

## Opinion No. 202.

Montana State College—Students,  
Injury Of.

**Held:** So long as the college station wagon is operated by one of the college staff for use by students in the exclusive, regular course of educational work, there can be no liability on the part of the college for personal injury to student being driven or riding in the same, since the Montana State College is an arm of the state, instituted and maintained by the state in compliance with the state's constitutional duty to establish and maintain educational institutions.

August 25, 1946.

Dr. R. R. Renne  
President  
Montana State College  
Bozeman, Montana

Dear Dr. Renne:

You request the opinion of this office as to the possible liability of the Montana State College in the event of injury to students while the station wagon—which belongs to the state and is used by the college—is being operated and controlled by the college in taking students for field trips.

The Montana State College is a unit of the University of Montana (Sections 852, 852.1 and 836, Revised Codes of Montana, 1935, as amended by Chapter 158, Laws of 1945.)

The control and supervision of the University of Montana is in the State Board of Education (Sections 836 and 853, Revised Codes of Montana, 1935.) The State Board of Education consists of certain state officers (Section 830, Revised Codes of Montana, 1935) and a certain number of appointees of the Governor (Section 831, Revised Codes of Montana, 1935.) The appointees of the Governor take an oath of office in conformity with Section 832, Revised Codes of Montana, 1935. Section 11 of Article XI of the Montana Constitution provides for said Board of Education.

Thus, the Montana State College—a unit of the University of Montana, controlled and managed by a constitutional board—is an arm of the state government. It is the state in action,

carrying on a part of the state's political activity in an educational program made mandatory on the state by Section 1, Article X of the Montana Constitution.

The State of Montana cannot be sued without its consent and our Supreme Court in the case of *Coldwater v. State Highway Commission*, \_\_\_\_\_ Mont. \_\_\_\_\_ (unreported), 162 Pac. (2d) 772, extended this immunity to agencies of the state, stating at page 776 of the *Pacific Reporter*:

"The state's immunity from suit extends to boards, commissions and agencies through which the state must act . . ."

See in this respect *Mills v. Stewart*, 76 Mont. 429, 247 Pac. 332. In reference to all school or educational activities being governmental, see the cases of *Perkins v. Tracks, et al.*, 91 Mont. 1, 23 Pac. (2d) 982; *McNair v. School District*, 87 Mont. 423, 288 Pac. 188; *Bartell v. School District*, 114 Mont. 451, 137 Pac. (2d) 422.

It is therefore my opinion that—so long as the college station wagon is operated by one of the college staff for use by students in the exclusive, regular course of educational work—there can be no liability on the part of the college for personal injury to students being driven or riding in the same, since the Montana State College is an arm of the state, instituted and maintained by the state in compliance with the state's constitutional duty to establish and maintain educational institutions.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General