



OFFICES OF THE  
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JEFFERSON CITY

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May 1, 1974

OPINION LETTER NO. 185

Mr. Bert Shulimson  
Director, Missouri State  
Division of Welfare  
Broadway State Office Building  
Jefferson City, Missouri 65101

Dear Mr. Shulimson:

This letter is in response to your question asking whether foster parents who receive children from the Juvenile Court under the provisions of Chapter 211, RSMo are legally responsible for the torts committed by children in their care.

We wish to point out that questions concerning the responsibility of persons having charge of children are complex questions which are dependent on the facts of each case. Such questions cannot be answered in general because of the myriad factual situations that may exist.

The general rules respecting the liability of natural parents as expressed in 59 Am.Jur.2d, Parent and Child, §130, which appear to be applicable to those standing in loco parentis (such as foster parents) are as follows:

"It is universally held at common law that the mere fact of paternity does not make a parent liable for the torts of his minor child. A fortiori is this true in the case of an adult child. The parent is not liable merely because the child lives at home with him, works for him, and is under his care, management, and control. Rather, liability exists, apart from the parent's own negligence, only where the tortious act is done by the child as the servant or agent of the

Mr. Bert Shulimson

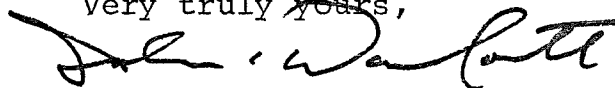
parent, or where the act is consented to or ratified by the parent. The rule that the parent is not liable holds true whether he is present or absent when the tort of the child is committed. However, a parent may be liable for an act of his child if his conduct in the premises was such as to render him a principal tortfeasor, or, in other words, if his own negligence was a proximate cause of the injury complained of. Thus the parents may be liable if their negligence made the injury possible. In a case of this kind, the parent's liability is based upon the ordinary rules of negligence, not upon the relation of parent and child. It is held that the relationship of parent and child is no evidence of a conspiracy to do the tortious act complained of. . . ."

Section 537.045, RSMo, imposes legal liability upon a ". . . parent or guardian of any unemancipated minor, in their care and custody, against whom judgment has been rendered for the willful marking upon, defacing or in any way damaging any property. . . ." in an amount not to exceed three hundred dollars. However, it is our view because of the strict liability and the penal nature of such provisions, such "foster parents" would not be held to be "guardians" within such section.

Your letter also indicates some concern as to whether the Division of Welfare has any liability for the acts of such children. The Division of Welfare as a part of the state government has sovereign immunity. See our Opinions No. 98, dated June 18, 1951, to Witte and No. 25, dated September 5, 1961, to Duval, copies enclosed.

As we noted in Opinion No. 136, dated April 4, 1973, addressed to you, employees of the Division of Welfare including those persons qualifying as "volunteers" are within the provisions of the "Tort Defense Fund", Section 105.710, RSMo Supp. 1973. The question of liability, including the question of whether the defense of sovereign immunity still exists under such section, remains to be determined by the facts of the particular case and cannot be considered in the abstract.

Very truly yours,



JOHN C. DANFORTH  
Attorney General

Enclosures: Op. No. 98, 6-18-51, Witte  
Op. No. 25, 9-5-61, Duval