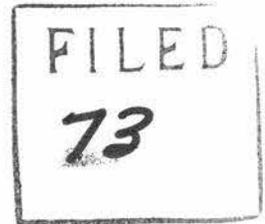


STATE CLAIMS: An agency of the state having power to sue is also authorized to settle a claim in behalf of the state and execute a valid release of future liability.

May 18, 1951

Mr. B. E. Ragland
Director, Division of Mental Diseases
State Office Building
Jefferson City, Missouri



Dear Mr. Ragland:

We have given careful consideration to your recent request for an official opinion, which request is as follows:

"Official State Car No. 100, assigned to the Director of the Division of Mental Diseases, when properly parked was struck by a Jefferson City bus and somewhat damaged.

"A bill has been presented to the Jefferson City Bus Company for damages, which bill the bus company seems disposed to pay but their attorney raises the question as to who, if anybody, in the state government has the authority to execute a valid and effective release of all claims for damages against the car in question.

"I desire an official opinion of your department on the question as to whether or not there is anyone in the state government who has authority to execute an official release in the event that there is satisfactory evidence that damages in full are being paid, and if so who has that authority and how can the execution of a valid and effective release be accomplished."

The Department of Public Health and Welfare, of which the Division of Mental Diseases is a part, is an agency of the state invested with certain administrative functions. The director of the department, by authority of Section 191.120, RSMo 1949, is trustee for the state-owned property assigned to him for the use of his department and its various divisions. He is also vested, under Section 191.130, with power to bring suit in any court of competent jurisdiction for all debts and demands due any of the institutions subject

to the control of his department and for trespass and other wrongs to any property assigned to his supervision and care.

The Supreme Court of Missouri has laid down the rule that an agency of the state having power to bring suit is also authorized to settle claims by agreement on behalf of the state. In the case of Iron Mountain and Southern Railway Company v. Anthony, 73 Mo. 431, l.c. 434, the court said:

"The power to sue implies the power to accept satisfaction of the demand sued for, whether the precise amount demanded or less."

The Supreme Court in a more recent decision sustained this principle in the case of State v. Smith, 201 S.W. (2d) 153. In the course of that opinion, at l.c. 157, the court said:

"Respondent contends that since the Sales Tax Act gives him the power to sue for the tax, it necessarily gives him the implied power to settle the tax, except where he is prohibited from doing so by law. He, therefore, contends that he has the power to compromise interest and penalties. We think respondent's contention must be sustained. * * *"

CONCLUSION

It is the opinion of this office that the Director of the Department of Public Health and Welfare is authorized to settle a claim for damages against a state-owned automobile assigned to the Director of the Division of Mental Diseases and to execute a valid and effective release of all future liability.

Respectfully submitted,

B. A. TAYLOR
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General