

**OPINION NO. 80-102****Syllabus:**

1. The veterans' service officer and his staff qualify as "county employees" while using their personal vehicles for the transportation of veterans and families of veterans on official business.
2. While the board of county commissioners may, pursuant to R.C. 9.83, R.C. 307.44 and R.C. 307.441, procure liability insurance to insure the veterans' service officer and members of his staff against liability arising from the transportation of veterans, the board of county commissioners has no legal duty or responsibility to procure such insurance.
3. In the absence of an express waiver of sovereign immunity, neither the county nor the soldiers' relief commission is liable for the negligent acts or intentional misconduct of the veterans' service officer or his staff in transporting veterans and families of veterans.

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**To: David E. Lightliser, Licking County Pros. Atty., Newark, Ohio**  
**By: William J. Brown, Attorney General, December 31, 1980**

I have before me your request for an opinion concerning the potential liability of the Licking County Veterans' Service Officer and his staff while transporting veterans and their families to various institutions for medical treatment. It is my understanding that the Licking County Veterans' Service Officer and members of his staff transport veterans in their private automobiles and are reimbursed by the county for the actual mileage incurred.

Your specific questions are as follows:

1. Do employees of the Soldiers' Relief Commission authorized under Section 5901.01 of the Ohio Revised Code qualify as "County Employees" for purposes of liability in the event of accidents or injuries while using their personal vehicles while transporting veterans and members of their (veterans) families on official business?
2. Does the Board of County Commissioners have a legal duty or responsibility of arranging or acquiring liability insurance coverage for such acts (transportation of veterans)?

3. In light of the recent repeal of the Guest Statute in Ohio, what is the liability against the county or Soldiers' Relief Commission to passengers (veterans) being transported in non-county owned vehicles?

With respect to your first question, it is my understanding through telephone conversations with your office and also with the Office of the Licking County Veterans' Service Officer, that your concern is whether the veterans' service officer<sup>1</sup> and his staff, when transporting veterans on official business, are county employees; you raise this question in connection with the question whether the county may be held responsible for injuries resulting from the acts of such employees and the question whether the county may insure such persons against liability resulting from their actions. In determining whether such persons are county employees, the provisions of R.C. Chapter 5901, which govern the establishment and administration of county soldiers' relief commissions, are controlling.

R.C. 5901.02 which provides for the establishment of county soldiers' relief commissions, reads, in pertinent part, as follows:

In each county there shall be a commission known as "the soldiers' relief commission" composed of five persons. Such persons shall be residents of the county and shall be appointed by a judge of the court of common pleas. Each member of the commission shall serve for five years.

R.C. 5901.07, which provides for the employment and compensation of a county veterans' service officer and his staff, reads, in pertinent part, as follows:

The commission may employ such service officer on a part or full time basis. . . . The commission may employ the necessary clerks, stenographers, and other personnel to assist the service officer in the performance of duties and fix their compensation. The board of county commissioners, upon the recommendation or approval of the commission, may provide suitable office space, supplies, and office and incidental expenses for such service officer. The compensation of the service officer and of any employee and any expenses incurred under this section shall be paid out of funds appropriated to the commission, as provided in section 5901.11 of the Revised Code.

Pursuant to R.C. 5901.07, the compensation of the veterans' service officer and his staff is paid out of the funds appropriated to the commission as provided in R.C. 5901.11. R.C. 5901.11 provides that "the board of county commissioners. . . shall make the necessary levy, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county" to raise the amount necessary for the assistance of indigent persons by the soldiers' relief commission. Thus, the compensation of the veterans' service officer and his staff is paid by the county.

The fact that the veterans' service officer and his staff are compensated by the county for the performance of services for county residents leads to the conclusion that the veterans' service officer and his staff are county employees. This is the conclusion that was reached by one of my predecessors in 1962 Op. Att'y

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<sup>1</sup>It is my understanding that the veterans' service "officer" is an employee of the soldiers' relief commission rather than a public officer, and that the title veterans' service "officer" is used in deference to the fact that the veterans' service "officer" is a retired veteran of the armed forces of the United States. See R.C. 5901.07. See generally 1962 Op. Att'y Gen. No. 3067, p. 441. Therefore, the status of the veterans' service officer will be the same as that of other employees of the soldiers' relief commission for purposes of my response to your inquiry.

