the statutory limitations in section 768.28, Florida Statutes.[2]

By entering into a contract whereby the county agrees to the payment of attorney's fees to the prevailing party, it may be waiving the limitations on its sovereign immunity and assuming a liability that it may not have. The courts of this state have recognized that the government controls absolutely how much it will pay in tort claim cases.[3]

Relief from the present statutory restrictions on the waiver of sovereign immunity, therefore, would need to be addressed legislatively.[4]

Sincerely,

Charlie Crist
Attorney General

CC/tls

[1] See, Ops. Att'y Gen. Fla. 95-12 (1995), 93-34 (1993), and 90-21 (1990).

[2] See, e.g., *City of Live Oak v. Harris*, 702 So. 2d 276 (Fla. 1st DCA 1997); *Ingraham v. Dade County School Board*, 450 So. 2d 847 (Fla. 1984).

[3] *Hellmann v. City of Orlando*, 634 So. 2d 245, 246 (Fla. 5th DCA 1994).

[4] *Cf.* s. 215.245, Fla. Stat., permitting the state and its political subdivisions to enter into indemnification agreements with the Federal Government with respect to water resources development projects; s. 255.559(1), Fla. Stat., authorizing state agencies or political subdivisions to agree to hold harmless and indemnify an asbestos consultant who has a written contract with the state or a political subdivision for any civil damages to third parties under specified conditions.