

1252

PUBLIC LIBRARY BOARDS—ARE NOT SUBJECT TO LIABILITY FOR CLAIMS ARISING IN TORT—THEREFORE HAVE NO AUTHORITY TO PURCHASE LIABILITY INSURANCE—§3375.33, R.C.

SYLLABUS:

The public library boards referred to in Section 3375.33, Revised Code, are not subject to liability for claims arising in tort and, therefore, have no authority to purchase liability insurance as to such claims.

Hon. Robert O. Stout, Prosecuting Attorney
Marion County, Marion, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

“Could you please render your opinion upon the following factual situation and the queries set forth.

“Our Marion Public Library was established many years ago under the laws then existing. Said Library is not a school library, although at the time the library was established, the law provided for the appointment of the trustees by the Board of Education. This practice has continued to the present, the present trustees being appointed by our Marion City Board of Education. The Library derives its revenue from the classified property tax. Our query concerns the purchase of public liability insurance.

“The present statutes covering libraries provide that the trustees or association are as a body corporate or politic, capable of suing and being sued. The law further provides that said association may purchase liability insurance covering motor vehicles operated by the employees of the library.

“A search of the statutes reveals no authority for the purchase of ordinary public liability insurance. We find little or no law in the statutes, or Ohio Jurisprudence covering the liability of the Board of Trustees or such an association as respects ordinary negligence and torts.

“Could you please advise whether or not said trustees are liable individually, or as a corporate body, for the ordinary negligence of their employees or any tort occasion in connection with the property maintained by them. Secondly, whether or not the trustees have any authority to purchase public liability insurance.”

As suggested in your letter, the authority of a library board to purchase liability insurance must depend on whether or not there is any liability on the part of said board from which it is to be protected. If there is no liability, there can be no justification for an expenditure of public funds for the purchase of insurance as such insurance would be of no value.

While, from the information in your letter, it is not possible to determine with certainty under what authority the Marion Public Library is operated, it appears that it is one of the types of libraries mentioned in Section 3375.33, Revised Code.

Section 3375.33, Revised Code, reads as follows :

“The boards of library trustees appointed pursuant to sections 3375.06, 3375.10, 3375.12, 3375.15, 3375.22, and 3375.30 of the Revised Code are bodies politic and corporate, and as such are capable of suing and being sued, contracting, acquiring, holding, possessing, and disposing of real and personal property, and of exercising such other powers and privileges as are conferred upon them by law.”

In the case of *Miller v. Akron Public Library, et al.*, 60 Ohio Law Abs., 364, the court determined the meaning of the phrase “bodies politic and corporate” as used in the then existing Section 7628, General Code, which is now Section 3375.33, Revised Code, beginning on page 369, as follows :

“Under Sec. 7628 GC the legislature, as stated before, made all the various library boards bodies politic and corporate, and as

such capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and of exercising such other powers and privileges as are conferred upon them by law.

“In the court’s opinion this made them separate and distinct entities or bodies politic and corporate, separate and apart from the municipality, the county, the school board, etc., and not agents of said bodies politic.”

In accordance with the above quotation it appears that all library boards are separate entities.

In the case of *Dunn v. Agricultural Society*, 46 Ohio St., 93, it is stated, beginning at page 96:

“There is a class of public corporations, sometimes called civil corporations, and sometimes quasi corporations, that, by the well settled and generally accepted adjudications of the courts, are not liable to a private action in damages, for negligence in the performance of their public duties, except when made so by the legislative enactment.

“Of this class, are counties, townships, school districts and the like. The reason for such exemption from liability, is that organizations of the kind referred to are mere territorial and political divisions of the state, established exclusively for public purposes, connected with the administration of local government. They are involuntary corporations, because created by the state, without the solicitation, or even consent, of the people within their boundaries, and made depositaries of limited political and governmental functions, to be exercised for the public good, in behalf of the state, and not for themselves.”

Because public library boards are separate instrumentalities established pursuant to statute, it follows that such boards are not liable in tort unless they are made so liable by legislative enactment.

While Section 3375.33, Revised Code, as above quoted indicates that such boards are capable of “suing and being sued”, I call your attention to the case of *Wolf v. Ohio State University Hospital, et al.*, 170 Ohio St., 49, decided on November 12, 1959.

In that case the plaintiff sued the Board of Trustees of Ohio State University for damages caused by the alleged negligence on the part of the Board’s servants in administering to her an antitoxin to which she was allergic. The defendant had filed a demurrer which was sustained in the common pleas court. The court of appeals upheld the lower court.

Section 3335.03, Revised Code, in effect at the time of the *Wolf* case, *supra*, said:

“The trustees and their successors in office shall be styled the ‘board of trustees of the Ohio state university,’ with the right as such, of suing and being sued, of contracting and being contracted with, of making and using a common seal, and altering it at pleasure.”

Article I, Section 16 of the Ohio Constitution reads in part as follows:

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

The court said beginning at page 51 in the *Wolf* case:

“The above-quoted statute was enacted in the year 1870. The constitutional provision was not adopted until 1912. Hence, the statute obviously was not enacted pursuant to the constitutional provision, and, according to its own terms, the latter is not self-executing. *Raudabaugh v. State*, 96 Ohio St., 513, 118 N.E., 102.

“In the syllabus in the case of *Overholser v. National Home for Disabled Volunteer Soldiers*, 68 Ohio St., 236, 67 N.E., 487, 96 Am. St. Rep., 658, 62 L.R.A., 936, this court held:

‘1. The National Home for Disabled Volunteer Soldiers is a corporation created by Congress for the purpose of performing an appropriate and constitutional function of the federal government, and for national purposes only; and as such it is a part of the government of the United States, and cannot be sued in an action sounding in tort.

‘2. The grant of power to sue and be sued at law and in equity applies to such matters only as are within the scope of the other corporate powers of the defendant, and it does not authorize such corporation to be sued for a tort.’”

The court went on with other citations of authority and concluded on page 53 as follows:

“Consistent with the foregoing views, this court finds no error in the action of the lower courts in sustaining the demurrer to the plaintiff’s petition. If the law of Ohio is to be changed to authorize tort actions against the state, this important question of legislative policy must be determined by the General Assembly acting under the thus far unused constitutional legislative power vested in it by the people approximately half a century ago.

“The judgment of the Court of Appeals is affirmed.”

I can see no difference in the powers granted to public library boards by Section 3375.33, Revised Code, from those granted to the Board of Trustees of Ohio State University in Section 3335.03, Revised Code, save the date of enactment. (Section 3375.33, Revised Code, was enacted subsequent to 1912.)

In accordance with the rule set forth in the *Wolf* case *supra*, I am of the opinion that the legislature has not authorized tort actions to be brought against public library boards.

As to Section 3375.401, Revised Code, which authorizes the purchase of certain insurance by public library boards, it is to be noted that said section does not authorize the purchase of such insurance to protect the board, but says:

“Each board of library trustees appointed pursuant to sections 1713.28, 3375.06, 3375.10, 3375.12, 3375.15 and 3375.22 of the Revised Code may procure policies of insurance insuring officers and employees of the library against liability on account of damage or injury to persons and property, including liability on account of death by wrongful act, occasioned by the operation of a motor vehicle owned or operated by said library.”

This section authorizes the insuring of officers and employees, and therefore cannot be interpreted as being an acknowledgment of liability as to the board.

It is, therefore, my opinion and you are advised that the public library boards referred to in Section 3375.33, Revised Code, are not subject to liability for claims arising in tort and, therefore, have no authority to purchase liability insurance as to such claims.

Respectfully,

MARK McELROY

Attorney General