Gen. No. 3067, p. 441. In that opinion, the Attorney General defined the status of employees of the soldiers' relief commission as follows:

As to employees of soldiers' relief commissions, Section 5901.06, Revised Code, provides that such a commission may employ such investigators and clerks as are necessary to carry on relief work when the necessity arises, and Section 5901.07, Revised Code, provides that such a commission may employ a county veterans' service officer and the necessary clerks, stenographers and other personnel to assist him. Compensation and expenses of the employees of the commission are paid out of the funds appropriated under Section 5901.11, supra.

It already having been determined that members of a county soldiers' relief commission are county officers, it follows that employees of the commission are employees of the county. Further, since expenses of such employees are paid out of funds appropriated under Section 5901.11, supra, payment of such expenses is a county expense.

1962 Op. No. 3067 at 446 (emphasis added).

I concur in the opinion of my predecessor that the veterans' service officer and his staff, when acting within the scope of their duties, are, in fact, employees of the county. Consequently, if the transportation of veterans and their families to institutions for medical treatment is within the scope of the duties of the veterans' service officer and his staff, it must be concluded that the veterans' service officer and his staff, when engaged in such activities, are county employees.

R.C. 5901.07, which defines the duties of the veterans' service officer, reads, in pertinent part, as follows:

The duties of such officer shall be to advise and assist persons in the armed forces of the United States, veterans of any war, and the spouses, surviving spouses, children, parents, and dependents of such veterans in presenting claims or obtaining rights or benefits under any law of the United States or of this state.

The transportation of veterans and their families to institutions for medical treatment clearly comes within the purview of R.C. 5901.07. Therefore, it must be concluded that, when the veterans' service officer or members of his staff transport veterans or members of their families in the course of assisting those veterans, the veterans' service officer and his staff are acting within the scope of their duties as established by R.C. 5901.07.

The fact that the veterans' service officer and his staff use their private automobiles to transport the veterans does not alter their status as county employees. The Ohio Supreme Court in Pappas v. Jeffery Manufacturing Co., 139 Ohio St. 637, 640, 41 N.E.2d 864, 866 (1942), stated:

A corporation can be the operator of a motor vehicle only by and through its agent or employee. If the automobile being driven by Wilson, the Defendant's employee, were owned by the defendant corporation, it properly could be considered the operator as well as the owner of the automobile. When the automobile was being driven by Wilson for and on behalf of the corporation, as is conceded, it was the operator thereof, even though Wilson was the owner.

In 1960 Op. Att'y Gen. No. 1535, p. 481, the then Attorney General applied the rationale of the court in Pappas to the operation of vehicles by library officers on behalf of the library. In that opinion, the Attorney General stated as follows:

In accordance with the rule set forth in the Pappas case, supra, I am of the opinion that when motor vehicles are being driven by

officers and employees of the library for and on behalf of the library, such library is the operator thereof, even though the officers and employees are the owners of such motor vehicles.

1960 Op. No. 1535 at 484.

Therefore, it must be concluded that when private automobiles are driven by the veterans' service officer and his staff to assist veterans and their families, the soldiers' relief commission is, in fact, the operator of the vehicle. In response to your first question, then, it is my opinion that the veterans' service officer and his staff, while using their personal vehicles to transport veterans and members of veterans' families on official business, qualify as county employees.

With respect to your second question, it is my understanding that your concern is whether the board of county commissioners is required to procure insurance policies to insure the veterans' service officer and his staff against liability arising from the transportation of veterans and the families of veterans on behalf of the soldiers' relief commission. In order to respond to your question, an analysis of R.C. 9.83, R.C. 307.44 and R.C. 307.441, which authorize boards of county commissioners to procure liability insurance, is necessary.

R.C. 9.83 and R.C. 307.44 authorize boards of county commissioners to procure liability insurance to protect employees while operating motor vehicles on behalf of the county. R.C. 9.83 provides, in this regard, as follows:

The state and any political subdivision may procure a policy or policies of insurance insuring its officers and employees against liability on account of damage or injury to persons and property, including liability on account of death or accident by wrongful act, occasioned by the operation of such motor vehicles as are automobiles, trucks, motor vehicles with auxiliary equipment, self-propelling equipment or trailers, aircraft, or watercraft by employees or officers of the state or a political subdivision, while such vehicles are being operated in the business of the state or the political subdivision. (Emphasis added.)

