



**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON  
ATTORNEY GENERAL**

March 22, 1960

Mr. Franklin L. Smith  
County Attorney  
Corpus Christi, Texas

Opinion No. WW-813

Re: May a county as an adjunct to the operation of a vertical lift bridge over a navigable deep water channel, purchase public liability insurance to cover damages or injuries resulting from its tortious acts committed in the operation thereof, such bridge being a part of a county road.

Dear Mr. Smith:

Your question for an opinion of the Attorney General has been received in this office as to whether a county, as an adjunct to the operation of a vertical lift bridge over a navigable deep water channel, may purchase liability insurance to cover damages or injuries resulting from its tortious acts committed in the operation of such bridge, said bridge being a part of a county road.

The pertinent facts stated in your letter concerning this question are as follows:

"In connection with a port improvement and railroad re-location project currently under way in Nueces County, there has been constructed a vertical lift bridge, known as the Upper Harbor Bridge, over a portion of the Port of Corpus Christi. Such bridge was built jointly by Nueces County, the City of Corpus Christi, Nueces County Navigation District, and the U.S. Corps of Engineers. The purpose of the bridge is to provide a means of crossing Corpus Christi's deep water port by both vehicular and railroad traffic. Such roadway is a county road. In order to permit ocean-going vessels to pass under such bridge, it is raised to a height of 129 feet; it is then lowered again and passage of vehicular and railroad traffic resumes."

" . . .

"A question has arisen concerning the legality of the purchase of such liability insurance by Nueces County, because, of course, the county ordinarily is immune from liability for damages resulting from its tortious acts. However, in view of the fact that the operation of this bridge would subject Nueces County to the jurisdiction of the admiralty court, it appears to me that the principle of governmental immunity does not apply."

Regardless of the fact that Texas Courts have consistently held that the State, a county, or any political subdivision of the State, other than cities, are not liable for the tortious acts of its officers, agencies and employees committed in the exercise of governmental functions, and that there is a total and absolute absence of liability on the part of the State or any of its subdivisions for an action in tort, unless specifically provided by statute, Miller v. El Paso County, 156 S.W. 2d 1000; Orndorff v. State, ex rel McNeal, 108 S.W. 2d 206 (Civ. App. 1937, error ref.) / it is the opinion of this Department that a county may be liable for its torts in a Court of Admiralty where an Admiralty Court has jurisdiction.

"Admiralty" as defined in 2 Corpus Juris Secundum 64, Admiralty Law, Section I, Subsection 1, is that branch or department of jurisprudence which relates to and regulates maritime property, affairs and transactions, whether civil or criminal. In a more limited sense, it is the tribunal exercising jurisdiction over maritime causes and administering the maritime law by a procedure peculiar to itself and distinct from that followed by courts either of equity or of common law. Another definition may be found in Lee v. Licking Valley Coal Digger Co., 273 S.W. 542, 543 (Ky. 1925), from which we quote:

"Admiralty is a tribunal exercising jurisdiction over all maritime contracts, torts, injuries or offenses, and extends to navigable rivers, whether tidal or not, in the United States. . . ."

In 2 Corpus Juris Secundum 74, Admiralty Law, Section III, Subsection B (11), it states as follows:

". . . A body of water constitutes navigable water of the United States within admiralty jurisdiction when it forms, by itself, or by its connection with other waters, a continued highway over which commerce is, or may be, carried on with other states or countries; and, where meeting such test, the following have been held within admiralty jurisdiction: Canals Great Lakes, rivers, and slips. . . ."

It is further stated in Section III, Subsection E (7), page 114 of Corpus Juris Secundum, as follows:

"A court of admiralty, generally, has jurisdiction of a suit to recover damages for a maritime tort or injury, but injuries that are not maritime are outside of its jurisdiction. The general rule is that the place of injury, namely, whether or not on the high seas or other navigable waters, determines whether or not the injury is maritime; and it has been frequently stated that it solely determines the question. The general rule that the place of injury determines its character applies irrespective of the nature and origin of the wrong or injury, . . ." (Emphasis added).

