

" \* \* \* The school taxes levied by boards of education and collected from the several districts or parts of districts in the county shall be paid to the districts from which it was collected."

However, circumstances do arise sometimes whereby, in making an equitable distribution of funds and indebtedness, the board making the distribution orders the proceeds of certain taxes to be collected in the future to be paid to the school district, which has received territory by annexation from the district receiving the taxes.

Third. Whether or not the taxes levied for the year 1928 and collected in December, 1928, and June, 1929, should be divided and prorated between the school districts effected by the transfer, is a matter to be considered by the Knox County Board of Education in making the equitable distribution of funds and indebtedness between the two districts, and whatever conclusion is arrived at by the board is a matter within its discretion.

Fourth. The principles which should govern in making an equitable distribution of funds and indebtedness between two political subdivisions are discussed in the body of this opinion and in the 1927 opinion referred to herein.

Fifth. The Brink Haven School District will be obligated to assume charge of the education of the children residing in the territory, which has been transferred to the district, when the transfer becomes complete; that is to say, when the Knox County Board of Education passes a resolution making an equitable distribution of the funds and indebtedness between the two school districts and a proper map is filed with the Auditor of Knox County.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

3082.

TOWNSHIP TRUSTEES—ROADS—LIABILITY IN DAMAGES FOR INJURIES PROXIMATELY CAUSED BY NEGLIGENT IMPROVEMENT.

SYLLABUS:

*Where a road under the jurisdiction of a board of township trustees is being improved by such trustees, the board may become liable in its official capacity for damages received by any person when the proximate cause of the injury was the negligence of said board of trustees in failing to erect proper barriers or signals to warn travelers upon the highway of the presence of danger due to such construction work.*

COLUMBUS, OHIO, December 31, 1928.

HON. C. E. MOYER, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion as follows:

"Several days ago a person drove his automobile off of an embankment on a township road, which was, at the time, being improved by the township trustees and the work was being done by their road men, this embankment was at a curve and was being cut out and refilled to widen the curve and there were no danger signals or barriers to warn anyone using said road of the danger, placed there at the time said accident occurred.

The person now seeks damages from the township trustees for carelessness and negligence and the question arises as to whether or not a board of trustees is liable for damages caused by a defective road under its jurisdiction.

There seems to be no statute specifically making the board of trustees liable for a defective road under its jurisdiction such as there is in the case of a county road. The case laws hold that a county or a township is not liable, or the boards of said political subdivisions are not liable, in their official capacity, for damages or anything else unless made so by statutes.

The only section covering this question that I can find is 3298-17 which reads as follows:

'Each board of township trustees shall be liable, in its official capacity for damages received by any person, firm or corporation, by reason of the negligence or carelessness of said board of trustees in the discharge of its official duties.'

The question arises as to whether or not this section is broad enough to cover the specific case mentioned."

It is important in considering your question to note that in your communication you state that the road being improved is a township road and the work is being done by road men in the employ of the township trustees.

In view of this statement it is assumed that the road improvement is being carried on by the board of township trustees as a part of its official duties relating to the improvement of township roads.

Section 3298-17 of the General Code reads as quoted in your letter, and was enacted May 17, 1915 (106 v. 574), being Section 237 of an act entitled:

"An Act—To provide a system of highway laws for the State of Ohio \* \* \* ."

In a former opinion of this department, namely, Opinion No. 2172, rendered under date of May 29, 1928, to the Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio, it was held in the first and second branches of the syllabus as follows:

"1. By the terms of Section 3298-17, General Code, a board of township trustees is liable, in its official capacity, for damages received by any person by reason of the negligence or carelessness of said board of trustees in the discharge of its official duties. If an action be brought against a board of township trustees for such damages it must, to succeed, be for a wrong committed or an obligation incurred by such trustees while in the discharge of their *official* duties.

2. Statutes, such as Section 3298-17, General Code, being in derogation of the common law, should not be extended beyond the plain meaning of their terms."

Although the first question raised in Opinion No. 2172, *supra*, is not on all fours with the question propounded here, the principles of law involved are the same.

