ity is thus given to it to entertain and pass upon claims, which, for some amount, may be the *subject of legal demand* against the county. Its jurisdiction being thus necessarily limited, is not of such a character as to permit a finding of jurisdiction by the board to be conclusive of the fact. Speaking more specifically, the board may properly pass upon a question whether in fact a given service has been rendered, and *upon the amount which ought to be paid upon an unliquidated claim, where in law a claim may exist, i. e. where it has a legal basis on which to stand. But it is wholly without authority to sanctify a demand illegal because of being upon a subject which can admit of no claim, and thus give away the people's money.* It can no more do so than can any other agent bind his principal by acts unauthorized because without the scope of his authority." (Italics the writer's.)

From the foregoing discussion it is clear that there being no statute making a county or its board of county commissioners liable for injuries caused by the negligent operation of county motor vehicles, an action for damages because of such injuries can not be sustained. Nor is there any statute authorizing county commissioners to purchase "public liability" or "property damage" insurance covering county owned trucks and cars. The conclusions and reasoning of the two opinions of the Attorney General above quoted, relating to boards of education, therefore, apply with equal force to boards of county commissioners.

Moreover, a moment's reflection discloses a reason of a fundamental nature, why county funds may not be expended by the county commissioners for insurance of this nature. The insurance paid for is insurance to indemnify the county for losses sustained *where a liability to pay damages exists.* If there be no legal liability, there could be no losses for which the insurance company might be called upon to indemnify the county, and the payment of county funds for such insurance would amount to a donation to the insurance company, the policy paid for with public moneys affording no protection whatsoever either to the public or to the person injured.

Answering your question specifically, for the reasons stated, I am of the opinion that 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 injury to persons and damages to property caused by the negligent operation of county owned motor vehicles.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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AUDITOR OF STATE—DUTY TO EXAMINE BOOKS AND AFFAIRS OF TITLE GUARANTEE AND TRUST COMPANIES—REPORTS AS TO CONDITION OF SAID COMPANIES SHOULD BE KEPT CONFIDENTIAL.

SYLLABUS:

1. *It is the duty of the Auditor of State, by the terms of Section 710-171 of the General Code, to make such examination of the books and affairs of title guaranty and trust companies as will enable him to determine whether such companies are faithfully performing all of the guarantees entered into and trusts accepted by them.*

2. *Reports as to the condition of title guaranty and trust companies and the re-*

sults of examination of the affairs of such companies are not public documents and the facts obtained therefrom should be kept confidential.

COLUMBUS, OHIO, May 16, 1927.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication as follows:

> "Section 710-171, G. C., provides in part that 'Title Guaranty and Trust Companies shall make such reports to the Auditor of State as are required to be made by trust companies to the superintendent of banks and shall be subject to like examination, penalties and fees.'
>
> I wish to submit the following questions governing my duties under the provisions of said section:
>
> 1. If the report filed with me by such companies under the provisions of the law, upon audit and verification with the books and records of the company show the same to be correct, does the approval thereof by me, as Auditor of State, discharge the official duties imposed upon me by Section 710-171 G. C.?
>
> 2. If the report of the examination made by my examiner, together with the report of the company, is filed in this office, and with the Attorney General, governor and directors of the company, is such report public document, or, does the provisions of Section 710-35 G. C., governing examination of state banks, apply and should the facts obtained in the course of such examination be kept confidential?"

The answer to your questions involves an examination of statutes other than the one from which you quote. The provisions of Section 710-171 of the General Code, quoted, obviously confer the same authority on you as the superintendent of banks has in relation to trust companies. It follows necessarily that the statutes on the subject of trust companies must be examined to find the extent of that authority.

By the terms of Section 710-153, the specific right of examination of the books or affairs of trust companies is granted to the superintendent of banks. That section is in the following language:

> "The superintendent of banks shall have the right to examine, by any deputy, examiner or person especially appointed for that purpose, the books or affairs of any foreign trust company, or any corporation doing a trust business, as to any and all matters relating to any trust, estate or property within this state and concerning which such trust company is acting in a trust or representative capacity, the expense of which shall be charged to and paid by such trust company."

While this section grants authority to make examinations, it does not directly authorize the making of reports by trust companies to the superintendent of banks. I think, however, that under the language of that section you may properly require reports as a necessary incident to the power therein granted to examine. As you will note, the expense of the examination is charged against the trust company, and, accordingly, such expense as to an examination by you of a title guaranty and trust company must be borne by the company. If the filing of reports will assist and facilitate the examination of the affairs of the guaranty title and trust company and so effect a saving in the expense incident to the examination, I should deem it entirely proper for you to exact and the companies to furnish such reports.

You have not advised me as to the character of the reports filed, but I assume they are such as would enable you to check the actual condition of the affairs of the company.

