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THE LEGAL NATURE AND STATUS OF THE AMERICAN COUNTY

By Charles M. Kneier*

A review of judicial decisions indicates the general doctrine that the American county has a legal position wholly subordinate to the state government. But the extreme view seems to call for qualification in the light of constitutional and statutory provisions, as well as other developments; and this situation is recognized to some extent in some of the recent decisions.

The Anglo-Saxon shire was a district of large local autonomy, subject to only limited control by the central government. But with the development of a more highly centralized government in England after the Norman Conquest, the county came to be considered as primarily an administrative district for the general government, and was not recognized as having the legal status of a municipal corporation, when the borough came to receive this recognition. The same view was applied to the early American county, and was continued after the practice of local election of county officers had developed, and other changes were introduced in the state constitutions and laws.

In a case before the Supreme Court of the United States in 1845 Chief Justice Taney stated that:

"Counties are nothing more than certain portions of the territory into which the state is divided for the more convenient exercise of the powers of government."

It has been held that they "exist only for the purpose of the general political government of the state." More conservatively, another court has stated that "a county organization is created almost exclusively with a view to the policy of the state at large."

Counties are now referred to as bodies corporate and politic, and are recognized as public corporations. In some states they

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1Russell v. Devon County, (1788) 2 Durn. & E. 667.
2State of Maryland v. Baltimore and Ohio R. R. Co., (1845) 3 How. (U.S.) 534, 11 L. Ed. 714. Also see State v. Board of Commissioners, (Ind. 1907) 82 N. E. 482.
4State v. Downs, (1899) 60 Kan. 788, 57 Pac. 962.
are now included in the class of municipal corporations; but in
most states they are considered only as quasi corporations, along
with townships, school districts and road districts. This term
is used to indicate the low rank they hold in the scale of corporate
existence and serves to distinguish them from municipal and from
private corporations.5

The distinction between municipal and quasi corporations, such
as counties, was well expressed by the supreme court of Ohio
in a case before it in 1857.6 The court emphasized the fact that
"municipal corporations proper are called into existence, either
at the direct solicitation or by the free consent of the people who
compose them." In the case of counties, however, the court
pointed out that they are:

"local subdivisions of a state, created by the sovereign power
of the state, of its own sovereign will, without the particular
solicitation, consent or concurrent action of the people who in-
habit them. The former organization is asked for, or at least as-
sented to by the people it embraces; the latter is superimposed
by a sovereign and paramount authority. A municipal corpora-
tion proper is created mainly for the interest, advantage, and con-
venience of the locality and its people; a county is created almost
exclusively with a view to the policy of the state at large, for
purposes of political organization and civil administration, in mat-
ters of finance, of education, of provision for the poor, of mili-
tary organization, of the means of travel and transport, and
especially for the general administration of justice. With scarcely
an exception, all the powers and functions of the county organi-
ization have a direct and exclusive reference to the general policy
of the state, and are, in fact, but a branch of the general ad-
ministration of that policy."7

6Commissioners of Hamilton County v. Mighels, (1857) 7 Ohio
St. 109. Also see Scales v. Chatahoochee County, (1870) 41 Ga. 225;
Granger v. Pulaski County, (1870) 26 Ark. 37; O'Neal v. Jennette,
(1925) 190 N. C. 96, 129 S. E. 184.
7The supreme court of Illinois in a case before it in 1924, in
comparing the legal nature of municipal and quasi corporations said:
"Municipal corporations are those called into existence either at
the direct request or by consent of the persons composing them.
Quasi municipal corporations, such as counties and townships, are at
most but local organizations, which are created by general law, with-
out the consent of the inhabitants thereof, for the purpose of the civil
and political administration of government, and they are invested with
but few characteristics of corporate existence. They are, in other
words, local subdivisions of the state created by the sovereign power
of the state of its own will, without regard to the wishes of the people
inhabiting them. A municipal corporation is created principally for
the advantage and convenience of the people of the locality. County
While in most states judicial opinions distinguish counties from municipal corporations, there are a number of states where counties are recognized as municipal corporations by constitutional or statutory provisions, or in judicial opinions. In North Carolina, Alabama and Montana, counties are dealt with in the state constitution under the general title of municipal corporations. In North and South Carolina, Indiana, Oklahoma, Texas and Wyoming, counties have been classed as municipal corporations by the courts. In New York state, by act of 1892, counties are declared to be municipal corporations; and it has been held by the supreme court of the state that, in view of this act, it seems hardly open to question that a county is a municipal corporation, suable and capable of suing in its own name like any and all corporations.

