amounts to a suspension of the portion of the statute until such time as moneys are made available by appropriation to meet the requirements of the statute.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3539.

BOARD OF EDUCATION—NO MORAL OR LEGAL OBLIGATION TO PAY HOSPITAL BILL OF STUDENT INJURED IN FOOTBALL GAME.

SYLLABUS:

Boards of education are without authority to recognize and pay damages or doctor or hospital bills for pupils injured in playing of high school football games as either legal or moral obligations.

COLUMBUS, OHIO, September 8, 1931.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

> "A high school student playing upon a the regular high school football team is injured while playing football in a game arranged for and played by the high school football team of the school in question. During the progress of the game the boy in question suffers an injury which calls for medical and surgical and hospital treatment.
>
> The school board has been asked to pay the boy's medical and hospital bill. The High School Athletic Association has also been asked to pay said bill. Are either legally liable for same? Could the same be paid by the school board if it was disposed to do so irrespective of its legal responsibility?
>
> I have read with interest your recent opinion relative to liability in tort for any damage accruing to patrons at a game played on the playgrounds of the board of education, which grounds had been leased or let to some outside party for the purpose of giving some kind of an athletic exhibition. It would seem that the same principle of law would be determinative in both instances, but inasmuch as the clerk of the board of education has asked for an opinion whether it might pay such a bill with public funds or whether the High School Athletic Association would be legally liable therefor, I am asking you for your advice in the matter."

High school football and similar activities are usually conducted and supervised by associations commonly called athletic associations. Sometimes, they are not supervised by anyone other than the participants who have a leader or someone recognized as manager, who arranges dates, solicits and collects funds, purchases supplies and otherwise looks after the affairs of the team. These associa-

tions and managers act independently of the regularly constituted school authorities. Such games and athletic contests are not conducted as a part of the regular school activities and are not financed from public funds. In fact, there is no authority for the expenditure of public funds for such purposes except perhaps in a limited way, as part of courses in physical education.

The limited authority to expend school funds for such needs as footballs, etc., which might be charged to the needs of courses in physical education would not extend to the financing and conducting of a football, basketball or baseball team for the purpose of engaging in contests and conducting a regular series of contests as is done by high school football teams and similar athletic activities.

There is really no relation between the public school as such, or the board of education as such, and football games played by the students among themselves or with teams from other schools. There could not possibly be any legal liability on the board of education for injuries received by pupils while playing these games. Even if the playing of such games as football and the like were to be considered a part of the regular school activities, the board of education could not be held liable in damages for injuries received while the pupils are engaged in these activities. It is well settled that boards of education in the absence of statute are not liable in damages for injuries received by pupils attending school, even though circumstances may be such that the board if acting in a proprietary capacity would be said to be guilty of neglect. *Board of Education* v. *McHenry,* 106 O. S., 357; *Conrad, a Minor,* v. *Board of Education of Ridgeville Township,* 29 O. A., 317.

In some instances, a board of education may recognize and pay a claim which is not strictly a legal claim upon which recovery could be had but which may be said to be a moral claim. This question has been discussed in a number of former opinions to which your attention is herewith directed. See Opinions of the Attorney General for 1928, pages 352 and 3056; for 1929, pages 915 and 1939; Opinion No. 1442 rendered under date of January 24, 1930. See also *Kessler* v. *Brown,* 4 O. C. D., 345; *State ex rel.* v. *Wall, Director,* 15 O. C., 349; *Caldwell* v. *Marvin,* 8 O. N. P., N. S., 387. It is well settled, however, that a claim may not be paid as a moral obligation unless it really is a moral obligation. It is difficult in all cases to determine just when a moral obligation exists. The rule from which this determination may be made and which is deduced from a consideration of the authorities digested in the opinions referred to above, and the Ohio cases where the subject is discussed, is stated in Opinion 3467, rendered under date of July 31, 1931, as follows:

> "A claim against a political subdivision, whether sounding in tort or contract, even though it may not be enforceable in a court of law, may be assumed and paid from the public funds of the subdivision as a moral obligation, if it be shown that the claim is the outgrowth of circumstances or transactions whereby the public received some benefit, or the claimant suffered some loss or injury, which benefit or injury or loss, as the case may be, would constitute the basis of a strictly legal and enforceable claim against the subdivision, were it not that because of technical rules of law no recovery may be had."

Applying this rule to a claim growing out of injuries received by a football player while participating in a high school football game, we must conclude that such a claim can not be made the basis of a moral obligation on the part of the school district for the reason that no direct relation exists between the board

of education, or the school district, and the player who might have received an injury. No legal claim would exist against the board even if the board were not protected by the rule that it is not liable in tort in any case for the reason that it exercises its functions in a governmental capacity as distinguished from a proprietary capacity. Even if the school were a private school and were not protected by this rule of non-liability in tort, the relationship between the player and the school authorities would not be such as to merit the imposing of a legal liability on the school for injuries received by the player during the conduct of the game, the game being played entirely independent of the school's supervision.

Whether or not a legal claim exists against the athletic association conducting the games or whether the athletic association might pay such a claim even if strict liability for the injury did not exist, is a question involving private rights as between the participants of the game and the athletic association, and is not such a question as should properly be passed upon by the Attorney General.

In specific answer to your question, I am of the opinion that boards of education are without authority to recognize and pay damages or doctor or hospital bills for pupils injured in the playing of high school football games as either legal or moral obligations.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3540.

APPROVAL, DEED TO LAND OF LUCIUS J. OTIS, ET AL., IN MIFFLIN TOWNSHIP, PIKE COUNTY, OHIO.

COLUMBUS, OHIO, September 8, 1931.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—Some time ago Opinion No. 3221 was rendered to you containing an analysis of the documents relating to the proposed purchase of ninety acres of land in Mifflin Township, Pike County, Ohio, from Lucius J. Otis, et al. It was therein pointed out that the trustees under the will of Charles T. Otis, deceased, held the title to an undivided three-twelfths interest in said land; that, by the will of said testator, Margaretta E. Otis, his sister, and Lucius J. Otis, his brother, were appointed to act as trustees; that the testator also provided that "In the case of the death, resignation, inability or refusal to act of either of said Margaretta E. Otis or Lucius E. Otis, either as executor, executrix or trustee, then I nominate and appoint the Northern Trust Co., of Chicago, Ill., as co-executor or trustee with the remaining executor, executrix or trustee, as the case may be. * * * "; that Margaretta E. Otis has subsequently died; that Lucius J. Otis, as surviving trustee under the will of Charles T. Otis, deceased, alone purported to convey the interest of the said Charles T. Otis to the state of Ohio and that the Northern Trust Company, of Chicago, had not joined in the execution of said deed.

You now submit for my examination a deed made by the Northern Trust Company, of Chicago, as trustee under the last will and testament of Charles T. Otis, deceased, to the state of Ohio, covering the interest which was once owned