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SYLLABUS:

The procurement of a policy of liability insurance by a board of county commissioners for the purpose of insuring the county against damages for injuries sustained by one while attending a function sponsored by private persons on county owned property constitutes an unwarranted and unlawful expenditure of public funds. (Opinion No. 5949, Opinions of the Attorney General for 1943, approved and followed).

Columbus, Ohio, August 29, 1963

Hon. Harry Friberg
Prosecuting Attorney
Lucas County
Toledo, Ohio

Dear Sir:

I have your request for my opinion which reads in pertinent part as follows:

“The Board of County Commissioners of Lucas County has established a recreation center, as provided in Sec. 755.12 et seq. of the Revised Code of Ohio. On the grounds of the center the Board has built a stadium, as authorized in Sec. 307.02.

“In making full use of said grounds and stadium the Recreation Board may rent the premises to private schools and various other organizations.

“If a spectator were injured while attending a function put on by a private organization, could the County be

liable for such injury? If such liability is a possibility, could the County protect itself by purchasing the appropriate type of insurance?

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In absence of statutory authority, it is well established that the expenditure of public funds by a political subdivision of the state for the purpose of purchasing liability insurance is unlawful unless there exists a real liability against which such policy of insurance may be procured. See Opinion No. 2995, Opinions of the Attorney General for 1931 and Opinion No. 5949, Opinions of the Attorney General for 1943.

It therefore is necessary to determine whether a county is liable for injuries incurred by a spectator while attending a function sponsored by a private organization under such circumstances as described in your letter.

A similar question was considered and answered in Opinion No. 5949, Opinions of the Attorney General for 1943, the syllabus of which reads as follows:

“A board of county commissioners may not legally expend public funds to pay premiums upon policies of public liability insurance insuring the county against liability for damages and injuries sustained by persons attending privately promoted events taking place in a Memorial Building of the county or while attending meetings of an organization occupying space in the Memorial Building.”

Although the 1943 opinion, *supra*, may be distinguished on its facts, the principle announced therein is equally applicable to the present situation under discussion.

In this regard, I also direct your attention to the recent case of *Scheffer v. Board of Trustees of the Franklin County Veterans Memorial*, 171 Ohio St., 228, wherein the Supreme Court pronounced the following rule of law:

“In the absence of statutory authorization therefor, a county or its agencies are immune from suit for negligence.”

It is now apparent that a county is not liable for the negligence of its board of county commissioners in absence of express statutory

authority. It necessarily must follow that a county, in absence of statutory authority therefor, could not be liable for damages caused by the negligence of private persons or organizations such as those described in your letter.

Although the common-law rule of immunity has been abrogated in certain instances, such as by imposing liability on a board of county commissioners in their official capacity for damages received by reason of such boards negligent maintenance of roads and bridges, I have found no statutory provision imposing liability on a county based on facts such as you have described.

In summary then, it is my opinion and you are advised that the procurement of a policy of liability insurance by a board of county commissioners for the purpose of insuring the county against damages for injuries sustained by one while attending a function sponsored by private persons on county owned property constitutes an unwarranted and unlawful expenditure of public funds. (Opinion No. 5949, Opinions of the Attorney General for 1943, approved and followed.)

Respectfully,
WILLIAM B. SAXBE
Attorney General