

MAINE STATE LEGISLATURE

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Commissioner

Education

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Liability of Fire Service Instructor.

FACTS:

From time to time, an old building is turned over to a local fire department for demolition, and is used for the training of the local firemen. A question has been raised regarding any liability on the part of a state fire service instructor, should fire spread to other property during a training period at which a building was burned for training purposes. The local fire chief has primary responsibility in such a case, but some instructors have requested that your department raise questions regarding their liability, if any.

QUESTION:

1. Would the instructors be subject to liability in case a fire spread to other property?
2. If so, what steps or precautions, if any, can be taken to protect instructors from such liability?

ANSWER:

The answers are given below.

REASON:

"As a general rule and apart from statute, state officers, agents, and employees, acting in good faith, legally, and within the scope of their authority are not liable individually for their official acts of omissions, as in connection with performance of discretionary duties or in connection with the performance of ministerial duties; but state officers may be held personally liable for their unauthorized acts. State officers may, accordingly, be liable for misfeasance or positive wrong to third persons in the discharge

of their official functions, or for culpable negligence. It has been held, however, that state officers are not liable to third persons for negligence or for a wanton or willful omission in the performance of a public duty, as distinguished from a duty owed to a particular citizen or individual."

Sl. C., U.S., States, § 84, a.

Too, the immunity of the state from tort liability does not generally extend to its officers, agents, or employees.

"The immunity of the state from liability for tort, * * * does not generally extend to its officers, agents, or employees, and, as a general rule, state officers, agents, and employees are personally liable in tort for unauthorized acts committed by them in the performance of official duties, particularly where such acts deprive private individuals of federal rights." Sl. C., U.S., States, § 84, a.

A state fire service instructor could become liable for damage to a third person, depending on the facts of the case. Necessarily, the question of liability will depend upon the facts of the particular case.

It is hoped that the chance of incurring liability would be kept to a minimum through the employee's proper adherence to the "curriculum" approved by the state. Too, the employee should continuously recognize that he serves only in an instructor's capacity.

It is suggested that insurance protection be purchased to safeguard the reference employees from incurring liability in an individual capacity.

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