

Montana State Fair—Liability of State for Injury at.

The State of Montana is not liable for an injury received by a machinist while riding with his employer in an auto race at the State Fair.

February 27, 1918.

Mr. R. S. Skinner, Secretary,
Montana State Fair,
Helena, Montana.

Dear Sir:

You have requested my opinion upon the question of the liability of the State or of the Montana State Fair for an injury received by a machinist while riding with his employer in an auto race at the State Fair.

By Section 1 of Chapter 96 of the 1903 Session Laws, Section 1311 of the Revised Codes of 1907 (see also Section 1 of Chapter 47 of the 1911 Session Laws), there was established a "State Institution, to be designated and known as the 'Montana State Fair'". It is a general rule that a State is not liable for the torts of its officers or agents in the discharge of their official duties unless it has voluntarily assumed such liability and consented to be so liable. 36 Cyc. 881, *Billings v. State*, 27 Wash. 288, 67 Pac. 183, *Riddock v. State*, (Wash.) 123 Pac. 450, *Charman v. State*, 104 Cal. 690, 28 Pac. 457, 43 A. S. R. 158. In the *Chapman* case it was also held that under the constitution which prohibits the legislature from making a gift of public money or other thing of value to any person, it cannot, by statute, create a liability against the state for the acts of past negligence on the part of its officers. In the *Riddock* case it was held that the state was not liable for personal injury to a spectator caused by a railing in the gallery of an armory building giving way while the building was being used for an athletic entertainment by a club to which the building was leased for the occasion; official functions concerning the armory being governmental in their nature, and the armory not being in the nature of a private business enterprise. A great many authorities were reviewed in this case, including *Melvin v. State*, 121 Cal. 16, 53 Pac. 416, in which the state was held not liable to a spectator, who had paid for admission to a state fair conducted by an agency of the state, for a tortious injury by the falling of negligently constructed seats. The court in this case said: "The doctrine that a sovereign state is not liable for the misfeasance, malfeasance, nonfeasance, or negligence of its officers, agents, or servants, unless it has voluntarily assumed such liability, is established by authority so cogent and uniform that isolated expressions which might be construed as tending to the contrary are negligible."

It was held in *State v. Rich*, 126 Maryland 643, 95 Atl. 956, that a statute making bodies corporate and politic subject to suit for negligence like natural persons, has no application to governmental agents and that the State Roads Commission was a governmental agency. In *Miner v. State Board of Agriculture*, 259, Ill. 549, 102 N. E. 1082, it was held that the State Board of Agriculture was created as an arm or

agency of the State for the purpose of managing and conducting a department of the State, and all powers conferred and duties enjoined upon the board are for the purpose of enabling it to manage the department in such manner as to best promote the object of its creation. And it was also held that the provision of the statute providing that the State Board of Agriculture may sue and be sued has reference only to obligations incurred by contract in the management of the department of agriculture, and does not refer to an action of tort, and that the State Board of Agriculture is not liable in an action for damages for an injury received by the collapsing of the elevated seats or bleachers provided for spectators of the races at the State Fair, even though the board may have been guilty of negligence in not discovering the defective condition of said seats or bleachers.

It is therefore apparent that the Montana State Fair is a state institution, a governmental agency, and that the State is not liable for the injury mentioned above.

Respectfully,

S. C. FORD,

Attorney General.