

**Cities—Liability for Damages for Dynamiting a Building to Stop Fire—Liability of Insurance Company.**

A city may, out of necessity for the public safety, destroy property to prevent the spread of fire. Where private property is destroyed, under directions of a fire chief of a city or town, the city or town is liable in damages, except in those cases where the destruction of the property is, in fact, necessary for the public safety and to prevent the spread of fires.

The liability of an insurance company depends upon the terms of the insurance policy.

R. S. Mentrum, Esq.,  
State Fire Marshal,  
Helena, Montana.

My dear Mr. Mentrum:

You have inquired whether, when a fire in a city is rapidly spreading and it becomes necessary, in order to stop this spread, to dynamite a building, the city would be responsible for the building dynamited or whether the insurance company would be required to pay insurance on the building so dynamited.

This matter has frequently been before various courts, and the authorities are assembled in 26 C. J., page 340, also page 342. The rule stated on the latter page as to destruction of buildings by tearing them down or blowing them up, in order to prevent the spread of fire, is as follows:

"The policy covers a loss caused by the burning, blowing up, or tearing down of an insured building by order of the civil authorities, in order to prevent the spread of a fire, or to prevent the spread of disease, unless such a cause is excepted by the policy."

However, the effect of the foregoing has been modified and changed by a clause inserted in nearly all standard policies, "exempting the insurer from liability for loss 'caused directly or indirectly by invasion, insurrection, riot, civil commotion, military, or usurped power, or by order of any civil authority.' It has been held, under such clause, that the insurer is not liable for a loss occurring from fire set by military forces in order to prevent the property from falling into the hands of the enemy; or for damages caused by a

fire started by an incendiary bomb from enemy aircraft; or for damages caused by a fire started by order of the civil authorities. Some policies, however, expressly cover damage directly caused by war, bombardment, military or usurped power, or by aerial craft. (26 C. J. Sec. 437, p. 343.)

The liability of the insurance company, therefore, depends upon the contract in each case. As to the liability of the city, under such circumstances, the general rule is that the city may, out of necessity for the public safety, destroy property to prevent the spread of fire. The general rule is stated in 1 C. J., Sec. 62, page 969, as follows:

"Rights of necessity are recognized as a part of the law, and an impending necessity will often justify and make lawful an act which would otherwise be actionable. This principle is particularly applicable to acts done for the public safety, such as injury to, or destruction of, private property in order to prevent the spread of fire, or disease, or to prevent any other public calamity; but it also applies to what may be termed acts of private necessity. \* \* \* The rule of immunity for acts done under the law of necessity does not, however, apply unless an actual necessity exists for the act done; mere expediency, or public good or utility, is not sufficient; and the nature and extent of this necessity cannot be defined except in general terms, and must be determined according to the facts and circumstances of the particular case."

The rule is also stated in the case of *American Print Works v. Lawrence*, 21 N. J. L. 248, 257, as follows:

"The principle as it is usually found stated in the books is that 'if a house in a street be on fire, the adjoining houses may be pulled down to save the city.' But this is obviously intended as an example of the principle, rather than as a precise definition of its limits. The principle applies as well to personal as to real estate; to goods as to houses; to life as to property—in solitude as in a crowded city; in a state of nature as in civil society. It is referred by moralists and by jurists to the same great principle, which justifies the exclusive appropriation of a plank in a shipwreck, though the life of another be sacrificed; with the throwing overboard of goods in a tempest for the safety of the vessel; with the taking of food to satisfy the instant demands of hunger; with trespassing upon the lands of another to escape death from an enemy. It rests upon the maxim, '*necessitas inducit privilegium quoad jura privata.*'"

It is, therefore, my opinion that where private property is destroyed, under orders of the Fire Chief of a City or Town, the City or Town is liable in damages, except in those cases only where the destruction of the property is, in fact, necessary for the public safety

and to prevent the spread of fires. As to whether there is an actual necessity for destroying property for the public safety depends, of course, upon the facts and circumstances involved in each case, but destruction for mere expediency, public good or utility is not sufficient to exempt the City from liability for the resulting damages.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.