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*Via email to maloy@iastate.edu*

Terry Maloy  
Executive Director  
Iowa Extension Council Association  
6363 196<sup>th</sup> St.  
Albia, IA 52531-8520

Re: Tort Liability Funds for Mandatory Background Screenings

Dear Terry:

You have requested our opinion regarding whether the County Agricultural Extension Districts may include the costs of background screenings for County Agricultural Extension employees and volunteers under the state Tort Liability levy. By letter dated May 22, 2018, LMC Insurance & Risk Management informed you that background checks are mandatory in order to obtain the requested coverage and the insurer providing tort liability coverage to the county extension services has confirmed this underwriting requirement.

Upon review of this information, it is our opinion that such checks are a mandatory requirement imposed by the insurance carrier in order for the Districts to procure or maintain appropriate tort liability coverage, and that these costs of compliance may therefore constitute “amounts payable under the insurance agreements.” Accordingly, these costs may be paid out of the Districts’ available unrestricted funds, or, if no such funds are available, may be provided for by an additional levy for Tort Liability. *See* Iowa Code §§ 176A.10; 670.7(1).

#### Analysis

The Iowa Legislature has granted the County Agricultural Extension Councils the authority to determine the necessary amount of money “to be raised by taxation” in order to finance the County Agricultural Extension Districts. Iowa Code § 176A.10; *see also* 1980 Iowa Op. Atty. Gen. 688 (Iowa A.G.), 1980 WL 25971 (“[A] municipality cannot tax except as authorized by the Legislature.”). These funds are then levied annually by the County Board of Supervisors, in coordination with the Iowa Department of Management budget process. *See* Iowa Code §§ 176A.12; 331.422(4); *see also* Iowa Code § 331.301(11).

Iowa Code § 670.7 authorizes and sets for the funding parameters for local government tort liability insurance, allowing a District to “make payments beyond its current budget year to *provide or procure*” insurance policies. Iowa Code § 670.7(1) (emphasis added). Relevant for the County Agricultural Extension Councils, this section also expressly provides that “amounts payable *under*



*the insurance agreements* may be paid out of the general fund or any available funds or may be levied in excess of any tax limitation imposed by statute.” *Id.* (emphasis added). Such “amounts payable” are authorized in addition to the costs of insurance premiums, and appear to include other costs required under the insurance agreement to obtain appropriate coverage. *Id.*

Accordingly, to the extent that the Districts are obligated to pay for background checks to procure coverage under the insurance agreement, such checks fall within the scope of the liability insurance statute and would be an appropriate use of Tort Liability funds.

Where the costs of obtaining tort liability coverage exceed the available funds under the maximum regular Education Operating Fund levy, the Extension Districts may seek an additional levy for Tort Liability funds. If the additional levy is necessary and anticipated in future fiscal years, the Districts should request it via the regular budget process. Please keep in mind that when an additional Tort Liability levy is utilized, the funds received must be put exclusively to liability-related purposes.

It is my understanding that you have received verbal guidance from the State Auditor’s Office expressing concurrence with this position. Moving forward, you are advised to obtain such concurrence in writing, and to consult with the Iowa Department of Management regarding any specific questions you may have about levying for tort liability through the regular budget process.

Sincerely,

/s/ Alecia A. Meuleners