There has been no opinion of an Attorney General of Texas on the question of liability of a county for its torts in a Court of Admiralty where an Admiralty Court has jurisdiction, nor have there been any Texas cases that we have been able to find passing on that specific question.

In Workman v. New York, 179 U.S. 552, 21 S. Ct. 212, 45 L. Ed. 314, it is stated as follows:

"The proposition then which we must first consider may be thus stated: Although by the maritime law the duty rests upon courts of admiralty to afford redress for every injury to person or property where the subject-matter is within the cognizance of such courts and when the wrongdoer is amenable to process, nevertheless the admiralty courts must deny all relief whenever redress for a wrong would not be afforded by the local law of a particular state or the

course of decisions therein. And this, not because, by the rule prevailing in the state, the wrongdoer is not generally responsible and usually subject to process of courts of justice, but because in the commission of a particular act causing direct injury to a person or property it is considered, by the local decisions, that the wrongdoer is endowed with all the attributes of sovereignty, and therefore as to injuries by it done to others in the assumed sovereign character, courts are unable to administer justice by affording redress for the wrong inflicted. The practical destruction of a uniform maritime law which must arise from this premise, is made manifest when it is considered that if it be true that the principles of the general maritime law giving relief for every character of maritime tort where the wrongdoer is subject to the jurisdiction of admiralty courts, can be overthrown by conflicting decisions of state courts, it would follow that there would be no general maritime law for the redress of wrongs, as such law would be necessarily one thing in one state and one in another; one thing in one port of the United States and a different thing in some other port. As the power to change state laws or state decisions rests with the state authorities by which such laws are enacted or decisions rendered, it would come to pass that the maritime law affording relief for wrongs done, instead of being general and ever abiding, would be purely local - would be one thing to-day and another thing to-morrow. That the confusion to result would amount to the abrogation of a uniform maritime law is at once patent. \* \* \* The disappearance of all symmetry in the maritime law and the law on the other subjects referred to, which would thus arise, would, however, not be the only evil springing from the application of the principle relied on, since the maritime law which would survive would have imbedded in it a denial of justice. This must be the inevitable consequence of admitting the proposition which assumes that the maritime law disregards the rights of individuals to be protected in their persons and property from wrongful injury, by recognizing that those who are amenable to the jurisdiction of courts of admiralty are nevertheless endowed with a supposed governmental attribute by which

they can inflict injury upon the person or property of another, and yet escape all responsibility therefor. \* \* \* . . . As a result of the general principle by which a municipal corporation has the capacity to sue and be sued, it follows that there is no limitation taking such corporations out of the reach of the process of a court of admiralty, as such courts, within the limit of their jurisdiction, may reach persons having a general capacity to stand in judgment. \* \* \* The contention, is, although the corporation had general capacity to stand in judgment, and was therefore subject to the process of a court of admiralty, nevertheless the admiralty court would afford no redress against the city for the tort complained of, because under the local law the corporation as to some of its administrative acts was entitled to be considered as having a dual capacity, one private, the other public or governmental, and as to all maritime wrongs committed in the performance of the latter functions it should be treated by the maritime law as a sovereign. But the maritime law affords no justification for this contention, and no example is found in such law, where one who is subject to suit and amenable to process is allowed to escape liability for the commission of a maritime tort, upon the theory relied upon."

It is obvious from the opinion in the Workman v. New York case that a county or a city whether acting in a governmental or proprietary capacity is liable for its torts under Admiralty Law but that it is essential for recovery that the county or political subdivision be "subject to suit and amenable to process," and that it have "the capacity to sue and be sued," and that it have "a general capacity to stand in Judgment."

In the case of O'Keefe v. Staples Coal Co., 201 Fed. 131, it was held that a county in the operation of a draw-bridge, under the local statutes, was a body amenable to the process of the Federal court, had a general capacity to stand in judgment, and was liable for a maritime tort in an action brought in the Federal court, even though it was exempt from liability by a local statute for negligence of its agents or servants engaged in the actual performance of a public duty imposed by statute. In the case of The Alex Y.

