

relate to injuries inflicted to a person by a mob as defined in Section 6278, and Sections 6279, 6281 and 6282 authorize recovery of damages from the county for such an injury. By the terms of Section 7565, General Code, failure to comply with the provisions of Sections 7563 and 7564 relating to the erection and maintenance of guard rails in certain places on county roads rendered "the county liable for all actions or damages for the result of such failure."

I find no statute, however, which permits recovery of damages from a county for an injury to persons or property caused by the negligence of an agent or servant of the county in the operation of a county owned motor vehicle.

An interesting and instructive case with reference to the liability of a municipal corporation on account of the negligence of its agents and servants while in the act of making repairs and improvements to streets and highways is the case of *City of Wooster vs. Arbenz*, 116 O. S., 281.

While this case is a case respecting the liability of a municipality, the principles there discussed and the doctrine of the case could well be applied in determining the liability of a county while in the exercise of its powers with respect to the construction, repair and improvement of highways. In the course of the opinion in this case, written by Chief Justice Marshall, it is said:

"By the weight of authority, as well as upon principle, we have reached the conclusion that streets and highways are public and governmental institutions, that in the absence of statutes there would be no liability for failure to maintain them, that it is only by reason of statutes that municipalities have been held responsible in damages for injuries caused by defects in streets, and that this statutory liability by its terms extends only to damages caused by defects in the streets themselves, and does not extend to the negligence of the agents and servants of the city while in the act of making repairs and improvements."

I am of the view that the principles set forth by Chief Justice Marshall in his opinion in the above case are equally applicable in determining the liability of a county on account of the alleged negligence of its servants and agents while engaged in the construction, repair and improvement of highways as they are to the liability of a municipality.

I am of the opinion, therefore, in specific answer to your question, that a county is not liable in tort for the negligent discharge of official duties by the employes of the county working under the jurisdiction of the county surveyor.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2708.

APPROVAL, ABSTRACT OF TITLE TO LAND OF HENRIETTE J. CORRODI IN THE CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, December 23, 1930.

State Office Building Commission, Columbus, Ohio.

GENTLEMEN:—There has been submitted for my examination and approval an abstract of title, warranty deed and Encumbrance Estimate No. 700, relating to a parcel of land owned of record by one Henriette J. Corrodi, which property is more particularly described as follows:

"Situate in the County of Franklin, in the State of Ohio and in the city of Columbus.

Being Inlot Number One Hundred and Twenty-four (124) in the city of Columbus, Ohio, as the same is numbered and delineated upon the recorded plat thereof, of record in Deed Book "F", page 332, Recorder's Office, Franklin County, Ohio, excepting therefrom, however, the following described tract: Beginning at the northeast corner of said Inlot No. 124; thence with the south line of Broad street, west 46.44 feet to the center of a brick wall, thence south along the center of said wall 70.30 feet to a stake, thence westwardly parallel with the south line of Broad street 17.76 feet to the east line of Scioto street, thence southeasterly with the east line of said Scioto street 142.70 feet to Capital Alley, thence east with the north line of said alley one foot more or less; thence north along the east line of said lot No. 124 to the place of beginning."

Upon examination of the abstract of title submitted, the last continuation of which is certified by the abstracter under date of December 6, 1930, I find that said Henriette J. Corrodi has a good, indefeasible fee simple title to the above described property free and clear of all encumbrances except the following:

1. On June 3, 1929, said Henriette J. Corrodi executed a mortgage on the above described property to the Lilley Building and Loan Company to secure the payment of a mortgage loan note in the sum of \$12,000.00 payable in monthly installments of not less than \$120.00 each. This mortgage is not satisfied of record and the same to the extent of the obligation secured thereby is a lien upon said property.

2. On February 24, 1930, Henriette J. Corrodi executed a mortgage on said property to the Lilley Building and Loan Company to secure a mortgage loan note in the sum of \$4,000.00 payable in monthly installments of not less than \$40.00 each. This mortgage is likewise a lien on said property to the extent of the amount remaining unpaid upon the obligation secured thereby.

3. On May 26, 1930, said Henriette J. Corrodi executed a mortgage on said property to the Lilley Building and Loan Company to secure a loan of \$1,000.00 payable in monthly installments of not less than \$10.00 each. This mortgage, like the others above mentioned, is not satisfied of record and the same is a lien upon said property to the extent of the amount remaining unpaid upon the obligation thereby secured.

4. On August 20, 1930, said Henriette J. Corrodi executed a fourth mortgage on the above described property to the Lilley Building and Loan Company to secure a mortgage loan note in the sum of \$2,000.00, payable in monthly installments of not less than \$20.00 each. This mortgage is likewise not satisfied of record and the same is a lien upon said property to the extent of the amount remaining unpaid upon the obligation secured by said mortgage.

5. On October 31, 1930, said Henriette J. Corrodi executed another mortgage on said property to the Lilley Building and Loan Company to secure a mortgage loan note in the sum of \$1,500.00, payable in monthly installments of not less than \$15.00 each. This mortgage is not satisfied of record and the same is likewise a lien upon said property to the extent of the amount still remaining unpaid upon the obligation secured thereby.

6. The taxes on said property for the year 1930, amounting to \$597.60, are unpaid and are a lien upon the above described property.

7. There is a balance of \$93.77 remaining unpaid upon the assessment for the improvement of West Broad street. This assessment to the extent of the balance above noted is a lien upon the property.

8. There remains unpaid a balance of \$47.42 on the assessment for the street

lighting improvement benefiting such property. This assessment to the extent of said balance is a lien upon the property.

The liens above mentioned other than those for the taxes and assessments above noted should, of course, be paid off and cancelled before the transaction for the purchase of this property is closed. In making this observation, I assume that said tax and assessment liens are to be paid by the State.

Upon examination of the warranty deed tendered by said Henriette J. Corrodi, who is an unmarried person, I find that the same has been properly executed and acknowledged by her and that the form of such deed is such that it conveys the above described property to the State of Ohio by full fee simple title free and clear from all encumbrances whatsoever except taxes and assessments due and payable on and after the December, 1930, payment, and is accordingly hereby approved.

On examining Encumbrance Estimate No. 700, which has been submitted as a part of the files relating to the purchase of the above described property, I find that the same has been properly executed and approved and that there is shown thereby a sufficient balance in the appropriation account to pay the purchase price of said property which is the sum of \$30,304.91.

I am herewith enclosing said abstract of title, warranty deed and Encumbrance Estimate No. 700.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2709.

APPROVAL, GAME REFUGE LEASE TO LAND IN PORTAGE COUNTY.

COLUMBUS, OHIO, December 23, 1930.

HON. JOHN W. THOMPSON, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval the following Game Refuge Lease, in duplicate:

<i>No.</i>	<i>Lessor</i>	<i>Acres</i>
2072	Caroline C. Nelson, Freedom Township, Portage County----	235.17

Upon examination, I find that the errors pointed out in my Opinion No. 2634, rendered to you under date of December 6, 1930, have been corrected, and am therefore returning to you the above lease with my approval endorsed thereon.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2710.

APPROVAL, BONDS OF MONTGOMERY COUNTY, OHIO—\$75,000.00.

COLUMBUS, OHIO, December 23, 1930.

Industrial Commission of Ohio, Columbus, Ohio.