



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-110

January 12, 2016

The Honorable David J. Sanders
State Senator
500 Woodlane Avenue
State Capitol, Room 320
Little Rock, AR 72201

Dear Senator Sanders:

This is in response to your request for my opinion on whether the Arkansas Health Insurance Marketplace (“AHIM”), its Board of Directors (“Board”), and their officers and employees are immune from tort liability under Ark. Code Ann. § 21-9-301.

That statute provides:

- (a) It is declared to be the public policy of the State of Arkansas that all counties, municipal corporations, school districts, public charter schools, special improvement districts, and all other political subdivisions of the state and any of their boards, commissions, agencies, authorities, or other governing bodies shall be immune from liability and from suit for damages except to the extent that they may be covered by liability insurance.
- (b) No tort action shall lie against any such political subdivision because of the acts of its agents and employees.¹

¹ Ark. Code Ann. § 21-9-301 (Supp. 2015).

As you note in your request, this statute has been held to extend immunity to public officers, directors, and employees in actions brought against them in their official capacities.²

As you also note in your request, however, AHIM is “exempt” from all laws other than the Freedom of Information Act.³

You ask whether, given the exemption, AHIM, the Board, and their officers and employees are immune from tort liability under Ark. Code Ann. § 21-9-301.

RESPONSE

In my opinion, Ark. Code Ann. § 21-9-301 applies to AHIM, the Board, and their officers and employees, and all of them are immune from tort liability thereunder to the extent the statute provides for such immunity.

DISCUSSION

The statute creating AHIM provides that it is “created as a political subdivision, instrumentality, and body politic of the State of Arkansas”⁴ The immunity statute expressly applies to the state’s “political subdivisions.”⁵

The Board, being a “board . . . or other governing bod[y]” of a political subdivision of the State, is also immune from tort liability under the express terms of the immunity statute.⁶ And as noted above, officers and employees of immune entities are also immune.⁷

² See, e.g., *Matthews v. Martin*, 280 Ark. 345, 658 S.W.2d 374 (1983).

³ Ark. Code Ann. § 23-61-803(b)(2) (Supp. 2015).

⁴ Ark. Code Ann. § 23-61-803(b)(1).

⁵ Ark. Code Ann. § 21-9-301(a). The statute creating AHIM provides that it “is not a state agency.” Ark. Code Ann. § 23-61-803(b)(1). I do not regard this provision as relevant to the question at issue here. Whatever else AHIM is or is not for other purposes, it is expressly declared to be a political subdivision of the State and thus comes within the immunity statute’s coverage. Section 23-61-803(b)(1) states in full: “The Arkansas Health Insurance Marketplace is created as a political subdivision, instrumentality, and body politic of the State of Arkansas and, as such, is not a state agency.”

⁶ Ark. Code Ann. § 21-9-301(a).

⁷ See *supra* note 2 and accompanying text.

The statute exempting AHIM from all laws other than the Freedom of Information Act does not, in my opinion, change the analysis or result.

The cardinal rule of statutory interpretation is to construe a statute just as it reads, giving words their ordinary and usually accepted meanings. When a statute is clear, the courts give it its plain meaning and will not search further for legislative purpose.⁸

The word “exempt” means “free or released from a *duty or liability* to which others are held.”⁹ Thus, in my view, the provision exempting AHIM from all laws other than the Freedom of Information Act only frees AHIM from laws that would otherwise impose on it some duty or liability; it does not, in my view, mean that a law *protecting* a public entity and its officers and employees does not apply. It is accordingly my opinion that Ark. Code Ann. § 21-9-301 applies to AHIM, the Board, and their officers and employees, and all of them are immune from tort liability thereunder to the extent the statute provides for such immunity.

Sincerely,



LESLIE RUTLEDGE
Attorney General

⁸ See, e.g., *Friar v. Erwin*, 2014 Ark. 487, 450 S.W.3d 666.

⁹ *Black's Law Dictionary* 692 (10th ed. 2014) (emphasis added).