BRIDGES:
DAMAGES TO PUBLIC HIGHWAYS OR BRIDGES: Any person who shall wilfully or negligently damage a highway or bridge upon a public highway is liable for the amount of such damage and the same may be recovered in the name of the state by the municipality, county or other civil subdivision of the state suffering the loss.

August 29, 1950

FILED
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Honorable Emmett L. Bartram
Prosecuting Attorney
Nodaway County
Maryville, Missouri

Dear Sir:

I.

We have received your request for an official opinion on the question of the liability of a truck owner for damage to a county bridge. Your letter is as follows:

> "Nodaway County has suffered large losses to their bridges by dump trucks hauling heavy loads of rock and tractors pulling lowboy trailors loaded with heavy machinery breaking down the bridges when they cross.
>
> "Recently, a merchant in an adjoining county had his men load a caterpillar bulldozer onto a lowboy attached to a tractor to bring this equipment into Nodaway County. They were almost across this particular bridge when it broke under the weight of the lowboy with the caterpillar bulldozer on it and let it slide down into the river. The tractor part was almost across the bridge, but it really broke under the weight of the lowboy and the bulldozer.
>
> "This will cause the county to have to put a new bridge across this stream and a new bridge will cost our county, under the present cost of things, possibly $6000.00. The bridge, of course was old, but would have served ordinary purposes for a number of years yet.
>
> "The tractor and lowboy and the load were within the weights permitted under the Statute, as we construe it; that is, the total length was 36 feet and under the

calculation, 36 plus 40 would be 76; this times 700 would make 53,200. The total weight of this tractor, lowboy and the load was 42,000. The bridge was built for a 7 ton capacity with a 50% over manufacturer's guarantee on it, which would give the bridge a 10½ ton capacity.

"This bridge was not posted by the county as to the load limit and these people had crossed this same bridge with the same load several times before.

"Our question is, is this merchant, whose machinery and equipment went through the bridge, liable for damages to our county for the loss of this bridge under the foregoing statement of facts? I am wondering how far Section 8591 R. S. Mo. would apply in this case, where really the weight of the lowboy was what broke the bridge instead of the gasoline tractor. Of course, the tractor was attached to and pulling the loaded lowboy, but I am afraid that this section is not broad enough to cover our case."

II.

Section 304.11, R. S. Mo. 1949, S.R.B. No. 1113, 65th General Assembly, provides as follows:

"1. No motor drawn or propelled vehicle, or combinations thereof, shall be moved or operated on the highways of this state when the gross weight thereof, in pounds shall exceed the weight computed by multiplying the distance in feet between the first and last axles of such vehicles or combinations of such vehicles plus forty by seven hundred; nor shall the total gross weight, with load on any group of axles of a vehicle or combination of vehicles where the distance between the first and last axles of the group is eighteen feet or less exceed the weight, in pounds, computed by multiplying the distance in feet between the first and last axles of

> such group under consideration plus forty by six hundred fifty. No vehicle or combination of vehicles shall be moved or operated on any highway in this state having a greater weight than sixteen thousand pounds on one axle when the wheels attached to said axle are equipped with high pressure pneumatic, solid rubber or cushioned tires, and no vehicle or combination of vehicles shall be moved or operated on the highways of this state having a greater weight than eighteen thousand pounds on one axle when the wheels attached to said axle are equipped with low pressure pneumatic tires, and no vehicle shall be moved or operated on the highways of this state having a load of over six hundred pounds per inch width of tire upon any wheel concentrated on the surface of the highway, the width in the case of rubber tires, both solid and pneumatic, to be measured between the flanges of the rim.
>
> "2. For the purpose of this section an 'axle load' shall be defined as the total load imposed upon the highway through all wheels whose centers are included within two parallel transverse vertical planes not more than forty inches apart."

It is not clear to us that your total length of 36 feet as stated in your letter was measured from the first axle to the last axle. If the vehicle is available to be measured, then the sheriff or some member of the Missouri Highway Patrol should measure the vehicle involved and also determine whether or not there was more than 16,000 pounds on one axle. If the truck owner or operator has violated this section, it could be used as one allegation of negligence. The criminal aspects of such a violation are not considered in this opinion.

