OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

L. MANN
GENERAL

Honorable A. E. Hickerson
County Auditor
Montgomery County
Conroe, Texas

Dear Sir:

Opinion No. O-5543
Re: Under the facts submitted would Montgomery County be liable for damage done to the truck in question?

Your letter of August 12, 1943, requesting the opinion of this department on the question stated therein is as follows:

> "Just recently a truck passed over one of our light bridges in an outlying district, broke through the bridge and is asking the County to reimburse for damages done to his truck.
>
> "Would Montgomery County be responsible for damages of this kind, and could this party bring suit in case we refuse payment of this claim."

Opinion No. O-2779 of this department held that Liberty County, was not liable for a truck wreck under the facts related. We enclose herewith a copy of said opinion for your information.

Opinion No. O-4754 of this department held that Hill County was not liable for damage to an automobile or compensation for injuries to the parties therein under the facts related. We also enclose a copy of that opinion.

We quote from Texas Jurisprudence, Vol. XI, page 627 as follows:

> "It has long been the law in Texas that a County is not liable in damages for injuries sustained in consequence of tortious or negligent acts of its agents or employees, unless liability therefore be created by statute, either in express terms or by necessary implication. Of course, the county is not liable for the acts of its officers where such acts are not performed in connection with their official duties."

(Also see the authorities sustaining this proposition cited on page 628, Texas Jurisprudence, Vol. XI)

In view of the foregoing authorities it is the opinion of this department that Montgomery County is not liable for the damages done to the truck in question. With reference to that portion of your question asking in effect whether or not the party owning the truck could bring suit in the event the county refused payment of the claim you are respectfully advised that it is our opinion that we know of no statutes or authority which would prohibit the party from bringing the suit, however, as above stated the county would not be liable for such damages occurring to the truck.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Ardell Williams

Ardell Williams
Assistant

APPROVED SEP 8, 1943

Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

AW:ff
Encl.

APPROVED
OPINION
COMMITTEE
BY
CHAIRMAN