

3673.

INSURANCE—BOARD OF EDUCATION UNAUTHORIZED TO ENTER INTO CONTRACT OF INSURANCE ON SCHOOL BUS WHICH DOES NOT PROVIDE COMPENSATION FOR INJURY OR DEATH OF PUPIL CAUSED BY SCHOOL BUS ACCIDENT.

SYLLABUS:

Unless a contract of insurance entered into by a board of education provides for compensation for injury or death to any school pupil caused by any accident arising out of or in connection with the operation of a school bus or other vehicle used in the transportation of school children, it is not such a contract as a board of education is authorized to enter into by favor of Section 7731-5, General Code.

COLUMBUS, OHIO, December 20, 1934.

HON. ALVIN F. WEICHEL, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion concerning a certain proposed contract for insurance which one of the boards of education in Erie County has under consideration. Enclosed with your communication is a copy of the proposed policy of insurance. The specific question submitted by you with reference thereto, is as follows:

“Will you kindly advise whether the enclosed policy is the coverage contemplated in Section 7731-5 of the General Code of Ohio, and your opinion thereunder No. 1438 given in 1933?”

The policy enclosed is policy No. 550739, which may be described as “Combination Automobile Policy—Optional Full Coverage Form” issued by Gulf Insurance Company of Dallas, Texas and Atlantic Insurance Company of Dallas, Texas. The policy states:

“This combination automobile insurance is issued severally by the GULF INSURANCE COMPANY and ATLANTIC INSURANCE COMPANY, subject to the printed conditions of the policies and to any special conditions contained in or endorsed upon the policy and also subject to the following Declarations and Warranties;”

Here follows a series of declarations and warranties among which are the names and addresses of the assured which are stated thus:

“NAME OF ASSURED, Board of Education Margaretta Rural Schools, and/or Lewis Karbler, and/or S. E. Mantey, and/or Elmer Borchardt, and/or Fred Brunner, and/or C. J. Parker, and/or Wm. Spada, and/or John Hartman, and/or Edw. Mitchell, and/or Wm. Rohrbacher, and/or Elmer White, and/or Emil Gimm, and/or J. B. Miller and/or any substitute driver.”

“ADDRESS OF ASSURED, Castalia, Margaretta Twp., Erie County, Ohio.”

The term of the policy corresponds to the school year of 1934-1935.

The assured's occupation is stated as, "School Bus Driver employed by Board of Education."

It is stated in the said policy of insurance that the automobiles which the policy purports to cover, will be used for school bus purposes, and that they are definitely identified by "Year Model, Trade Name, Type of Body, Year Purchased, and Motor and Serial Numbers."

Under the heading "Schedule of Coverages" appears the following:

"Part 2—Perils: Atlantic Insurance Co.; No. 7. Public Liability, for Bodily Injuries or Death as defined in Paragraph O, page 3.—Limit of Liability—Limit One Person \$5,000—Limit One Accident \$100,000.

No. 8. Property Damage Liability, as defined in Paragraph P., page 3—Limit One Accident \$5,000."

The Paragraph "O," page 3 referred to above, under No. 7 reads as follows:

"Public Liability: To insure the Assured against loss from the liability imposed upon him by law for bodily injury, including death at any time resulting therefrom (herein called 'Public Liability') accidentally sustained by any person or persons, if caused by the ownership, maintenance or use of the automobile described in the Schedule of Warranties, on Page One of this policy, for the purpose therein stated. The Company's limit of liability, regardless of the number of Assured, as respects each automobile described, for bodily injury to or death of one person, shall be as first set forth in Peril 7 of the Schedule of Coverages on Page One of this policy, and, subject to that limit for each person, its total liability on account of any one accident resulting in bodily injury to or death of more than one person, shall be as second set forth in such Peril."

"Paragraph 'P', page 3," referred to above, under No. 8, reads as follows:

"Property Damage Liability: To insure the Assured against loss from the liability imposed upon him by law for accidental injury to or destruction of the property of others, including the loss of use thereof (herein called 'Property Damage') if caused by the ownership, maintenance or use of the automobile described in the Schedule of Warranties, on Page One of this policy, for the purpose therein stated. The Company's limit of liability, regardless of the number of Assured, as respects each automobile described, for any one accident resulting in property damage, including loss of use, shall be as stated in Peril 8 of the Schedule of Coverages on Page One of this policy."

