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A COUNTY IS NOT LIABLE FOR INJURIES RECEIVED BY AN INMATE OF A COUNTY HOME ARISING OUT OF INMATE'S PERFORMANCE OF LABOR—§5155.06, R.C.

SYLLABUS:

A county is not liable for injuries received by an inmate of a county home arising out of the inmate's performance of labor pursuant to Section 5155.06, Revised Code.

Columbus, Ohio, June 28, 1961

Hon. George E. Martin, Prosecuting Attorney
Portage County, Ravenna, Ohio

Dear Sir:

Your request for my opinion reads as follows:

> "Section 5155.06 of the Revised Code of the State of Ohio provides in part that the superintendent of the County Home shall require all persons received therein to perform such reasonable and moderate labor, without compensation, as is suited to their age and bodily strength. On the basis of this statutory requirement, the County Commissioners have presented the question as to the liability of the County, either in common law or by statute in the event that an inmate is injured in the course of such employment.
>
> "In the event the County may be liable, is it possible for the County Commissioners to contract with the Bureau of Workman's Compensation or a private carrier for insurance coverage to protect the County against this type of contingency?
>
> "We would appreciate your opinion on these questions."

I have been unable to find any statutory liability on the part of a county for injuries received by an inmate of a county home arising out of the inmate's performance of labor pursuant to Section 5155.06, Revised Code.

Under the Workmen's Compensation Act, Section 4123.01, *et seq.*, Revised Code, every person in the service of any county under any appointment or contract of hire is defined as an "employee" of the county for the purpose of receiving compensation for an injury received in the course of, and arising out of, the nijured employee's employment. Although the language of the Workmen's Compensation Act is very broad and should be literally construed in favor of a claimant, (*Industrial Commission v. Rogers,* 34 Ohio App., 196 (1929)), I have been unable to find any case in which an inmate of a county home performing labor without compensation pursuant to Section 5155.06, *supra,* has been held to be an employee of a county under the provisions of this act. In my opinion such an inmate is not a person in the service of any county under any appointment or contract of hire and is, therefore, not an employee within the meaning of the Workmen's Compensation Act.

At common law, members of a board of county commissioners are not liable for negligence in the discharge of their official functions. *The Board of Commissioners of Hamilton County v. Jesse W. Mighels,* 7 Ohio St., 109 (1857). The operation of a county home is an official function of a board of county commissoners. Section 5155.01, *et seq.,* Revised Code.

In *Green v. Muskingum Co. (Comrs.) et al,* 13 O.C.D. 43, 3 C.C. (N.S.) 212 (1901), a workhouse inmate filed a petition alleging that he was required to work at a defective machine and was thereby injured. The trial court sustained a demurrer to the petition, and the Circuit Court affirmed stating:

> "The petition, possibly, states a case against the persons whose active and affirmative acts and conduct were so negligent as to directly and proximately occasion plaintiff a serious injury without any fault of his own, but it is not believed that it states a cause of action entitling him to relief against the municipal corporation, the city of Zanesville, while the city, as we think clearly appears, was in the discharge of a wholly governmental duty as the duty constituted agency of the great public, the state of Ohio, and concerning which the city has no liability. It cannot be doubted that the power conferred on municipalities, to preserve the peace and protect persons and property by the arrest of offenders and their commitment and detention in jails and workhouses, is of a public or governmental nature, in which the sovereign state exercises its functions through the agency of the municipality. In such case, the non-liability of the municipality rests upon the same reason as does that of the sovereign exercising like powers."

In *Bell v. Cincinnati,* 19 O.D., 123 (1908), the Superior Court of Cincinnati reversed a judgment in favor of a workhouse guard against the city for injuries received by the guard in course of his employment. The court concluded by saying, "Whatever relief the plaintiff is entitled to must be given by the legislature." The legislature has now given relief to workhouse guards and other city and county employees through the Workmen's Compensation Act, *supra.* Inmates of workhouses and inmates of county homes have not, however, been covered by the Act.

It is my opinion, therefore, and you are accordingly advised that a county is not liable for injuries received by an inmate of a county home arising out of the inmate's performance of labor pursuant to Section 5155.06, Revised Code.

Respectfully,
MARK MCELROY
Attorney General