

**Opinion No. 63****Cities and Towns—Streets—Gas Leakage—Explosions—Public Liability**

**Held: A municipality is not liable for damages resulting from a gas leakage explosion when it appears that the leakage was caused by the negligence of a party, not an employee of the municipality, making a street opening under a permit issued by the municipality.**

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July 7, 1958

Mr. R. E. Towle  
State Examiner  
Helena, Montana

Dear Mr. Towle:

You have requested my opinion whether a municipality would be liable for damages resulting from a gas leakage explosion when it appeared that the leakage was caused by the negligent act of a third party in connection with the opening of a street under a permit issued by the municipality.

The case which you present should be distinguished from those cases which arise from damages suffered by a person while traveling over a defective street or walk and for which the municipality is liable under the provisions of Section 11-1303, RCM, 1947.

In addition to the liability imposed upon the municipality in connection with its duty to keep its streets and walks in safe condition for travel (See *Ledbetter v. City of Great Falls*, 123 Mont. 270, 275, 213 Pac. (2d) 246), the municipality will be held liable:

“. . . for damages arising out of the negligence of its officers and employees for acts done within the scope of their employment, but not otherwise.” (*Lazich vs. City of Butte*, 116 Mont. 386, 390, 154 Pac. (2d) 260.)

The question whether a third party will be held as an **agent** of the municipality because of the fact that he was authorized by a municipal permit to engage in the activity which ultimately resulted in the gas leakage explosion is foreclosed by the opinion of the court in the *Lazich* case to the effect that:

“In none of the authorities do we find where one holding a permit or a license issued by a municipality is classified as an agent of the municipality by reason of holding its permit or license. The contractor was not an officer or employee of the city of Butte, but was contracting agent of the owner or owners of the building.”

See also, *Ledbetter vs. City of Great Falls*, 123 Mont. 270, 284, 270 Pac. (2d) 246; McQuillan, "Municipal Corporations" (3rd Edition) Volume 18, Section 53.73, page 337.

In addition to the question of liability through an agency relationship it has been argued in some of the cases, that by issuing a permit for the opening of a street the municipality becomes liable as a concurrent tortfeasor for the damage resulting from the negligence of the permittee as a "matter of law." However, in light of the overwhelming authority opposing this theory it is my opinion that such an argument has little merit.

In the case of *Splinter vs. City of Nampa*, 74 Idaho 1, 256 Pac. (2d) 215, this argument was raised on behalf of the plaintiff who was seeking to hold the city liable for damages resulting from the negligence of a contractor who had defectively installed a butane gas tank beneath the public alley under an opening permit from the city.

An explosion resulted from this defective installation causing both personal injury and property damage in the plaintiff's adjacent business building. The Idaho court, at page 222 of 256 Pac. (2d) rejected the argument that the city was concurrently liable with the permittee because it had authorized the opening of the alley under its permit, in holding that:

" . . . when a city grants a permit for an installation, or the doing of work, in its streets or alleys, if the installation or work is such that it becomes dangerous only by reason of negligence on the part of the permittee, in the manner in which the thing is done, or in the subsequent operation of the installation, the permittee is liable, not the city. *Copeland vs. City of Seattle*, 33 Wash. 415, 74 Pac. 582, 65 L.R.A. 333; *Wilton vs. City of Spokane*, 73 Wash. 619, 132 Pac. 404, L.R.A. (1917D) 234; *Amann vs. City of Tacoma*, 170 Wash. 296, 16 Pac. (2d) 601 . . ."

See also, McQuillan "Municipal Corporations," (3rd Edition) Volume 18, Section 53.73, page 337; 38 Am. Jur. "Municipal Corporations" page 285, Section 590.

It is, therefore, my opinion that a municipality would not be liable for damages resulting from a gas leakage explosion when it appears that the leakage was caused by the negligence of a party, not an employee of the municipality, making a street opening under a permit issued by the municipality.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General