

In an opinion reported in Opinions of the Attorney General for 1929, Vol. II, page 1013, it was held as disclosed by the second branch of the syllabus:

“By reason of the liability created by Section 3298-17 of the General Code in cases where boards of township trustees are negligent in the performance of their duties in connection with roads, such boards may lawfully protect themselves against damages by means of insurance.”

In Opinions of the Attorney General for 1931, Vol. I, page 303, it was held as disclosed by the syllabus:

“By reason of the liability created by Section 3298-17, General Code, boards of township trustees may lawfully protect themselves against liability for damages by procuring liability or property damage insurance upon township owned motor vehicles and road building machinery while such vehicles and machinery are being operated in furtherance of the official duties of said trustees.”

If it were not for the liability of the township trustees under section 3298-17, General Code, an expenditure of public funds for liability insurance would be unauthorized. The two opinions just cited are therefore relevant to your question.

In your letter you do not state that the township trustees or their employes were negligent in the operation of the traction engine in question. It is clear that section 3298-17, General Code, does not impose liability without fault upon the township. This section uses the words “by reason of the negligence or carelessness of said board of trustees.” Before liability may attach to the township, it must be shown that the township trustees or their employes were negligent in the operation of such traction engine. The fact that the engine was moving along a county road, from one maintenance job to another, does not alter the conclusion reached in this opinion. The engine was in charge of employes of the township trustees and was being used in the maintenance of township roads, and was actually being conveyed from one maintenance job to another.

I am of the opinion therefore that the trustees of a township are liable in their official capacity for damages resulting from the negligent operation of road repair machinery owned by the township.

Respectfully,

JOHN W. BRICKER,
Attorney General.

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APPROVAL, NOTES OF RANDOLPH TOWNSHIP RURAL SCHOOL DISTRICT, MONTGOMERY COUNTY, OHIO—\$5,000.00.

COLUMBUS, OHIO, May 10, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.