

**OPINION
42-46**

July 29, 1942 (OPINION)

DRAINS

RE: Counties

I have your letter of July twenty-fourth, inquiring whether, in our opinion, the county is legally liable for damages caused by failure of the county commissioners to keep open and to maintain certain damaged drainage ditches in Richland County.

Section 2486 of the 1925 Supplement to the Compiled Laws provides in part as follows:

All drains that may have been constructed under any law of this state, or that may be constructed under the provisions of this chapter and situated in this state, shall, except as otherwise provided, be under the charge of the board of county commissioners and their successors in office and be by them kept open and in repair."

There is, therefore, no doubt about the duty of the county commissioners to maintain, keep open and repair the drainage ditch in question. Not having performed this duty, the question now is, whether the county is liable for damages resulting from failure to properly keep open and in repair such drains.

As a general rule, in the absence of a specific statute creating liability on the part of the county, a county is not liable for damages arising from defects or obstructions caused by the negligence or the tortious acts in the construction or maintenance of such drains. See 28 C.J. Sec. page 389.

We have no statute making the county liable for damages arising by reason of failure to keep open and maintain drainage ditches. Therefore, in the absence of such statute, it is my opinion that there is no liability on the part of a county to pay the claim in question.

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