

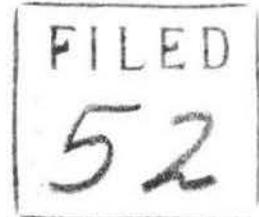
BOARD OF REGENTS:  
QUASI - PUBLIC CORPORATION:  
SOVEREIGN IMMUNITY:  
STATE COLLEGE:

The use, occupancy and operation of dormitories for students not for profit by a state college is a governmental function of that institution and the Board of Regents of the said college

is a quasi-public corporation and therefore the proper subject of sovereign immunity to liability in the same degree afforded the State.

OPINION NO. 52

April 19, 1965



Mr. E. C. Curtis  
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Attorneys at Law  
1016 Landers Building  
Springfield, Missouri 65806

Dear Mr. Curtis:

This is in reply to your opinion request in which you state:

"The Board of Regents for the Southwest Missouri State College has requested us, as attorneys for the College, to obtain your official opinion with regard to the liability of the College for tort claims arising out of the use, occupation and operation of dormitories presently being constructed by the College. These dormitories are being financed by the sale of revenue bonds under the provisions of Chapter 176, R.S.Mo. 1959. The dormitories will, of course, be occupied by students, and the occupation charges paid by the students will be used to pay the revenue bonds."

The specific question on which the opinion is requested is as follows:

". . . the liability of the College for tort claims arising out of the use, occupancy and operation of dormitories presently being constructed by the college."

Your opinion request further states that the dormitories are to be occupied by students. We assume that students of no other school or institution will be allowed to occupy the dormitories.

Educational institutions established by the authority of the State have long been considered to be an agency of the State and heir to the same sovereign immunity to liability. Cochran v. Wilson, et al., 287 Mo. 210, 229 SW 1050 (1921).

Article IX, Section 9(b) of the Missouri Constitution contains provisions for establishing schools other than the State University. That provision states:

"The general assembly shall adequately maintain the state university and such other educational institutions as it may deem necessary."  
(Underscoring ours.)

In addition to the constitutional provision authorizing other educational institutions, Chapter 174, RSMo, directly provides for five state colleges which includes Southwest Missouri State College. Chapter 174, RSMo also provides for a board of regents to govern the state college so established. A Board of Regents empowered under 174.040, RSMo, is a quasi-public corporation. Koch v. Board of Regents of Northwest State College, et al., Mo., 256 S.W.2d 785 (1953).

The courts have consistently held that public and quasi-public corporations have sovereign immunity. Todd v. Curators of the University of Missouri, 347 Mo. 460, 147 S.W.2d 1063 (1941). In defining and applying the public or quasi-public corporation theory to a case founded in negligence against a state school the Todd case, supra, stated (l.c. 1064):

"By establishing the university the State created an agency of its own, through which it proposed to accomplish certain educational objects. In fine, it created a public corporation for educational purposes - a state university."

A like analysis was stated in the Koch case, supra, concerning the Board of Regents of Northwest Missouri State College. The court in the Koch case stated (l.c. 78):

"Under section 174.040, RSMo the Board (of Regents) is a legal entity or a quasi-public corporation . . ."

Since Northwest State College and Southwest State College are common subjects of the above statute, the quote from the Koch

case, supra, is applicable to Southwest Missouri State College Board of Regents.

The statutory provision of 174.040, RSMo gives the board of regents the power to "sue and be sued". This provision is not a statutory waiver of sovereign immunity. The effect of such provision was discussed in the Todd case, supra, and the court stated (l.c. 1064):

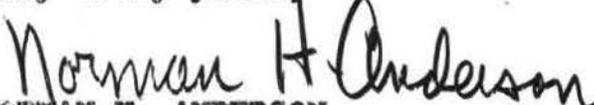
"A statutory provision that such a public corporation 'may sue or be sued' does not authorize a suit against it for negligence."

CONCLUSION

It is therefore the opinion of this office that Southwest Missouri State College Board of Regents is a quasi-public corporation entitled to sovereign immunity as a state agency established for educational purposes and as such is immune to liability for negligence arising out of the use, occupation and operation of dormitories constructed for the purpose of housing students of the said college not for profit.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, William A. Peterson.

Very truly yours,

  
NORMAN H. ANDERSON  
Attorney General