Section 304.18, R. S. Mo. 1949, S.R.B. No. 1113, 65th General Assembly, provides as follows:

> "1. No metal tired vehicle shall be operated over any of the improved highways of this state, except over highways constructed of gravel or clay bound gravel, if such vehicle has on the periphery of any of the road wheels any lug, flange, cleat, ridge, bolt or any

projection of metal or wood which projects radially beyond the tread or traffic surface of the tire, unless the highway is protected by putting down solid planks or other suitable material, or by attachments to the wheels so as to prevent such vehicles from damaging the highway, except that this prohibition shall not apply to tractors or traction engines equipped with what is known as caterpillar treads, when such caterpillar does not contain any projection of any kind likely to injure the surface of the road. Tractors, traction engines and similar vehicles may be operated which have upon their road wheels 'V' shaped, diagonal or other cleats arranged in such manner as to be continuously in contact with the road surface if the gross weight on the wheels per inch of width of such cleats or road surface, when measured in the direction of the axle of the vehicle, does not exceed eight hundred pounds.

"2. No tractor, tractor engine, or other metal tired vehicle weighing more than four tons, including the weight of the vehicle and its load, shall drive onto, upon or over the edge of any improved highway without protecting such edge by putting down solid planks or other suitable material to prevent such vehicle from breaking off the edges of the pavement.

"3. Any person violating this section, whether operating under a permit or not, or who shall wilfully or negligently damage a highway, shall be liable for the amount of such damage caused to any highway, bridge, culvert or sewer, and any vehicle causing such damage shall be subject to a lien for the full amount of such damage, which lien shall not be superior to any duly recorded or filed chattel mortgage or other lien previously attached to such vehicle; the amount of such damage may be recovered in any action in any court of competent jurisdiction, in the name of the state, by the municipality, county or other civil subdivision or interested party."

(Underscoring ours.)

This section provides that any person violating this section, or who shall wilfully or negligently damage a highway, shall be liable for the amount of such damage caused to any highway bridge, etc. We believe that the clause "or who shall wilfully or negligently damage a highway" applies to any and all damage inflicted upon the public highways regardless of whether or not any violation of this particular section has been involved. We believe that it is a general statutory liability enactment, and by reason of the provisions of this section that it would be unnecessary for you to rely upon the provision of Section 8591, R. S. Mo. 1939.

Section 8591, R. S. Mo. 1939, which will be Section 229.16, R. S. Mo. 1949, provides as follows:

> "All persons owning, controlling or managing threshing machines, sawmills and steam engines or gasoline tractors are required, in moving the same over public highways, to lay down planks not less than one foot wide and three inches in thickness on the floors of all bridges situate on the public highways, while crossing the same with such threshing machines, sawmills, steam engines or gasoline tractors, and in the event any person owning any such machinery shall cross or attempt to cross any bridge upon any public highway with such machinery who shall neglect or fail to lay down said planks as a protection to said bridge and who shall, by reason of such neglect cause injury to any such bridge, he shall be liable for double the amount of such injury to be recovered in the name of the county or any subdivision thereof, to the use and benefit of the road and bridge fund."

The term "gasoline tractor" may only refer to farm tractors. In 1921, when this section was enacted to include gasoline tractors, all farm tractors used either steel wheels with lugs or steel caterpillar tread. But the section does not specify the type of gasoline tractors that would be required to comply with the provisions of this section. Today we have automobile tractors that pull trailers. Such tractors use either deisel fuel or gasoline. We understand the weight of the heavy load caused the bridge to collapse. Section 8591 was enacted to protect the floors of bridges from the steel lugs or tread on steam engines or gasoline tractors. Would the planking of your bridge, as required by this section, have prevented the same

from collapsing? If so, then the failure to do so would be negligence, but not a violation of said Section 8591 in our opinion.

We wish to call your attention to the case of State Highway Commission v. Stadler, 148 P. (2d) 296. This case involved a suit by the Kansas State Highway Commission to recover damages for the destruction of a bridge on a public highway. The court in this case said:

> " * * * In 1929 the legislature enacted Laws of 1929, Ch. 84, Sec. 5, which reads: 'Any person who shall wilfully or negligently damage a highway shall be liable for the amount of such damage and the state highway commission may prosecute claims or suits for the amount of such damage.' Certainly after the enactment of this statute it must be conceded whatever common law cause of action existed in favor of a governmental agency for negligent destruction of its highway, and it must go unquestioned that a bridge is a portion of the highway. Board of Com'rs of Cloud County v. Mitchell County, 75 Kan. 750, 757, 90 P. 286; G. S. 1935, 77-201 (5) and G. S. 1941 Supp. 8-126(e) was superseded by the new statutory cause of action for negligence provided for therein. Later, the legislature passed Laws of 1931, Ch. 244, Sec. 7, prohibiting the overloading of bridges and imposing civil liability for violations of its provisions recoverable by the authorities charged with the maintenance of highway structures. This statute was in no sense a limitation of the negligence statute theretofore enacted and merely imposed an additional liability on users of the highway in cases where they used such structures when their vehicles were loaded in excess of the weight allowed by its provisions. In 1937 both of the statutory enactments just referred to were repealed by Laws of 1937, Ch. 283, known as the Uniform Act Regulating Traffic on the Highways, and substituted in their place was section 124, now G. S. 1943 Supp. 8-5, 124, which reads:

