

Opinion No. 615**Oil and Gas—Oil Conservation Board
—Rules and Regulations—Liability
of Board Members.**

HELD: The adoption of a rule or regulation beyond the powers of the Oil Conservation Board and enforcement thereof to the detriment of a producer, transporter or storer of or dealer in crude oil would render each member of the board personally liable to such producer, transporter, storer or dealer.

September 22, 1934.

Your request for an opinion follows:

“At a recent meeting of the members of this Board, the Secretary was directed to request you to give the Board an opinion as to the personal liability of the members of the Board as individuals for loss or damage suffered by any oil producer, transporter or refiner on account of any act or omission of the Board or any of its employees, under or connected with any rule, regulation or order promulgated by the Board under the Act approved December 29, 1933 (chapter 18, Special Session Laws 1933-1934) entitled ‘An Act to Prohibit and Prevent the Waste of Crude Petroleum in the State of Montana (etc.)’

“The question was raised in connection with recent discussion between Board members and representatives of producers concerning the advisability of issuance by the Board of orders intended to curtail or restrict crude oil production and transportation in the state in view of an alleged state of over-production existing and the apparent necessity of some action being taken by the Board with the view of preventing waste of oil as defined by the Federal Petroleum Administrative Board.”

The request for an opinion being general in its terms, the opinion itself must necessarily be so.

We think adoption of a rule or regulation beyond the powers of the Oil Conservation Board and enforcement thereof to the detriment of a producer, transporter or storer of or dealer in crude oil would render each member

of the board personally liable to such producer, transporter, storer or dealer. It is well settled that a public officer who proceeds without or in excess of authority is answerable in damages to any one who is specially injured thereby. (Section 8659, R. C. M. 1921; Hopkins v. Clemson Agr. College, 221 U. S. 636, 55 L. Ed. 890; Bailey v. Mayor of New York, 38 Am. Dec. 669; Beardslee v. Dolge, 38 N. E. 205, 42 Am. St. Rep. 707; Pauchogue Land Corp. v. Long Island Comm. 152 N. E. 451; Kenney v. Bank of Miami, 170 Pac. 866; Silva v. MacAuley, 26 Pac. (2d) 887; Nelson v. Babcock, 248 N. W. 49, 90 A. L. R. 1472; 22 R. C. L. 479; 2 Shearman & Redfield on Negligence 826; 3 Cooley on Torts 544; 15 C. J. 478, 479; 32 C. J. 247-254; 46 C. J. 1043; 59 C. J. 310-315.) There are exceptions to the rule but they need not be mentioned in this connection.

The general rule is that where, as here perhaps, the duty imposed upon an officer by statute is one owing solely to the public, no liability for its non-performance arises in favor of the individual however much he may be injured. In other words, where a duty neglected or improperly performed is a public duty exclusively, and no single individual of the public can be, in any degree, legally concerned with the manner of its performance, a private action will not lie; for no man can have ground for a private action until some duty owing to him has been neglected, and if the officer owed him no duty, no foundation can exist upon which to support his action. The remedy in such a case must be by public prosecution or removal proceedings. (Eberhardt Const. Co. v. Board of Com'rs., 186 Pac. 492; 2 Cooley on Torts, Sec. 300; Throop on Public Officers, Sec. 708; Mechem's Public Officers, Sec. 673.) The same rule should apply to the non-enforcement of a regulation or order, similar in character to the statute, made by an officer, board or commission.