

2397

FIRE INSURANCE—TOWNSHIP TRUSTEES MAY PURCHASE
FIRE AND WINDSTORM COLLISION AND LIABILITY IN-
SURANCE—TOWNSHIP FIRE TRUCKS.

SYLLABUS:

Township trustees may purchase fire and windstorm, collision and liability insurance on township fire trucks.

Columbus, Ohio, October 10, 1950

Hon. Frank T. Cullitan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Board of Trustees of Bedford Township wishes to know whether the Township Trustees have the authority to take out fire and windstorm, collision and liability insurance on the township fire trucks.

We have been unable to find any statute specifically authorizing such insurance or any cases in point.

Would you please render an opinion on this subject.”

Preliminary to a consideration of your question, it is to be noted that townships and other political subdivisions of the state are, in the absence of statute, immune from liability for negligence in the exercise of their public or governmental duties and functions. 39 O. Jur. 338. Accordingly, it has been the consistent holding of this office that political subdivisions of this state may not expend public monies for the purchase of liability insurance policies unless there is a liability created by statute against the subdivision. Opinion No. 787, Opinions of the Attorney General for 1937, Vol. II, p. 1451, at p. 1455.

Thus, it is apparent that the answer to your question relative to the purchase of liability insurance on township fire trucks, hinges on whether or not the statute creates a liability against townships for the negligent operation of township owned fire apparatus. If such statutory liability is created, there can be little doubt, in view of the aforementioned authority, that township trustees may purchase liability insurance to protect against the imposition of such liability.

Sections 3298-58 and 3714-1 of the General Code, read as follows:

“Section 3298-58. The provisions of section 3714-1 of the General Code, so far as the same shall apply to the operation of fire fighting equipment by municipal corporations, shall likewise apply to fire fighting equipment operated by a township, or townships, or a municipal corporation, or by any combination of townships and municipal corporations as authorized by this act, when such operation is within the boundaries of the political subdivisions covered by any contract or agreement authorized by section 3298-54 or by section 3298-60 of the General Code.”

“Section 3714-1. Every municipal corporation shall be liable in damages for injury or loss to persons or property and for death by wrongful act caused by the negligence of its officers, agents, or servants while engaged in the operation of any vehicles upon the public highways of this state under the same rules and subject to the same limitations as apply to private corporations for profit but only when such officer, agent or servant is engaged upon the business of the municipal corporation.

Provided, however, that the defense that the officer, agent, or servant of the municipality was engaged in performing a governmental function, shall be a full defense as to the negligence of members of the police department engaged in police duties, and as to the negligence of members of the fire department while engaged in duty at a fire or while proceeding toward a place where a fire is in progress or is believed to be in progress or in answering any other emergency alarm. And provided, further, that a fireman shall not be personally liable for damages for injury or loss to persons or property and for death caused while engaged in the operation of a motor vehicle in the performance of a governmental function and provided further that a policeman shall not be personally liable for damages for injury or loss to persons or property and for death caused while engaged in the operation of a motor vehicle while responding to an emergency call.”

It will be noted from a perusal of these sections that the provisions of Section 3714-1 supra, are specifically made applicable to townships. Consequently, it is clear that if Section 3714-1, supra, creates a liability against municipal corporations for negligent operation of municipal fire apparatus, that a similar liability is created and imposed against townships by the provisions of Section 3298-58 supra. Thus, our primary inquiry is narrowed to the question of whether or not Section 3714-1 supra, creates a liability against municipal corporations for the negligent operation of municipal fire apparatus. If it does, then township trustees may purchase liability insurance to protect against the imposition of a similar liability.

On the question of whether or not Section 3714-1 supra, imposes a

liability on municipal corporations for negligent operation of fire apparatus I cite Opinion No. 1043, Opinions of the Attorney General for 1933, Vol. II, p. 1070, in which the then Attorney General held as indicated by the second branch of the syllabus that :

“A municipal corporation is liable for the negligence of members of the fire department in operating fire apparatus when returning from a fire or other emergency alarm.”

In view of this opinion and the reasoning preceding it, I am impelled to the conclusion, and it is accordingly my opinion that township trustees may purchase liability insurance on township fire trucks to protect against the liability imposed on them by the combined provisions of Sections 3298-58 and 3714-1 supra.

Relative to the question of whether or not township trustees may purchase fire, windstorm and collision insurance on township fire trucks, your attention is directed to an opinion which I rendered in 1937, Opinion No. 787, Opinions of the Attorney General for 1937, Vol. II, p. 1451. In this opinion I said, at page 1452 :

“It is true that with few exceptions there are no express statutory provisions which authorize the political subdivisions to insure its buildings or property. However, there are many provisions in the General Code which vest in administrative bodies of political subdivisions the authority to acquire, possess and hold both real and personal property. It is well settled that the express authority extended to political subdivisions to acquire, possess and hold property includes the power to protect such property so as to secure the political subdivision in case of loss. Cooley's Briefs on Insurance, Vol. I, page 104, citing *French vs. City of Millville*, 67 N.J. Law 349; Couch on Insurance, Vol. I, par. 226.”

For the purposes of this opinion, suffice to say that I am still in accord with the principle quoted above. As such, it is my opinion that township trustees have, as an incident to their express authority to purchase fire apparatus given them by Section 3298-54 of the General Code, authority to purchase fire, windstorm and collision insurance on township fire trucks so as to secure the township in case of loss.

In specific answer to your question, it is my opinion that township trustees may purchase fire and windstorm, collision and liability insurance on township fire trucks.

Respectfully,

HERBERT S. DUFFY,
Attorney General.