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A BOARD OF TOWNSHIP TRUSTEES STATUTORY LIABILITY IS LIMITED TO ROADS, ROAD MACHINERY AND EQUIPMENT. IT MAY ONLY PURCHASE INSURANCE COVERING THESE LIABILITIES — §§5571.10, R.C., 3298-17, G.C., OPINION 2498, OAG, 1950.

SYLLABUS:

The statutory liability of a board of township trustees under Section 5571.10, Revised Code, is limited to roads, road machinery, or equipment used with relation to roads, and does not extend to cemeteries or fire stations; thus, such a board is without authority to procure liability insurance with respect to its cemeteries and fire stations, but may obtain such insurance with regard to its roads.

Columbus, Ohio, August 11, 1962

Hon. Everett Burton, Prosecuting Attorney
Scioto County, Portsmouth, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“We have received a request from the Board of Township Trustees of Clay Township, Scioto County, Ohio, inquiring as to whether or not they have the authority to procure liability insurance with respect to the roads, cemeteries and fire stations in their township.

“In examining the statutes we find that although each township is a body politic and corporate and exercises such powers

as may be necessary in accordance therewith, what the powers of the township trustees are are limited to those created by the statute or as are necessarily implied therefrom.

“We have been unable to locate any specific authority either allowing or denying the trustees such power. Since this is a matter of general concern, we will appreciate your opinion with respect to this problem.”

Section 5571.10, Revised Code, formerly Section 3298-17, General Code, provides 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 such board in the discharge of its official duties.”

The above section was construed by one of my predecessors in Opinion No. 2498, Opinions of the Attorney General for 1950, page 730. The syllabus of that opinion reads as follows:

“1. Liability insurance may be purchased by the township trustees only where there is a statutory liability to be insured against.

“2. Section 3298-17, General Code, refers exclusively to the act of which it is a part.

“3. The statutory liability of the township trustees created by Section 3298-17, General Code, is limited to roads, road machinery or equipment used with relation to roads.”

The request prompting the 1950 opinion indicated that the township trustees proposed to procure liability insurance coverage on such property as township fire houses, cemeteries, and roads. As indicated by the syllabus in that opinion, my predecessor stated that liability insurance might not be taken out upon such property as fire houses and cemeteries because Section 5571.10, *supra*, is directed at township negligence in the construction, maintenance and repair of township roads. The 1950 opinion has been repeatedly followed by this office. See Opinion No. 3010, Opinions of the Attorney General for 1953, page 414; Opinion No. 5839, Opinions of the Attorney General for 1955, page 517; Opinion No. 7464, Opinions of the Attorney General for 1956, page 866; Opinion No. 179, Opinions of the Attorney General for 1957, page 41.

I have been unable to find any statute imposing tort liability upon the township trustees in their official capacity for negligence with respect

to cemeteries or fire stations. It follows, therefore, that a board of township trustees may not lawfully pay the premium on a policy of public liability insurance covering cemeteries or fire stations.

Since a board of township trustees is liable in its official capacity for damages resulting from negligence in the construction, maintenance and repair of township roads, it follows that the township trustees may lawfully pay the premium on a policy of public liability insurance covering such roads.

Accordingly, it is my opinion and you are advised that the statutory liability of a board of township trustees under Section 5571.10, Revised Code, is limited to roads, road machinery, or equipment used with relation to roads, and does not extend to cemeteries or fire stations; thus, such a board is without authority to procure liability insurance with respect to its cemeteries and fire stations, but may obtain such insurance with regard to its roads.

Respectfully,

MARK MCELROY

Attorney General