subject to reappraisement for rental purposes at the end of each fifteen year period during the term of said lease, I find that said lease is in conformity with the provisions of the act of April 15, 1925, 111 O. L. 208, under the authority of which act, and particularly of Section 18 thereof, said lease is executed.

Said lease is accordingly approved by me, as to legality and form, as is evidenced by my approval endorsed upon said lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned to you.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2804.

SCHOOLS—COLLAPSE OF BLEACHERS ON ATHLETIC FIELD—INJURY SUSTAINED BY PATRONS IN ATTENDANCE AT FOOTBALL GAME —NO LIABILITY UPON DISTRICT OR BOARD OF EDUCATION IN ITS CORPORATE CAPACITY.

SYLLABUS:

Neither a school district, nor the board of education for such district in its corporate capacity, is liable for injuries received by patrons of a football game, by reason of the collapse of bleachers or otherwise, played on the playgrounds under the jurisdiction of said school district; and it is immaterial that those patrons were charged an admission fee and thereby there was an incidental monetary return from the playing of the game.

COLUMBUS, OHIO, January 7, 1931.

HON. JESSE K. GEORGE, *Prosecuting Attorney, Steubenville, Ohio.*

DEAR SIR:—I am in receipt of the following request for my opinion over the signature of Stuart B. Moreland, Assistant Prosecuting Attorney of Jefferson County. His inquiry reads as follows:

> "Would you kindly render us an opinion on the liability of the board of education with reference to injuries received by patrons at a football game in which paid admissions are asked for an inter-scholastic football game. I am referring to injuries received through collapse of bleachers or similar disasters such as was experienced in Columbus last week."

It is a well established rule of common law of almost universal application in American courts, that boards of education will not be held to answer in damages, in actions for tort in the absense of a statute specifically creating a civil liability therefor. In Ruling Case Law, Volume 24, page 604, the rule is stated as follows:

> "The courts very generally hold that school districts are not liable in damages for injuries caused by negligence of their officers, agents or employes, nor for any torts, whatsoever, unless such liability is imposed by statute."

There is no statute in Ohio imposing a liability on boards of education or school districts for any torts whatsoever, and the courts of Ohio are unequivocally committed to the doctrine set forth in the common law rule quoted above. *Finch* vs. *Board of Education,* 30 O. S., 37; *Board of Education* vs. *McHenry,* 106 O. S., 357; *Conrad* vs.

Board of Education of Ridgville Township, 29 O. A., 317. The reason back of this rule is that school districts are arms of the state, and as such charged with the administration of a portion of the state sovereignty, and in so doing, perform their duties in a governmental capacity, as distinguished from the performance of proprietary duties. In the Volk case, supra, the court said:

> "The board is not authorized to commit a tort—to be careless or negligent, and when it commits a wrong or tort, it does not in that respect represent the district, and for its negligence or tort in any form, the board cannot make the district liable."

Boards of education in Ohio, are authorized to acquire and furnish playgrounds, and by force of Sections 7622 et seq., of the General Code, are authorized to permit the use of those playgrounds for community centers and for the assembling of persons to engage in and witness athletic contests. The fact that an admission fee is charged to spectators upon said grounds, and thus, an incidental monetary benefit may be derived from permitting the use of the grounds for games and athletic contests does not, in my opinion, change the rule with reference to the relationship borne by a school district to the public.

It would hardly be said that because certain pupils attending a public school, who resided outside the district, paid tuition, their relationship to the district was any different so far as any liability that might accrue in their favor, is concerned, than that of resident pupils. The school is nevertheless a public school and does not take on the character of a private school, even though certain pupils are by law required to pay tuition for attendance at the school. The same rule would apply, in my opinion, to persons attending games played on the playgrounds under the jurisdiction of a public school district, even though an admission fee were charged for the privilege of witnessing those games. After considerable search, I have been unable to find any reported case where this question has been discussed to any extent. A case somewhat in point is the case of *Daniels* vs. *Board of Education* (Michigan) 158 N. W., 23 the first branch of the syllabus of which reads as follows:

> "A school district incorporated for educational purposes is not liable for injury to a pupil in the school because of a defectively planned railing along a stairway which permits him to fall over it down the shaft in which the stairs are built; and it is immaterial that it permits the building to be used for public gatherings with some incidental profit."

Boards of education in Ohio have limited authority fixed by statute. That statutory authority does not extend to permitting the board to engage in any transaction whatever for profit. The nominal admission fees charged by boards of education for games played on school playgrounds must necessarily be confined to such fees only as are necessary to a proper upkeep of the grounds and incidental expenses connected with the maintenance of the games, and I am convinced, from the authorities, that the receiving of these admission fees does not change the relationship of the school district to the persons paying the fees so as to render the district liable in tort for damages suffered by the patrons of the game.

In specific answer to your question, therefore, I am of the opinion that a board of education is not liable for injuries received by patrons of a football game played on the playgrounds under the jurisdiction of the board of education, even though those patrons had paid an admission fee for the privilege of witnessing the game.

Respectfully,
GILBERT BETTMAN,
Attorney General.