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LIABILITY - MISSOURI

Newsome v. Kansas City, Missouri School District

Supreme Court of Missouri, en banc - May 16, 2017 - S.W.3d - 2017 WL 2119347

School district employee, a purchasing manager, brought action against school district for wrongful discharge in violation of public policy regarding employee's objections to independent consultant's request for payment from school district and school district's purchase of three motor vehicles.

The Circuit Court entered judgment for employee for \$500,000. School district appealed.

On transfer from the Court of Appeals, the Supreme Court of Missouri held that:

- Endorsement to school district's liability insurance that precluded claims that were covered by sovereign immunity never became part of district's insurance policy;
- Sufficient evidence supported finding that independent consultant's payment request violated public policy;
- Sufficient evidence supported finding that purchase of three motor vehicles violated public policy;
- Instructions that erroneously asked jury if employee reasonably believed that transactions violated public policy did not prejudice school district;
- School district could only waive its sovereign immunity up to the statutory liability limit of \$403,139; and
- School district's insurance policy's retention amount of \$250,000 did not operate to reduce the \$403,139 statutory maximum for liability.

Endorsement to school district's liability insurance that precluded coverage for claims which, absent the insurance, would have been covered by sovereign immunity never became part of district's insurance policy, and thus endorsement did not preserve school district's sovereign immunity per statute on waiving sovereign immunity via liability insurance in employee's action against district for wrongful termination in violation of public policy; endorsement was negotiated several months after policy's issuance, and no authorized agent subscribed to the endorsement as required by statute governing contracts for school districts.

School district could only waive its sovereign immunity up to the statutory liability limit of \$403,139, and thus remittitur to that amount from the circuit court's judgment of \$500,000 was warranted on school district employee's successful claim against district for wrongful discharge in violation of public policy, despite argument that district waived its sovereign immunity up to its liability insurance policy limit of \$500,000; by the plain language of statute on waiving sovereign immunity via liability insurance, the district's liability coverage could not exceed \$403,139 for a single claim, and the fact that district purchased liability coverage in excess of \$403,139 was immaterial.

School district's insurance policy's retention amount of \$250,000 did not operate to reduce the \$403,139 statutory maximum for liability on school district employee's successful claim against district for wrongful discharge in violation of public policy; statute on waiving sovereign immunity via liability insurance provided that immunity was waived to the maximum amount of coverage purchased and allowed by law, nothing in statute indicated that retention amount did not count as

coverage, and under either liability insurance policy at issue, the limit of liability reduced by the retention amount would have far exceeded \$403,139.

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