

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE  
MIDDLE DIVISION

FILED  
CLAIMS COMMISSION  
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CYNTHIA FERGUSON, )  
 ) Claim No. T20140831  
 Claimant, )  
 )  
 vs. )  
 )  
 STATE OF TENNESSEE, )  
 ) Regular Docket  
 Defendant. )

ORDER OF DISMISSAL

This matter came before Robert N. Hibbett, Commissioner and judge of the facts and law, upon the State's Motion to Dismiss for lack of jurisdiction and failure to state a claim upon which relief can be granted. The Claimant has responded with a memorandum in opposition to the motion to dismiss.

The Claimant has filed a complaint alleging battery, sexual assault, false imprisonment, negligent hiring and supervisory liability on the part of the State of Tennessee. The Claimant has alleged that the State is liable for the battery, sexual assault and false imprisonment perpetrated by a state probation officer. These allegations constitute malicious and criminal conduct. The General Assembly has made it clear that the state is not liable for the willful, malicious or criminal acts done by state employees.

(d) The state will be liable for actual damages only. No award shall be made unless the facts found by the commission would entitle the claimant to a judgment in an action at law if the state had been a private individual. The state will not be liable for punitive damages and the costs of litigation other than court costs. The state will not be liable for willful, malicious, or criminal acts by state employees, or for acts on the part of state employees done for personal gain...

Tenn. Code Ann. § 9-8-307

Our Court of Appeals has established that the Claims Commission only has jurisdiction over causes of action explicitly permitted by the General Assembly.

The State, as sovereign, is immune from suit except as it consents to be sued. *Brewington v. Brewington*, 215 Tenn. 475, 387 S.W.2d 777 (1965). The rule of sovereign immunity in Tennessee is both constitutional and statutory. It is not within the power of the courts to amend it. *Austin v. City of Memphis*, Tenn.App.1984, 684 S.W.2d 624. A statute permitting suit against the State must be strictly construed, and jurisdiction cannot be enlarged by implication. *Stokes v. University of Tennessee*, Tenn.App.1987, 737 S.W.2d 545, cert. den. 485 U.S. 935, 108 S.Ct. 1110, 99 L.Ed.2d 271 (1988), *Sweeney v. State Dept. of Transportation*, Tenn.App.1987, 744 S.W.2d 905.

*Brown v. State*, 783 S.W.2d 567, 571 (Tenn. Ct. App. 1989)

Therefore, the Claims Commission lacks jurisdiction to adjudicate the claims of battery, sexual assault, and false imprisonment and these causes of action must be dismissed.

The Claimant has alleged that the State was negligent in the hiring and supervision of the state probation officer. The Tribunal has carefully searched

Tenn. Code Ann. 9-8-307 and finds nothing to give a basis for jurisdiction over these causes of action. The Claims Commission is a statutory administrative Tribunal (Court) created by the General Assembly to adjudicate specific claims against the State of Tennessee. The Claims Commissioners do not have any legislative or executive powers and cannot expand its jurisdiction. The Claims Commissioners are judges empowered to do only one mission: adjudicate monetary claims as permitted by the General Assembly.<sup>1</sup>

The Court of Appeals has addressed a claim similar to the instant case in *Byrd v. State*, 150 S.W.3d 414 (Tenn. Ct. App. 2004). In that case, the State was being sued for negligent supervision, negligent retention, sexual harassment, and assault among other causes of action. Because the employees were not under the

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<sup>1</sup>(a)(1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of “state employees,” as defined in § 8-42-101, falling within one (1) or more of the following categories:…  
Tenn. Code Ann. § 9-8-307

a) These rules shall govern the procedure in the Tennessee Claims Commission. These rules shall be construed to secure the just, speedy and inexpensive determination of every action. Where “judge” appears in TRCP or Rules of Evidence it shall include the Commissioners of the Claims Commission. Where “court” appears in TRCP or the Rules of Evidence, it shall include the Claims Commission.  
Tenn. Comp. R. & Regs. 0310-01-01-.01

At the conclusion of the proof, and after closing arguments, the **judge** took the case under advisement. On July 2, 1999, he issued an order which dismissed Mr. Lewis' claim. The **judge's** ruling included both findings of fact and conclusions of law, which we quote in part as follows:…  
*Lewis v. State*, 73 S.W.3d 88, 91 (Tenn. Ct. App. 2001) (Emphasis added) The judge in this opinion was a Claims Commissioner.

The commissioners shall comply with the standards of conduct contained in the Code of Judicial Conduct of the Rules of the Tennessee Supreme Court.  
Tenn. Code Ann. § 9-8-302

care, custody or control of the State, the Court ruled the Claims Commission did not have jurisdiction over the negligent supervision claim. In light of that ruling, the Tribunal can find no basis for exercising jurisdiction over the claims of negligent hiring and negligent supervision and these claims must be dismissed.

Having reviewed all of the Claimant's causes of action, the Tribunal finds that it does not have subject matter jurisdiction to adjudicate any of the claims and, therefore, the entire claim must be dismissed.

**IT IS, THEREFORE, ORDERED:**

That the claim is respectfully dismissed. Any pending motions are held to be moot.

ENTERED this 11 day of September, 2014.



ROBERT N. HIBBETT  
Claims Commissioner  
Sitting as the Trial Court of Record

**CERTIFICATE OF SERVICE**

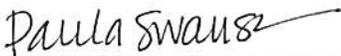
This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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This 15<sup>th</sup> of Sept., 2014.

  
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PAULA SWANSON  
Administrative Clerk  
Tennessee Claims Commission