Power of the State Legislature Over Counties

Resulting from the nature of counties as administrative districts and agents of the state, created for governmental purposes and for greater convenience in carrying on public affairs, is the ...
complete and plenary power of the legislature over counties, except where specific provisions of the constitution govern.\textsuperscript{10} It follows as a necessary corollary of the fact that counties are merely political entities or subdivisions of the state that "the state may, through its legislature, and in the exercise of its sovereign power and will, in all cases where the people themselves have not restricted or qualified such exercise of power, apportion and delegate to the county any functions which belong to it." It also follows, however, that, "on the other hand, the state may take back and itself resume the exercise of certain functions which it has delegated to those local agencies."\textsuperscript{11}

The Supreme Court of the United States, in considering the question of legislative control over counties and "the paramount authority of the state, in respect as well of its acts as of its property and revenue held for public purposes," has said: "The state made it, and could, in its discretion, unmake it, and administer such property and revenue through other instrumentalities."\textsuperscript{12} The supreme court of North Carolina has held that since counties are but agencies of the state government, "They can be created, changed or abolished at the legislative will."\textsuperscript{13}

The power of the legislature over counties because of their nature as quasi corporations may be shown by its control over county property.

The supreme court of Missouri has upheld the constitutionality of an act of the state legislature directing the county to appropriate part of its revenue, already collected, in a certain way. The court pointed out that the county is not a private corporation "but an agency of the state government, and though as a public corporation it holds property, such holding is subject to a large extent to the will of the legislature. Whilst the legislature cannot take away from a county its property, it has full power to direct


\textsuperscript{13}State v. Commissioners of Haywood County, (1898) 122 N. C. 812, 30 S. E. 352.
the mode in which the property shall be used for the benefit of the county."14

The control of the legislature over county property is shown in a forceful manner in a case before the United States circuit court for the district of North Dakota in a case before it in 1898.15 In this case a county had been sued on a warrant, but the plaintiff was defeated on the ground that the county commissioners had no authority to contract for the services for which the warrant was given. The state legislature afterwards passed an act authorizing contracts of a like nature and validating those theretofore made. In upholding the validity of this act, the United States circuit court considered the nature of a county as a quasi corporation and mere instrumentality of the state, "at all times, both as to its power and its rights, subject to legislative control." In considering the extent of legislative control over the property of a county, the court said:

"While it is no doubt true that the legislature has not such transcendent and absolute power over these bodies that it can apply property held by them to private purposes or to public purposes wholly disconnected with the community embraced within their limits, still it is true that a purely public corporation like a county, cannot acquire any vested interest which will preclude the legislature from directing the application of all its property and rights to the performance of those governmental functions which pertain to the community embraced within the corporation and for the performance of which the corporation was created. If it were otherwise, counties, instead of being agencies of the state for administering the government, would be petty sovereignties, to impede and defeat the state with claims of local interest and authority."

Another case which illustrates the legal status of the property held by counties was before the supreme court of Illinois in 1911.16 A city attempted to take, by eminent domain, a strip of land through the county poor farm for street purposes. While cities had been authorized to take property for public purposes by the right of eminent domain, the supreme court of Illinois held that they could not take the property used for a poor farm since this was not private property. The county was held to have "no powers

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14 State v. County Court of St. Louis County, (1864) 34 Mo. 546. Also see Board of Commissioners v. Lucas, (1876) 93 U. S. 108, 23 L. Ed. 822.
except such as are derived from the statutes constitutionally enacted, and it can own no private property.” The court went on to say that:

“Property, the title to which is vested in the county, is public property, held by the county as a state agency, and in the absence of positive constitutional restriction is subject to the disposition of the Legislature without the consent of the county authorities.”

This same principle was brought out in a case before the supreme court of Illinois in 1924.17 Cook county brought suit against the city of Chicago to restrain it from enforcing its fire and building ordinances in the construction of a jail within the city limits on the grounds that the county was but an “arm of the state to which there has been committed the control of county buildings, and that it is not, therefore, subject to the police power of the city.” The supreme court of Illinois, held, however, that the legislature of the state in delegating the police power to cities and giving them power to cause all buildings and inclosures in a dangerous state to be put in a safe condition, intended to confer upon the city council such power over all buildings within the city, including county buildings. It was pointed out that “While the county is an agency of the state, it is likewise a creature of the state.”

