

**Letter from LAFCO Legal Counsel  
Dated February 9, 2011 Regarding  
Liability and AB 774 (Donnelly) As  
Amended**

**Attachment 3**



**BEST BEST & KRIEGER**  
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February 9, 2011

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FEB 10 2011  
LAFCO  
San Bernardino County

Kathleen Rollings-McDonald  
Executive Officer  
Local Agency Formation Commission  
for San Bernardino County  
215 North D Street, Suite 204  
San Bernardino, CA 92415-0490

Re: Potential Liability and Duty to Maintain Unaccepted County Roads

Dear Kathy:

You have requested guidance regarding potential liability if a county discontinues its maintenance of roads not officially part of the county road system.

Generally, California Streets & Highways Code section 941(b) immunizes a county from any claimed failure to maintain a road which has not been accepted into the county road system by official action of the county board of supervisors or its designee. Section 941 indicates that a county can only be held liable for failure to maintain a road if the county has officially accepted a road as part of the county road system. If the road has not been officially accepted, the county cannot be held liable for failure to maintain it. A 1978 California Court of Appeals case found that the Legislature, in passing section 941, clearly intended to immunize public agencies from liability for damages caused by defects in a street which had not been officially accepted into the public entity's street system by resolution. (*Benitez v. City and County of San Francisco* (1978) 77 Cal. App. 3d 918, 920-922.)

Additionally, California Government Code section 831.3 speaks generally to when a public entity has maintained roads which it never accepted into its official road system. If a public entity performs an act of maintenance, grading, repair, or reconstruction of an unaccepted road, it may be held liable for injuries occurring on account of that work only if the work is not done with reasonable care and if the work leaves the road in a more dangerous or unsafe condition that it was before the work began. Thus, as long as a county has done work with reasonable care and the work left the road "in a no more dangerous or unsafe condition that it was before the work commenced," a county would likely not be held liable for any injuries occurring on account of the work.

The case of *Matthews v. County of San Bernardino* discusses and applies these two code sections in a summary judgment context. (*Matthews v. County of San Bernardino* (1991) 223 Cal.App.3d 1623.) The court there simply indicated that:

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“section 941 states that a county is not liable for *failure to maintain* unaccepted roads, while section 831.3 merely states that *if* public entities perform an act of maintaining, grading or repairing unaccepted roads, they may be liable *if* the work is not done with reasonable care and *if* the work leaves the road in a more dangerous or unsafe condition that it was in before the work began. Simply stated, section 941 immunizes a county from any claimed nonfeasance regarding its lack of maintaining unaccepted roads. Section 831.3 addresses in part a public entity’s misfeasance in its action of maintaining or grading or repairing an unaccepted road.” (*Matthews v. County of San Bernardino* (1991) 223 Cal.App.3d 1623, 1633.)

Moreover, the California Attorney General has also opined that a county has no statutory duty to maintain public roads that have not been accepted into the county highway system by resolution of its board of supervisors. (89 Cal.Ops.Atty.Gen. 148, 150 (2006); 61 Ops.Cal.Atty.Gen. 466, 468 (1978) (citing *County of Kern v. Edgemont Dev. Corp.* (1963) 222 Cal.App.2d 874, 878-879).)

Therefore, pursuant to California Streets & Highways Code section 941, a county generally cannot be held liable for failure to maintain a road that has not been officially accepted into the county road system. If a county has performed maintenance work on these unaccepted roads, California Government Code section 831.3 indicates that so long as a county has completed any maintenance work with reasonable care and the work left the road “in a no more dangerous or unsafe condition that it was before the work commenced,” a county generally cannot be not be held liable for any injuries occurring on account of the work.

Please do not hesitate to contact me with any further questions or concerns.

Sincerely,



Clark H. Alsop  
of BEST BEST & KRIEGER LLP

jml: CHA

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 774**

**Introduced by Assembly Member Donnelly**

February 21, 2013

An act to amend Section ~~25217.2~~ 25215 of, and to add Sections 25213.7 and 25217.5 to, the Government Code, relating to local government.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 774, as amended, Donnelly. ~~County~~ County service areas: zone dissolution.

The County Service Area Law authorizes the county board of supervisors, acting as the governing authority of a county service area, to provide for the collection and enforcement of property-related fees and charges in the same manner that the county collects and enforces property-related fees and charges for the property-related services that the county provides. *Existing law allows the board to raise revenues, as specified, whenever the amount of revenue available to the county service area is inadequate to meet the costs of operating and maintaining the services and facilities that the county service area provides.* Existing law authorizes the dissolution of a county service area and allows the board to change the boundaries of a zone, or to dissolve the zone, by following specified procedures.