Hanna, 246 Federal 157, in which the court, holding that a Delaware county with no corporate organization or status could not be sued in admiralty for the maritime tort of its agents, said:

"A municipal corporation or other organized political district of a state having a general capacity to sue and be sued may be held liable in a court of admiralty in an action in personam for damages resulting from negligence or other tort on the part of its officers or agents while acting in their representative character, where the principles of maritime law as recognized by the Constitution and laws of the United States, justify the granting of such relief. The circumstances that, at the time of the commission of the tort, such corporation or district was engaged in the discharge of a governmental or sovereign rather than a subordinate or local function is immaterial. And where such corporation or organized district possesses such general capacity to sue and be sued, it is not competent for the state to provide that such corporation or district shall enjoy immunity from accountability in a proceeding in personam in a court of admiralty for the recovery of damages for a maritime tort committed by it through its officers or agents. In such case it is beyond the power of the state to defeat or render nugatory rights and liabilities created and recognized by the paramount authority of the Constitution and laws of the United States. . . ."

In the very recent case, Nueces County, Texas Road District No. 4.v. The Nellie B.A.B. No. 184, the United States District Court, S.D. Texas, Corpus Christi Division, it is stated as follows:

"The short answer to this contention, at least so far as the claims for tort not resulting in death are concerned, is the deeply rooted principle that a state cannot deprive a party of redress in Admiralty against a municipality for the negligence of its servants. . . . There is a distinction between immunity from process, which goes to the question of jurisdiction, and immunity from liability, which deals with the substantive law of admiralty. Where the Court has jurisdiction, as here, because the county may sue and be sued, 11-B, Tex. Jur. 120-123, secs. 87 and 88<sup>7</sup> the state may not

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deprive an admiralty court of the right to redress a wrong; . . . or deprive a person of any substantial admiralty rights. . . ."

Under Texas law a county may sue and be sued, 11-B, Tex Jur. 120-123, secs. 87 and 88, and has a "general capacity to stand in Judgment."

The law as enunciated under Article III, Section 52 of the Constitution of Texas, that a county is denied the right to lend its credit or grant public money in aid of, or to any individual or corporation and that therefore a county has no authority to purchase liability insurance is based on the premise that a county as a subdivision of the State cannot be held liable for its tortious acts under any circumstances and that therefore there could be no necessity or reason to purchase liability insurance. However, when it is determined, as under Admiralty Law, that a county can stand in judgment and be held liable in tort, a different rule will result as to the legality of the purchase of liability insurance by a county.

When a claim for injuries or damages for the tortious acts of a county's officers, agents and employees has been reduced to a valid judgment, it cannot be said that such judgment is not legally chargeable against a county. The following is quoted from Article 1575, Vernon's Civil Statutes:

". . . When a judgment is rendered against a county the commissioners court of such county shall settle and pay such judgment in like manner and pro rata as other similar claims are settled and paid by said court. . . ."

In view of our opinion that a county may be liable under Admiralty Law for injuries and damages sustained by reason of the negligent or tortious acts of its agents or employees when the Admiralty Courts have jurisdiction, it is our further opinion that the Commissioners Court has the implied power to employ reasonable methods to protect the county against such liability, it being within the sound discretion of the Commissioners Court. You are therefore advised that a county, as an adjunct to the operation of a vertical lift bridge over a navigable deep water channel, such bridge being a part of

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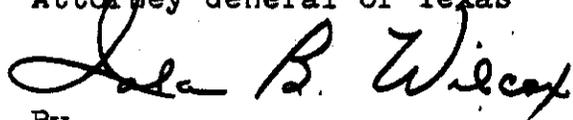
a county road, may purchase public liability insurance to cover damages or injuries resulting from the tortious acts committed in the operation thereof.

SUMMARY

A County in the operation of a drawbridge over a navigable deep water channel may be liable for its torts under Admiralty Law, where an Admiralty Court has jurisdiction and, therefore, a County, as an adjunct to the operation of a vertical lift bridge over a navigable deep water channel, such bridge being a part of a county road, may purchase public liability insurance to cover damages or injuries resulting from tortious acts committed in the operation thereof.

Yours very truly,

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By

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