In 1921 the legislature of the state of Nebraska passed an act which provided that the county commissioners of any county should furnish rooms in the court house for the municipal courts of any city which was the county seat of that particular county. The county commissioners of the county of which Omaha was the county seat refused to furnish rooms for the municipal courts of that city. The supreme court of Nebraska upheld the lower court in allowing a writ of mandamus to issue against the commissioners to command them to furnish such rooms for the municipal courts. The court, in considering the power of the legislature over county property, said:

“It must be remembered that a county does not possess the double governmental and private character that cities do. It is governmental only, and in that capacity acts purely as an agent of the state. The funds raised by taxation in the county are subject to the direction and control of the legislature for public use in that county, and the property of the county, acquired by funds raised through taxation, is property of which the state can direct the

17Cook County v. City of Chicago, (1924) 311 Ill. 234, 142 N. E. 512, 31 A. L. R. 442.
LEGAL NATURE OF THE AMERICAN COUNTY

management and disposition, so long at least as it acts for the benefit of the public in the taxing district. 17

These cases illustrate the power of the legislature over counties as administrative districts of the state. This complete and plenary authority extends not only to their powers but also to their property.

LEGAL RIGHTS AND OBLIGATIONS

The principle is well established that a state cannot be sued in its own courts without its consent and permission. 19 Counties are nothing more than certain portions of territory into which the state is divided for the more convenient exercise of the powers of government and a suit against the county is in effect a suit against the state. 20 Since counties are created for the administration of justice, the restraint of minor criminals, the relief of paupers, etc., the fact that the state administers these things through geographical subdivisions does not make the acts any the less acts of sovereignty. 21

It is thus generally held that actions may be maintained either by or against counties only by virtue of statutory or constitutional authority. 22 The supreme court of Oregon in considering the question of suits against counties has stated that it is the settled rule that "neither the state itself, nor one of its counties, which

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18State v. Board of Commissioners, (1922) 109 Neb. 35, 189 N. W. 639.
21O'Brien v. Rockingham County, (1923) 80 N. H. 522, 120 Atl. 254; Board of Commissioners of Greer County v. Watson, (1898) 7 Okl. 174, 54 Pac. 441.
are but instrumentalities of the state in the exercise of its sovereignty, can be sued, unless upon express permission given by the legislative power in the form of a statute permitting the same. Public policy forbids that the state shall be made a defendant in litigation without its consent, and as counties are regarded as parts of the government the exemption is in good reason also extended to them, unless a statute exists expressly allowing the maintenance of actions against them."  

The court of appeals of Kentucky has stated that with respect to the right of a party to sue, "there is a wide difference between 'municipal corporations' and 'counties.'" The principle of non-liability of the county to suit was stated as follows:  

"It is a well-established doctrine in this state, and in harmony with the rule generally prevailing, that counties are not liable to suit, unless authority for it can be found in the statute, or it follows by necessary implication from some express power given. The reason upon which this rule rests is that counties are subordinate political subdivisions of the state. They are created for public purposes, and are a part of the necessary machinery of government, and can no more be sued by a citizen than can the state."  

The court went on to point out, however, that:  

"The right of these political subdivisions of the state to sue is much larger than their right to be sued, and this follows from the fact that, having control of the bridges, highways, and public buildings of the county, it is necessary that they should be invested with all needful power to protect and preserve them, and so it has been held that a county may maintain an action for injury to its courthouse or public roads."  

**Non-Liability of the County for Torts**  

It may thus be stated as the general holding of the courts that "as counties are merely geographical divisions of the state for the convenient exercise of sovereign power each for that purpose represents the state, and is not suable for default in the exercise thereof in the absence of statute permitting such suit." The courts also hold that cities are not liable in tort where the officers are

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23 Rapp v. Multnomah County, (1915) 77 Or. 607, 152 Pac. 243.
25 State v. Board of Commissioners of Marion County, (1908) 170 Ind. 595, 85 N. E. 513; Brown v. Davis County, (1923) 196 Iowa 1341, 195 N. W. 363. For exception to this rule see Anne Arundel County v. Watts, (1910) 112 Md. 353, 76 Atl. 82.
engaged in governmental functions; from this they reason that since the county performs, as an agent of the state, only governmental functions, there can be no liability on its part. It is also stated that no right of action should lie against counties and other quasi corporations since "these organizations are not voluntary but compulsory; not for the benefit of individuals who have asked for such a corporation, but for the public generally."26

