

ADJUTANT GENERAL:
MILITIA:

Cannot enter into agreement in which State would be liable for torts of Air National Guard personnel.

May 22, 1950



Brigadier General John A. Harris
Adjutant General's Office
Jefferson City, Missouri

Dear General Harris:

This department is in receipt of your recent opinion request which reads as follows:

"Reference is made to the enclosed letter from the National Guard Bureau, and your opinion is requested as to whether it is legal or proper for the Adjutant General to agree to the proposal made therein."

The enclosed letter containing the proposal in question was addressed to you and sent by Major General Kenneth F. Cramer, Chief, National Guard Bureau. This letter reads in part:

"1. This Bureau is prepared to request Headquarters, United States Air Force to continue negotiations for the acquisition of the Sheboygan Air-to-Air Gunnery Ranges for use by the units of the Missouri Air National Guard.

"2. Prior to such acquisition it is necessary that the State agree to the following:

"a. The processing of any claims for liability to cover damages to property or personnel that result from operation of aircraft by Air National Guard personnel is a responsibility of the State.

"b. The Federal Government is not liable for damages as a result of claims filed

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against the State where the operator of the aircraft is a member of the National Guard."

The question to be determined is whether or not the Adjutant General has the authority to agree, on behalf of the State, to accept liability for personal or property damages resulting from operation of aircraft by Missouri Air National Guard personnel.

It is a well-established principle of law that the State is not liable for the tortious acts of its officers, agents or employees, absent any constitutional or statutory provision assuming such liability. This rule is stated in 49 Am. Jur., States, Territories and Dependencies, paragraph 76, page 288:

"The rule is well settled that the state, unless it has assumed such liability by constitutional mandate or legislative enactment, is not liable for injuries arising from the negligent or other tortious acts or conduct of any of its officers, agents, or servants, committed in the performance of their duties. In other words, the doctrine of respondeat superior does not apply to sovereign states unless through their legislative departments they assume such liability voluntarily."

It was held in *Cassidy v. City of St. Joseph*, 247 Mo. 197, l.c. 205, 152 S. W. 306, that:

"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 the 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. * * *"

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Neither the Constitution nor legislative acts of the State of Missouri provide for the State's assumption of liability for damages resulting from operation of aircraft by the Missouri Air National Guard, nor is the Adjutant General, by a constitutional provision or legislative act, given the authority to enter into an agreement assuming such liability. Since a constitutional or statutory provision authorizing such is required before such liability can be assumed by the State, it is our opinion that the Adjutant General cannot agree to the instant proposal made by the National Guard Bureau.

CONCLUSION

It is therefore the opinion of this department that the Adjutant General is without the authority to agree with a proposal made by the National Guard Bureau, under which agreement the State would be required to assume liability for personal and property damages resulting from operation of aircraft by Missouri Air National Guard personnel.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General