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March 15, 1978

FILE NO. 8-1339

TORT LIABILITY:
Liability of a Governmental
Entity to a Juvenile Performing
Public Service Work As a Condition
of Probation

Honorable Thomas J. Difanis
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Dear Mr. Difanis:

I have your letter relating to Public Act 80-711 which amends section 5-3 of the Juvenile Court Act (Ill. Rev. Stat. 1978, ch. 37, par. 705-3) to permit courts to make public service work a condition of a juvenile's probation. You ask whether the governmental entity for which a juvenile is performing public service work is liable for injuries to such juvenile which occur while he is performing public

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service work as a condition of probation.

Section 5-3 of the Juvenile Court Act, as amended by Public Act 80-711, provides in pertinent part as follows:

" * * *

(2) The court may as a condition of probation or of conditional discharge require that the minor:

* * *

(n) perform some reasonable public service work such as but not limited to the picking up of litter in public parks or along public highways or the maintenance of public facilities, provided that no minor required to perform such public service work shall be assigned to work outside the municipality or township of his residence:

* * *

(10) Neither the State, any unit of local government, nor any official or employee thereof acting in the course of his official duties shall be liable for any tortious acts of any minor placed on probation who is given any public service work as a condition of probation, except for wilful misconduct or gross negligence on the part of such governmental unit, official, or employee.

(11) No minor assigned to a public service employment program shall be considered an employee for any purpose, nor shall the county board be obligated to provide any compensation to such minor."

It is clear from the above language that neither the government entity receiving the services of a juvenile under

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the Act nor any officer or employee of such entity is liable for the tortious acts of such juvenile. It is equally clear that a juvenile engaged in public service work under the provisions of the Act is not to be considered an employee for any purpose and thus, would not be eligible for coverage under the Workmen's Compensation Act. (Ill. Rev. Stat. 1975, ch. 48, par. 138.1 et seq., as amended.) There is, however, no language in the statute relieving a governmental entity from liability to juveniles injured while performing public service work as a condition of probation should the juvenile have grounds for an action sounding in tort against the entity.

The General Assembly has vested the Court of Claims with exclusive jurisdiction to handle cases sounding in tort against the State (Ill. Rev. Stat. 1975, ch. 127, par. 801; Ill. Rev. Stat. 1976 Supp., ch. 37, par. 439.8(d)), and enacted the Local Governmental and Governmental Employees Tort Immunity Act (Ill. Rev. Stat. 1975, ch. 85, par. 1-101 et seq.) to define the liability of a local public entity. Therefore, an injured juvenile would have to proceed under, and his rights would be subject to the limitations of "AN ACT to create the Court of Claims, etc." (Ill. Rev. Stat. 1975,

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ch. 37, par. 439.1 et seq.) and the Local Governmental and Governmental Employees Tort Immunity Act.

It is therefore my opinion that, if a juvenile performing public service work as a condition of probation is injured as a result of some act or omission of the pertinent governmental entity, its officers or employees, and such entity would have been liable to any individual as a result of such act or omission, the entity would be liable to the juvenile to the extent and in the manner permitted by "AN ACT to create the Court of Claims, etc.", or the Local Governmental and Governmental Employees Tort Immunity Act, whichever is applicable. There is no statutory authority for, or any public policy supporting the proposition that a juvenile performing public service work as a condition of probation should not be compensated for injuries resulting from the negligent acts or omissions of the entity benefiting from his labor, just because he is not to be considered an employee of such entity, especially when any other individual could be compensated if injured by the same act or omission.

Very truly yours,

A T T O R N E Y G E N E R A L