

Legal Opinion: GCH-0097

Index: 2.265

Subject: Governmental Immunity Endorsement Waiver

May 18, 1994

MEMORANDUM FOR: MaryAnn Russ, Director
Office of Assisted Housing, PH

FROM: Michael Reardon, Assistant General Counsel, GCH

SUBJECT: Assisted Housing Risk Management Association (AHRMA)
Governmental Immunity Endorsement Waiver

This responds to your February 14, 1994, memorandum requesting our views with respect to AHRMA's January 13, 1994, letter to Roger Braner seeking further consideration of its request for waiver of the ACC requirement that each liability insurance policy shall prohibit the insurer from defending any tort claim on the ground of immunity of the PHA from suit.

By memorandum dated July 2, 1993, we advised that, since PHAs which self-insure would not be barred from the defense of sovereign immunity, extending this exception to nonprofit insurance entities owned and controlled by PHAs could be construed as justified. You now are considering waiving the ACC requirement for AHRMA and for other similarly situated PHAs and ask assistance in defining the criteria for exempting insurance pools similar to AHRMA from the ACC requirement for waiver of the sovereign immunity defense in tort cases. AHRMA contends that it is inequitable to treat pools of PHAs that are too small to self-insure in a manner different from the large PHAs that are able to self-insure.

A persuasive basis for exempting the pools is, we believe, to be found in the Illinois and Iowa statutes which provide that participation by a PHA in either self-insurance programs or government risk programs shall not constitute a waiver of the defense of sovereign immunity. These are the two States in which AHRMA operates. We do not believe that there is a conflict between the State law provisions granting immunity and the ACC requirement to waive this defense, noting particularly that the Illinois statute expressly permits waiver of immunity.

Since your February 14, 1994, memorandum indicates agreement with AHRMA's contention that the pools should be treated the same as the PHAs that self-insure, you may wish to consider the following alternatives: (1) a broad exemption for all nonprofit insurance pools that are not organized as insurance companies, or (2) a narrower exemption limited to pools in States where, under State law, PHA pools have the same status as self-insurance programs with respect to the defense of sovereign immunity.