

OPINION  
51-18

January 17, 1951 (OPINION)

CITIES

RE: Liability for Acts of Firemen

This is in answer to your letter of January 13, 1951.

You have asked whether or not the city of Mohall is liable for the negligent actions of a city fireman. The courts have upheld the general rule that municipalities are not liable for the negligent acts of its employees or agents, therefore it is my opinion that the city of Mohall would not be liable in this instance but that the fireman is personally liable for his negligent act.

Section 39-0108 provides that municipal governments may purchase liability insurance for the protection of its employees. The section reads as follows:

"From and after July 1, 1945, the State of North Dakota or any department, agency, bureau, or the employees thereof as well as any county, city, village, or other political subdivision including townships, school and park districts, drainage and irrigation districts using or operating motor vehicles, is hereby authorized to carry insurance for its own protection and the protection of any employee from claims for loss or damage arising out of or by reason of the use or operation of such motor vehicle, whether such vehicle at the time the loss or damage in question occurred was being operated in a governmental undertaking or otherwise; provided, however, that any insurance carrier furnishing such insurance shall not be permitted to raise a defense of governmental immunity from liability for any damage or loss occasioned by any such vehicle or the operator thereof, which waiver shall be contained in the policy; provided, further, that if a premium savings will result therefrom, such policies of insurance may be taken out for more than one (1) year, but in no event beyond a period of five (5) years."

ELMO T. CHRISTIANSON

Attorney General