



Attorney General Of New Mexico

HECTOR H. BALDERAS
Attorney General

ELIZABETH A. GLENN
Chief Deputy Attorney General

August 17, 2015

The Honorable Antonio "Moe" Maestas
New Mexico State Representative
5818 Jones Pl. NW
Albuquerque, NM 87120

Re: **Opinion Request – Higher Educational Facilities Authority to Purchase Liability Insurance from the New Mexico Public School Insurance Authority**

Dear Representative Maestas:

In your letter dated June 4, 2014, you requested an Attorney General Opinion concerning whether "higher educational facilities" can purchase liability insurance coverage from the New Mexico Public School Insurance Authority ("PSIA") when the Tort Claims Act ("TCA"), NMSA 1978, §§ 41-4-1 to -27 (1976, as amended through 2015), does not specifically authorize such purchases. Based on our examination of the relevant New Mexico statutes, constitutional provisions, case law, as well as the information available to us at this time, we conclude that those higher educational facilities identified as "educational entities" under the Public School Insurance Authority Act ("PSIA Act"), NMSA 1978, Sections 22-29-1 through -12 (1987, as amended through 2008), may purchase liability insurance coverage offered by the PSIA.

1. The PSIA Act and Article 12, Section 11 of the New Mexico Constitution define the educational entities that may purchase insurance from PSIA

The PSIA Act defines "educational entities" as "state educational institutions as enumerated in Article XII, Section 11 of the constitution of New Mexico and other state diploma, degree-granting and certificate-granting post-secondary educational institutions and regional education cooperatives." NMSA 1978, § 22-29-3(F). The New Mexico Constitution confirms Eastern New Mexico University as a state educational institution. N.M. Const., art XII, § 11.¹ Thus, we conclude

¹ In addition to Eastern New Mexico University, Article XII, Section 11 of the constitution of New Mexico also confirms the following as state educational institutions: University of New Mexico; New Mexico State University; New Mexico Highlands University; Western New Mexico University; New Mexico Institute of Mining and Technology; New Mexico Military Institute; New Mexico School for the Blind and Visually Impaired; New Mexico School for the Deaf; and Northern New Mexico State School.

that the PSIA Act's definition of educational entities encompasses all of the "higher educational facilities" referenced in your request.

The above-named educational entities may petition for "permission to participate in the insurance coverage" provided by the PSIA. NMSA 1978, § 22-29-9(E). The PSIA offers group health insurance, due process reimbursement, and some risk-related coverage. *See* NMSA 1978, § 22-29-4. The PSIA Act defines "risk-related coverage" as "coverage that includes property and casualty, general liability, auto and fleet, workers' compensation and other casualty insurance." NMSA 1978, § 22-29-3(I). The PSIA's rules further define "risk-related coverage" as "any coverage required under the Tort Claims Act[.]" 6.50.1.7(BBB) NMAC (9/1/2014).

2. An educational entity is both a "governmental entity" and a "state agency" for purposes of the TCA

Under NMSA 1978, Section 41-4-20(A), a "governmental entity" is required to "cover every risk for which immunity has been waived" under the TCA. The term "governmental entity" is defined in the TCA as "the state or any local public body as defined in Subsections C and H [.]" NMSA 1978, § 41-4-3(B).² The New Mexico Court of Appeals has held that a public university is a governmental entity for purposes of the TCA. *See Risk Mgmt. Div., Dep't of Fin. & Admin., State v. McBrayer*, 2000-NMCA-104, ¶ 7, 129 N.M. 778, 14 P.3d 43 (determining that New Mexico State University is a governmental entity under the TCA and citing § 41-4-3(B), (H)). Given the similar legal status of all New Mexico public universities, we conclude that the educational entities that are the subject of this opinion are "governmental entities" and "state agencies" for purposes of the TCA.

