that the same are in conformity with section 471, General Code, under the authority of which these leases are executed, and with other statutes relating to leases of this kind.

I am, therefore, approving this lease as to legality and form as is evidenced by my approval endorsed upon the lease and the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3340.

APPROVAL, BONDS OF YOUNGSTOWN CITY SCHOOL DISTRICT, MAHONING COUNTY, OHIO, $439,868.60.

COLUMBUS, OHIO, October 23, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3341.

MOTOR VEHICLE—DRIVER EMPLOYED BY COUNTY, OPERATING COUNTY OWNED AUTOMOBILE, LIABLE FOR NEGLIGENT OPERATION THEREOF.

SYLLABUS:

The driver of a county owned motor vehicle, employed by the county for that purpose, is liable in damages for the direct and proximate results of his negligence in the operation of said motor vehicle.

COLUMBUS, OHIO, October 24, 1934.

HON. GEORGE N. GRAHAM, *Prosecuting Attorney, Canton, Ohio.*

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

> "Some time ago you gave your opinion that the county commissioners could not purchase liability insurance on trucks owned and operated by the county, and further that the county could not be held in damages by reason of the operation of such trucks for the county.
>
> The question now presents itself as follows: Would an individual employed by the county as a truck driver and operating a truck owned by the county and doing work for the county be individually liable for damage done by such trucks while being operated by such individual and employee.
>
> We would appreciate your opinion on this question and we feel that it is of sufficient importance throughout the state to justify us in calling upon you for your opinion."

As stated in your letter, I held in Opinion No. 2976, rendered July 31, 1934, that a board of county commissioners could not legally purchase liability insurance covering county owned motor vehicles, since the county was not liable to third persons for the negligent operation of county owned motor vehicles. Your question refers to the personal liability of county employes operating county owned motor vehicles. It is, no doubt, prompted by the fact that in most cases the principal, as well as the agent, is liable for the negligent acts of such agent while acting within the scope of his authority. It is fundamental that the mere cloak of agency is usually no defense to a person who, while acting in such relationship, negligently injures a third person. As stated in 1 Mechem on Agency, page 1081 (2d ed.):

> "So if an agent or servant, while acting upon his master's business, so negligently acts as to cause direct and immediate injury to the person or property of a third person, whether he be one to whom the master owes a special duty or not, under circumstances which would impose liability on the agent or servant if he were acting under the same conditions upon his own account, he would be personally liable."

In the present situation, the principal could not be held and the sole question is presented as to whether or not this factor would excuse the agent from liability for his negligent acts. It is almost uniformly held by the courts that in such a situation the agent nevertheless remains liable for his tortuous acts.

In the case of *Perkins* vs. *Blauth,* 165 Calif. 782, it was held in the seventh and eighth branches of the syllabus:

> "Municipal corporations are not liable for dereliction or remissness of municipal officers or agents in the performance of public or governmental functions of the city, or in the performance of duties imposed upon those officers which are prescribed and limited by express law; and when an injury results from the wrongful act or omission of a municipal officer charged with duty prescribed and limited by law, the doctrine of *respondeat superior* is inapplicable. The officer is not treated as the agent or servant of the corporation in the performance of such duty, but is held to be the servant and agent of and controlled by the law, and while for his tortuous acts he will be held responsible, the municipality will not.
>
> Upon the other hand, if the act is one commanded by the municipality itself, if inherently wrong, the municipality and the agent who performed will both be liable. If the injury results, however, not from the wrongful plan or character of the work, but from the negligent or improper manner in which it is performed, the one so negligently acting will always be responsible, and the public corporation may or may not be responsible, depending upon the relationship which it may sustain to that agent."

The syllabus of the case of *Moynihan* vs. *Todd,* 188 Mass. 301, reads in part as follows:

> "A municipal officer is not exempt from liability for acts of personal misfeasance in the performance of a public duty.

> If the superintendent of streets of a town is personally negligent in superintending the blasting of a rock in a highway, he is liable to one who in the exercise of due care is injured from being struck by pieces of the rock."

