

TRUCKS) No liability on counties for injuries caused by
COUNTIES) negligence.

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August 30, 1935

Hon. A. H. Juergensmeyer
Prosecuting Attorney
Warren County
Warrenton, Missouri



Dear Sir:

This will acknowledge receipt of your letter of August 8, 1935 reading as follows:

"I should like to have an opinion on the following:

1. The County owns a number of trucks which are used in the construction and maintenance of county roads. Would the county be liable for personal and property damage should one of these trucks collide with a motor vehicle?
2. Assuming the County would not be liable, if the County would take out insurance for both personal and property damage, could the insurance company set up the same defense as the county?
3. Would the County obligate itself by taking out insurance on its trucks and operators?"

In Cassidy v. City of St. Joseph 247 Mo. 197, 152 S. W. 306, the Court said:

"Neither the State nor those quasi-corporations consisting of political

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subdivisions which, like counties and townships, are formed for the sole purpose of exercising purely governmental powers, are, in the absence of some express statute to that effect, liable in an action for damages either for the non-exercise of such powers, or for their improper exercise, by those charged with their execution. This applies alike to the acts of all persons exercising these governmental functions, whether they be public officers whose duties are directly imposed by statute, or employees whose duties are imposed by officers and agents having general authority to do so."

In McQuillin on Municipal Corporations, Vol. 6, Section 2775, the following is said with reference to liability of quasi-municipal corporations:

"It is not within the scope of this work to consider in detail the law relating to quasi-municipal corporations such as counties, towns, school districts, etc. However, it is proper to state here that there is a distinction between municipal corporations and quasi-municipal corporations as to liability for torts, and that the general rule is that the latter are not liable for torts, unless allowed by statute. So, generally, as referred to in the following chapter, in the absence of statutory authorization, counties, towns and other quasi-municipal corporations are not liable for injuries from defective highways."

The following is found in Ruling Case Law, Vol. 7 page 954:

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"Still the law is well settled that counties being organized for public purposes and charged with the performance of duties as an arm or branch of the state government, are never to be held liable in a private action for neglect to perform a corporate duty, or for acts done while engaged in the performance of such duties, or because they are not performed in a manner most conducive to the safety of its employees or the public, unless such liability is expressly fixed by statute.* * * * * since a county is but a political subdivision of the state, a suit against the county is, in effect, a suit against the state, and that therefore an action will not lie without the consent of the legislature."

In 46 S. W. (2d) *Bush v. State Highway Commission of Missouri*, the question for decision before the court was similar to the first question involved here, namely, the liability of the State Highway Commission in tort for acts of its agents and employees. In rendering its opinion the Court said:

"At the time the opinion was rendered in *State v. Bates*, supra, the antecedent case of *State ex rel. v. Hackmann*, supra, was the law on the proposition that the State Highway Commission was 'a subordinate branch of the executive department.' *State ex rel. v. Hackmann* was not overruled by *State v. Bates*. The decision that the State Highway Commission was 'a subordinate branch of the executive department' was essential to the determination of the issues raised in *State ex rel. v. Hackmann*, and the classification given to the Commission by the last named decision

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is the law in the instant case. It thus having been determined that the commission is a subordinate branch of the executive department, it is not liable in Tort for the acts of its agents and employees upon grounds of public policy heretofore stated."

In Reardon v. St. Louis County 36 Mo. 555, the Court said:

"Counties are quasi corporations created by the Legislature for the purpose of public policy, and are not responsible for the neglect of duties enjoined on them, unless the action is given by statute."

In Richardson v. City of Hannibal 50 S. W. (2d) 650, plaintiff asked to recover \$10,950.00 for damages alleged to have been sustained by plaintiff as the result of a collision of a fire department motor hook and ladder truck belonging to the City of Hannibal, Missouri, with plaintiff's car while plaintiff's car was parked on the south side of Broadway in the City of Hannibal. The Supreme Court, in affirming the decision of the lower court directing a verdict in favor of the plaintiff city, said:

"The fact that the doctrine of 'respondeat superior' does not apply to the State or the several political subdivisions thereof, when exercising a governmental function, is so well established in our system of government that we do not find any cases where the courts have held to the contrary."

Applying the decisions of the above cases to the question at hand, it is our opinion that counties are not

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liable for damages when a truck owned by the county and used on county business collides with a privately owned car. We do not comment on the right of a county to recover damages sustained in an accident.

In view of the foregoing holding that counties are not liable in tort we deem it unnecessary to answer the last two questions contained in your letter for the reasons (1) a wrong premise would have to be assumed, and, further, (2) the answer would be only academic.

Yours very truly,

James L. HornBostel
Assistant Attorney General

APPROVED:

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JLH:
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