

APR 27 1950
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ARIZONA ATTORNEY GENERAL

Mrs. Ana Frohmiller
State Auditor
Capitol Building
Phoenix, Arizona

Dear Mrs. Frohmiller:

We have your letter of April 5 wherein you state:

"The University of Arizona has presented the following purchase orders:

| | | |
|--------|----------------------|---------|
| #04808 | A. & A. Ambulance | \$ 7.50 |
| #04809 | M.R. Palmer, M.D. | 50.00 |
| #04810 | John H. Green, M.D. | 345.00 |
| #04811 | R. E. Hastings, M.D. | 309.38 |
| #04812 | St. Mary's Hospital | 473.00 |

for ambulance and medical expenses rendered to James Blasdell who was injured in a physical education class on December 13, 1949. I am enclosing a copy of a letter from Mr. John L. Anderson, Comptroller relative to injury sustained by James Blasdell, a student.

Will you please give me an opinion as to whether or not these expenditures are proper charges against present appropriation made to the University of Arizona, or do you feel that such expenditures should have a special appropriation by the Legislature."

It appears from the letter accompanying yours that Mr. Blasdell was injured through no fault of the University or its officers or employees, but through an unfortunate accident which happened in class through no fault of anyone. The question as to whether the state is liable for the medical expenses of the student depends on whether it is legally liable for injuries sustained by a student in class work.

The University is a department or agency of the state, engaged in conducting educational work, including classes in physical education and in so doing is performing a governmental function. Our Supreme Court in the case of State v. Sharp, 21 Ariz. 424, 189 Pac. 631, held the state is not liable in damages for the negligent acts of its representatives and employees resulting in injury to a state employee. In School Dist. V. Rivera, (Ariz.) 243 Pac. 609, 45 ALR 762, the Arizona court

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held a school district or its trustees are not liable for the negligence of its employees which caused the destruction of another's property. In Jones v. City of Phoenix (Ariz.) 239 Pac. 1030, it was held the city was not liable for a tort committed by one of its employees, while engaged in work connected with the city's governmental functions, notwithstanding the city was a municipal corporation under the control of a managing body provided for by charter.

The Missouri statutes provide the curators of the University is a public corporation for the management of the University and may sue and be sued. In the case of Todd v. Curators, etc., 147 S.W. 2d 1063 (Mo.) an action was commenced to recover damages from the Curators for personal injuries. The Curators contended the state was immune from such a suit, and such immunity extended to the University and its managing board. In the opinion the court said:

"* * * 'The university is clearly a public institution, and not a private corporation.

* * * The State established an institution of its own, and provided for its control and government, through its own agents and appointees.' Again, on page 225 of 47 Mo.

'* * * 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.'

(2) In the absence of express statutory provision, a public corporation or quasi corporation, performing governmental functions, is not liable in a suit for negligence.

* * * * *

(4) The cases heretofore cited are mainly based upon the principle that a public corporation, performing governmental functions, is an agency or arm of the State and entitled to the same immunity as the State itself, in the absence of express statutory provision to the contrary. Another reason for immunity of public educational institutions, not organized for profit, from suits for negligence rests upon the public policy which has existed in this state from its beginning. The funds of the State University, whether raised by taxation, endowments or tuition fees, are dedicated

to the beneficent purpose of education. It has no funds, nor means of raising funds, for the purpose of paying damages for tort nor is its property subject to execution for such purpose. Courts should maintain such public policy unless and until it be changed by positive legislative enactment. * * *

See also Daniel v. Hoofsel, 155 S.W. 2d 469 (Ky.).

47 Am. Jur. 335, Section 57, states the general rule as follows:

"Contrary to what appears to be the English rule, the general rule in this country, in the absence of a statute imposing liability, is that a school district, municipal corporation, or school board is not liable for injuries to pupils of public schools suffered in connection with their attendance thereat."

See also extended note 160 ALR 11.

Arizona does not have a statute or a constitutional provision making it liable for the torts of its officers, agents or employees. Therefore, under the authorities above cited the State is not subject to legal action if the student was injured by reason of negligence of the officers or agents of the University, and we know of no rule of law which would make the University liable for injuries received by a student while in attendance of a class at the school.

In California they have a statute permitting a recovery against a school district for personal injuries sustained by a student by reason of the negligence of the employees of a school, but the courts hold that before a recovery can be sustained, negligence must be shown as in other personal injury actions. In the case of Underhill v. Alameda School Dist., 24 P. 2d 849 (Cal. App.), the court said:

"* * * The injuries which may result from the playing of said games are ordinarily of an inconsequential nature and are incurred without fault on the part of any one. In such cases there is no liability and, of course, the fundamental rules governing liability remain the same, even though the

particular injury may prove to be of a more serious nature. The law does not make school districts insurers of the safety of the pupils at play or elsewhere, and no liability is imposed upon a district under the above-mentioned section, in the absence of negligence on the part of the district, its officers or employees. With the foregoing observations in mind, we believe that, whenever an attempt is made to recover damages from a school district for such injuries, the complaint in the action must set forth facts clearly showing a violation of a duty of care imposed upon the school authorities."

Under the facts shown by the correspondence and the authorities cited, the state cannot be compelled to respond in damages for the injuries sustained by the student, and it necessarily follows that a recovery could not be had for medical expenses incurred in the treatment of the student.

We do not think the claim could be paid out of the appropriation in the general appropriation bill for the reasons above stated, and for the further reason that we do not think it is for an expenditure contemplated by the appropriation bill. The first part of the bill provides:

"Section 1. Subject to applicable state laws, the sums or sources of revenue herein set forth are appropriated for the 38th and 39th fiscal years for the purposes and objects herein specified:"

Therefore, it is our opinion you may not legally honor the orders or pay the claims mentioned in your letter out of funds set apart for the University by sub-division 46 of the general appropriation act.

The matter of the payment of these claims and any claim of the student, will have to be submitted to the Legislature for its consideration in determining whether a relief bill on this subject should be passed.

Very truly yours,

FRED O. WILSON, Attorney General

EARL ANDERSON, Assistant Attorney
General

EA:rc

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