As I have before stated, your authority over title guaranty and trust companies is as extensive as that of the superintendent of banks over trust companies. I am informed that the superintendent of banks now requires reports from trust companies and also makes periodic examinations of their books and affairs. Since the authority to require reports is not expressly conferred by Section 710-153, it is perhaps pertinent to look further to determine whether that authority is elsewhere conferred. By the terms of Section 710-2 of the General Code, the term "bank" is defined as including, among others, trust companies. This definition is made with the qualification that trust companies shall be included in the definition "unless the context otherwise requires." In the last sentence of the section is found the following language:

> "All banks, including the trust department of any bank, organized and existing under the laws of the United States, shall be subject to inspection, examination and regulation as provided by law."

This section seems apparently to authorize the inspection, examination and regulation of trust companies, but the manner of accomplishing these purposes is left to other provisions of the statute.

It is unnecessary to quote or even enumerate the various sections dealing with the examination of banks. Most of these sections make it apparent that their provisions deal peculiarly with commercial or savings banks and the matters required are in many instances not such as would be incident to the business of a trust company.

Section 710-31 of the General Code provides for the filing with the superintendent of banks of at least four reports of condition of banks and also makes the publication of a summary of the report furnished mandatory. It is not clear from the context of that section whether the word "banks," as used therein, is general or whether it should be limited in its effect to commercial and savings banks. The next succeeding section (710-32 G. C.) authorizes the superintendent of banks to call for a special report "whenever in his judgment it is necessary to inform him fully of the condition of any bank." This section also is open to doubt as to the definition of the term "bank." Because of the doubt as to the breadth of the authority conferred on the superintendent of banks in these sections, I prefer to place his right to demand reports upon the implication arising from the language of Section 710-153, which I have heretofore discussed. Hence, since your authority is the same as that of the superintendent of banks over trust companies, I deem it neither your right nor your duty to require at least four reports annually from title guaranty and trust companies. It has never been understood to be the law that these companies were required to file these four reports and publish a summary thereof.

I would rather place your authority to require such reports as you may deem necessary on the fact that it is a proper incident to your right of examination of such companies.

You ask, however, in your first question, whether the filing of a report by a guaranty title and trust company with you and its audit and verification with the books and records of the company, discharge all of the official duties imposed upon you by Section 710-71. The extent of your duties is confessedly very indefinite and little assistance is found by reference to the analogous duties of the superintendent of banks with relation to trust companies. I think it may be fairly assumed, however, that your primary duty is to see that the company is in a safe and sound financial condition to the end that the interests of those with whom it is doing the business it is authorized to do are properly protected. By the terms of Section 9851, a title guaranty and trust company is required to deposit $50,000 in securities with the treasurer of state. The

next succeeding section states that this deposit is held by the treasurer as security "for the faithful performance of all guarantees entered into and trusts accepted by such company." It is my opinion, therefore, that your examination of the affairs of a company of this character, should go far enough to determine whether or not it is faithfully performing all the guarantees entered into and trusts accepted by it. If such is not the case, I believe the attention of the board of directors of the company should be called to the unsatisfactory condition and demand made for correction. If compliance is not forthwith made, the matter should be referred to this office for such proceedings as may be necessary.

Your second inquiry is whether the report of the examination made by your examiner and the report of the company filed in your office should be regarded as a public document or whether the facts therein contained should be treated as confidential information.

My discussion heretofore has shown that the authority to require reports of title guaranty and trust companies rests primarily upon the fact that it is an incident to the proper examination of the affairs of the company. You point out that Section 710-35 provides a penalty for the failure to keep secret the facts and information obtained in the course of an examination by the superintendent of banks or his assistants. This section is found among those devoted to the examination of banks which, as I have before stated, seem to pertain particularly to commercial and savings banks and not to trust companies or title guaranty and trust companies. I therefore believe that this penal section is inapplicable.

It is, however, well understood that there are many documents and papers pertaining to public business which are not public documents. That is to say, unless the statute specifically provides that papers or documents of a public office are to be matters of public record and available for public inspection, there is no necessity for or appropriety in divulging their contents to every one applying for the privilege. No such duty exists in the present case. These reports and the results of examinations made by your examiners, are not public records and I think it entirely proper that you regard them as confidential. This is, of course, subject to the qualification that any of the matters discovered by your examiners in the course of an examination may be disclosed when it becomes necessary to take official action regarding the affairs of the company.

I note that your communication infers that these reports are filed in the office of the governor and the attorney general and with the board of directors of the company. I presume that you are proceeding on the theory that such filing is required by Section 286 of the General Code, with reference to the reports of the examiners of the Bureau of Inspection and Supervision of Public Offices. I do not believe this section to be applicable in the examination of title guaranty and trust companies and therefore conclude that you will have complied with the statute by the preservation of these reports in your office without making the contents thereof available to the public.

Answering your questions specifically, I am of the opinion that it is your duty to make such examination of the books and affairs of title guaranty and trust companies as will enable you to determine whether or not they are faithfully performing all of the guarantees entered into and trusts accepted by them and that any reports filed with you by such companies and the results of examinations of their affairs reported to you by your examiners are not public documents and should be treated as confidential.

Respectfully,
EDWARD C. TURNER,
Attorney General.