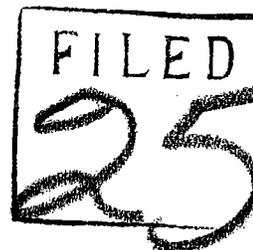


IMMUNITY OF STATE FROM SUIT:  
STATE HOSPITALS:  
DIVISION OF MENTAL DISEASES:

The State of Missouri is not liable or subject to suit for damages when personal property of employees at state mental hospitals is stolen or damaged by state hospital patients.

September 5, 1961



Dr. Addison M. Duval, Director,  
Division of Mental Diseases,  
722 Jefferson Street,  
Jefferson City, Missouri

Dear Dr. Duval:

The following opinion is rendered in reply to your inquiry, which reads as follows:

"For the past several years, questions have been raised by our institutions relative to the liability of the State for personal property of employees stolen or damaged by acts of hospital patients. We would therefore appreciate it very much if you would give us a formal opinion regarding this matter so that we may properly advise employees of this Division."

Your request in essence raises the question as to whether the State of Missouri is immune from suit when personal property of employees is stolen or damaged by State Hospital patients. The general doctrine of the immunity of the sovereign state and its agencies is well settled. In 49 Am. Jur. §73, p.284, it states as follows:

"The liability of a state in its ordinary affairs is somewhat different from that of a private individual. Under ordinary circumstances, it can sustain a liability only by reason of a contractual obligation. It is not liable for the tortious acts of its officers. And where a governmental duty rests upon a state or any of its instrumentalities, there is absolute immunity in respect to all acts or agencies. There is no moral obligation upon the part of the state which can be enforced upon equitable principles alone. The state is not liable as an individual or private corporation may be on the ground that its agent acted upon an apparent authority which was not real.

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It is not bound to compensate an individual employee for injuries sustained while in its service, and no right of recovery in favor of such employee exists by inference or legal construction, or otherwise than by statute. It is not the policy of states to indemnify persons for loss, either from lack of proper laws or administrative provisions, or from inadequate enforcement of laws or the inefficient administration of provisions which have been made for the protection of persons and property. It has been held that a state is not liable for injury to private property by animals which it imports or attempts to protect by statute, whether the statute is constitutional or not. It is fundamental, however, that a state acting through the legislature has the power to recognize claims against it founded on justice and equity for which, by reason of the sovereign character of the state, it would otherwise not be liable, and on proper occasions should do so. Thus, while the state is not liable in tort for the acts of its officers, agents, or servants, it may assume such liability by statute, in the absence of any prohibition in the Constitution of the state. The state may recognize liability for payment of moral or equitable obligations, when not restricted by constitutional limitations, and the legislature may properly appropriate public funds for the payment thereof.

"The state can adopt whatever mode or method it elects to determine whether it shall become liable and discharge a given obligation. It can select whatever agency it sees fit and proper to pass upon the question, and provide that upon the determination of such agency, the claim shall be paid; and the inquiry conducted by such agency may be administrative or judicial, as the legislature elects."

The Missouri courts seem to be in agreement as to the immunity of the state from suit. In the case of *Hinds v. City of Hannibal*, 212 S. W. 2d 402, the Supreme Court said:

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"Immunity from tort liability for acts of public officers in the exercise of governmental functions is not retained in this country to perpetuate the idea that the king can do no wrong, as plaintiff suggests. The principal reason for it is that the general rules of respondeat superior cannot be applied to public officers without opening up unlimited possibilities for wasteful and dishonest dissipation of public funds. *Brown v. City of Craig*, 350 Mo. 836, 168 S.W. 2d 1080. Public funds are trust funds and public policy does not permit them to be diverted from the purposes for which they are raised by taxation. This is analogous to the rule which exempts charitable trusts from tort liability. See *Dille v. St. Luke's Hospital*, Mo. Sup., 196 S. W. 2d 615 and cases cited. Any change in this situation must be made by the Legislature, as has been done in providing for tort claims against other states and the Federal Government, because only the Legislature could prescribe all regulations and limitations necessary to protect the public interest and provide the fiscal basis for payment of such claims."

This case is entirely consistent with earlier Missouri cases. In *Zoll v. St. Louis County*, 124 S. W. (2d) 1168, the Court stated:

"The courts of this state have consistently held that, absent consent of the state, its agencies cannot be sued in damages from whatever source caused, except when acting in a private or proprietary capacity as was the case in *Hannon v. St. Louis County*, supra (62 Mo. 313) . . . It is the prerogative of the state to determine when suit may be maintained against it or its agencies and when not."

An opinion of this office dated June 18, 1951, discussed the question of whether the state is liable in damages for the wrongful acts of inmates of a state maintained training school for the care and treatment of feeble-minded and epileptic patients. We believe that opinion is entirely consistent with the opinion rendered herein and we are enclosing a copy of that opinion for your convenience and information.

Dr. Addison M. Duval

CONCLUSION

It is therefore our conclusion that the State of Missouri is not liable or subject to suit for damages when personal property of employees at the state mental hospitals is stolen or damaged by state hospital patients.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Clyde Burch.

Very truly yours,

THOMAS F. EAGLETON  
Attorney General

CS:gm;mw

Enc.