

CANCER HOSPITAL:

Cancer Commission is not liable for damages in tort nor can it pay for damages occasioned by the negligence of one of its employees.

STATE CANCER COMMISSION:

March 3, 1942

Miss Dorothy A. Hehmann
Executive Director
State Cancer Commission
3713 Washington Boulevard
St. Louis, Missouri



Dear Miss Hehman:

This will acknowledge receipt of your letter of February 17, 1942, as follows:

"Recently one of the automobiles owned and operated by The Ellis Fischel State Cancer Hospital while being used on state business was involved in an accident, resulting in property damage to the car belonging to a private individual.

"We understand it is charged the accident was due to the negligence of the hospital employee. We are desirous of an opinion from your office as to:

"1. The legal liability of the hospital, that is to say of the Cancer Commission as a state agency, in cases where injuries and damages result from the negligence of an employee of the Commission while in performance of his duties.

"2. The authority of the Commission to make reimbursement for damages or injuries caused under such circumstances."

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The State Cancer Commission consists of four persons appointed by the Governor and is created by the provisions of Chapter 125, R. S. Missouri, 1939. Its function was to establish and operate a state owned and maintained institution known as the "State Cancer Hospital."

In Bush v. State Highway Commission, 46 S. W. (2d) 854 (Mo. Sup.) the Highway Commission had been sued. Bush, the plaintiff, had sued for personal injuries sustained and demolition of his automobile, alleged to have been caused by collision with a truck of the Highway Commission upon the highways. Plaintiff alleged that his injuries and the destruction of his automobile were the direct result of the negligence of an employee of the Highway Commission. Defendant demurred to plaintiff's petition, and the trial court sustained the demurrer. Thus it stood admitted that the employee of the Highway Commission was at fault, and that his negligence was the cause of the accident. The court, in passing upon this case, first laid down the rule that (l. c. 857):

"* * * the state is not liable for injuries arising from the negligence of its officers and agents unless such liability has been assumed by constitutional or legislative enactment."

* * * * *

"The proposition that the state is not subject to tort liability without its consent is too familiar to deserve extended citations of authority. * * * * *"

The court then said, l. c. 858:

"* * * 'Let us consider, therefore, in what manner the state highway commission should be classified. It was created by

a legislative enactment in 1921 (Laws 1921, 1st Ex. Sess. p. 132). It consists of four members appointed by the Governor. Its duties, generally stated, are the construction, improvement, and maintenance of highways; and to that end auxiliary power is conferred necessary to the performance of the main purpose of the creation of the commission (section 14, Laws 1921, 1st Ex. Sess. p. 137). Created by legislative enactment, and clothed with powers therein defined, through the appointment of the Governor, under all recognized rules of construction it is, when properly classified, a subordinate branch of the executive department. * * * *."

It was held, l. c. 858:

"* * * It thus having been determined that the commission is a subordinate branch of the executive department, it is not liable in tort for the acts of its agents and employees * * *."

There is no essential difference between the Cancer Commission and the Highway Commission so far as the source of its authority and for whom it acts. We think said Cancer Commission is also a subordinate branch of the executive department.

Therefore, in answer to your first question, it is our opinion that no liability is imposed on the State Cancer Commission for injuries or damages resulting from the negligence, while engaged in performance of their duties, of its agents and employees.

Your second question seems to contemplate an answer, viewed from the standpoint of the authority of the Commis-

sion to pay such damages or injuries even though there is no legal liability to do so.

Section 19, Article X of the Constitution provides:

"No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; * * * * * * * * * *; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such sum or object. * * * * * * * * * *."
(Underscoring ours)

The appropriation to the Cancer Commission for the 1941-42 biennium appears in Laws of 1941, page 187, Section 17. That section pays heed to the Constitution by specifying the object to which the money appropriated is to be applied, as follows:

"For operation of Cancer Hospital, including Personnel, Service, Addition, Repairs and Replacements, Operation, and all other necessary expense \$442,730.00"

None of the purposes there enumerated include the payment of damages and injuries caused by negligent acts of the employees of the Commission.

In State ex rel. McKinley Pub. Co. v. Hockman, 282 S. W. 1007 (Mo. Sup.) it was expressly held that money could

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not be paid out for a purpose not specified in the appropriation act. The court said, l. c. 1013:

"* * * under the provisions of section 19, article 10, of the Constitution, no money may be paid out of the state treasury, except in pursuance of an appropriation by law, the respondent was and is without authority to issue a warrant in payment of relator's claim. For it cannot be said that a claim is paid pursuant to an appropriation act, where it is paid out of money specifically appropriated for a different purpose. * * * * *"

Further, under no circumstances, could such items as these be paid because Section 46, Article IV, of the Constitution expressly provides that:

"The General Assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever: * * * * *"

Therefore, it is our opinion that the Cancer Commission has no authority to pay for damages or injuries occasioned by the negligent acts of its employees.

Respectfully submitted,

APPROVED:

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LLB/rv