3. An educational entity may purchase liability insurance coverage offered by the PSIA

Under the TCA, the Risk Management Division must "insure or otherwise cover" every risk for which an educational entity has waived immunity under the TCA. NMSA 1978, § 41-4-20(A)(2). The TCA also restricts an educational entity from purchasing liability insurance "other than as authorized by the Tort Claims Act." NMSA 1978, § 41-4-20(C). Under the PSIA Act, however, the PSIA may provide educational entities with "group health insurance, other *risk-related coverage* and due process reimbursement with the *exception of the mandatory coverage provided by the risk management division[.]*" NMSA 1978, § 22-29-4 (emphasis added).

To the extent that the PSIA Act and the TCA appear to conflict, they may be reconciled under the rules of statutory construction. The principal tenet of statutory construction is to determine the legislature's intent for the statute. *State v. Ogden*, 1994-NMSC-029, ¶ 24, 118 N.M. 234, 880 P.2d

² Subsection C of Section 41-4-3 defines a "local public body" as "all political subdivisions of the state and their agencies, instrumentalities and institutions and all water and natural gas associations organized pursuant to Chapter 3, Article 28 NMSA 1978[.]" Subsection H of Section 41-4-3 defines a "state" or "state agency" as "the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions."

845. "Statutes are to be read in a way that facilitates their operation and achievement of their goals." *Rutherford v. Chaves Cnty.*, 2003-NMSC-010, ¶ 24, 133 N.M. 756, 69 P.3d 1199.

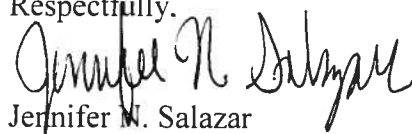
The legislature enacted the PSIA Act "to provide comprehensive core insurance programs . . . for all participating public schools . . . by expanding the pool of subscribers to maximize cost containment opportunities for required insurance coverage." NMSA 1978, § 22-29-2. Under Section 22-29-4, the legislature authorized the PSIA to provide participating public schools with risk-related coverage. It is presumed that the legislature was aware of the TCA's insurance requirements when it enacted the PSIA Act. *See Public Serv. Co. of New Mexico v. New Mexico Pub. Util. Comm'n.*, 1999-NMSC-040, ¶ 23, 128 N.M. 309, 992 P.2d 860 ("In ascertaining legislative intent, the provisions of a statute must be read together with other statutes in pari materia under the presumption that the legislature acted with full knowledge of relevant statutory and common law." (quoting *State ex rel. Quintana v. Schmedar*, 115 N.M. 573, 575-76, 855 P.2d 562, 564-65 (1993))).

"Whenever possible. . . we must read different legislative enactments as harmonious instead of as contradicting one another." *State v. Tafoya*, 2010-NMSC-019, ¶ 10, 148 N.M. 391, 237 P.3d 693 (internal quotation marks and citation omitted). Moreover, "[c]onflicts between general and specific statutes are resolved by giving effect to the specific statute." *Lopez v. Barreras*, 1966-NMSC-209, ¶ 12, 77 N.M. 52, 419 P.2d 251. *See also Stinbrink v. Farmers Ins. Co. of Arizona*, 1990-NMSC-108, ¶ 10, 111 N.M. 179, 803 P.2d 664 ("[A] statute dealing with a specific subject will be considered an exception to, and given effect over, a more general statute.").

Here, the TCA operates as a general statute setting forth broad liability insurance coverage requirements. The TCA mandates that the Risk Management Division "insure or otherwise cover" every risk for which a state agency's immunity has been waived under the Tort Claims Act. NMSA 1978, § 41-4-20(A)(2). The PSIA Act, in contrast, is a specific statute which identifies the insurance options available to a specific type of governmental entity – participating public schools – including those educational entities in question. Thus, the PSIA Act serves as an exception to, and is given effect over, the TCA's general liability insurance requirements. For these reasons, we conclude that when the TCA and PSIA Act are read in harmony, the educational entities in question may purchase liability insurance coverage offered by the PSIA.

You have requested a formal opinion on the matters discussed above. Please note that such an opinion is a public document available to the general public. Although we are providing you with our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Respectfully,



Jennifer N. Salazar

Assistant Attorney General