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March 13, 2014

PERSONAL & CONFIDENTIAL
Mr. Thomas L. Judy
Executive Director
Miami Valley Risk Management
4625 Presidential Way
Kettering, Ohio 45429

Re: Inquiry on Recreational Immunity
SD&T No. 2289.001

Dear Tom:

This letter is a response to your inquiry about the availability of recreational user immunity to member cities under circumstances where the city permits an outside organization to conduct a race/fun run such as 5K in a city park. It is my understanding that some of the members allow an outside organization to conduct these events, and that the city does not charge the outside organization a fee for this purpose. However, the outside organization may charge the participants an entry fee to participate in the event. Based upon my research, it is my considered opinion that the city would retain its immunity under the recreational user statute.

On August 9, 2005, Bob Surdyk provided a letter to Craig Blair addressing a similar situation, although not identical to the facts that you have presented. In that prior correspondence, Bob discussed *Pippin v. M. A. Houser Enterprises, Inc.*, 111 Ohio App. 3D 557 issued by the Sixth Ohio Appellate District. In that case, Mr. Pippin paid a $450 sponsor fee to the City of Toledo for purposes of permitting a company softball team to participate in a city softball league. While playing softball, Mr. Pippin broke his leg while sliding into second base. He subsequently sued the city alleging that it had negligently maintained the ball field. Pippin argued that since he was required to pay a sponsor fee to the city, the recreational user statute was inapplicable. The Court of Appeals disagreed and distinguished a sponsorship fee paid by the team from an entrance fee paid by an individual. The court concluded that the fee in question was a sponsor's fee that permitted C&C Painting Team to join a league. The fee was not required for any specific team member to make use of the park's recreational facilities. The court also relied upon two earlier appellate decisions to support its decision that the payment of a fee by a team sponsor to a municipality does not affect the status of individual members as that team as "recreational users." *See Dinarda v. Louisville* (July 15, 1991), unreported, (Fifth Dist. 1991) WL136101; *Dowdell v. East Lake* (August 10, 1990), (Eleventh Dist. 1990) WL117083.

The *Pippin* court also recognized that the Cuyahoga County Court of Appeals had reached an opposite conclusion in *Nowak v. Ries* (December 19, 1991), unreported 1991 WL271353. The *Nowak* court concluded that the payment of the sponsorship fee removed the city's recreational user immunity defense. The Supreme Court of Ohio has not addressed this issue so it does remain somewhat in dispute at the present time. However, the *Nowak* decision appears to be an aberration as no other appellate district has followed its rationale since the decision was issued in 1991. The weight of authority supports retention of the recreational user immunity under circumstances where a sponsorship fee has been paid.

I also believe that the factual scenario that was presented would provide an even stronger basis for retaining recreational user immunity. In *Pippin*, a sponsorship fee was paid to the city by some entity. You have indicated to me that the members do not charge the outside organization fee for use of the park so the city is not receiving any revenue whatsoever. The outside organization may require that a participant pay an entry fee to run in the race; however, that fee does not go to the city nor does the city require it. From the city's perspective, an individual is still free to enter into the park, without payment of a fee to engage in recreational pursuits. The decision to separately enter into an agreement to pay a participant fee to join the race should not impact the city's entitlement to immunity.

Very truly yours,

SURDYK, DOWD & TURNER CO., L.P.A.

Edward J. Dowd

EJD/mw