"'(a) Any person driving any vehicle, object, or contrivance upon any highway or highway structure shall be liable for all damage which said highway or structure may sustain as a result of any illegal operation, driving, or moving of such vehicle, object, or contrivance, or as a result of operation, driving, or moving any vehicle, object, or contrivance weighing in excess of the maximum weight in this act but authorized by special permit issued as provided in this act. (b) Whenever such driver is not the owner of such vehicle, object, or contrivance, but is so operating, driving, or moving the same with the express or implied permission of said owner, then said owner and driver shall be jointly and severally liable for any such damage. (c) Such damage may be recovered in a civil action brought by the authorities in control of such highways or highway structure.'

"(2,3) The language of this new statute is broad and comprehensive. On analysis, it can be said it permits the commission to sue in its own name and recover all damages which the highway and/or structure may sustain as a result of overloading and/or any illegal operation, driving or moving of any vehicle, object or contrivance driven upon the highway. Appellant argues its provisions do not contemplate negligence and that the only basis for recovery thereunder is overloading. Here again appellant's position is not well taken. True enough, the terms of the new act do not specifically impose liability for negligence nor is the word 'negligence' to be found in the language used therein. But that is no justification for a claim that negligence was not contemplated by its provisions. The language 'illegal operation, driving, or moving of such vehicle, object, or contrivance' not only contemplates acts of negligence but embraces in its terms so many negligent acts that it is difficult to imagine any illegal operation of a vehicle on the highway which would not constitute negligent operation of

such vehicle if injury to the highway resulted, and rare indeed would be the occasion where negligent operation of such vehicle would not be illegal. For illustration, the acts alleged and relied on by the plaintiff in its petition as constituting common law negligence were all illegal under the present act, namely, driving the truck on the wrong side of the highway, see, G. S. 1943 Supp. 8-537, driving at a rate of speed greater than reasonable and proper, see, G. S. 1943 Supp. 8-532, driving at a reckless rate of speed, see, G. S. 1943 Supp. 8-531. It should be added the commission of one or all of such acts if established by the evidence was sufficient to authorize the recovery of damages under its provisions. We have no difficulty in concluding that the present statute was intended to be all inclusive and embraces within its terms all the acts for which the driver or owner of a vehicle might be civilly liable to the commission in the event while driving on the highway he damages a highway or highway structure. The common law right of action has been superseded by the statutory one and so far as acts of negligence are concerned the commission's right of action is limited to such negligent acts as amount to illegal acts under the provisions of the Uniform Act Regulating Traffic on the highways. Common law negligence may now give rise to the statutory cause of action if the act relied on is illegal but it no longer gives appellant the right to rely upon a common law cause of action for negligence. It follows the trial court's finding the appellant was limited to the relief authorized by the statute and was not entitled to recover anything other than provided for therein was proper.

" * * * Relating to highways 25 Am. Jur. 637 Sec. 341, states the general rule to be as follows: 'The damages recoverable are measured by the expense to which the municipality or other public agency has been put by the act of the defendant and do not include mere inconveniences in the use of the road which do not make it more expensive to be kept in repair.'

> "With respect to bridges the rule stated in 11 C.J.S., Bridges, p. 1137, Sec. 100, reads: 'It has been held that the measure of damages for injury to a bridge is usually the amount which must necessarily be expended in repairing or restoring it, but in some jurisdictions the party is, by statute, liable to greater damages, as will appear from an examination of statutory provisions and the decisions cited infra this note. * * * '
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> "While in 8 Am. Jur. 973, Sec. 84, it is stated thus: 'The measure of damages to the owner of the damaged bridge is the cost of repairs necessitated by the injury received, together with a reasonable sum, in case of a toll bridge, for the loss of net profits during the time the bridge cannot be used. Additional costs, however, due to delay or other action by the owner cannot be recovered in such a case.'
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> * * * * * * * * * * * * * *
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> " * * * we have determined without must perturbation, irrespective of what the rule may be elsewhere, that under our present statute which imposes liability for all damage which a highway and/or highway structure may sustain, the proper measure of damages is the actual cost of replacement of such highway and structure in the condition it was in at the time the injury occurred."
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> (Underscoring ours.)

The above quotations from this Kansas case should be beneficial to you in construing the provision of said S.R.B. No. 1113, quoted above. We believe that this case clearly shows that the appellate courts of this state would construe said liability statute, quoted above, to include the damage inflicted upon the bridge described in your letter.

