

Opinion No. 390**Public Officers—Montana Livestock
Sanitary Board—State Veterinary
Surgeon—Liability for Sub-
ordinates**

HELD: The members of the Livestock Sanitary Board and the State veterinary surgeon are public officers and the doctrine of respondeat superior does not apply to them.

November 17, 1933

You have asked my opinion concerning the liability of the Montana Livestock Sanitary Board and the members thereof individually, and the State Veterinary Surgeon, for the acts of a resident deputy state veterinary surgeon, a district deputy state veterinary surgeon, range riders, inspectors or veterinarians not regularly employed. Your question is a general one as you do not present specific facts and therefore it is impossible to answer it except in a general way.

The members of the board and the State Veterinary Surgeon are public officers. "Public office" has been defined in 46 C. J. 922, section 2, as follows: " 'Office', in the sense of public office, may be defined broadly as a public station or employment conferred by the appointment of government, or more precisely as 'the right, authority, and duty, created and conferred by law, the tenure of which is not transient, occasional, or incidental, by which for a given period an individual is invested with power to perform a public function for the benefit of the public.'" See also 9 Opinions of the Attorney General, page 494.

The doctrine of respondeat superior does not apply to a public officer. In *Laird v. Berthelote, et al.*, 63 Mont. 122, 206 Pac. 445, in an action against the county commissioners of Hill

County, for the negligence of an employee, it was said: "The rule of the maxim 'respondeat superior' applies only to the personal relation of master and servant, or principal and agent. The maxim is based upon the principle 'that he who expects to derive advantage from an act which is done by another for him must answer for an injury which a third party may sustain.' (34 Cyc. 1673; 35 Cyc. 972; *Donovan v. McAlpin*, 85 N. Y. 185, 39 Am. Rep. 649; *Stoddard v. Fiske*, 35 Cal. App. 607, 170 Pac. 663.)" Our court in that case quoted from 23 American and English Encyclopedia of Law, second edition, page 382: "It is a well-settled rule that a public officer is not responsible for the acts or omissions of subordinates properly employed by or under him, for such subordinates are not in his private service but are themselves servants of the government, unless he has directed such acts to be done or has personally co-operated in the negligence. Such an officer is, however, liable for the misconduct and negligence in the scope of their employment of those employed by or under him voluntarily or privately or paid by or responsible to him." The following cases announce the same doctrine: *Colby v. City of Portland*, 85 Or. 359, 166 Pac. 537; *Skerry v. Rich*, 228 Mass. 462, 117 N. E. 824; *Lunsford v. Johnson*, 132 Tenn. 615, 179 S. W. 151; 1 *Thompson's Commentaries on the Law of Negligence*, Section 601; *Casey v. Scott*, 82 Ark. 362; *American & English Ann. Cas.*, Vol. 12, p. 184 and note p. 185; 46 C. J. 1045, Section 330.

In the *Laird* case, in speaking of the liability of county commissioners, the court said that if they are liable at all it is because of their own negligence—not for the negligence of the employee who was not employed by them but by the county.

As to the liability of the officers mentioned in your inquiry for "automobile accidents and other accidents that may occur when these agents are going to or from or performing official work or unofficial work", the general rule is that there is no liability. As we do not have the facts of any case before us we can only draw at-

tention to the general principles of law as above stated by the courts and text-writers. The facts of each particular case must be considered before a statement of the law applicable thereto can be made.