R.C. 307.44 provides, in pertinent part, as follows:

The board of county commissioners may procure policies of insurance insuring officers and employees of the county against liability on account of damage or injury to persons and property, including liability on account of death by wrongful act, occasioned by the operation of a motor vehicle, motor vehicles with auxiliary equipment, or all self-propelling equipment or trailers, owned or operated by the county. (Emphasis added.)

R.C. 9.83 expressly authorizes the state, or a political subdivision of the state, to procure liability insurance to cover employees who use or operate motor vehicles on behalf of the state or a political subdivision, regardless of whether such vehicles are owned by the state or the political subdivision. R.C. 307.44 expressly authorizes a board of county commissioners to procure liability insurance to insure county officers and employees who operate motor vehicles "owned or operated by the county." The fact that the General Assembly, in enacting R.C. 307.44, chose to employ the term "owned or operated," rather than the term "owned and operated," indicates that the legislative intent was to authorize boards of county commissioners to procure liability insurance to cover employees who use their personal vehicles in their work as well as employees who use vehicles owned by the county in their work. See 1972 Op. Att'y Gen. No. 72-007; 1967 Op. Att'y Gen. No. 67-007.

As previously discussed, the veterans' service officer and his staff, when transporting veterans and families of veterans on official business, qualify as

county employees. Thus, the board of county commissioners may, pursuant to R.C. 9.83 and R.C. 307.44, procure policies of insurance to protect the veterans' service officer and his staff from liability arising from the transportation of veterans. Your question, however, is whether the board of county commissioners is required to procure such liability insurance.

There is no indication in the language of either R.C. 9.83 or R.C. 307.44 that the legislative intent was to require the board of county commissioners to procure insurance policies to protect employees from liability arising from the operation of vehicles on behalf of the county. To the contrary, the use of the term "may procure" in R.C. 9.83 and R.C. 307.44 evidences that the legislative intent was merely to authorize a board of county commissioners to procure such insurance, rather than to require that such insurance be procured. See Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) ("may" is to be construed as permissive, whereas "shall" is to be construed as mandatory). Consequently, it must be concluded that neither R.C. 9.83 nor R.C. 307.44 requires the board of county commissioners to procure insurance to protect the veterans' service officer and his staff from liability arising from the transportation of veterans.

It may be similarly concluded that R.C. 307.441 merely authorizes, rather than requires, a board of county commissioners to procure liability insurance. R.C. 307.441 provides, in pertinent part, as follows:

(A) The board of county commissioners of each county may procure a policy or policies of insurance insuring the county recorder and the clerk of the court of common pleas and their deputies against liability on account of errors or omissions unknowingly made by them and for which they may be held liable.

The policy or policies of insurance shall be in an amount of not less than fifty thousand dollars.

(B) The board of county commissioners of each county may procure a policy or policies of insurance insuring the sheriff and his deputies against liability arising from the performance of their official duties.

(C) The board of county commissioners of each county may procure a policy or policies of insurance insuring the prosecuting attorney, and assistant prosecuting attorneys against liability arising from the performance of their official duties.

(D) The board of county commissioners of each county may procure a policy or policies of insurance insuring the coroner, county engineer, county auditor, each county commissioner, and the county treasurer and their assistants against liability arising from the performance of their official duties.

(E) The board of county commissioners of each county may procure a policy or policies of insurance insuring any county employee against liability arising from the performance of his official duties.

(F) If the board of county commissioners of any county procures a policy or policies of insurance insuring any county official against liability arising from the performance of his official duties as provided by divisions (A) to (D) of this section, it shall not refuse to procure a policy or policies of insurance insuring any other county official as authorized in those divisions, if such policy or policies are reasonably available. (Emphasis added.)

Clearly, pursuant to R.C. 307.441(E), the board of county commissioners may procure insurance to insure the veterans' service officer and his staff against liability arising from the performance of their duties. The use of the word "may" in R.C. 307.441, however, evidences that the legislative intent was to merely vest the board of county commissioners with discretion as to whether to procure such insurance, rather than to require that such insurance be procured.

