

August 23th, 1899.

F. Burbridge,
Manager ect.,
Kellogg, Idaho.

Dear Sir:

In reply to your letter of the 10th inst. inquiring as to the liability of the persons engaged in the destruction of the property of your company on the 29th of last April, I enclose the following as the result of my examinations. It is only just to Mr. Folsom, who was in my office during my absence and who had been investigating the questions before my return, to say that the opinion enclosed was prepared by him and when I had examined the authorities on which he based, I fully approved it.

There is no doubt of the liability of the parties as stated herein and I think it would be good policy to act upon it as it would be a warning to others and might result in good verdict for you.

Yours truly,

Joseph R. McBride

OPINION OF COUNSEL.

As to the liability for the destruction of the Bunker Hill property by a mob on April 29th, 1899, a careful examination of all the authorities shows the following:

1. As to the liability of the State of Idaho.

The authorities all agree that there is no liability on the part of the government for the action of a mob unless there is a Statute of the State consenting to such liability. In the State of Idaho there is no such Statute. It follows that the State of Idaho as a State is not liable to the Bunker Hill & Sullivan Company for the value of the property destroyed on April 29th.

2. As to the liability of the County of Shoshone.

While in England the Hundred was made responsible for the destruction of property by a mob, it is conceded by all the authorities that in this country cities and counties are under no common law liability to answer for the injuries done by a mob. The decisions usually rest upon the principle that the duty of the county in such cases is a public duty, that such duty to protect property is discharged by the appointment of officers charged to keep the peace. But the statutes of many states provide by express terms that cities and counties shall be liable for the value of the property of an individual destroyed by a mob; and such statutes have been held to be constitutional, except when they fix a certain sum in which the city or county shall be liable regardless of the real value of the property destroyed. The following States have such Statutes: Alabama, California, Kentucky, Kansas, Illinois, Louisiana, Maine, New York, Maryland, New Hampshire, Pennsylvania and Wisconsin. The Statutes of Idaho contain no provision imposing upon a county

the liability for the acts of a mob, and in the absence of such a

provision, the County of Shoshone cannot be compelled to make good the loss of the Bunker Hill & Sullivan Company.

3. As to the liability of the Sheriff and bondsmen.

Public officers whose duty it is to preserve the peace are liable in civil actions by any individual for injuries resulting from a mob, where the officers have neglected or failed wilfully to do their duty. The Statutes of Idaho impose upon the Sheriff the duty of preserving the peace and suppressing riots and insurrections which may come to his knowledge. If he fails to do his duty he is responsible for the consequences. The bonds of all officers in Idaho are for the use and benefit of the State, "and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity, and any person so injured may bring suit upon such bond". The Sheriff and his bondsmen are legally responsible to the amount of the bond for the acts of the mob of April 29th, provided it can be shown that the sheriff failed or neglected to do his duty and the injury to the property resulted from such failure or neglect.

4. The County Commissioners are the chief executive officers of the County and are required to superintend the work of the other officers. According to the decisions of most states if they knew of the danger on April 29th, and neglected to take such steps as would prevent it they would be liable on their bonds for the injuries resulting from their neglect or failure. There are some decisions in Idaho which tend to relieve the County Commissioners from civil liability for failure to do their duty where such failure was the result of unintentional neglect. But those decisions do not ~~agree~~ go so far as to excuse them from liability for willful neglect. If the Commissioners knew of the danger and wilfully neglected to take means in their power to protect the property of the Bunker Hill & Sullivan Company and the injury resulted from

such failure or neglect they would be held liable. If the Commissioners are liable, their bondsmen are also.

5. As to the liability of the individuals in the mob

The persons actively participating in the destruction of the property or participating in the riot, are each personally responsible for the full value of the property destroyed.

Spokane Aug 26. 1899 - *Wm R. [unclear]*
City of Law -