

MOTOR VEHICLES: Liabilities of the Motor Vehicle Unit of the
Department of Revenue under House Bill 317.

December 12, 1946



12/28

Mr. Rinkle Statler
Supervisor of Motor Vehicle Unit
Department of Revenue
Jefferson City, Missouri

Dear Mr. Statler:

We are in receipt of your letter of September 26, 1946, in which you request an opinion from this department. Your letter reads as follows:

"I would very much appreciate an opinion from you with regard to the liabilities and responsibilities of this Department under House Bill No. 317, the Financial Responsibility Act."

House Bill 317 sets out certain duties and responsibilities of the Commissioner of Motor Vehicles. For the most part these duties are directed to the general operation of the Motor Vehicle Unit in regard to requiring motor vehicle owners and insurance companies to comply with the Act.

However, there are several sections of the Act which require the Commissioner to act in a certain manner with respect to the individual motor vehicle owners. These sections are the ones we are interested in here.

Section 4 (b) provides that this Act shall not apply to motor vehicles owned by the United States, the State of Missouri or any political subdivision of this state, nor shall this Act apply to any common carrier or contract carrier whose operations are subject to the jurisdiction of and are regulated by the Interstate Commerce Commission or the Public Service Commission of Missouri. Should the Commissioner apply this Act to these named individuals he would be exceeding his authority.

Section 7 (a) provides that the Commissioner cannot suspend, or if suspended shall restore a license, registration or a non-resident's operating privilege following non-payment of a judgment when the judgment debtor gives proof of financial responsibility and obtains an order from the trial court in which such judgment was rendered permitting the payment of such judgment in installments. Should the Commissioner suspend a license or refuse to restore a license contrary to this section he will be exceeding his authority.

Section 28 provides that the Commissioner shall cancel any bond or return any certificate of insurance, or the Commissioner shall direct and the State Treasurer shall return to the person entitled thereto any moneys or securities deposited pursuant to this Act as proof of financial responsibility or waive the requirement of filing proof of financial responsibility in four instances as set out by the Act. If the Commissioner should refuse to comply with this provision he will be failing to exercise his duty under the Act.

Section 35 provides that this Act shall not have a retroactive effect and shall not apply to any judgment or cause of action arising out of an accident occurring prior to the effective date of this Act. If the Commissioner should apply this Act retroactively he will be exceeding his authority.

If the Commissioner exceeds his authority or fails to perform certain duties contrary to any of the preceding sections, the Commissioner, or his agents acting for him, will be liable to the party injured by such negligence or misfeasance.

Section 14 of Senate Bill 297 permits the Collector of Revenue to "deputize any officer or employee of any department, institution or agency of the state, subject to the approval of the head of such department, institution or agency, * *" It then provides that "The state collector of revenue may require a surety bond from any person so deputized in such amount and upon such conditions as he may deem necessary, with sureties to be approved by him. * *" Since the Motor Vehicle Unit is under the Collector of Revenue, a division of the Revenue Department, the Commissioner or his agents may be required to furnish a surety bond as required by this bill.

If any person is injured or damaged by the Commissioner or his agents because of their negligence or misfeasance, action should be brought against the Commissioner or his agents in their

individual capacity, as there is no right to proceed against the state or an agency thereof in the absence of a provision permitting such action. This rule is set out in Bush vs. State Highway Commission of Missouri, 46 S. W. (2d) 854, 1. c. 357:

"The rule is well settled that the state is not liable for injuries arising from the negligence of its officers and agents unless such liability has been assumed by constitutional or legislative enactment. * * *

"The exemption of the state from liability for the torts of its officers and agents does not depend upon its immunity from action without its consent, but rests upon grounds of public policy that no obligation arises therefrom. * * * "

It hardly seems necessary to cite authority to the effect that the Motor Vehicle Unit as a part of the State Revenue Department is a state agency, but the Bush case, supra, at page 858, says this about the State Highway Commission, an analogous situation:

"Let us consider, therefore, in what manner the state highway commission should be classified. It was created * * * * * by legislative enactment, and clothed with powers therein defined, through the appointment of the Governor, under all recognized rules of construction it is, when properly classified, a subordinate branch of the executive department. * * * * *"

Extending this proposition further, the court in State v. Riggs, 47 S. W. (2d) 178, 1. c. 180, makes this observation:

"We hold * * * that the state highway commission, being an agent of the state, is not liable for damages in torts."

However, if the Commissioner or his agents are bonded as authorized by Senate Bill 297, the sureties may be required

to satisfy any judgment obtained. Section 3242, R. S. Mo. 1939, specifically provides:

"Persons injured by the neglect or misfeasance of any officer may proceed against such principal or any one or more of his sureties, jointly or severally, in any proceeding authorized by law against such officer for official neglect or injury."

In the case of State v. Collins, 172 S. W. (2d) 284, 1. c. 289, the court makes the following observation in regard to the liability of sureties of public officials:

"This statute creates no new cause of action against either the officer or his sureties for his neglect or misfeasance, but merely provides a summary remedy against the sureties in any case where the officer is liable for an act of neglect or misfeasance which amounts to a breach of the condition of the bond. In other words, whenever the facts are such as to impose liability upon the officer, the person injured may proceed against both him and his sureties (State ex rel. v. Roth, 330 Mo. 105, 49 S.W. 2d 109), which must mean, we think, that whenever the facts are such as to impose liability upon two or more officers jointly for a single tort, the person injured may proceed against all the officers jointly, and at the same time join their respective sureties, each to answer for the default of his particular principal, so long as the maximum amount to be recovered is within the penalty of each individual bond. Notwithstanding the liability of his co-defendants, each officer in such a case is liable for the entire injury, so that a particular surety's undertaking is in no sense enlarged or affected by a rule of procedure which permits the person injured to bring in the sureties of each

individual officer in an action against two or more officers jointly for the redress of a single wrong."

Conclusion

Therefore, it is the opinion of this department that the Department of Revenue and the Motor Vehicle Unit, as a division of that department, are not liable for negligence or misfeasance in regard to the duties and responsibilities to individuals as set out under House Bill 317, but that the Commissioner of Motor Vehicles and his agents are individually subject to liability under this Act; but further, that the sureties indemnifying these agents may be joined in an action or proceeded against separately for any judgment to be recovered because of said negligence or misfeasance.

Respectfully submitted,

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APPROVED:

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Attorney General

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