

STATE -- LIABILITY OF:

In absence of an express statute the State is not liable for damages either for non-performance of its powers or for their improper exercise by those charged with their execution.

9-12
September 8, 1934.



Honorable Harve G. Gray
Superintendent
Missouri Training School for Boys
Boonville, Missouri

Dear Sir:

We are in receipt of your letter dated August 27th, 1934, wherein you state as follows:

"On the afternoon of Monday, August 27th, an inmate of our Institution driving our truck was crossing the bridge over the Missouri River during a shower. When approaching the Howard County side of the bridge, which is on an incline, said inmate applied the brakes which caused the truck to swerve to the left, at which time he was meeting young Martin (son of Professor Martin of Missouri University) in a 1931 A Ford. The cars collided causing considerable damage to both truck and car.

"Both Martin and the truck driver stated to me the accident was unavoidable. Both were driving at a very moderate rate of speed because of the slippery condition of the bridge.

"Please advise me as to what we can lawfully do regarding repairing Mr. Martin's car.

"An early reply will be appreciated."

In Cassidy v. City of St. Joseph, 247 No. 197, 1.c. 205, 152 S. W. 306, our court held that in the absence of an express statute to that effect, the State is not liable for damages either for non-performance of its powers or for their improper exercise by those charged with their execution. The court said:

"Neither the State nor those quasi-corporations consisting of political subdivisions which, like counties and townships, are formed for the sole purpose of exercising purely governmental powers, are, in the absence of some express statute to that effect, liable in an action for damages either for the non-exercise of such powers, or for their improper exercise, by those charged with their execution. This applies alike to acts of all persons exercising these governmental functions, whether they be public officers whose duties are directly imposed by statute, or employees whose duties are imposed by officers and agents having general authority to do so. ****"

From the foregoing, we are of the opinion that the State is not liable for damages resulting in the negligent operation of a motor car by an inmate of one of its institutions unless there is a statute providing for such a liability. We find no statute imposing such a liability and therefore we are of the opinion that nothing can be done lawfully by the State towards the repair of Mr. Martin's car.

Respectfully submitted,

APPROVED:

WM. ORR SAWYERS,
Assistant Attorney-General.

ROY MCKITTRICK
Attorney-General.

MW/WOS:afj