

May 5, 1933.

Mr. J. Prugh Herndon,
Assistant Comptroller,
University of Arizona,
Tucson, Arizona.

Dear Sir:

Your letter of April 27th to the Attorney General relative to public liability and property damage insurance upon busses owned and operated by the University, is at hand. You have requested an opinion of the Attorney General as to whether or not, in view of the rider placed upon the public liability and property damage insurance policies covering your buses, you should refuse to accept the return of premium tendered you by the insurance company.

The decision of our Supreme Court in the case of Hartford Accident Indemnity Company vs. R. C. Wainscott, reported in 19 Pacific 2nd, 328, has caused insurance companies throughout the state to cancel insurance of the nature carried by you on your buses. It appears that the decision in that case materially affects the University of Arizona. The University of Arizona is of nearly the same status as a county or school district, since it comes within the classification of what is known as a public corporation. The officers and agents of the University perform governmental functions. In view of this situation, neither the University of Arizona nor the Board of Regents, which is a corporate entity conducting the affairs of the University of Arizona, can be held liable for damages as the result of tortious or negligent acts of its officers, employees or agents, committed in the exercise of the powers conferred upon the University of Arizona and the Board of Regents by law. In view of the decision of the Wainscott case, aforementioned, it would therefore be illegal for the University of Arizona to pay public money for premiums on public liability and property damage insurance covering its buses. The immunity of the University and the Board of Regents from liability by reason of the negligent or tortious acts of its officers, agents, or employees does not, however, extend to the officers, agents, or employees, and they may be, in certain instances, held personally liable in damages for their tortious or negligent acts. The rider placed upon the insurance policies which you referred to in your letter has no legal significance, and therefore we recommend that you accept the

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return of the permium paid by you for such insurance policies.

We also recommend that the driver of buses owned by the University be required, at his own expense, to take out public liability and property damage insurance upon the bus or buses which he drives.

Very truly yours,

Attorney General.

By

Assistant Attorney General.

State vs. Board of Regents, University of Kansas,
29 L. R. A. 387, and notes;
Davie vs. Regents of University of California,
227 Pac. 247;
People vs. Regents of University of Colorado,
49 Pacific 286;
Moscow Hardware Company vs. Solson (Idaho) 158 Fed. 199;
In re Estate of Herman Royer (Calif.) 44 L.R.A. 364 & notes;
11 C. J. pp. 975 and 976, Sec. 2, and page 980, sec. 4.

JRM:MD