

make any provision for a case or object which is analogous to those enumerated, or stands upon the same reason and is therefore within the general scope of the statute and, even though it may appear that such case was overlooked by the legislature or omitted by reason of inadvertence, such defect or omission cannot be supplied by the courts. See *Black on Interpretation of Law*, section 31; *Weirich vs. Lumber Company*, 96 O. S. 396; *Cincinnati vs. Roettinger*, 105 O. S. 145. This rule of interpretation is usually referred to as "casus omissus."

While there might appear to be as much reason for including "township" within the definition of subdivision as there would be to include a school district, yet when the legislature has specifically defined the term "subdivision" in language other than that which it has used in defining "subdivision" in other acts, as for instance, the Uniform Bond Act or the Budget Act, I am unable to hold that the legislature intended to include "township" within the meaning of "subdivision" for the purposes of House Bill No. 94, as enacted by the 90th General Assembly.

Specifically answering your inquiry, it is my opinion that a township is not included within the definition of "subdivision," as contained in section 2 of House Bill No. 94, enacted by the 90th General Assembly, and for such reason liquidated claims against a township may not be tendered to and received by the county treasurer in payment for taxes assessed against the taxpayer.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

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1010.

COUNTY—UNDER SECTION 7314-1, GENERAL CODE, NOT LIABLE IN DAMAGES FOR NEGLIGENT OPERATION OF COUNTY-OWNED MOTOR VEHICLES.

*SYLLABUS:*

*Section 3714-1, General Code, enacted by the 90th General Assembly, does not render a county liable in damages for the negligent operation of county owned motor vehicles.*

COLUMBUS, OHIO, July 1, 1933.

HON. RAY W. DAVIS, *Prosecuting Attorney, Circleville, Ohio.*

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

"Does Section 3714-1 of the General Code of Ohio, which makes Municipal Corporations liable as private Corporations, for damages incurred by vehicles operated by them, extend also to county automobiles operated by officials and officers of the county?"

It is well settled that a county is not liable in tort in the absence of an express statute creating such liability.

In Opinions of the Attorney General for 1927, Vol. II, page 814, it was held as disclosed by the syllabus:

"A board of county commissioners cannot legally enter into a contract and expend public moneys for the payment of premiums on 'public liability' or 'property damage' insurance covering damages to property and injury to persons caused by the negligent operation of county owned motor vehicles; there being no liability to be insured against, the payment of premiums would amount to a donation of public moneys to the Insurance Company."

In the case of *Riley vs. McNicol*, 109 O. S. 29, Judge Jones at page 33 stated the rule as follows:

"This court has on various occasions announced the principle that these county boards are not liable in their official capacity for negligent discharge of official duties, unless such liability is created by statute, and that 'such liability shall not be extended beyond the clear import of the terms of the statutes.' *Weiber vs. Phillips*, 103 Ohio St., 249, 133 N. E., 67."

Section 3714-1, General Code, enacted by the 90th General Assembly, signed by the Governor April 13, 1933, and filed in the office of the Secretary of State April 14, 1933, 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."

The title of Amended Senate Bill No. 105 reads as follows:

"AN ACT

To supplement section 3714 of the General Code of Ohio by the enactment of supplemental section 3714-1, relative to the liability of municipal corporations for the operation of vehicles."

It is significant to note that nowhere in Senate Bill No. 105 does the word "county" appear. The words "municipal corporations" appear several times. Furthermore, this section supplements section 3714, General Code, which makes it the duty of municipal corporations to keep the streets open, in repair and free from nuisances.

In view of the clearness of the language of the newly enacted section, and

in view of the above discussion, it is my opinion that section 3714-1, General Code, enacted by the 90th General Assembly, does not render a county liable in damages for the negligent operation of county owned motor vehicles.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

1011.

PUBLIC FUNDS—COUNTY COMMISSIONERS MAY RELEASE COUNTY TREASURER FROM LIABILITY WHERE FUNDS STOLEN—COUNTY COMMISSIONERS SHOULD APPROPRIATE SUM EQUIVALENT TO THE LOSS.

*SYLLABUS:*

*Where a board of county commissioners has by former resolution released the county treasurer from all liability for loss of public funds by reason of a theft, the commissioners should by proper resolution appropriate a sum equivalent to the loss either from the general fund of the county or other special fund, and direct the auditor to charge this specific fund with an amount equivalent to the amount of the loss.*

COLUMBUS, OHIO, July 1, 1933.

HON. LYMAN R. CRITCHFIELD, JR., *Prosecuting Attorney, Wooster, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads:

“I have been requested by the county commissioners of Wayne County to ask you for an opinion on the following facts:

During the year 1932, a thief or thieves entered the office of the County Treasurer at a time during the day when the door was unlocked but no one was in the office. Presumably they climbed over the cage and took between two and three hundred dollars from the drawer.

In December, 1932, the Board of Commissioners feeling that the Treasurer was not at fault released him and his surety company under the provisions of Section 2303. Of course, since that time there is a shortage on the books of the Treasurer of Wayne County due to this theft.

The question now is whether the Commissioners can order money transferred from the Unexpected Emergency Fund to meet this deficiency or what action they can take to make the Treasurer's books balance.

I would appreciate your advice on this subject.”

The question presented by your inquiry is, what is the necessary legal procedure to be followed in order to charge a particular fund of the county with the loss of the public fund resulting from a theft. The county commissioners are prohibited by section 5625-13 from transferring funds except as provided in that section. Your inquiry does not involve the transfer of funds but a charging of a particular fund of the county with the loss. It involves a bookkeeping entry to show the actual status of the funds.