The fact that R.C. 307.44(F) requires a board of county commissioners to procure liability insurance only for those county officials enumerated in divisions (A) through (D) of R.C. 307.44 and only if liability insurance is procured for other county officials enumerated in those divisions further evidences that the legislative intent was merely to authorize, rather than to require, a board of county commissioners to procure liability insurance for all county employees. See 1979 Op. Att'y Gen. No. 79-004 (R.C. 307.44(F) does not require a board of county commissioners to obtain liability insurance for all county employees; however, if a board procures insurance for an official enumerated in R.C. 307.44(A) through (D), it cannot refuse to procure insurance for other officials enumerated in R.C. 307.44(A) through (D) ).

In light of the plain language of R.C. 307.44, it must be concluded that a board of county commissioners is not required, pursuant to R.C. 307.44, to procure liability insurance for a county employee, unless such employee is an official designated in divisions (A) through (D) of R.C. 307.44 and the board of county commissioners has procured liability insurance for another official designated in those divisions.

Neither the veterans' service officer nor his staff are officials included within divisions (A) through (D) of R.C. 307.44. It is my opinion, therefore, that R.C. 307.44 does not require the board of county commissioners to procure liability insurance to protect the veterans' service officer or his staff.

I am not aware of any other statutes which require a board of county commissioners to procure such insurance. Consequently, it is my opinion that, while the board of county commissioners may, pursuant to R.C. 9.83, R.C. 307.44 and R.C. 307.44(E), procure liability insurance for the veterans' service officer and his staff, there is no legal duty incumbent upon the board of county commissioners to procure such liability insurance to insure the veterans' service officer and his staff against liability arising from the transportation of veterans and their families.

With respect to your third question, it is not possible in the space of an opinion to address all potential liability which may result from the acts of the veterans' service officer or his staff while transporting veterans on behalf of the soldiers' relief commission. Therefore, I feel that a general analysis of your question would be most appropriate.

Concerning the question of the potential liability of the soldiers' relief commission and the county, it appears that any liability alleged against the commission or the county as a result of the negligent acts or intentional misconduct of the veterans' service officer or his staff in transporting veterans or families of veterans would be foreclosed under the "doctrine of sovereign immunity."

The "sovereign immunity doctrine," which is found in Ohio Const. art. I, §16, provides that "[s]uits may be brought against the state, in such courts and in such manner, may be provided by law" (emphasis added).

This doctrine has been repeatedly upheld in the state of Ohio for all "political subdivisions" for which it has not been waived through legislative action. See Haas v. Hayslip, 51 Ohio St. 2d 135, 364 N.E.2d 1376 (1977). In 1972, I had occasion to comment upon the application of the doctrine of "sovereign immunity." In 1972 Op. Att'y Gen. No. 72-040, I concluded as follows:

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<sup>2</sup>Due to the specific nature of actions brought under 42 U.S.C. §1983, I have not considered, nor attempted to discuss, such actions in my general response to your third question.

The Ohio Supreme Court in Krause v. State, 31 Ohio St. 2d 132 (1972), has recently upheld the doctrine of sovereign immunity. This decision was in accord with a consistent line of Ohio opinions pronouncing that doctrine. Wolf v. Ohio State University Hospital, 170 Ohio St. 49 (1959); State, ex rel. Williams v. Glander, 148 Ohio St. 188 (1947); Palumbo v. Industrial Commission of Ohio, 140 Ohio St. 54 (1944); Raudabaugh v. State, 96 Ohio St. 513 (1917). Paragraph one of the syllabus in Krause v. State, supra, reads as follows:

"The state of Ohio is not subject to suits in tort in the courts of this state without the consent of the General Assembly."

The immunity from suit which the state possesses extends to political subdivisions and administrative agencies as well. Wolf v. Ohio State University Hospital, supra.

Id. at 2-368.

Pursuant to the Court of Claims Act, R.C. Chapter 2743, the state has, to a certain degree, waived its sovereign immunity. The Court of Claims Act, however, is not applicable to political subdivisions of the state, a term which, by definition, includes counties. R.C. 2743.01(B). Moreover, I am not aware of any other action by which the sovereign immunity of either Licking County or the Licking County Soldiers' Relief Commission has been waived. Thus, it can be concluded that the "doctrine of sovereign immunity" remains applicable in your county, thereby serving to defeat claims brought against the county or the soldiers' relief commission. An issue which must be addressed and resolved, however, is whether, in the absence of an express waiver, a subdivision's sovereign immunity may be defeated by the "doctrine of respondeat superior" or by the procurement of liability insurance.

