

OPINION NO. 1109

Syllabus:

1. A joint township district hospital board organized pursuant to Section 513.07 et seq., Revised Code, and operated solely from funds received through charges for services, is not liable in tort to persons injured in the operation of its hospital.

2. The board of governors of a joint township district hospital has no authority to purchase liability insurance for protection against loss by reason of liability for tort in the operation of the joint township district hospital.

To: James I. Shaw, Auglaize County Pros. Atty., Wapakoneta, Ohio
By: William B. Saxbe, Attorney General, June 9, 1964

I am in receipt of your letter in which you state:

"A Joint Township District Hospital was organized under Section 513.07 et seq., Revised Code. At the present time the hospital is self-supporting and is functioning solely from funds obtained through hospital service charges and without the aid of an operating levy from taxes. The hospital charges and receives payment for any and all care administered to any of its patients; and for all practicable purposes, is operating in a proprietary capacity.

"Your opinion is requested on the following questions:

"1. Is a Joint Township Hospital District, operating in a proprietary capacity,

liable in tort to individuals injured in the operation of its hospital?

"2. May the Board of Governors spend money derived from hospital service charges for premiums of insurance against loss by reason of liability from tort in the operation of its hospital?"

The organization and operation of a hospital by a joint township district hospital board are governed by the provisions of Sections 513.07 to 513.18, inclusive, Revised Code. Section 513.07, Revised Code, authorizes the trustees of two or more contiguous townships in any county to form themselves into a joint township hospital district for the purpose of constructing and maintaining a joint township hospital. All the members of the boards of township trustees of the townships participating comprise the joint township district hospital board. Section 513.12, Revised Code, contemplates the issuance by such board of bonds for the construction of such hospital.

Section 513.16, Revised Code, provides for the appointment by said joint township district hospital board and by the judge of the court of common pleas of the county of a board of three members, known as the board of hospital governors, to which is committed the management and control of the operation of such hospital.

Thus, this enabling legislation, authorizes townships to establish a joint township hospital district which is an arm or agency of the townships. Opinion No. 1374, Opinions of the Attorney General for 1952, page 306. Opinion No. 1374 concluded as disclosed by the syllabus:

"1. The operation of a joint township hospital organized under the provisions of Section 3414-1 et seq., of the General Code, is a governmental and not a proprietary function.

"2. In the operation of such hospital, the board of governors thereof is not liable in damages by reason of injuries sustained, due to the negligence or fault of any employes of said board, or to any act or omission on the part of such board.

"3. The board of governors of such hospital is without power to expend any public money in procuring insurance against possible liability growing out of the operation of such hospital."

This opinion is dispositive of your question. However, because your request assumes, contrary to the 1952 opinion, that a joint township district hospital can be operated in a proprietary capacity and because there appears to be some confusion over the tort liability of a township generally, further consideration will be given the questions you have raised.

The traditional immunity of the sovereign from suit has been

recognized in Ohio by constitution. Section 16, Article I, Constitution of Ohio provides in material part:

"Suits may be brought against the state, in such courts and in such manner, as may be provided by law."

This constitutional provision is not self-executing and in the absence of express statutory authority the state and its instrumentalities are not liable in tort. Wolf v. Ohio State University Hospital et al., 170 Ohio St. 49 (1959).

The immunity of the sovereign extends to counties. Board of Commissioners of Hamilton County v. Mighels, 7 Ohio St. 110 (1857); Schaffer v. Board of Trustees of The Franklin County Veterans Memorial et al., 171 Ohio St. 228 (1960); Wierzbicki v. Carmichael, 118 Ohio App. 239 (1963). It was stated in the Schaffer case:

"A county is purely a political subdivision, an agency or instrumentality of the state and is clothed with the same sovereign immunity from suit." (171 Ohio St. 228, 231).

In Wierzbicki v. Carmichael, supra, a tort action was brought against a county hospital by a former patient to recover damages from the members of the board of trustees of the hospital for personal injury claimed to have been received as a result of the negligence of the members of the board, acting through their servants and employees in the operation of the hospital. In affirming the judgment of the lower court sustaining a demurrer to the petition the appellate court concluded:

* * * * *

"There is nothing in the petition which states a cause of action against the trustees as individuals, nor, for the reasons stated above, does it state a cause of action against the trustees 'collectively,' as that word is used in the appellant's claim.

"Trustees of a county hospital are not liable individually in damages for claimed misconduct where they act in their official capacity, in good faith, and in the honest discharge of official duty. See: Thomas v. Wilton, 40 Ohio St., 516; Gregory v. Small, 39 Ohio St., 346; and Stewart v. Southard, 17 Ohio, 402.

"The appellant attaches importance to the pleaded fact that the hospital was operated for profit. Whether it was so operated or not is of no importance except to the taxpayer. It is an agency of the state and county governments, and as such is not an operation for profit as that phrase is used in the world of private business.

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(118 Ohio App. 239, 243).

Townships like counties are agencies or instrumentalities of the state and by a parity of reasoning a township and a joint township district hospital board are immune from suit for tort.

Whether the joint township district hospital in question is operated in a manner such that under other circumstances it would be considered to constitute a proprietary function -- as distinguished from a governmental function -- is immaterial. Opinion No. 179, Opinions of the Attorney General for 1957; Opinion No. 2482, Opinions of the Attorney General for 1961. As I stated in the 1957 opinion, page 46:

" * * * * * * * * "

" * * * The doctrine of governmental and proprietary functions recognized that with regard to some functions municipal corporations act as agents of the sovereign state, and when they do they partake of sovereignty and sovereign immunity. The purpose of the doctrine is to distinguish those functions where the municipal corporation does partake of sovereignty from those where it does not. But counties and townships have never been regarded otherwise than as agents of the state. There has never been any confusion between their governmental and corporate functions, for they are not corporations and are regarded as having governmental functions only. Therefore the doctrine of governmental and proprietary functions does not apply to them.

" * * * * * * * * "

I am aware of no statutory provision which waives the immunity of the township from suit for torts occurring in the operation of a joint township district hospital. There being no potential liability, the board of governors of a joint township district hospital has no authority to purchase liability insurance.

Therefore, it is my opinion and you are accordingly advised that:

1. A joint township district hospital board organized pursuant to Section 513.07 et seq., Revised Code, and operated solely from funds received through charges for services, is not liable in tort to persons injured in the operation of its hospital.
2. The board of governors of a joint township district hospital has no authority to purchase liability insurance for protection against loss by reason of liability for tort in the operation of the joint township district hospital.