The syllabus of the case of *Florio* vs. *Jersey City,* 101 N. J. L. 535, reads as follows:

> "1. A municipality cannot be properly called upon to respond in damages to a person injured, through the negligence of its servant, and the doctrine of *respondeat superior* does not apply to such cases.
> 2. The driver of a fire apparatus, employed by a municipality, while driving to a fire, must perform such duty in a proper and careful manner, and cannot thrust aside all ordinary prudence in driving the apparatus along the public streets. If, while in the performance of this duty, he negligently drives the apparatus and injures another, his official cloak will not shield him from answering for his wrongful act."

A similar question in reference to boards of education was passed upon in an opinion to be found in Opinions of the Attorney General for 1929, Volume I, page 74. The syllabus of that opinion reads as follows:

> "The driver of a school wagon or motor van regularly employed for that purpose is liable in damages for the direct and proximate results of his negligence in the operation of said school wagon or motor van. The said driver may lawfully provide against such liability with liability insurance."

While it was determined in that opinion that boards of education could not be held liable to third persons for the negligence of drivers of school buses, it was nevertheless held that the driver could be held personally liable for his negligent acts. The following language appears in the opinion at page 76:

> "The driver of course would not be liable in damages on account of an accident which was not the direct and proximate result of his negligence. As to such damages for which he would himself be liable, he might lawfully safeguard himself by carrying liability insurance, this being a private matter in which the board itself would not be interested and as to which no statutory inhibition exists."

In reviewing a case similar to the one passed upon in the 1929 opinion, the following appears in 47 Harvard Law Review at page 1069:

> "To impose liability here would accord with the general principles that an agent is answerable for his torts and that even officers of municipal corporations are responsible for negligently performing ministerial acts."

The Supreme Court of Ohio in the case of *United States Fidelity & Guaranty Co.* vs. *Samuels,* 116 O. S. 586, held that immunity from liability does not exist in favor of an officer or employe of a city when carrying out the governmental

functions of a city. It would appear that the same rule would be applicable to the present inquiry. The first branch of the syllabus of the Samuels' case reads as follows:

> "Where in the discharge of official duty a police officer fails to take that precaution or exercise that care which due regard for others requires, resulting in injury, his conduct constitutes misfeasance."

In that case suit was brought against the surety on a police officer's bond, seeking to subject the surety to the payment of a judgment which had been recovered against the police officer on account of the negligence of the officer while in the performance of his duty as such police officer. In the course of the opinion the following appears at page 593:

> "It does not follow that, because an action cannot be maintained against the city for the act of an official representing the city in the discharge of a governmental duty, there can be no recovery by a third person against the surety on the bond of such official. If there be a violation of the guaranty that the official will faithfully discharge his duties, there can be a recovery upon his bond by one injured by such failure, although there could be no recovery from the city."

Without further prolonging this discussion, it is my opinion in specific answer to your question that the driver of a county owned motor vehicle employed by the county for that purpose, is liable in damages for the direct and proximate results of his negligence in the operation of said motor vehicle.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3342.

TOWNSHIP TRUSTEES—AUTHORIZED TO PAY RENT UNDER SECTION 3476 ET SEQ. G. C. TO FAMILIES NEEDING SUPPORT WHEN UNDER EXTRAORDINARY CIRCUMSTANCES HELP IS NEEDED ONLY TEMPORARILY.

SYLLABUS:

Township trustees have authority to pay rent under Sections 3476 *et seq., General Code, to families in need of support when under extraordinary circumstances such help is needed only temporarily. (Opinions of the Attorney General* 1915, *Vol.* 1, *page* 609, *approved and followed.) Amended Senate Bill No.* 200, 115 *O. L.* 194 *as amended by Amended Substitute Senate Bill No.* 53 *of the first special session of the* 90*th General Assembly gives authority to the county commissioners to provide direct housing relief for indigent persons.*

COLUMBUS, OHIO, October 24, 1934.

HON. FRANK D. HENDERSON, *Chairman, State Relief Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your recent communication which reads as follows: