

481.

MUNICIPAL CORPORATION — MAY PURCHASE LIABILITY INSURANCE — COVERAGE — MOTOR VEHICLES, POLICE CRUISERS, FIRE TRUCKS, ETC.—SECTION 3714-1 G. C.

SYLLABUS:

A municipal corporation may purchase liability insurance to cover such motor vehicles as police cruisers, fire trucks, etc., in view of the provisions of Section 3714-1, General Code, as amended effective August 18, 1937.

COLUMBUS, OHIO, April 26, 1939.

Bureau of Inspection and Supervision of Public Offices, State House Annex, Columbus, Ohio.

GENTLEMEN: Your recent request for my opinion contains the following question:

“May a municipality purchase liability insurance to cover such motor vehicles as police cruisers, fire trucks, etc., in view of the provisions of Section 3714-1 of the General Code, as amended effective August 18, 1937?”

Section 3714-1 of the General Code read, prior to the amendment referred to in your letter, as follows:

“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.”

Said section in its present form, reads as follows :

“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.”

A careful consideration of the language contained in the amendment will disclose that the liability of a municipality growing out of the negligent operation of municipally owned motor vehicles under certain conditions and circumstances was not effected in any way by the amendment to said section. In other words, the amendment deals entirely with the personal liability of a policeman while engaged in the operation of municipally owned motor vehicles while responding to an emergency call and nothing contained in said amendment can in any way be construed to effect the liability of the municipal corporation.

In numerous opinions rendered by former attorneys general, it has been held that where a liability exists against a political subdivision, the subdivision may take out insurance covering such liability. See Opinions of the Attorney General for 1929, page 1013. The second branch of the syllabus of that opinion reads as follows :

“By reason of the liability created by Section 3298-17, General Code, in cases where boards of township trustees are negli-

gent in the performance of their duties in connection with roads, such boards may lawfully protect themselves against damages by means of insurance."

The third branch of the same syllabus reads:

"Municipal officers, when not acting in a proprietary capacity, such as when operating a public utility, are limited in the acquiring of such insurance in the same manner as boards of education and township trustees."

For further opinions regarding the same subject matter, see 1931 Opinions of the Attorney General, No. 2995 and 1934 Opinions of the Attorney General No. 3478.

Therefore, in specific answer to your question, I am of the opinion that a municipal corporation may purchase liability insurance to cover such motor vehicles as police cruisers, fire trucks, etc., in view of the provisions of Section 3714-1, General Code, as amended effective August 18, 1937.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

482.

BONDS—CITY OF COLUMBUS, FRANKLIN COUNTY, \$1,000.00.

COLUMBUS, OHIO, April 26, 1939.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:

Re: Bonds of the City of Columbus, Franklin County, Ohio,
\$1000.00.

The above purchase of bonds appears to be part of a \$2,720,000 issue of Sewage Treatment Bonds of the above city dated December 15, 1933. The transcript relative to this issue was approved by this office in an opinion rendered to your Commission under date of June 15, 1938, being Opinion No. 2601.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.