

STATE CONSERVATION COMMISSION: Not liable in tort.

July 26, 1939



Mr. I. T. Bode, Director
State Park Board
Jefferson City, Missouri

Dear Sir:

This acknowledges receipt of your inquiry, which is as follows:

"At some of the parks in the free range part of the State we are having trouble with stray live stock. Since there are no live stock laws in that part of the State, live stock is permitted to run at large and we have fenced the parks in an effort to keep out the live stock. This policy requires that we have cattle guards or gates or some other method of keeping out the live stock and at the same time permit automobile traffic.

The question has arisen of responsibility for damages to live stock which might become injured in attempting to cross our cattle guards. Some of these guards are so constructed that it might be possible for a domestic animal to get caught or stumble and fall or be injured in some other manner in attempting to go through the guard and trespass on State property.

The legal question involved appears to be, is a property owner responsible if stray live stock becomes injured in attempting to trespass in those parts of the State where there is no stock law?"

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Replying thereto, the case of *Bush v. State Highway Commission of Missouri*, 46 S. W. (2d) 854, decided by the Supreme Court in 1932, seems to answer your inquiry. That was a suit for damages brought by the plaintiff against the State Highway Commission for alleged injuries received by him on account of the wrongful collision with an auto truck of the Missouri State Highway Commission. The court there held that the State Highway Commission was a subordinate branch of the Executive Department of the State Government and was not liable in tort for acts of its agents and employees.

At page 857, 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."

At page 858, the court further said:

"It thus having been determined that the commission is a subordinate branch of the executive department, it is not liable in tort for the acts of its agents and employees upon grounds of public policy heretofore stated."

And at page 859, the court further said:

"The authority of the state of Missouri, through its highway commission, a branch of its executive department, over its system of highways was completely established by the act of August 4, 1921. 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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The creation of the State Park Board was authorized by the act of 1937, (Laws 1937 page 520).

By that act certain powers were conferred upon said board. By analogy, if the State Highway Commission is a branch of the state government, as was held in the Bush case, it also follows that the State Park Board is likewise a branch of the state government and, as was said in the Bush case

***** the state is not subject to tort liability *****.

There is no consent given by the state in said laws which create or authorize the creation of said State Park Board by which suit against it might be maintained on account of the tortious acts on behalf of said State Park Board.

Conclusion.

It is our opinion that neither the State of Missouri nor the State Park Board is legally liable on account of an injury received by stray stock, cattle or live stock, becoming injured in attempting to trespass on the parks which are owned by the state through the State Park Board.

Drake Watson.,
Assistant Attorney General.,

Approved;

J. E. Taylor,
Acting Attorney General.,