

OFFICIAL OPINION NO. 75-49, Liability of agents of the State Board of Dentistry

March 13, 1975

Mr. Paul M. Torgerson, D.D.S.  
Secretary-Treasurer  
State Board of Dentistry  
808 Mountain View Road  
Rapid City, South Dakota 57701

OFFICIAL OPINION NO. 75-49

**Liability of agents of the State Board of Dentistry**

Dear Mr. Torgerson:

You have asked for an opinion as to the potential liability of agents of the State Board of Dentistry while acting in their official capacities.

On February 6, 1975, the South Dakota Supreme Court filed its opinion in the case of *Saw v. City of Mission*, 88 S.D. 564, 225 N.W. 2d 593 (1975). In that decision the court reaffirmed existing South Dakota cases which recognize the concept of governmental immunity. This immunity extends to negligent acts of employees of the sovereign while acting in their official capacities. In my opinion, this immunity would apply to negligent acts of agents of your board while acting as agents.

Governmental immunity does not, however, operate to protect government employees from liability for intentional torts, or for acts which violate civil rights guaranteed by federal law. *Monroe v. Pape*, 365 U.S. 167, 5 L. Ed. 2d 492, 81 S. Ct. 473 (1961). Governmental immunity would also be of no use to your board or their agents to claim immunity from equitable remedies such as mandamus, prohibition, or declaratory judgment.

Respectfully submitted,

WILLIAM J. JANKLOW  
ATTORNEY GENERAL

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