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TOWNSHIP TRUSTEES—NOT LIABLE UNDER SECTION 3298-17 GC, SECTION 5571.10 RC, INDIVIDUALLY OR IN OFFICIAL CAPACITY TO PERSONS INJURED THROUGH NEGLIGENT MAINTENANCE OR OPERATION OF TOWNSHIP OWNED STONE QUARRIES — TRUSTEES UNAUTHORIZED TO PROCURE LIABILITY INSURANCE COVERING QUARRIES.

SYLLABUS:

Township trustees are not liable under Section 3298-17, General Code, Section 5571.10 R.C., or any other section, either individually or in their official capacity to persons injured through the negligent maintenance or operation of township-owned stone quarries; therefore, township trustees are unauthorized to procure policies of liability insurance covering quarries.

Columbus, Ohio, September 2, 1953

Hon. Sumner J. Walters, Prosecuting Attorney  
Van Wert County, Van Wert, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"Ridge Township, in Van Wert County, is one of the few Townships of the State of Ohio which operates a stone quarry in connection with the Township road system. On the land which they own for this purpose is situated two holes; one hole is an abandoned quarry and is filled with water; the other hole is an active hole from which stone is presently being quarried. The general public has access to both of these quarries. The active quarry they remove stone from on occasion and the abandoned quarry the public fishes in and on occasions members of the general public swim in this quarry, although it is posted with signs saying, 'No swimming allowed.'

"The Trustees of Ridge Township have consulted me with respect to their liability to persons who might be injured around these quarries, and I have explained to them their general non-liability as a governmental subdivision, however, we are wondering in view of General Code of Ohio, Section 3298-17 whether or not this quarry operation is so closely connected with their duties in the maintenance and upkeep of roads that there might not be some liability. Therefore, would you please render your Opinion for us with respect to the following questions:

- "1. May the Trustees be liable as individuals to persons who might be injured through negligent operation of these quarries.
- "2. Are the Township Trustees liable in their official capacity to persons who might be injured through negligent operation of these quarries.
- "3. May the Township Trustees purchase liability insurance to compensate persons who might be injured through the negligent operation of these quarries and pay for the same from Township funds."

At common law neither townships nor township trustees are liable for negligence, since townships are but political subdivisions of the state, organized as a part of the machinery of the government for the perform-

ance of functions of a public nature, and, as such, they partake of the State's immunity from liability. It follows, therefore, that liability, if any, must be imposed by statute. See 39 Ohio Jurisprudence, Townships, Section 88, page 337.

Section 3298-17, General Code, Section 5571.10, R.C., to which reference is made in your letter of request, reads as follows:

"Each board of township trustees shall be liable, in its official capacity for damages received by any person, firm or corporation, by reason of the negligence or carelessness of said board of trustees in the discharge of its official duties."

The foregoing section is a part of an act passed in 1915, 106 Ohio Laws, 574, 647, "to provide a system of highway laws for the state of Ohio."

It was held in Opinion No. 2498, Opinions of the Attorney General for 1950, page 730, that the statutory liability of the township trustees created by Section 3298-17, General Code, is limited to roads, and road machinery or equipment used with relation to roads. The request prompting the 1950 opinion indicated that township trustees proposed to procure liability insurance coverage on such property as the township offices, fire houses, voting booths, and similar property. My predecessor held that liability insurance might not be taken out upon such property due to the fact that Section 3298-17, General Code, is actually directed at township negligence in the construction, maintenance and repair of township roads. Under Section 3370, General Code, Section 5571.02, R.C., township trustees are placed under the duty to keep township roads in good repair.

The abandoned quarry, which is filled with water, bears no relationship to the improvement or maintenance of township roads. With regard to the other quarry, from which the township occasionally removes stone for the purpose of improving township roads, it is my opinion that Section 3298-17, General Code, does not impose tort liability upon township trustees for the negligent operation or maintenance of the quarry. Section 3298-17, General Code, imposing liability for negligence upon the township trustees, is in derogation of common law and should be strictly construed. *Washington Township v. Rapp*, 50 Ohio App., 1. It would appear that the legislature was concerned solely with injury to persons or damage to property traveling the township roads, which injury or damage results

from the negligent upkeep of the road or negligent operation of road machinery or equipment. The stone quarry is merely the source from which the road material is obtained.

Evidently the legislative purpose with reference to township trustees, was to parallel the liability of county commissioners found in Section 2408, General Code, Section 305.12, R.C., which section *specifically* imposes liability upon the commissioners for damages resulting from negligence in not keeping a road in repair.

Since there is no statute imposing tort liability upon the township trustees in their official capacity for the negligent maintenance or operation of a township stone quarry, it follows that the township trustees may not lawfully pay the premium on a policy of public liability insurance covering the quarry. See Opinion No. 2406, Opinions of the Attorney General for 1953.

You have asked further whether the township trustees *as individuals* might be liable to persons who might be injured through the negligent operation of the quarries. I presume that this question is not directed at a situation where the township trustee in person negligently injures a person at the quarry site. I shall assume that you are concerned with a situation where a person is injured through negligence upon the part of a township employe who is engaged in the operation of the township quarry. Suffice it to say that a public officer is not personally liable in tort to an injured party unless a statute imposes a public duty upon the officer and the officer wilfully neglects to perform that duty. See 32 Ohio Jurisprudence, Public Officers, Sec. 108, p. 966. Since I find no statute imposing a duty upon the township trustees with respect to the maintenance of a quarry, this question, like the others, must be answered in the negative.

Accordingly, it is my opinion that township trustees are not liable under Section 3298-17, General Code, Section 5571.10, R.C., or any other section, either individually or in their official capacity to persons injured through the negligent maintenance or operation of township-owned stone quarries; therefore, township trustees are unauthorized to procure policies of liability insurance covering quarries.

Respectfully,

C. WILLIAM O'NEILL

Attorney General