

Counties, Claims Against. Claims, Against Counties. Liability, for Acts of Officers.

Counties are involuntary quasi municipal corporations, or civil divisions of the State for the expedient administration of law. Their liabilities are fixed by law, and where the Statute makes no liability, there is none. Officers of the County engaged in enforcing the law share the county's immunity from suit.

December 23, 1914.

Hon. Frank Beley,
Chairman, Board of County Commissioners,
Livingston, Montana.

Dear Sir:

I have your letter under date December 10, 1914, enquiring as to

the liability of the county for a horse killed under the following circumstances:

"The county attorney and a number of other young men have a cabin or hunting lodge in the mountains about fifteen miles from town. About three months ago articles of various kinds were taken from the cabin, and at about the same time several horses were stolen in that vicinity. Upon the night in question the sheriff took a force up to this cabin to investigate the horse stealing charge and the burglary charge. Arriving at the cabin after dark the sheriff and his party put up there for the night. Upon the same evening the county attorney and his friends came to the cabin, and seeing a light therein prepared to capture the persons, then believing them to be the burglars who had formerly broken in. An affray started, in which several shots were fired on both sides, one of them fired by the sheriff killing a horse which the county attorney had hired from a local livery stable."

You state that the horse was hired by the county attorney and his friends for their own personal use. The owner of the horse now makes claim against the county for the value of the horse, and the question is whether this is a proper and legal claim.

Ordinarily a county is liable only for the necessary expenses incurred by its officers in the apprehension of criminals. In this case it does not appear that the sheriff—who is the proper officer to make arrests and investigate crime—knew anything about or had anything to do with the hiring of the horse that was killed. Consequently, the county could not be held liable on any theory that this horse was used by the sheriff in the investigation of crime. In other words the killing of the horse was no part of his plan or scheme and did not arise through any hiring of the horse for that purpose by the sheriff.

While it is made the duty of the county attorney to investigate crime and the county is liable for all necessary expenses incurred by him therefor, it appears from the facts stated in your letter that the horse hired by the county attorney was for a private purpose and not connected with the investigation of crimes alleged to have been committed. Unless it was made to appear that this horse was hired by the county attorney as a necessary part of his investigation of the crime, the loss of the horse would not be an expense necessarily incurred in the investigation of the crime, and, therefore, it would not be a legal charge against the county. All of the facts stated by you show that there was no concert of action between the sheriff and the county attorney, but, on the other hand, that through a mistake they worked at cross purposes. Instead of being an expense incurred by the sheriff the position of the owner of the horse, it seems to me, is no different than that of any other private person whose horse happened to get into the line of fire.

And I am equally convinced that no recovery can be had for the value of the horse upon any theory of tort. The general rule of law that the superior or employer must answer civilly for the negligence or want of skill of his agent or servant in the course or line of his

employment by which another is injured, does not apply to counties.

11 Cyc, 498.

Counties are involuntary quasi municipal corporations; simply political or civil divisions of the state erected for the better and more expedient administration of law. When performing purely governmental functions they usually share the immunity of the state from suit or prosecution. Their liabilities are fixed by law, and unless a liability exists by virtue of legislative enactment there is none. Here the sheriff was engaged, as he believed, in enforcing the law; consequently there could be no liability against the county founded upon his act.

I am, therefore, of the opinion that the value of this horse cannot be made a legal charge against the county, and that recovery, if any is had, must be against the person hiring it from the livery stable.

Yours very truly,

D. M. KELLY,

Attorney General.