

1974 WL 27984 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 9, 1974

\*1 Wyman D. Shealy  
Director of Financial Services  
State Board for Technical and Comprehensive Education  
1429 Senate Street  
Columbia, SC 29201

Dear Mr. Shealy:

You have requested that this Office advise you as to the following:

Palmer College—Columbia merged with thd State Board for Technical and Comprehensive Education in July, of 1973, prior to and after this date, the Palmer Corporation (a separation non-profit entity) leased certain dormitory facilities to Palmer College—Columbia for use within the TEC system. The lease agreement provided, among other things, for Palmer College—Columbia to receive and administer the collection of rents and fees, for which the College was paid an administrative fee of \$2,000.

On September 28, 1973, the Palmer College Business Office was robbed and approximately \$3,400. In cash was taken, which has not been recovered.

Under these circumstances, you pose the question of whether Palmer College, as a State Agency, is liable for the loss of these monies.

It appears to be clear that Palmer College in receiving and administering rents and fees for the Palmer Corporation, was acting as the agent of the Corporation which was the principal.

The applicable law regarding Agent-principal relationships states in regard to this situation:

An agent is under a duty to use reasonable care to protect the property of his principal by keeping it in a safe place, and he must exercise due care and diligence to keep the property from coming to harm, or from being lost destroyed, or stolen. 3 Am Jur 2d Agency § 212

If the agent fails to exercise such due care with regard to the principal's property, he can be liable to the principal for losses sustained due to such negligence. On the other hand, the agent is not an insurer, and if he uses care, skill and integrity in the preservation of his principal's property, he will not be responsible for an entirely unforeseeable result against which ordinary prudence could not have provided. Stanberry vs. Moore 56 Ill. 472; 3 Am.Jur. 2d (supra). See also American Law Institute, Restatement of the Law of Agency 2nd., Principal vs. Agent § 402.

The general law thus appears to be that the Agent is not liable for losses accruing to the Principal, unless such losses were due to negligence on the part of the agent. Applying this general law to the instant situation, it is apparent that the Agent, a State agency, legally presumed incapable of negligence, would not be liable to its Principal, the Palmer Corporation, for losses incurred due to the aforementioned robbery, and even assuming the Agent was negligent in its safe keeping of these monies, such negligence attributed to the sovereign, and again Palmer College-Columbia would not be liable.

I trust this has been sufficient in answering the question which you posed. If we may be of any further assistance, please do not hesitate to call or write.

Very truly yours,

\*2 Timothy G. Quinn  
Senior Assistant Attorney General

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