In 1962, a prior Attorney General had occasion to speak to the issue of whether sovereign immunity may be defeated by the "doctrine of respondeat superior." 1962 Op. Att'y Gen. No. 3512, p. 1030. In that opinion, the Attorney General concluded as follows:

With regard to your second question, attention is directed to the case of Schaffer, v. Board of Trustees of the Franklin Veterans Memorial, et al., 171 Ohio St. 228, wherein the syllabus reads as follows:

"In the absence of statutory authorization therefore, a county or its agencies are immune from suit for negligence."

Since it is obvious that a county can only perform an act through its agents, it seems elementary that a county, once cloaked with governmental immunity, cannot be stripped thereof by reason of the doctrine of respondeat superior. The existence of liability on a county as a result of the latter, is the denial of all immunity granted by the former. I believe that no citation of authority is necessary to substantiate the statement that governmental immunity from tort liability cannot be defeated by the doctrine of respondeat superior.

Id. at 1033-34.

In the same opinion, my predecessor also had occasion to address the issue of whether the procurement of liability insurance by a county serves as a waiver of the county's sovereign immunity. In concluding that the procurement of insurance does not serve to defeat a county's sovereign immunity, my predecessor stated as follows:

Thus, it seems eminently clear that, as stated in Opinion No. 1252, supra, the authorization found in Section 305.44, supra, does not waive the governmental immunity from suit which is enjoyed by the various counties. Said statute permits the counties to purchase insurance for the protection of the officers and employees of the county. There is no mention made therein relating to the county itself and none was intended.

Id. at 1033.

I concur in the opinion of my predecessor that, in the absence of an express waiver, neither the "doctrine of respondeat superior" nor the purchase of liability insurance for officers and employees serves to defeat a political subdivision's sovereign immunity. Since I have concluded that neither the sovereign immunity of the county nor that of the soldiers' relief commission has been waived, it is my opinion that neither the county nor the soldiers' relief commission is liable for the negligent acts or intentional misconduct of the veterans' service officer or his staff in transporting veterans and their families.

It should be noted, however, that the "doctrine of sovereign immunity" would not extend to protecting the veterans' service officer or his staff from liability resulting from their own negligent acts or intentional misconduct. See 1972 Op. Att'y Gen. No. 72-090 (employees and volunteers working for a county board of mental retardation are liable for their own negligence); 1972 Op. Att'y Gen. No. 72-007 (volunteers who use their own vehicles to provide transportation for children in the custody of the children's services board are personally liable for their own negligence); 1967 Op. Att'y Gen. No. 67-001 (employees and volunteers working for a university are personally liable for their own negligence). It is well settled that:

An agent is bound in the performance of his duty to recognize and respect the rights and privileges of others, and failing to do so, either negligently or intentionally, thereby causing an injury to another, is liable to him for the damages sustained, and the fact that the injury occurred while in the performance of his agency would constitute no defense, although in some cases it may appear that the principal is liable also.

Richards v. Stratton, 112 Ohio St. 476, 480, 147 N.E. 645, 646 (1925). See 1972 Op. Att'y Gen. No. 72-007. Consequently, if the county chooses not to procure liability insurance, the veterans' service officer and his staff would be personally liable for any damages resulting from their own negligent acts or misconduct in the transportation of veterans and families of veterans on behalf of the soldiers' relief commission.

In conclusion, it is my opinion, and you are so advised, that:

1. The veterans' service officer and his staff qualify as "county employees" while using their personal vehicles for the transportation of veterans and families of veterans on official business.
2. While the board of county commissioners may, pursuant to R.C. 9.83, R.C. 307.44 and R.C. 307.441, procure liability insurance to insure the veterans' service officer and members of his staff, against liability arising from the transportation of veterans, the board of county commissioners has no legal duty or responsibility to procure such insurance.
3. In the absence of an express waiver of sovereign immunity, neither the county nor the soldiers' relief commission is liable for the negligent acts or intentional misconduct of the veterans' service officer or his staff in transporting veterans and families of veterans.