

### **County—Liability for Damages Occuring by Reason of a Washout.**

A county is not liable for damages to an owner of an automobile, either for damage to his car or injuries to his person caused by the washout of a bridge across a dry creek on a public road.

M. L. Parcels, Esq.,  
County Attorney,  
Columbus, Montana.

My dear Mr. Parcels:

I have your letter in which you have asked whether the County of Stillwater is liable for damages occurring under the following circumstances:

Some years previous to 1922 the County of Stillwater had built and maintained a county bridge across a dry creek on a public road. In the month of July, 1922, this bridge was entirely washed away by flood waters and thereafter was never rebuilt or replaced; that in October, 1922, the claimant was driving an automobile along this road not knowing that the bridge had been washed out, and there being no guards or warning at the point where the road crossed the creek and where said bridge had formerly been, he drove his automobile off the bank into the creek, sustaining injuries to his person and damaging his car.

The rule as stated in 9 Corpus Juris, page 469, under Section 70, is as follows:

"The liability to respond civilly for the failure to maintain or to repair a bridge does not necessarily accompany the duty to repair; and at common law a county was not liable in a civil action for injuries to travelers, resulting from its failure to maintain or to repair a public bridge. The reason for this rule is that they are a part of the machinery of the state government, that their functions are wholly of a public nature, and that their creation is a matter of public convenience and governmental necessity. By the weight of authority in the United States such liability does not exist as to such subdivisions created by the sovereign authority for political and civil purposes, as counties or towns, unless expressly imposed by statute. The mere fact that a county or other political subdivision of the state is under obligation imposed by statute

to keep bridges in repair does not render them liable to one who has sustained injuries by reason of their failure to comply with the statutory requirement." (See cases under Note 23.)

Statutes declaring counties to be municipal corporations do not change the rule that a county is not liable for negligence of the board of supervisors in failing to maintain bridges in a reasonably safe condition for public travel.

Ahern v. Kings County, 89 Hun 148, 34 N. Y. S. 1023;

Albrecht v. Queens County, 84 Hun 399, 32 N. Y. S. 473.

In the case of Smith v. Zimmer, 45 Mont. 282, at page 304, Justice Smith, speaking for the court, said:

"The nonliability of the county itself rests upon an entirely different principle from that which is invoked in an attempt to show that the commissioners cannot be made to respond in damages personally. The reason why a county is not liable is that it is a political subdivision of the state, and neither the latter nor any of its subdivisions may be sued without its consent. Such consent has never been given by the law-making power of this state."

See, also, the recent case of Laird v. Berthelote (Mont.) 206 Pac. 445.

It has also been held: "In the absence of statute road districts are not responsible for injuries caused by defects in roads under their control." (37 Cyc. 303, note 63.) See, also, the cases cited in 9 C. J. 470, under notes 24 and 25.

It is, therefore, my opinion that the county is not liable for damages under the circumstances as set out herein.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.