

Accidents—Highways—Injuries—Liability—State Highway Commission.

There being no positive duty enjoined upon the state highway commission to repair defective state highways, no liability attaches to them for injury occasioned thereby.

State Highway Commission,
State Capitol Building,
Helena, Montana.

June 11, 1927.

Gentlemen:

You have requested my opinion regarding the responsibility and liability of the state highway commission to the public for accidents occurring on completed federal aid projects or other state constructed roads as a result of injury sustained by reason of roadways, culverts or bridges having been impaired by washouts or otherwise.

Section 1792 of the revised codes gives the state highway commission authority to organize and operate a division of maintenance and control and by cooperation with the board of county commissioners to maintain state highways constructed by the state. I do not find any positive duty enjoined upon the state highway commission to remove obstructions, repair bridges or erect barriers or warning signs to protect the public. This duty is imposed upon the board of county commissioners of the several counties of the state by section 1627, R. C. M. 1921.

The supreme court of this state has held that by reason of the foregoing statutory provisions a positive legal duty to repair defective public highways is imposed upon county commissioners where such duty was not imposed theretofore. (Becker v. Chapple, 72 Mont. 199.) Conversely, there being no positive legal duty imposed upon the state highway commission, no liability would attach to them.

There is no provision of statute directing the state highway commission to close the roads not under construction by reason of defects or impaired condition. This duty seems to be devolved upon the county commissioners.

Very truly yours,

L. A. FOOT,
Attorney General.