

Superseded 5/12/2015

72-1-207 Department may sue and be sued -- Legal adviser of department -- Partial waiver of 11th Amendment immunity.

- (1) The department may sue, and it may be sued only on written contracts made by it or under its authority.
- (2) The department may sue in the name of the state.
- (3) In all matters requiring legal advice in the performance of its duties and in the prosecution or defense of any action growing out of the performance of its duties, the attorney general is the legal adviser of the commission, and the department, and shall perform any and all legal services required by the commission and the department without other compensation than his salary.
- (4) Upon request of the department, the attorney general shall aid in any investigation, hearing, or trial under the provisions of Chapter 9, Motor Carrier Safety Act, and institute and prosecute actions or proceedings for the enforcement of the provisions of the Constitution and statutes of this state or any rule or order of the department affecting motor carriers of persons and property.
- (5)
 - (a) The state waives its immunity under the 11th Amendment of the United States Constitution and consents to suit in a federal court for lawsuits arising out of the department's compliance, discharge, or enforcement of responsibilities assumed pursuant to 23 U.S.C. Sec. 326.
 - (b) The waiver of immunity under this Subsection (5) is valid only if:
 - (i) the executive director or the executive director's designee executes a memorandum of understanding with the United States Department of Transportation accepting the jurisdiction of the federal courts as required by 23 U.S.C. Sec. 326(c);
 - (ii) before execution of the memorandum of understanding under Subsection (5)(b)(i), the attorney general has issued an opinion letter to the executive director and the administrator of the Federal Highway Administration that the memorandum of understanding and the waiver of immunity are valid and binding upon the state;
 - (iii) the act or omission that is the subject of the lawsuit arises out of or relates to compliance, discharge, or enforcement of responsibilities assumed by the department pursuant to 23 U.S.C. Sec. 326; and
 - (iv) the memorandum of understanding is in effect when the act or omission that is the subject of the federal lawsuit occurred.