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INSURANCE, PUBLIC LIABILITY—COUNTY COMMISSIONERS, BOARD OF—MAY NOT LEGALLY EXPEND PUBLIC FUNDS TO PAY INSURANCE PREMIUMS, PUBLIC LIABILITY INSURANCE—PURPOSE TO INSURE COUNTY AGAINST LIABILITY FOR DAMAGES AND INJURIES TO PERSONS, IN ATTENDANCE PRIVATELY PROMOTED EVENTS, COUNTY MEMORIAL BUILDING — MEETINGS, ORGANIZATION WHICH OCCUPIES SPACE IN MEMORIAL BUILDING.

SYLLABUS:

A board of county commissioners may not legally expend public funds to pay premiums upon policies of public liability insurance insuring the county against liability for damages and injuries sustained by persons attending privately promoted events taking place in a Memorial Building of the county or while attending meetings of an organization occupying space in the Memorial Building.

Columbus, Ohio, April 2, 1943.

Hon. Paul T. Landis, Prosecuting Attorney,
Lima, Ohio.

Dear Sir:

I am in receipt of a letter from your office requesting my opinion as follows:

"Allen County is the owner of a Memorial Hall building located in the city of Lima, Ohio. The management and operation of this building is handled by the Allen County Commissioners. The Allen County Commissioners have leased the main auditorium of this building under written lease to an individual who promotes boxing and wrestling matches in Memorial Hall on Tuesday evening of every week. Under the terms of this lease the commissioners receive a stipulated rental. Bleachers are set up in the auditorium and admissions charged by the promoter of these boxing and wrestling events who, of course, operates the enterprise at a profit. In addition, there are various organizations in Allen County, other than military organizations, who have arranged with the commissioners for regular use of Memorial Hall for a stipulated rental.

The Allen County Commissioners have been carrying public liability insurance on this hall to protect against claims for injuries to persons sustained while in the premises, including any claims for damages from personal injuries sustained by persons while attending these events for which they have paid admission, or while attending meetings of organizations who rent space in the hall. This policy of liability insurance is now up for renewal and the question arises as to whether the expenditure of the money necessary to pay the premium on this policy of public liability insurance is a legitimate expenditure of public funds, or whether there is, in fact, no liability on the part of Allen County, or the Allen County Commissioners, for damages and injuries sustained by persons attending these privately promoted events in Memorial Hall, thereby making such insurance unnecessary.

We request your formal opinion as to whether it is proper for the Allen County Commissioners to make expenditure of county funds to pay premiums upon policies of public liability insurance to protect the county against liability for damages and injuries sustained by persons attending privately promoted events operated for profit under lease with the Allen County Commissioners in the Memorial Hall at Lima, Ohio, or while attending meetings of private organizations occupying space in said Memorial Hall under rental agreements with the Allen County Commissioners."

As is suggested in the letter, the real question for determination is whether the board of county commissioners would be liable for damages and injuries sustained by persons attending the various events which are performed in the Memorial Building. This question, I believe, must be answered in the negative.

The syllabus of the case of Commissioners of Hamilton County v. Mighels, 7 O. S., 109, reads as follows:

> "The board of commissioners of a county are not liable, in their *quasi* corporate capacity, either by statute or at common law, to an action for damages for injury resulting to a private party by their negligence in the discharge of their official functions. The Commissioners of Brown County v. Butt, 2 Ohio, 348, overruled."

This case has been consistently and repeatedly followed by the Supreme Court in many subsequent decisions and it may be regarded as a settled rule in this state that, in the absence of a statute creating liability, a board of county commissioners in its official capacity is not liable on account of damage caused by the negligence of the board in carrying out its official duties. Some of these decisions are Grimwood v. Commissioners of Summit County, 23 O. S., 600; Commissioners of Morgan County v. Marietta Transfer Company, 75 O. S., 244, and Commissioners of Franklin County v. Darst, 96 O. S., 163.

The reason for this rule of non-liability on the part of the board of county commissioners is well stated by Williams, J., in Dunn v. Agricultural Society, 46 O. S., 93, 96, 97:

> "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 legislative enactment.
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> 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. They are no less than public agencies of the state, invested by it, of its own sovereign will, with their particular powers, to assist in the conduct of local administration, and execute its general policy, with no power to decline the functions devolved upon them, or withhold the performance of them in the mode prescribed, and hence, are clothed with the same immunity from liability as the state itself."

Although in some states it has been held that a county may exercise private or proprietary functions and thereby become liable for negligence in carrying on such functions (see annotation in 101 A. L. R., 1166), I

believe that such is not the law of Ohio in view of the pronouncements of our Supreme Court. In other words, every function carried on by a board of county commissioners must be considered as governmental in its nature.

If a board of county commissioners is not liable in its official capacity for its own negligence, *a fortiori,* it is not liable for damages suffered by persons on account of the negligence of its lessees.

Since the board of county commissioners cannot be liable, there is nothing in this respect for the board to insure against. The payment of a premium on account of such insurance, if procured by the board, would be tantamount to a gift of public funds to the insurance company. The statement of such a proposition demonstrates its illegality.

You are therefore advised, in specific answer to the question, that a board of county commissioners may not legally expend public funds to pay premiums upon policies of public liability insurance insuring the county against liability for damages and injuries sustained by persons attending privately promoted events taking place in a Memorial Building of the county or while attending meetings of an organization occupying space in the Memorial Building.

Respectfully,

THOMAS J. HERBERT,
Attorney General.