

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.

Section 2303 of the General Code authorizes the county commissioners to release and discharge the county treasurer from all liability resulting from the loss of public funds in his custody by a theft. The effect of the resolution of the commissioners in December, 1932, in releasing the treasurer was an expenditure of that amount of the county's funds. The commissioners at that time should have made an appropriation and charged a particular fund with this loss.

The county auditor by section 2570, General Code, cannot make a charge against any particular fund except on express order. It is impossible for the treasurer to know which fund is to be charged with this loss. In order that the records in both the auditor's office and the records of the treasurer reflect the true status of the transaction, the county commissioners should pass a resolution reciting that on the former date the commissioners had by resolution released the treasurer from liability for this loss and that there was appropriated from the general fund of the county a sum equivalent to the amount of the loss for this specific purpose and direct the auditor to charge the general fund of the county with this amount. The procedure as to appropriations, as provided by law in sections 5625-1, et seq., General Code, should be followed, and the certificate of the auditor as required by section 5625-33 should be issued certifying that the funds were available. The auditor on receipt of the certified copy of the resolution is legally authorized to charge the particular fund and issue a warrant to the treasurer. The county treasurer upon receipt of the warrant should credit himself with the amount of the warrant and charge the particular fund with that amount, thereby properly accounting for the loss, and the records would then reflect the true status of the funds.

You refer to a special fund designated the "unexpected emergency fund." I am unable to determine from your letter the purpose of this fund. Sections 5625-9 and 5625-12 provide for the establishment of certain funds. Section 5625-11 requires the consent of the Bureau in order to establish specific funds other than those provided by law. If the "unexpected emergency fund" is established to take care of a loss, such as the loss of these funds, it would be proper to charge this fund rather than the general fund of the county.

In specific answer to your inquiry, it is my opinion that since the board of county commissioners by virtue of authority granted by section 2303, General Code, has by former resolution released the county treasurer from all liability, resulting from the loss of public funds by reason of a theft, the commissioners should in order to charge this loss to a specific fund, pass a resolution reciting the fact of the former resolution and appropriate a sum equivalent to the amount of the loss and direct the auditor to charge a particular fund with that amount.

Respectfully.

JOHN W. BRICKER,
Attorney General.