In the former opinion, the question in substance was whether Section 3298-17, *supra*, made the trustees liable in case of the negligent operation of trucks or other road building machinery owned by the township and operated by employes of the

township, while in the present case the question involves the liability of township trustees in their official capacity for negligence in failing to provide proper barriers or signals to indicate the presence of road construction.

I am of the opinion that the discussion of the various statutes and principles of law set forth in my former opinion is entirely applicable here. Your attention is invited to the citation of authorities appearing on pages 2 and 3 and pages 5 to 10 inclusive, of said opinion, a copy of which is herewith enclosed.

In addition to the statutes referred to in the discussion in Opinion No. 2172 your attention is invited to the provisions of Section 7464 of the General Code, as amended in House Bill No. 67 (112 v. 496) and to Section 7467 of the General Code, by the terms of which the primary and absolute duty of maintaining township roads is placed on township trustees. These sections provide respectively as follows:

Sec. 7464. "The public highways of the state shall be divided into three classes, namely: State roads, county roads and township roads.

(a) State roads shall include the roads and highways on the state highway system.

(b) County roads shall include all roads which have been or may be established as a part of the county system of roads as provided for under Sections 6965, 6966 and 6968 of the General Code, which shall be known as the county highway system, and all such roads shall be maintained by the county commissioners.

(c) *Township roads shall include all public highways of the state other than state or county roads as hereinbefore defined, and the trustees of each township shall maintain all such roads within their respective townships;* and provided further, that the county commissioners shall have full power and authority to assist the township trustees in maintaining all such roads, but nothing herein shall prevent the township trustees from improving any road within their respective townships, except as otherwise provided in this act." (Italics the writer's).

Sec. 7467. "*The state, county and township shall each maintain their respective roads as designated in the classification hereinabove set forth; provided, however, that either the county or township may, by agreement between the county commissioners and township trustees, contribute to the repair and maintenance of the roads under the control of the other. The state, county or township or any two or more of them may by agreement expend any funds available for road construction, improvement or repair upon roads inside of a village or a village may expend any funds available for street improvement upon roads outside of the village and leading thereto.*" (Italics the writer's).

It will be noted that the discussion appearing in Opinion No. 2172, supra, to which your attention has been invited, refers to several sections of the law pertaining to the duties of township trustees in reference to improving township roads. Among these statutes is Section 3370, General Code, placing the control of township roads in township trustees and making it their duty to keep them in good repair, while Section 3298-1, of the General Code, authorizes the township trustees "to construct, reconstruct, resurface or improve any public road or roads or parts thereof under their jurisdiction." Whatever may be the nature of the work in improving township roads, as to its being construction, reconstruction, maintenance or repair, once the work is undertaken, the board of township trustees is acting in the discharge of its official duties.

In the light of the provisions of Section 3298-17, supra, and answering your question specifically, it is my opinion that where a road under the jurisdiction of a board of township trustees is being improved by such trustees, the board may become liable in its official capacity for damages received by any person when the proximate cause of the injury was the negligence of said board of trustees in failing to erect proper barriers or signals to warn travelers upon the highway of the presence of danger due to such construction work.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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3083.

APPROVAL, BONDS OF WOOD COUNTY—\$92,000.00.

COLUMBUS, OHIO, December 31, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

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3084.

COLUMBUS, OHIO, December 31, 1928.

APPROVAL, BONDS OF VILLAGE OF LEETONIA, COLUMBIANA COUNTY, OHIO—\$37,906.73.

*Industrial Commission of Ohio, Columbus, Ohio.*

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3085.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE WAPAKONETA CEMENT BLOCK COMPANY, WAPAKONETA, OHIO, FOR DRAINAGE OF BASIN, KNOWN AS BEAVER DITCH, NEAR CELINA, MERCER COUNTY, OHIO, AT AN EXPENDITURE OF \$10,131.06—SURETY BOND EXECUTED BY THE SOUTHERN SURETY COMPANY.

COLUMBUS, OHIO, December 31, 1928.