

OPINION NO. 67-007**Syllabus:**

A township may purchase liability insurance to cover volunteer firemen in the operation of their personal automobiles, while such operation is in behalf of the township, and in the course of its business.

To: Harry Friberg, Lucas County Pros. Atty., Toledo, Ohio
By: William B. Saxbe, Attorney General, January 12, 1967

Your request for my opinion reads as follows:

"I request an opinion concerning the following situation: May a township purchase liability insurance to cover volunteer firemen in the operation of their personal automobile, (a) while said volunteer fireman is proceeding to a fire from wherever he might be at the time of notice of fire, (b) while said volunteer fireman is returning from a fire to wherever he might desire to go.

"I would like to call your attention to the following pertinent Ohio Revised Code sections and Attorney General's Opinion: §9.83, §505.42,

§701.02; Attorney General's Opinion No. 1535, 7-7-60."

Section 9.83, Revised Code, provides that:

"The state and any political subdivision may procure a policy or policies of insurance insuring its officers and employees against liability on account of damages or injury to persons and property, including liability on account of death or accident 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 state or a political subdivision, while said vehicle is being used or operated in the course of the business of the state or the political subdivision."

Section 9.83, Revised Code, includes "township" within the category of political subdivisions, and Section 505.41, Revised Code, defines "volunteer fireman" as a township employee. Therefore, there would seem to be general statutory authority for the purchase by a township of liability insurance for its volunteer firemen.

Section 701.02, Revised Code, to which you have reference in the latter part of your letter, has been applied to townships by operation of Section 505.42, Revised Code, to which you also refer, which limits the application of Section 701.02, supra, only to the operation of firefighting equipment.

The clause limiting liability of municipal corporations appearing in Section 701.02, supra, reads:

* * * * *

"Firemen shall not be personally liable for damages for injury or loss to persons or property and for death caused while engaged in the operation of a motor vehicle in the performance of a governmental function.

* * * * *

Therefore the provision does not extend to township volunteer firemen who are driving their personal automobiles and as a result the general rules of agency are applicable.

Therefore, a township volunteer fireman, acting on behalf of the township, could be liable for injuries caused by negligence in operating an automobile on behalf of the township.

Since your question pertains to the personal automobile of the volunteer fireman, and Section 9.83, supra, seems to

restrict automobile liability insurance coverage to autos "owned or operated by the state or political subdivision," we must further consider Opinion No. 1535, Opinions of the Attorney General for 1960, page 481. Such opinion deals with the question of when motor vehicles are "operated" by a public agency and holds that such public agency (specifically a public library) is the operator of an auto--although such auto is privately owned by an employee--whenever the auto is being driven "in behalf of" the agency. See also Pappas v. Jeffery Manufacturing Co., 139 Ohio St. 637. The purchase of liability insurance is authorized in such a situation.

Therefore, I conclude that a township may purchase liability insurance to cover employees such as volunteer firemen in the operation of their personal automobiles, while such operation is in behalf of the political subdivision.

The wording of your question, however, impels me to add a caveat. The language of Section 9.83, supra, does not permit insuring a fireman's return from a fire "to wherever he might desire to go". It expressly limits insurance coverage to the "course of the business" of the state or the political subdivision. This would presumably include proceeding to a fire or to a place where a fire is believed to be in progress, returning the fire apparatus to the fire station, and other activity in behalf of the township. It would presumably exclude the subsequent personal errands of the firemen. The line to be drawn between the extremes would be left up to the trier of fact.

It is, therefore, my opinion and you are hereby advised as follows:

A township may purchase liability insurance to cover volunteer firemen in the operation of their personal automobiles, while such operation is in behalf of the township, and in the course of its business.