

INSURANCE: (1) Missouri State School for Blind cannot purchase insurance covering damage or loss on property in its department; (2) State of Missouri is not liable in damages for the torts of its officers or agents while in the performance of their duty.

July 27, 1942.



Mr. Robert H. Thompson
Acting Superintendent
Missouri School for the Blind
3815 Magnolia Avenue
St. Louis, Missouri

Dear Mr. Thompson:

The Attorney-General wishes to acknowledge receipt of your letter of July 24, 1942, in which you requested an opinion from this Department. Omitting caption and signature, your letter requesting such opinion is as follows:

"We received a letter from Mr. Ferguson, state purchasing agent, advising us that your office had issued a ruling that the state was not liable for personal or property damage. Consequently, it would be impossible for him to purchase or approve an order for insurance.

"Insurance was carried on the bus and passenger car covering personal and property liability as well as loss or damage by fire, theft, hail, etc.

"We would like to have your opinion on the following questions:

"(1) Is there any way we can legally protect the school against loss of either of these two vehicles by fire, collision, theft, etc.?"

"(2) Are any of the authorized operators of either of these vehicles, as employees of the state, legally liable for personal or property damage resulting from an

accident while driving either of these state owned vehicles on a mission connected with the work of the school?

"Thanking you for your earliest possible reply on these question, I remain"

Answering your first question, I will cite you to Article IV, Section 48, of the Constitution of Missouri, which provides as follows:

"The General Assembly shall have no power to grant, or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered or a contract has been entered into and performed in whole or in part, nor pay nor authorize the payment of any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void."

I also wish to cite Article X, Section 19, of the Constitution of Missouri, which is as follows:

"No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient to refer to any other

law to fix such sum or object. A regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

After examining these constitutional provisions it would appear that in order for any State money to be paid out there must be a specific appropriation authorizing the payment of such sum for the particular matter in question and such appropriation must state to what object it is to be applied.

I will also cite you to Section 13043, R. S. Mo. 1939, which provides as follows:

"No warrant to be drawn or paid unless money appropriated for payment.
No warrant shall be drawn by the auditor or paid by the treasurer, unless the money has been previously appropriated by law; nor shall the whole amount drawn for or paid, under any one head, ever exceed the amount appropriated by law for that purpose."

There is no general statute in the State of Missouri which provides that the State shall carry or have the right to carry or purchase insurance on any of its property. Therefore, it becomes necessary to examine the appropriation for the department wishing to purchase such insurance. Accordingly, we have examined the appropriation act of 1941, referring to the Missouri State School for the Blind, and we do not find that any amount was appropriated for the payment of insurance premiums of any kind on any of the property under the control of your department which is required under the constitutional provisions cited above.

As to your second question, we will first cite you to 59 C. J., 194, where we find the following:

" A State is not liable for the torts of its officers, or agents, in the discharge of their official duties unless it has voluntarily assumed such liability and consented to be so liable."

In *Bush v. State Highway Commission of Missouri*, cited in 46 S. W. (2d), at page 854, 329 Mo. 843, the court stated:

"The proposition that the state is not subject to tort liability without its consent is too familiar to deserve extended citations of authorities."

In this case an individual sought to bring an action against the State of Missouri for damages caused by a collision with a truck operated by the State Highway Commission in Pulaski County, Missouri. There was a judgment in favor of the defendant sustaining a demurrer to the petition, and the plaintiff appealed and the Supreme Court of Missouri affirmed the judgment of the circuit court and held that an action such as this could not be sustained.

In support of this proposition we will also cite you to *Broyles v. State Highway Commission of Missouri* (Mo. Sup.), 48 S. W. (2d) 78.

Following these authorities we find that the State of Missouri cannot be sued in tort for actions of its officers or agents without its consent. If any damage would result from an accident in which an automobile of your Department is involved, the driver of such motor vehicle might be personally liable, according to whether or not he was negligent in the operation of such automobile, but no action could be brought against the State itself under such circumstances.

Conclusion

(1) It is the opinion of this Department that your department cannot purchase insurance to protect the state against loss or damage to vehicles, under the control of your department, by fire, collision or theft, in view of the fact that no appropriation was made contemplating the purchase or payment for insurance. (2) It is also the opinion of this Department that the State of Missouri cannot be held liable in damages for the torts of its officers or agents while in the performance of their

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duties as such officers or agents, without the consent of the State itself. The driver of such motor vehicle might be personally liable according to whether or not he was negligent in the operation of such motor vehicle, but the State itself cannot be so held.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

HARRY H. KAY
(Acting) Attorney-General

JSP:EG