

**Workmen's Compensation Law, Provisions of. Counties,
Authority to Become Bound. Authority of County, to Become
Bound Under Compensation Law.**

Counties in this state have no authority to become bound by the provisions of the Workmen's Compensation Act.

June 30, 1915.

Hon. A. E. Spriggs,
Chairman Industrial Accident Board,
Helena, Montana.

Dear Sir:

Pursuant to a discussion had by your honorable Board with representatives of the Boards of County Commissioners of Silver Bow and Lewis and Clark Counties, relative to the classification of hazardous employments to be enumerated by the counties desiring to avail themselves of the provisions of Plan No. 3 of the Workman's Compensation Law, you have requested an opinion of this office, as to whether a county may under any circumstances become bound by the provisions of said plan. Under the definition given the term "public corporation" by the law, counties are included therein. (Sec. 6 gg). Section 3 (e) reads as follows:

"Where a public corporation is the employer, or any contractor engaged in the performance of contract work for such public corporation, the terms, conditions and provisions of Compensation Plan Number Three shall be exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this Act by any public corporation shall be considered to be ordinary and necessary expenses of such corporation, and governing body of such public corporation shall make appropriation of and pay such sums into the accident or administration fund, as the case may be, at the time and in the manner provided for in this Act, notwithstanding that such governing body may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriation, ordinance, or otherwise."

In the recent case of *Hersey vs. Neilson*, 47 Mont. p. 132, the doctrine is announced that a county is but a subordinate subdivision of the State, created for governmental purposes, and for greater convenience in carrying on the public affairs; a government agency, organized for the purpose of exercising some functions of the State Government of a purely political character; constituting the machinery and essential agency by which free governments are upheld, and through which, for the most part, their powers are exercised; they are subordinate agencies for the orderly government of the state within the scope of their authority,—hence, are subject to the control and direction of the legislature, in which chiefly the sovereignty of the State is represented and exercised.

In the United States there is no common law obligation resting upon counties to respond in damages of tort. They may become liable to respond in damages only in pursuance of an express and unequivocal declaration by the legislature upon the subject. In this State no law has as yet been enacted, imposing such liability upon counties. The spirit of the Compensation Law is to provide mutual protection for the employer and the employee. The employer seeks the benefit of the law for the purpose of escaping litigation instituted against him for the purpose of collecting damages for injuries sustained by his workmen; and the workmen obtains the advantages of the law for the purpose of enabling him to collect from his employer certain stipends as compensation for damages he may have sustained, in lieu of an action for damages against his employer. In this state an employee of the county, if injured while engaged in pursuit of a hazardous undertaking, is without redress against the county, but limited in his claim for damages to an action against its officers (*Smith vs. Zimmer*, 48 Mont. 332; 45 Mont. 282), who may become personally liable for negligence. The officers of the county, however, are not to be deemed a "public corporation" in the sense that the county fund may be paid into the Industrial Accident Fund for their protection.

You are, therefore, advised that counties in this state have no authority to elect to be bound by the provisions of the Compensation Act for the protection of their employees.

Yours very truly,
J. B. POINDEXTER,
Attorney General.