Municipal corporations, on the other hand, are held to a greater degree of responsibility for torts than are counties and quasi corporations. This is because of their dual character and the nature and purpose of their creation. Municipal corporations usually receive a special charter from the state, only at the request of those to be incorporated. Since municipal corporations are voluntary, it is assumed that incorporation confers what to them is a valuable privilege. Some of the special privileges conferred are larger powers of self government, greater privileges in the acquisition and control of corporate property, and special authority to make use of the public highways for the special and peculiar convenience of the people of the particular city.27

The municipal corporation, in receiving a grant of powers for its own beneficial purposes and not for the benefit of the state as a whole, assumes a greater degree of liability. It is not only an administrative agent of the state but it is also a unit of local government; thus it assumes a dual character. In determining the liability of the municipal corporation for the acts of its officers, the courts have pointed out that it receives this grant of power from the state primarily for the benefit of the people within the corporation and must assume responsibility for failure to perform the corporate duties. But as in the case of the quasi corporation, there is no liability in cases where the municipal corporation performs governmental functions as an agent of the state.

While the holding of the courts has been quite general that counties are not liable in tort since they perform governmental functions only, there seems to be a tendency to depart from this rule in some cases. This has been noted especially in cases where damages have been allowed against counties and other quasi corporations because of the negligent invasion of property rights of

26Cook County v. City of Chicago, (1924) 311 Ill. 234, 142 N. E. 512, 31 A. L. R. 442.
persons by the county's use of land which it holds only for public governmental purposes, as the soil of highways.\textsuperscript{28} The allowance of damages in such cases is placed upon the liability of a landowner for the maintenance of a nuisance on his land to the injury of his neighbors.\textsuperscript{29} It has been suggested that such suits might be maintained because they were brought to redress an injury to private rights, and that they therefore might be distinguished from the cases where an individual depended upon a public right, such as his right as a traveler on the highways.

The supreme court of New Hampshire, in a case before it in 1923, questioned the decisions which were based upon this reasoning, and held that if the counties and quasi corporations were liable in such cases it established the liability of the state itself.\textsuperscript{30} "But," according to the opinion of the court, "the state can no more be sued for injuries caused by its own negligence or that of its servants or agents or for the results of a nuisance maintained on its land than it can be for a breach of its promise to pay for service rendered or money loaned." The court indicated that it could not agree with the reasoning in these cases by which the liability of quasi corporations was established; rather it seemed to look upon the two lines of cases, one holding quasi corporations liable for negligent invasion of an adjoining owner's property rights by the use of land which they hold for governmental purposes, as the soil of highways, and those holding them not liable for negligent invasion of private personal rights while acting in a public governmental capacity, as not being logically reconcilable.

Another explanation that has been offered of the two types of decisions is that:

"the evident justice of the individual cause has influenced the courts, and led them to seize upon any possible distinction to afford a remedy for what is clearly a wrong in fact if not in law."\textsuperscript{31}

Again, it may reflect the tendency to bring into the field of liability of quasi corporations the question of the soundness of the old rule of non liability, as was done by Justice Wanamaker of the


\textsuperscript{29}Burnham v. Windham, (1914) 77 N. H. 103, 88 Atl. 701.

\textsuperscript{30}O'Brien v. Rockingham County, (1923) 80 N. H. 522, 120 Atl. 254.

\textsuperscript{31}See note. (1923) 8 Minnesota Law Review 164.
supreme court of Ohio in 1919 in a case dealing with the question of liability of municipal corporations while performing governmental functions.  

As the state may by statute permit itself to be sued in certain cases in its own courts, it may also place liability upon counties in certain classes of cases. This principle is brought out in a case before the supreme court of Texas in 1926. Suit was brought against a county for damages to land and also to the health of the owner of the land resulting from the flooded property. The court pointed out that "at common law counties as a rule are not liable for injuries resulting from the negligence of their officers or agents, and that no recovery can be had in damages unless liability be created by statute." The legislature of the state of Texas had provided for the payment of damages by the county to land in such cases; therefore, suit for damages to land would be sustained against the county in the present case. But as neither the constitution nor the statutes authorized a recovery against the county for damages to the health of persons on account of the construction or maintenance of a road, suit in such cases would not be entertained.