This bill would require the board, upon dissolution of a county service area or a specified zone, to post signs indicating which services and facilities are no longer provided within the zone and require the board to provide adequate maintenance to the signs. This bill would provide that, once the signs are ~~posted and the action is recorded,~~ posted, the county and the dissolved zone shall not be held liable for death or injury resulting from the termination of services or facilities. *This bill would also provide that the county, county service area, and zones would not be responsible for a loss or injury resulting from the failure to provide maintenance of services or facilities if the board is unable to raise revenues.* This bill would require the board to mail notice to an owner of property within the county service area, or zones that will no longer be able to maintain the services or facilities.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- P2 1     **SECTION 1.**  
       Section 25213.7 is added to the Government Code,  
 2     to read:  
 3     25213.7.  
       (a) Notwithstanding any other law, upon dissolution  
 4     of a county service area providing services or facilities for a public  
 5     street or divestiture of authority to provide services or facilities

6 for a public street, the board shall post clearly visible signs within  
 7 the zone for which authorized services, levels of service, or  
 8 authorized facilities are no longer being provided within the zone.  
 9 The sign shall indicate what service or facility is no longer being  
 10 provided within the zone and that the county and the zone are not  
 11 responsible for any loss or injury resulting from the termination  
 12 of services or facilities. The board shall provide adequate  
 13 maintenance to ensure that the signs remain posted within the zone  
 14 and the message is legible for a period of one year.

15 (b) After the signs are posted pursuant to subdivision (a), the  
 16 county and the dissolved zone shall not be held liable for death or  
 17 injury resulting from termination of services or facilities.

18 **SEC. 2.**

19 Section 25215 of the Government Code is amended to  
 20 read:

21 **25215.**

22 (a) Whenever the board determines that the amount  
 23 of revenue available to a county service area or any of its zones is  
 24 inadequate to meet the costs of operating and maintaining the  
 25 services and facilities that the county service area provides, the  
 26 board may raise revenues pursuant to this article or any other  
 27 provision of law.

P3 1 (b) If the board is unable to raise revenues, the county, county  
 2 service area, and the county service area's zones shall not be  
 3 responsible for a loss or injury resulting from the failure to provide  
 4 maintenance of services or facilities that the county service area  
 5 or any of its zones provides. The board shall mail notice to any  
 6 owner of property within the county service area or any of its zones  
 7 that it will no longer be able to maintain the services or facilities.

8 **SEC. 3.**

9 Section 25217.5 is added to the Government Code, to  
 10 read:

11 **25217.5.**

12 (a) Upon dissolution of a zone providing services or  
 13 facilities for a public street, as authorized by Section 25217.2, the  
 14 board shall post clearly visible signs within the zone for which  
 15 authorized services, levels of service, or authorized facilities are  
 16 no longer being provided within the zone. The sign shall indicate  
 17 what service or facility is no longer being provided within the zone  
 18 and that the county and the zone are not responsible for any loss  
 19 or injury resulting from the termination of services or facilities.  
 20 The board shall provide adequate maintenance to ensure that the  
 21 signs remain posted within the zone and the message is legible for  
 22 a period of one year.

23 (b) After the signs are posted pursuant to subdivision (a), the  
 24 county and the dissolved zone shall not be held liable for death or  
 25 injury resulting from termination of services or facilities.

26 ~~SECTION 1.~~

27 ~~Section 25217.2 of the Government Code is~~  
 28 ~~amended to read:~~

29 ~~25217.2.~~

30 ~~(a) The board may change the boundaries of a zone~~  
 31 ~~or dissolve a zone by following the procedures in Sections 25217~~  
 32 ~~and 25217.1, as appropriate.~~

33 ~~(b) Upon dissolution of a zone, the board shall post clearly visible~~  
 34 ~~signs within the zone for which authorized services, levels of~~  
 35 ~~service, or authorized facilities are no longer being provided within~~  
 36 ~~the zone. The sign shall indicate what service or facility is no~~  
 37 ~~longer being provided within the zone and that the county and the~~  
 38 ~~zone are not responsible for any loss or injury resulting from the~~  
 39 ~~termination of services or facilities. The board shall provide~~

34     ~~adequate maintenance to ensure that the signs remain posted within~~  
35     ~~the zone and the message is legible for a period of one year. Once~~  
36     ~~the signs are posted and the action is duly recorded, the county~~  
37     ~~and the dissolved zone shall not be held liable for death or injury~~  
38     ~~resulting from termination of services or facilities.~~

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