

PENAL INSTITUTIONS:

What liability insurance, if any, to be carried by Department of Penal Institutions.

April 11, 1933



Department of Penal Institutions
Jefferson City, Missouri

Gentlemen:

This office acknowledges receipt of your letter dated April 7, 1933, in which you state and inquire as follows:

"The Board of Penal Commissioners would be pleased to receive an opinion from you at your early convenience on these points;

First:- Should boiler insurance for our Institutions cover injuries to employees or other persons.

Second:- Should insurance on motor vehicles operated by our Institutions cover liability and property damage".

We do not find any statutory requirement that you take out the character of insurance inquired about in either the first or second subdivisions in your letter. If you should have insurance coverage at all then as to what persons or property it should or would apply would depend on the contract itself and upon your judgment as to what protection should be obtained.

While it is true that section 8316, Revised Statutes Missouri, 1929, establishes a department to be known as the "Department of Penal Institutions", with the right to complain and defend in all courts and to adopt and use a common seal, by which section and language we take it the Legislature intended to create a separate legal and suable entity to be known as the Department of Penal Institutions, but your attention is called to the further fact that no provision is made for service of process on the Department of Penal Institutions or any member thereof, and that such legal entity could not be served with

process as is provided in Sections 723 and 735 Revised Statutes Missouri, 1929.

State ex rel State Highway Commission of Missouri, v. Bates, Circuit Judge, 296 S. W. 418, 423.

The State Highway Commission of Missouri is a quasi public corporation, created for specific purposes and the general principles of law governing the State Highway Commission of Missouri would govern the Department of Penal Institutions, as to liability for torts, negligence and damages. However, we might say that the Act creating the State Highway Commission of Missouri provides specifically that it may be sued and the service of process is to be had on the Secretary of the Commission, in Cole County, Missouri.

In the case of Bush v. State Highway Commission of Missouri, 46 S. W. (2nd) 854, the Supreme Court of this state at page 857 of the opinion 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".

And again on page 859:

"And it would be against the public interest to rule that the state highway commission was subject to liability for the tortious acts of its agents and employees".

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

We call these matters to your attention on the question of the advisability of your Department procuring any insurance mentioned in your letter.

Very truly yours,

GILBERT LAMB
Assistant Attorney General.

APPROVED:

Attorney General.

GL:LG