SOIL CONSERVATION DISTRICTS: The soil district of any county, in the absence of any statutory provision, is immune from any tort liability for the negligence of its employees while engaged in the soil conservation program as provided for in the Soil Conservation Districts Law.

May 23, 1947

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Dean E. A. Trowbridge, Chairman
Missouri State Soil Districts Commission
128 Mumford Hall
Columbia, Missouri

Attention: Mr. John W. Ferguson
Extension Soil Conservationist

Dear Sir:

This is in reply to your letter of May 17, 1947, in which you requested an opinion relative to the liability of established soil districts in this state. Said letter reads in part as follows:

> "I hope our discussion the other day, together with these enclosed forms, will enable you to prepare an opinion relative to the exact legal status of established soil districts in this state. We would like to know definitely whether the Enabling Act under which we operate actually establishes soil districts as definite political subdivisions of the state, and we would appreciate an opinion regarding their liability and rights with respect to the operation of conservation equipment and the employing of necessary personnel."

A letter to you from the Franklin County Soil District, under date of April 30, 1947, which you enclosed to us, reads in part as follows:

> "The Soil Conservation Service has received three T-D 18 track type tractors for use in this district. The Soil District of Franklin County will receive at least one, or possibly more, of these machines for use in the county.

> "The Supervisors of the Soil District of Franklin County have requested that I obtain information from you regarding types of insurance they will need for both the machine and operator. They are thinking specifically about liability and property damage on the machines, and insurance that would cover personal injury for the operator."

The State Soil Districts Commission was created by an act of the Legislature of the State of Missouri, approved July 23, 1943, by the 62nd General Assembly, and known as the Soil Conservation Districts Law, Senate Bill No. 80, found on page 839 of the 1943 Missouri Laws. By the act this Commission is made a political subdivision of the state--a state agency. Section 4 of said act provides for the establishment of soil conservation districts in any certain county or specific township or townships. Section 6 specifies that any soil district organized under the provisions of this act shall be a body corporate. Said section says that "* * * Any soil district so organized shall be officially known and titled The Soil District of . . . . . .County, and shall be so designated by the county court by order of record, and in that name shall be capable of suing and being sued and of contracting and being contracted with."

Therefore, this soil district being what we may refer to as a quasi-corporation, a political subdivision and agency of the state, and analogous to a school district as regards liability, we feel that the wording of the court in the case of Cochran v. Wilson, 287 Mo. 210, is quite applicable where at l.c. 218 they said:

> "* * * The reasons prompting legislative action in the creation of school districts has been judicially defined many times, nowhere perhaps more fully or clearly than in Freel v. School of Crawfordsville, 142 Ind. 27, in which recovery was sought by a laborer in a suit against a school district for injuries while working on a school building. A demurrer to the petition was sustained and there was judgment for the defendant. This was affirmed on an appeal to the Supreme Court.

> In discussing the quasi-corporate capacity of the district as a ground of nonliability, at page 28, the court said, in effect:
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> "'They are involuntary corporations, organized, not for the purpose of profit or gain, but solely for the public benefit, and have only such limited powers as were deemed necessary for that purpose. Such corporations are but the agents of the State for the sole purpose of administering the state system of public education. * * * In performing the duties required of them, they exercise merely a public function and agency for the public good, for which they receive no private or corporate benefit. School corporations, therefore, are covered by the same law in respect to their liability to individuals for the negligence of their officers or agents, as are counties and townships. It is well established that where subdivisions of the State are organized solely for a public purpose by a general law, no action lies against them for an injury received by a person on account of the negligence of the officers of such subdivision, unless a right of action is expressly given by statute. Such subdivisions, then, as counties, townships and school corporations, are instrumentalities of government and exercise authority given by the State and are no more liable for the acts or omissions of their officers than the State.'"

Likewise, we feel that the wording of the Cochran case, supra, at page 220, is applicable where the court said:

> "In Moxley v. Pike County, 276 Mo. 449, l.c. 453, this court ruled that a county was not liable for an injury caused by a defective highway. The reasons for the court's ruling are stated somewhat elaborately and may not inappropriately be quoted in this connection.
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> "'When, for convenience in the administration of its laws, the State, through the Legislature,

> calls to its aid those territorial organizations sometimes called, with more or less accuracy, quasi-corporations, such as counties, townships and school districts, the question has frequently arisen whether these agencies share, with the State itself, immunity from common-law liability for the negligence of their officers in the exercise of their territorial duties. The answer, from the courts of this State, has generally been a negative one. From Reardon v. St. Louis County, 36 Mo. 555, down to Lamar v. Bolivar Special Road District, 201 S.W. 890, are many cases which will be found collected in the case last cited which have settled the general principle so firmly that it is not questioned by this appellant. On the other hand, it has been equally well settled that municipal corporations, which include cities, towns and villages, are, in the control, management and maintenance of their streets, alleys and public places, subject to such liability. The cases recognizing this doctrine are so numerous and so constantly before our appellate courts and their doctrine so well recognized as to render citations not only unnecessary but unjustifiable. This general doctrine is also recognized and admitted by the parties to this appeal.'"

