

OPINION
51-79

February 9, 1951 (OPINION)

HIGHWAYS

RE: Duty of Party Discovering an Injured Person on Highway

In your letter to this office of January 31, 1951, you ask a question in behalf of Mr. I. J. Iverson of Fairdale, North Dakota, with respect to the duties of a party discovering an injured person upon the highway.

I call to your attention the case of the Owl Drug Company v. Crandall, 120 A.L.R. at page 1523. There it is held, and with numerous authorities from a great number of jurisdictions, that "One who, being under no duty to do so, takes charge of another who is helpless adequately to aid or protect himself is subject to liability to the other for any bodily harm caused to him by

(a) the failure of the actor to exercise reasonable care to secure the safety of the other while within the actor's charge;

(b) the actor's discontinuing his aid or protection, if by so doing he leaves the other in a worse position than when the actor took charge of him."

While the above rule renders the volunteer liable for negligence, the rule is not extended to cover the good Samaritan who has done the best he can and knows how to do or who follows the instructions of a physician in his ministrations, and hold him for damages for injuries he did not cause and could not prevent. A volunteer does not become an insurer of the person he seeks to aid.

Your inquiry further expresses the thought that it may be a criminal offense to aid or assist a person injured and lying helpless upon the street or highway.

There is no statute to that effect and the case law does not so hold.

From the case cited, and supporting cases, it may be fairly stated that the proper rule accepted by the majority of the courts is to this effect that, in law, we are not our brothers' keepers. A third person traversing the street or highway can therefore elect whether or not to aid an injured person, but if he should so elect and tender him care or assistance he must do so as a reasonable prudent man would under the same or like conditions.

ELMO T. CHRISTIANSON

Attorney General