Attorney's Fees — County Commissioners — Counties— Suits.

The county is not liable for attorney's fees incurred by its officers in their individual capacity.

The county is not liable for attorney's fees for services rendered in an action to which the county is not a party.

George Bourquin, Esq.,
County Attorney,
Butte, Montana.

My dear Mr. Bourquin:

You have requested my opinion whether on the statement of facts presented in a memorandum transmitted to this office the claims filed against Silver Bow county by Messrs. Fabian, Simonson and Cooney are valid claims and entitled to payment.

From the memorandum of facts it appears that these claims are for moneys expended by the above named persons in payment of attorneys' fees for services rendered by said attorneys in defending said persons in a certain action brought against them as members of the Board of County Commissioners, and also against them as individual defendants.

It appears that the action in question was one for damages for alleged negligence on the part of the Board, and on the part of the individual defendants, for failing to have warning signs placed along a line of travel, which had later been changed, as a result of which alleged negligence Bert Carney was injured and killed, and the action in question was prosecuted.

Your letter states that the action was brought against the persons "as a Board of County Commissioners," and that said persons were also named "as individual defendants."

Two propositions seem to me clear:

1. That the county was not obligated to pay the attorneys' fees incurred by these three persons in their capacity as individuals.

2. That the county itself is not liable for **any** damages whatever upon the facts set forth in plaintiff's cause of action. See Smith v. Zimmer, 45 Mont. 282, a case involving a similar state of facts, in which the Court said:

"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."

No valid judgment could have been obtained against the county in this suit, and it was a matter of no public concern to the county whether or not the plaintiff prevailed in his action against the Commissioners as individuals.

Applying the above principles, it is my opinion that the bill presented by the persons named, against Silver Bow county for the attorneys' fees in question, is improper and should not be allowed or paid. That the county should not pay for attorneys' fees incurred by its officers in their individual capacity is obvious. Equally does it seem to be true that the county should not pay for attorneys' fees for services rendered in an action to which the county itself was not a party and could not have been made a party.

Very truly yours,

L. A. FOOT,
Attorney General.