

◆ ◆ ◆ ◆

Social Sciences

◆ ◆

LIABILITY OF THE CITIES OF OKLAHOMA FOR TORTS

A. M. Gober. *Oklahoma City, Oklahoma*

The purpose of this paper is to bring together all decisions on the subject of Torts in Oklahoma, and to state in a simple, condensed form the Oklahoma law as interpreted by the Supreme Court. The paper is a summary of a study of all cases where an Oklahoma town or city has been sued for a wrong committed through some agency of the municipality.

The municipal corporation possesses a dual character—the one governmental, legislative, or public, wherein it functions as the agent, of the State; the other proprietary or private, wherein it acts as the agent for the community in providing for local necessities and conveniences. The distinction is important in the question of liability.

The rule, briefly stated, is that where a municipal corporation acts for a purpose purely and essentially public—that is, where it acts as an agent for the State and nothing more—the corporation is regarded as a part of the sovereign State and cannot be sued for a tort unless express permission, by statute, to bring such a suit has been given. But where municipal corporations act as private corporations, for the local benefit and advantage of their members, they are liable in tort to the same extent as private individuals or private corporations. This rule holds in Oklahoma, according to the decisions of our highest court.

Fire Departments and Officials, White. [*Negligence of Municipal Corporations, Sec. 66*], states that a city is not liable to private actions for negligent acts or omissions in the conduct of its fire department. It is immaterial whether such a department is established voluntarily, or under compulsion of a charter or statutory requirement.

Health Officers. The courts almost universally agree that the care of persons afflicted with contagious diseases is a governmental function and that the municipal corporation is not liable for the neglect of its

officers in performing services in this field. The Oklahoma Supreme Court held to the general rule in the case of the City of Shawnee v. Jeter, 96 Okla. 272, 221 Pac. 758, which held the city not liable for the negligent acts of its health officers in caring for a smallpox patient.

Most courts hold a city liable for negligent acts of its officers when it engages in a private health function. This was true in Oklahoma in the case of Shawnee v. Roush, 101 Okla. 60, 223 Pac. 354, when the city of Shawnee was held liable for the acts of the city health officers in caring for a patient who was in the city hospital and paying for her treatment.

Independent Contractors. In general a city is not liable for the acts of an independent contractor. However, Oklahoma courts held the city liable for the acts of the independent contractors in the case of City of Hugo v. Nance, 39 Okla. 640, 135 Pac. 348. The city was held liable in this case because of an exception to the general rule; namely, if the control of the work is reserved by the municipality, then it is liable for the torts of the independent contractor or his employees. In the contracts in question, every act of the contractors except the most minute details, was placed under the supervision of the city commissioners and the city engineer.

Nuisance. The only nuisance case found was that of Glenn v. City of Ardmore, 32 Okla. 414, 122 Pac. 508, which began in 1905, while the Arkansas law held over the Indian Territory. The court held the city not liable for creating a nuisance which caused the plaintiff great injury. Since Oklahoma is now a state, the cities are liable for any nuisance that they may create, just as is any private individual or private corporation.

Officers of a City Acting in a Private Capacity. Where the city engages in the business of furnishing its people with water, lights, and gas for a fixed charge, then the city is acting in a private capacity and the general rule holds the city liable for the acts of its agents. Oklahoma holds to the general rule, as is shown by the case of City of Durant v. Allen, 67 Okla. 1, 168 Pac. 205, where an employee of the city was killed in its electric plant and the city was held liable.

Failure of the City to Enact or Enforce Ordinances. A city is not liable for torts arising when the city fails to enact or enforce an ordinance, unless made liable by the statutes of the State. The first case on this subject was that of Wallace v. Town of Norman, 9 Okla. 339, 60 Pac. 108, in which the court held that the city was not liable for failure to stop a mob that drove a negro out of town and would not let him work.

Police Officers. The general rule in most states is that a city is not liable for the acts of policemen when they act in a governmental capacity. The Supreme Court of Oklahoma held accordingly in the case of the City of Lawton v. Harkins, 34 Okla. 545, 126 Pac. 727. Here it was held that the city may not be held liable even though the police arrested an innocent man.

Public Buildings. If a building is used for governmental purposes, the city is not liable for injuries that may result from the condition of the building. However, if the building is rented in whole or part, or used by the city in a private capacity, then the city is liable for injuries resulting to others when the city is at fault.

Sewers, Drains and Water Courses. Several cases have been decided in Oklahoma on this subject, and the Supreme Court of Oklahoma holds the city liable for negligence in constructing sewers, drains and storm sewers. If the storm sewers are so constructed that they change the water course and cause injury to some innocent persons, the city is held liable.

Streets and Other Public Ways. More tort cases have arisen in Oklahoma on the subject of streets than upon any other subject. Oklahoma holds in accord with the general rule that municipal corporations must

exercise reasonable care to make and keep their streets and other public ways safe for all ordinary uses for which they are opened to the public. The theory of liability is based upon the grounds that a city in Oklahoma has complete control over its public ways; it can open, close, widen, or extend the streets, and has power to levy and collect taxes for their construction and repair.

In the case of *City of Guthrie v. Swan*, 5 Okla. 779, 51 Pac. 562, the city was held liable for a defective sidewalk. In *City of Muskogee v. Miller*, 45 Okla. 414, 145 Pac. 782, the city was held liable for the injury of one of its policemen, caused by a dangerous place in the middle of a street. In Oklahoma, a city must keep the entire width of a street in a reasonably safe condition. In *City of Purcell v. Stubblefield*, 41 Okla. 562, 139 Pac. 290, the city was held liable for the falling of a signboard that had been suspended above the sidewalk in a dangerous condition for some time. In *City of Tulsa v. Wells*, 79 Okla. 39, 191 Pac. 186, the court held that the city could not relieve itself of liability for the defective condition of its streets by passing an ordinance to that effect.

