

1978 WL 35025 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 8, 1978

*1 The Honorable Charles Ellenburg, Sr.
Mayor
City of Easley
Post Office Box 466
Easley, South Carolina 29640

Dear Mr. Ellenburg:

This letter is in response to your request concerning municipal tort liability for damages incident to a dam and municipal responsibility for repairs thereto. Such liability and responsibility may exist, depending on certain factors to be discussed subsequently.

South Carolina is one of a minority of jurisdictions which continue to recognize sovereign immunity as a defense to tort liability. McQUILLIN, MUNICIPAL CORPORATIONS § 53.02 (1977); [Belton v. Richland Memorial Hospital](#), 263 S.C. 446, 211 S.E.2d 241 (1975); [Graham v. Charleston County School Board](#), 262 S.C. 314, 204 S.E.2d 384 (1974). Although this common law defense is still generally applicable, a statutory exception has been created by [Section 5-7-70 of the South Carolina Code \(1976\)](#). That section states in pertinent part:

Any person who shall receive bodily injury or damages in his person or property through a defect in any street, causeway, bridge or public way or by reason of a defect or mismanagement of anything under control of the corporation within the limits of any city or town may recover in an action against such city or town the amount of actual damages sustained by him by reason thereof if such person has not in any way brought about any such injury or damage by his own negligent act or negligently contributed thereto. But no person bringing an action under this section shall recover damages to exceed fifteen thousand dollars for bodily injury or death or to exceed five thousand dollars for damages to his property A corporation shall not be liable unless the defect was occasioned by its neglect or mismanagement.

It should be emphasized that such a tort action against a municipality is purely statutory and must come strictly within the purview of this section; municipal liability is also limited to 'actionable negligence'. [Coker v. Nationwide Mutual Ins. Co.](#), 243 S.C. 170, 133 S.E.2d 122 (1963); [Foster v. Union](#), 129 S.C. 257, 123 S.E. 839 (1924).

In applying this statute to the situation at hand, the question is whether the dam is 'under control' of the City of Easley. Although you have indicated that the City annexed the subdivision, it is unclear whether that annexation includes the dam itself or merely the surrounding land. If the City owns the dam and the land underlying the body of water, there would seem to be municipal control and [Section 5-7-70](#) would apply. However, the situation would be different if the City exerted control only over the road, with the dam and water being privately owned. As for flooding, 'a municipal corporation is not liable at common law for failure to abate the natural and ordinary flooding of lands on the bank of a navigable stream.' McQUILLIN, MUNICIPAL CORPORATIONS § 53.132 (1977).

Responsibility for repairs is similarly contingent on the ownership and control of the dam. Municipal ownership of the dam would seem to indicate municipal responsibility for repairs. Although there appears to be no mechanism for compelling such repairs, the negligent failure to do so would be significant in an action under [Section 5-7-70 of the Code](#).
With kind regards,

*2 Karen LeCraft Henderson
Senior Assistant Attorney General

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