While municipal corporations are not liable for tort when engaged in governmental functions, they are liable when they engage in private or corporate functions. The supreme court of Georgia had before it in 1926 the question as to whether a county would be liable for damages to one injured while working in a county rock quarry. The court held that a county, in quarrying and crushing stone on its land for highways, exercises a governmental function, and that no liability attaches to the non-performance or improper performance of the duties of the officers, agents, or servants of the county in respect to these governmental

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32 Fowler v. City of Cleveland, (1919) 100 Ohio St. 158, 126 N. E. 72; 9 A. L. R. 131; see concurring opinion of Justice Wannamaker. On the general question of governmental responsibility in tort, see the articles by Professor Borchard in 34 Yale L. J. (1924-25) 1, 120, 229; (1926-27) 36 Yale L. J. 1, 757, 1039; (1928) 28 Col. L. Rev. 577, 734.

33 For cases in which this has been done see: Decatur County v. Praytor, Howton, and Wood Contracting Co., (1927) 163 Ga. 929, 137 S. E. 247; Blum v. Richland County, (1893) 38 S. C. 291, 17 S. E. 20; Eastman v. Clackamas County, (C.C.Or. 1887) 32 Fed. 24; Hoexter v. Judson, (1899) 21 Wash. 646, 59 Pac. 498.

34 Harris County v. Gerhart, (1926) 113 Tex. 449, 283 S. W. 139.

functions. According to the opinion in the case, it would not affect the public character of the officers, agents or servants of the county that a purely incidental profit might result to the county from its operation and management of the quarry, or because of the sale to the public of a portion of the stone crushed at the quarry.

The question was also considered as to whether a county would be liable in such case if it engaged in the sale of crushed rock to the public. The court answered this question by saying that counties were not authorized to engage in the business of crushing rock for sale to the public, and the acts of its officers and agents in undertaking to do so would be ultra vires, and that no liability would attach to the county by reason of the non-performance or improper performance of such acts under those circumstances.

The supreme court of Iowa had a similar question before it in 1925. The county board of supervisors had leased the seventh floor of the court house to a post of the American Legion for one year, at an agreed rental of one hundred dollars per month. The contract provided that the county was to furnish elevator service. The plaintiff in this case was injured in the elevator while going to the rooms occupied by the American Legion, on private business concerned with the affairs of the Legion. The court, in holding the county not liable in this case for damages, pointed out that it was a well established rule in that state that "counties are not liable for torts growing out of the negligent acts of their agents or employees." The plaintiff argued, however, that there was liability in this case, since the county was not carrying out any "governmental powers," but that in renting a portion of the courthouse to the American Legion it was engaged in a "private enterprise," and that it was liable for the acts of its employees in connection with rooms so rented.

The court conceded, "for the sake of argument," that if the board of supervisors had the authority to so lease a portion of the courthouse to private parties and collect rent therefor, it would follow that the county might be liable for the negligent acts of its servants and employees in connection with the use of the rented premises. The court held, however, that the county board had no

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36Hilgers v. Woodbury County, (1925) 200 Iowa 1318, 206 N. W. 660.
such power under the Iowa law, and "that the county cannot be held liable for the negligent acts of its employee directly connected with the business of carrying out the said unauthorized contract."

These cases indicate that the county is not liable in tort for injuries resulting from some proprietary function in which it is engaged, in case it is not authorized by law to engage in such activity. In such cases the acts of its officers and agents in carrying out the unauthorized proprietary function are ultra vires and no liability attaches to the county, either for their non performance or improper performance. A different question is presented, however, in case the proprietary function in which the county is engaged is authorized by law.

The question of liability on the part of a county when engaged in a proprietary function was considered by the supreme court of Wisconsin in a case before it in 1927. 

Sparks, which had escaped from a steam shovel operated by the county to remove gravel and road material which was being sold to the county, burned adjoining property. The county had been warned by the adjoining property owners of the defective nature of the engine. The court, in holding the county liable, notwithstanding its governmental character, held that the relation of the county to an adjoining property owner in such case was that of one proprietor to another. It could see "no reason in justice or morals why a group should not be liable to one to whom its agents have done injury when a member of the group would be liable if he had done the same injury to another member of the group." The growing tendency towards greater liability on the part of municipal corporations was pointed out. Counties had by statute been made liable for mob violence in Wisconsin, which as pointed out by the court, was liability for the failure to perform a purely governmental function, the furnishing of adequate protection to life and property. Taking these factors into consideration, the county was held liable in the present case since the damages resulted not from mere performance of governmental functions but from an act of a county in its proprietary capacity.