Another case upon this question is Department of Highways v. Fogleman, 27 So. (2d) 155, 210 La. 375, in which the Supreme Court of Louisiana states:

> "(1,2) It is incumbent upon every citizen using the highways and public bridges to do so with reasonable care. The general

> rule that a traveler about to cross a public bridge may assume that it is strong enough for his purpose does not apply when he proposes to cross with an 'unusual load'. Nelson v. City of Rockford, 186 Ill. App. 288; Board of Com'rs of Allen County v. Creviston, 133 Ind. 39, 32 N.E. 735. See, also, 68 A.L.R. 605 et seq. It would be a desirable situation if all of the highway bridges could hold up the maximum loads permitted but, in Louisiana, we are faced with the fact that many of our bridges were built before the transportation of such loads were usual or even contemplated. Many of these bridges still serve their original purpose in their respective communities particularly in the transportation of passenger and other light vehicles. One who proposes to transport an unusual or undue load over a public bridge, particularly on a secondary route, is under the duty to exercise care and caution. In the absence of such care, a person driving such vehicle assumes the risk of injury to himself and cargo in trying to pass over the bridge. Wilson v. Grandy, 47 Conn. 59, 36 Am. Rep. 51; Clapp v. Ellington, 51 Hun. 58, 3 N.Y.S. 516; Carter v. Town of Minden, 156 La. 382, 100 So. 336."
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> (Underscoring ours.)

A case decided upon the general law of negligency or common law without the benefit of statutory provision is the case of Township of Livingston v. Parkhurst, 7 A. (2d) 627, 122 N.J.L. 598, in which the Supreme Court of New Jersey said:

> "The question presented on this appeal is the propriety of the action of the trial court in granting a nonsuit. From the agreed state of case it appears that on September 23, 1938, the defendant Brown was transporting over the public streets of the Township of Livingston, appellant, a truck and trailer attached thereto belonging to his employer, the defendant Parkhurst, who accompanied him. A small wooden bridge over a stream on Brookside Avenue was used by these vehicles and collapsed under their weight. The truck weighed from

three to three and one-half tons and the trailer from four to five tons. On the trailer was a gasoline shovel weighing from twenty-eight to thirty tons. The truck and the front wheels of the trailer had safely crossed over. The rear wheels of the trailer had crashed through the planking of the bridge. There was no sign posted at the bridge indicating the limit of the weight the bridge would carry. Two days prior there had been a severe rainstorm causing the stream to overflow the bridge. For that reason the bridge had been closed to traffic until the morning of the day in question when the waters having subsided and the planks of the bridge having, upon inspection by the Township Engineer, been found 'dried out' the bridge was opened to use.

"The bridge was substantially and fairly well constructed and in good condition. The usual traffic consisted of pleasure vehicles and delivery trucks, the heaviest trucks generally using the bridge being coal trucks. This was the first load the bridge had failed to carry safely. The bridge had been built in 1925, acquired by the municipality in 1927 or 1928 and since then maintained by it. The maximum safeload capacity of the bridge even if composed of entirely new lumber would not exceed fifteen tons and at the time of the accident somewhat less. Defendant Parkhurst told the Township Engineer at the scene of the accident, shortly thereafter, that he and his driver, defendant Brown, had inspected the bridge, even looked underneath it, before attempting to cross, but later in the day he denied to the engineer having made such examination or inspection, then stating that he had driven over it because it looked alright.

"It is, of course, not disputed that this bridge and highway leading to it were for the use of the public who had an easement in it. The defendants had a right to its use for the transportation of this equipment. But in doing so they were under a duty to the plaintiff to use reasonable care so as not to cause damage to the highway or

bridge. The highway was unpaved, and the bridge, a small one, was constructed of wood. Would one owing a duty to the municipality to use the facilities it provided with reasonable care be violating that duty by the transportation of equipment of the type and weight described along this highway and over this bridge? Were proper precautions taken in the exercise of due care? Was there, on the other hand, any duty on the part of the municipality which was contributory negligence as a matter of law under these facts?

"(2,3) It seems to us that these questions of fact, both as to negligence and as to contributory negligence, were clearly raised by the proofs and that it was error for the court to treat them as questions of law."

CONCLUSION

It is the opinion of this department that any person who shall wilfully or negligently damage a highway or bridge upon a public highway is liable for the amount of such damage and that the same may be recovered in the name of the state by the municipality, county or other civil subdivision of the state. It is the further opinion of this department that double damages may be recovered for damage to any bridge on a public highway caused by a violation of the provisions of Section 8591, R. S. Mo. 1939. Whether or not the facts stated in your letter would constitute negligence would be a question of fact to be determined by the court and jury.

Respectfully submitted,

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