The case of Zoll v. St. Louis County, 124 S.W. (2d) 1168, involved an action against the county to recover consequential damages resulting from changing the grade of a public highway. The court in denying recovery reviewed the many similar cases in this state where suits have not been permitted to be brought against an agency of the state. At l.c. 1172, the court said:

> "Such a cause as here has never been permitted to be maintained in this state. The long established policy of the state, as reflected in the cases we have reviewed, and there are others, clearly is against the maintenance of such suits. Cases involving municipal corporations are not authority for the maintenance of the present cause, and this because when improving streets, etc., the municipality is acting in a private

> and proprietary capacity and for its own private benefit. See Moxley v. Pike County, supra, 208 S.W. loc. cit. 247; Zummo v. Kansas City, 285 Mo. 222, 225 S.W. 934, loc. cit. 935; Cochran v. Wilson et al., 287 Mo. 210, 229 S.W. 1050, loc. cit. 1053."

As we understand the factual situation in the case of the county soil districts, the individual farmers of the district may enter into an agreement with the board of supervisors to have this program of soil conservation performed on their land. In other words, this county soil district probably would receive money from the individual farmers they serve to help defray some of the maintenance expense of the county soil conservation program. Such a procedure, we feel, would not deprive the district of the characteristics of a governmental function acting in the capacity of agent of the state. Moxley v. Pike County, 276 Mo. 449, is a case we feel by analogy is quite appropriate to our case of the soil district of a county. The Zoll case, supra, in speaking of the Moxley case, said at l.c. 1171:

> "Moxley v. Pike County, 276 Mo. 449, 208 S.W. 246, was an action for damages resulting from personal injury. Plaintiff's automobile, driven by himself at night on a public road, and occupied by himself and wife, ran over the bank and into the bed of a stream from which the bridge had been removed, and the place left unguarded. Originally this road was a private road and toll was charged, but later taken over by the county and collection of toll continued. It was contended that since this road, at its origin, was a private road and that toll was charged, and that toll continued to be charged after the road was taken over, the county was liable. In ruling the case, the court said, 208 S.W. loc. cit. 248: '* * * Pike county, in taking over the control and management of the road in question by authority of the act of 1899, and maintaining toll gates thereon, and collecting tolls from travelers to provide a fund for its maintenance, was acting in the capacity of agent of the state, and that its negligence

> in the performance of the duties arising from such official relation is not imputable to the county, which is not, therefore, liable in this suit.'"

Therefore, we feel that the statement made by the court in Todd v. Curators of University of Missouri, 147 S.W. (2d) 1063, would in general be the rule as applied to soil conservation districts where the court said at l.c. 1064:

> "In the absence of express statutory provision, a public corporation or quasi corporation, performing governmental functions, is not liable in a suit for negligence. * * * * * * * * * * * * * *"

The remaining question to be dealt with is the provision in the act to the effect that the district of any certain county, being a body corporate, "shall be capable of suing and being sued." Todd v. Curators of University of Missouri, supra, was a case involving an action against the Curators of the University of Missouri for alleged negligence in failing to furnish plaintiff a safe place to work when he was repairing certain campus buildings. The court held the defendant, as a public corporation, was immune from such actions. At l.c. 1064, the court said:

> "A statutory provision that such a public corporation 'may sue and be sued' does not authorize a suit against it for negligence. '* * * But the waiver by the state for itself or its officers or agents of immunity from an action is one thing. Waiver of immunity from liability for the torts of the officers or agents of the state is quite another thing.' Bush v. Highway Commission, 329 Mo. 843, loc. cit. 849, 46 S.W. 2d 854, loc. cit. 856. See also Hill-Behan Lumber Co. v. State Highway Commission, Mo. Sup., 148 S.W. 2d 499, not yet reported (in State Reports), and cases cited supra."

The case of Hill-Behan Lumber Co. v. State Highway Commission, 148 S.W. (2d) 499, involved an action by plaintiff against the State Highway Commission of Missouri for consequential damages to

plaintiff's property. The Supreme Court directed the trial court to dismiss plaintiff's petition. Section 8102, R.S. Mo. 1929, providing for the State Highway Commission, among other provisions, said that the State Highway Commission "may sue and be sued." The court, at l.c. 500, said:

> "Plaintiff, however, says that Section 8102 R.S. 1929, Mo. St. Ann., Sec. 8102, p. 6889, provides that the State Highway Commission 'may sue and be sued', and that therefore, there is statutory authority for the present suit. So can counties sue and be sued in many instances, but absent an authorizing statute, a county cannot be sued for changing the grade of a public highway as was ruled in the Zoll case, supra, and there is no authority to support the contention that Section 8102 authorizes such suit as here. By an authorizing statute, we do not mean such statute as Section 8102, but a statute specifically providing for the payment of damages when caused to abutting owners by the change of grade of a public highway."

CONCLUSION

In view of the above, it is the opinion of this department that the soil district of any county of this state, being an agent of the state in carrying out its governmental functions, in the absence of any statutory provisions, is immune from any tort liability for the negligence of its employees while engaged in the soil conservation program as provided for in the Soil Conservation Districts Law.

Respectfully submitted,

Wm. C. COCKRILL
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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