In several states counties have been held liable for their torts when they were acting, not as governmental agents, but as private corporations, or where they were performing some special duty

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37 Young v. Juneau County, (Wis. 1927) 212 N. W. 295.
38 Cf. Matson v. Dane County, (1920) 172 Wis. 522, 179 N. W. 774.
voluntarily accepted or assumed. Insofar as such functions are concerned, the county is no longer a quasi corporation, but in assuming the privileges must also assume the liabilities as in the case of a municipal corporation. It, should be noted, however, that such cases are few, and that in most matters the county still occupies its position as an agent of the state, performing only governmental functions, for which there is no liability in tort. The county has not extended its functions into the proprietary field as has the municipal corporation; it still maintains to a large degree its position as an administrative agent of the state, performing political and governmental functions.

It has been pointed out above that the state may by statute make the county liable to suit in the courts. Several states have provided for suits against counties for injuries to person and damage to property resulting from mobs and riots. The laws of New York provide that a city or county shall be liable to a person whose property is destroyed or injured by a mob or riot, if the consent or negligence of such person did not contribute to such destruction or injury. All counties in Illinois, Ohio, Wisconsin, New Jersey, and West Virginia, and Philadelphia and Allegheny counties in Pennsylvania have also been made subject to suits for damages resulting from mobs or riots. South Carolina provides that:

"In all cases of lynching when death ensues the county where such lynching takes place shall, without regard to the conduct of the officers, be liable in exemplary damages of not less than two thousand dollars, to be recovered by action in any court of competent jurisdiction by the legal representatives of the person lynched."


In several other states counties have been made subject to suit in certain classes of cases, by statutory provision. In Maryland and Washington a more general liability has been established. 43

LIABILITY OF COUNTY ON CONTRACTS

The immunity of the state from suits for breach of contract has not been applied generally to counties. In most jurisdictions there is a greater liability to suit on contracts on the part of the county than the state. Thus it is generally held that the county may be sued for breach of contract, even in the absence of express statutory provision to this effect. 44 The Kentucky court of appeals has held that "where a county has authority to make a contract, it would follow as an incident that it might sue or be sued concerning it." In a later case the court in referring to this statement said:

"That language refers only to an express contract. It was not intended to convey the idea, nor would it be proper to do so, that the right to sue could be implied from an implied contract."

More recently the same court has stated that:

"a county cannot be sued, unless there is a statute which expressly authorizes such an action to be maintained, or the right to do so can be necessarily implied from an express power given, or it may be sued upon an express contract, which the county has authority to make." 45

In a few states there has been an extension to the county of immunity enjoyed by the states from suits on contracts. The appellate court of Indiana in considering this question has said:

"Boards of county commissioners, in improving highways and entering into contracts for that purpose, are not acting as agents

43 Ann Arundel County v. Watts, (1910) 112 Md. 353, 76 Atl. 82; Austin v. King County, (1918) 103 Wash. 176, 173 Pac. 1020; State v. Superior County, (1918) 104 Wash. 268, 176 Pac. 352.


of a municipal corporation. In such cases they are by virtue of the statute acting as agents of the state, and, in the absence of a statute, no action can be maintained against such board for damages because of a breach of contract."

The court went on to say that cases involving the right to prosecute an action against an individual or against a municipal corporation for breach of contract were not in point. The superior court of Delaware, after pointing out that the counties in that state had been held not liable in tort, said:

"There has been no express decision in this state that a cause of action arising ex contractu would not lie against the county. But after reflection we are not able to see our way to the conclusion that there is any essential difference or any sufficient reason to except a case ex contractu from the general common-law rule that actions will not lie against the county, or the levy court commissioners, who represent the county.""

Conclusion

While the underlying doctrine, supported by the preponderance of judicial opinion, is to the effect that the county is merely an administrative district of the state and has a legal status distinctly different from that of a municipal corporation, full consideration of the present status of the American county seems to call for some qualification of this view. Constitutional provisions in many states have imposed important limitations on the power of the legislature over counties. By statutes they are quite regularly subject to suit in cases of contract, and to some extent in cases of tort; and county boards and officers are not exempt from compulsory judicial processes to secure obedience to the law. Moreover historical study of the county indicates that even in early days it acted to some extent as an organ of local government as well as an agent of the state. With the development of public services in recent years such local activities have increased, as in the maintenance of hospitals, libraries, parks, and aviation landing fields. These developments indicate that the county, in fact as well as in law, is approaching more nearly the position of a municipal corporation.

46Buck v. Indiana Construction Co., (1923) 79 Ind. App. 329, 138 N. E. 356. The court held that the proper remedy in this case was in injunction to restrain the cancellation of the contract.
47Duncan v. Willits, (1903) 4 Pennewill (Del.) 493, 57 Atl. 369.