

maintained by the Department of Public Welfare, should be accessible only to those authorized by the enactment.

By reason of the express provisions in Section 1860, General Code, as to the persons to whom such records shall be accessible, I am of the opinion that superintendents of state institutions may not make public the records of patients of such institutions unless authorized by the Department of Public Welfare or by order of a judge of a court of record.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3061.

FIRE EQUIPMENT—COLLISION IN OPERATION THEREOF WITH PERSON OR PROPERTY OUTSIDE MUNICIPALITY—NO LIABILITY UPON MUNICIPALITY FOR DAMAGES—INJURED FIREMAN MAY BE COMPENSATED IN SUCH INSTANCE.

SYLLABUS:

1. *A municipality is not liable for damages that may result to persons or property caused from a collision in the operation of fire equipment outside of the municipality. However, a fireman may be personally liable for consequences attendant upon his negligent acts.*

2. *If a member of the municipal fire department is injured while responding to a fire outside of the municipality, he may be compensated for such injuries under the provisions of the Workmen's Compensation Act.*

COLUMBUS, OHIO, March 18, 1931.

HON. THEODORE H. TANGEMAN, *Director, Department of Commerce, Columbus, Ohio.*

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

“Fire departments organized in municipalities occasionally respond to an appeal in territories outside of the municipalities. The questions upon which I request your opinion are:

1. May the department or the municipality, or those persons operating the equipment outside of the territorial limits of the municipality, be held liable for damages that may result to persons or property resulting from a collision in the operation of this equipment, under such circumstances?

2. Are the members operating this equipment while outside of the municipal corporation protected under the workmen's compensation act, particularly as outlined in section 1465-61, as to injuries they may sustain while engaged in such operation, provided, of course, the municipalities have complied with the provisions of the law?

3. There is enclosed herewith a copy of a bulletin, issued by the state fire marshal's office, pertaining to the procedure to be followed by

volunteer fire departments of townships relative to state compensation. Does this correctly state the law and procedure relative to this subject?"

For the purpose of this opinion, I assume that the municipal fire department, in going beyond the limits of the municipality, was obeying instructions from an authority of the municipality.

In answer to your first inquiry, I am enclosing herewith copy of opinion of this office, numbered 2946, rendered to the Bureau of Inspection and Supervision of Public Offices under date of February 16, 1931, the syllabus of which reads as follows:

"When a political subdivision enters into a contract with a second political subdivision for fire protection by authority of section 3298-60, General Code, the political subdivision furnishing such protection is not liable for injuries caused to persons or property by its fire department when operated outside the territorial limits of the subdivision, in pursuance of the contract so made."

In this opinion I quoted from the case of *Wooster vs. Arbenz*, 116 O. S., 281, 283, as follows:

"This court is for the present committed to the doctrine that there is no liability on the part of a municipality in actions for tort, if the function exercised by the municipality at the time of the injury to the plaintiff was a governmental function. The non-liability for governmental functions is placed upon the ground that the state is sovereign, that the sovereign cannot be sued without its consent, and that the municipality is the mere agent of the state and therefore cannot be sued unless the state gives its consent by legislation. * * *

First of all, let us ascertain the tests whereby these distinctions are made. In performing those duties which are imposed upon the state as obligations of sovereignty, such as protection from crime, or fires, or contagions, or preserving the peace and health of citizens and protecting their property, it is settled that the function is governmental, and if the municipality undertakes the performance of those functions, whether voluntarily or by legislative imposition, the municipality becomes an arm of sovereignty and a governmental agency and is entitled to that immunity from liability which is enjoyed by the state itself."

In the case you present in your inquiry, it would seem that the municipality, when responding to a call for aid from a territory outside of the municipality, voluntarily undertakes an obligation of sovereignty of the state, that is to say, protection from fire. In the exercise of this governmental function a municipality would not be held liable for damages that may result to persons or property from collision in the operation of this equipment outside of a municipality, and I see no good reason why a liability should be imposed when a municipality voluntarily enters upon such a beneficial work.

You also inquire as to the liability of persons operating this equipment outside of the territorial limits of a municipality.

It is a familiar rule in this state that a public employe is not exempt from personal liability resulting from acts negligently performed by him while in the exercise of his employment. See *U. S. Fidelity and Guarantee Company vs. Samuels*,

116 O. S., 586; *American Guarantee Company vs. McNiece*, 111 O. S. 532. Also *Florio vs. Jersey City*, 129 Atl., 470.

In answer to your first inquiry, I am of the opinion that a fire department of a municipality, operating its equipment outside of the territorial limits of the municipality, in response to an appeal for aid, may not be held liable for damages that may result to persons or property caused from a collision in the operation of this equipment. However, a fireman may be personally liable for the consequences attendant upon his negligent acts.

Your second inquiry is as to whether or not members of a fire department, operating its equipment outside of the municipal corporation, are protected under the Workmen's Compensation Act, in the event the municipality has complied with the provisions of the law.

It is a well settled principle, as expressed in Vol. I of Honnold on Workmen's Compensation, paragraph 114, that if the employe, though outside of the sphere of his original employment, is obeying the specific instructions of his employer, he is within the course of his employment. In the situation above considered, therefore, it would seem that if an injury arises to an employe while operating the fire equipment outside of the municipality, he is still doing something incidental to his work, although it may not be strictly in line with his obligatory duty, which is to prevent and extinguish fire in the municipality.

It is my opinion, therefore, that if a member of the municipal fire department is injured while responding to a fire outside of the municipality, he is protected under the Workmen's Compensation Act.

An examination of a copy of the bulletin issued by the State Fire Marshal's office suggests but one change. In the second sentence of the second paragraph, which reads: "In a township department, members must be *approved* by the Board of Trustees and names on record with the township clerk," it is suggested, in view of the language contained in Opinion 1536, dated February 18, 1930, that the word "approved" be changed to "employed."

In view of the foregoing, it is my opinion:

1. A municipality is not liable for damages that may result to persons or property caused from a collision in the operation of fire equipment outside of the municipality. However, a fireman may be personally liable for consequences attendant upon his negligent acts.

2. If a member of the municipal fire department is injured while responding to a fire outside of the municipality, he may be compensated for such injuries under the provisions of the Workmen's Compensation Act.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3062.

APPROVAL, LEASE TO OHIO CANAL LAND IN WALNUT TOWNSHIP,
FAIRFIELD COUNTY, OHIO, FOR USE OF DIVISION OF CONSER-
VATION AS A FISH HATCHERY.

COLUMBUS, OHIO, March 18, 1931.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain