

DEPARTMENT OF PENAL INSTITUTIONS:

Not liable in suit for
damages for negligence.

7-21
July 7, 1933

Reverend LeRoy Munyon
Chaplain and Physical Director
Penal Institutions
Jefferson City, Missouri



Dear Reverend Munyon:

This Department acknowledges receipt of your letter dated June 22, 1933, as follows:

"In arranging for wrestling and boxing contests in connection with the athletic activities at the Missouri State Prison, in which, at times past, outside fighters have been brought inside to meet inmate fighters, etc., the question has arisen; would the State be responsible in case of accident or injury incurred by an athlete from the outside while participating prison athletic programs?

At the suggestion of authorities here at the prison, I am writing you for an opinion on this subject".

Section 8316 Revised Statutes of Missouri 1929, establishes the "Department of Penal Institutions", with the right given such Department to complain and defend in all courts and adopt and use a common seal and by which section we understand the Legislature intended to create a separate legal and suable entity, to be known as the Department of Penal Institutions. However, your attention is called to the fact that no provision is made for service of process on the entity known as the Department of Penal Institutions nor any member thereof, and that such legal entity could not be served with process as is provided in Sections 723 and 735 Revised Statutes of Missouri 1929.

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State ex rel State Highway Commission of Missouri
v. Bates, Circuit Judge, 296 S. W. 418, 422.

We find your question answered in principle in the case of *Bush v. State Highway Commission of Missouri*, 46 S.W. (2d) 854, being an action for damages on account of negligence. The State Highway Commission is a quasi public corporation created for specific purposes and the general principles of law applicable to actions for damages on account of negligence against the State Highway Commission of Missouri would apply to such actions against the Department of Penal Institutions. In the latter case at page 857 of the opinion the court said:

"The proposition that the state is not subject to tort liability without its consent is too familiar to deserve extended citations of authorities. Story on Agency (9th Ed.) Sec. 319; *Gibbons v. United States*, 8 Wall. 269, 19 L. Ed. 453.

But appellant has sued respondent as "a corporation duly organized and existing according to law", and he contends that this court ruled in *State v. Bates*, supra, that the highway commission is a corporation and does not enjoy the immunity from suit which is a prerogative of the sovereign state. It is true that the court in its opinion in *State v. Bates*, supra, says of the state highway commission (317 Mo. 696, 296 S. W. loc. cit. 420): "It is an entity, with powers of a corporation established and controlled by the state for a specific public purpose, but that does not make this legal entity the sovereign state".

And further on the same page:

"But the views expressed by the court in *State v. Bates*, supra, do not subject the commission to liability for the tortious acts of its servants and employees".

Reverend LeRoy Munyon

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See also Broyles v. State Highway Commission of Missouri, 48 S. W. (2nd) 78.

We are therefore of the opinion that there would be no liability on the part of the State or the Department of Penal Institutions under the circumstances outlined in your letter.

Very truly yours,

GILBERT LAMB
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General.

GL:LC