2826.

SCHOOL PLAYGROUND—RENTED TO OTHERS—INJURY SUSTAINED BY PARTICIPANT OR PATRON OF ATHLETIC CONTEST—BOARD OF EDUCATION NOT LIABLE IN TORT.

SYLLABUS:

A board of education which permits the use of playgrounds, under its jurisdiction, by others, for the playing of baseball, football or other games, and exacts a reasonable and proper charge for the use of said grounds, is not liable in tort for any damages accruing to patrons of the game, or anyone else, by reason of negligence in the construction or maintenance of the said playgrounds or the grandstands or bleachers thereon.

COLUMBUS, OHIO, January 15, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

> "Where a board of education owns playgrounds used for baseball, football and other athletic games and such board leases such grounds for use by baseball teams not in any way connected with the school, would there be any liability on the part of the board of education in case an accident occurred on such grounds while being used under such lease?"

School districts under our system of government, are merely agencies of the State. They are involuntary corporations organized, not for the purpose of profit or gain, but solely for the public benefit, and have only such limited powers as are deemed necessary for that purpose. Such corporations are but agents of the state for the sole purpose of administering the state system of public education. In performing the duties required of them they exercise a public function and agency for the public good for which they receive no private or corporate benefit.

Largely because of the character of school districts and the purpose of their organization, there has been evolved the rule that no corporate liability exists as against a school district for torts of any nature whatsoever, unless that liability has been imposed by statute.

An exhaustive and instructive exposition of the reasons for the above rule and the history of its development is set forth in an article by Edwin M. Barchard, published in the American Bar Association Journal for August, 1925, Volume 9, American Bar Association Journal, p. 495. The rule is of almost universal application in the courts of this country and has been applied in a large number of cases, references to which are found in the following notes appended to leading cases there published: 9 A. L. R., 911, 14 A. L. R., 1392, 21 A. L. R., 1328, 23 A. L. R., 1070, 40 A. L. R., 1086–1091n, 56 A. L. R., 152–164n, 49 L. R. A. (N. S.) 1026, L. R. A., 1916 F. 486.

The question has been before the courts of Ohio in a number of cases wherein the rule above stated has been applied. *Finch* v. *Board of Education*, 30 O. S., 37; *Board of Education* v. *Volk*, 72 O. S., 469; *Board of Education* v. *McHenry*, 106 O. S., 357; *Conrad* v. *Board of Education*, 29 O. A., 317.

A board of Education, in the administration of the public school system, is authorized to acquire and equip playgrounds, and by force of Sections 7622 et seq. General Code, is authorized to permit the use of those grounds as community centers, and for the assembling of persons to engage in or to witness athletic contests. As an incidental power thereto, it has been universally recognized that persons using said playgrounds

may be required to pay such incidental charges as may be commensurate with the cost of a proper establishment and maintenance of the playgrounds. The fact must not be lost sight of, however, that boards of education as other administrative boards, have such powers only as are expressly granted to them by statute, together with such so-called implied powers as may be necessary and proper to effectually carry out the express powers so granted. There is no authority extended to boards of education, either expressly, or by necessary implication, which would authorize those boards to engage in any business enterprises or any enterprises for profit. While a board of education may lawfully extend to some other school district or some athletic association the privilege of the use of the playgrounds for the staging of games or athletic contests and may lawfully exact for the privilege a reasonable incidental charge therefor, it is not authorized to lease the premises in such a way as to create between themselves and the person or persons to whom the privilege is extended the relation of landlord and tenant with the incidental rights and liabilities which exist between a landlord and tenant, as the terms are used in legal phraseology.

The fact that a paper may be drawn up which is styled a lease, and that the parties themselves refer to it as a lease, when a board of education extends the use of playgrounds under its jurisdiction to some outside person or persons for the playing of games, and the fact that the incidental charge which is exacted for the use of the grounds is spoken of as a rental charge, does not, in my opinion, create the relationship of landlord and tenant between the parties and does not serve to change the rule of liability of the board of education, or the school district, for tort.

I am therefore of the opinion, in specific answer to your question, that a board of education which permits the use of playgrounds, under its jurisdiction, by others, for the playing of baseball, football or other games, and exacts a reasonable and proper charge for the use of said grounds is not liable in tort for any damages accruing to patrons of the game, or onyone else, by reason of negligence in the construction or maintenance of the said playgrounds or grand stands or bleachers thereon.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2827.

APPROVAL, LEASE FOR RIGHT TO LAY GAS MAIN ACROSS AND UNDER BED OF TUSCARAWAS FEEDER TO OHIO CANAL IN COVENTRY TOWNSHIP, SUMMIT COUNTY, OHIO—THE EAST OHIO GAS COMPANY.

COLUMBUS, OHIO, January 15, 1931.

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

DEAR SIR:—You lately submitted to me for my examination and approval a certain canal land lease in triplicate executed by the state of Ohio through you as superintendent of public works, by which, in consideration of the payment to the state of an annual rental of twelve dollars, there is granted to The East Ohio Gas Company of Cleveland, Ohio, for a term of fifteen years, the right to lay and maintain a ten inch gas main across and under the bed of the Tuscarawas Feeder to the Ohio Canal at a point 3503 feet east of the center line of South Main Street in Coventry Township, Summit County, Ohio, subject to the conditions and restrictions provided for in said lease.