Under the heading "Exclusions" in said policy, the following material recital appears:

"Unless otherwise provided by agreement in writing added hereto, this Company will not be liable for loss or damage:

* * * * *

(e) Under agreements O and P for any liability assumed by the Assured under any oral or written contract or agreement;"

Under "General Conditions" in said policy it is stated:

"2. Determination of Company's Liability: No recovery against the Company shall be had under this policy until the amount of loss or expense shall have been determined, either by final judgment against the Assured after actual trial in an action defended by the Company or by a written agreement of the Assured, the claimant, and the Company, nor in either event unless suit is instituted within the time herein limited."

"General Conditions" No. 13 reads as follows:

"This policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy the Assured agrees that its terms embody all agreements then existing between himself and this Company, or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to alter or waive any of the terms of this policy unless such alteration or waiver be made by endorsement attached hereto signed by the President, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so endorsed. This policy shall be void in event of violation by Assured of any agreement, condition or warranty contained herein or in any endorsement now or hereafter attached hereto."

There are a number of other statements, declarations, warranties, exclusions and conditions contained in the said policy but those referred to are all and the only ones material to the determination of the question before us. In addition to those mentioned is a typewritten endorsement attached to the policy which, however, is not signed by the president of the insurance company involved, but by some person as "representative." This endorsement contains nothing that in any way extends or creates a liability upon the company beyond a "loss" to the assured "from any liability imposed upon him by law" for bodily injury or death of any person injured on account of the operation of the automobile or automobiles covered by the policy or for accidental injury to or destruction of property resulting from a similar cause as provided by paragraph "O" and "P" referred to above, nor does it in any wise modify or limit the provision of the policy to the effect that no recovery shall be had thereunder, until the amount of the loss or expense shall have been determined either by final judgment against the assured or by written agreement of the company.

Obviously, nothing can be collected under this policy until there is a loss to the assured on account of a liability imposed upon him by law, of such a nature that judgment could be procured against him in a court of law.

It is well settled in this state that no legal liability for damages rests upon a board of education as a result of injuries to school pupils and no recovery can be had from the board on account of such injuries, regardless of how they may have been sustained. *Board of Education vs. McHenry, Jr.*, 106 O. S. 357; *Conrad vs. Board of Education*, 29 O. App., 317. While there have been no reported cases in this state involving injuries to pupils growing out of accidents which may have occurred while transporting pupils to and from school, the principles involved in the McHenry case and others of like import, would clearly apply. A number of cases in other states have so held. *Harris vs. Salem School District*, 72 N. H., 424; *Allen vs. Ind. School District*, 216 N. W., 533 (Minn.).

The driver of a school bus is, of course, liable for his negligence, and if an

accident occurs which may be attributed to the negligence of a school bus driver while operating a school bus, any person damaged thereby, either by reason of injury to his person or property, or on account of the death of another, as a direct and proximate result of the said negligence, recovery may be had against the driver for said damages, unless recovery is precluded by reason of the contributory negligence of the person injured or his decedent, as the case may be.

The insurance effected by the policy in question, is nothing more than insurance against accidents resulting from the negligence of the assured school bus drivers under such conditions that judgment might be procured by the person injured, against the said driver and the driver thereby suffer "loss" within the terms of the policy.

Section 7731-5, General Code, reads as follows:

"The board of education of each school district may procure liability and property damage insurance covering each school wagon or motor van and all pupils transported under the authority of such board of education. This insurance shall be procured from a recognized insurance company authorized to do business of this character in the state of Ohio, and shall include compensation for injury or death to any pupil caused by any accident arising out of or in connection with the operation of such school wagon, motor van or other vehicle used in the transportation of school children. The amount of liability insurance carried on account of any school wagon or motor van shall not exceed one hundred thousand dollars."

It seems clear from the terms of the above statute that unless a policy of insurance provides for compensation for injury or death to any pupil caused by any accident arising out of, or in connection with the operation of a school bus, as well as insurance against the negligence of school bus drivers it is not such a contract of insurance as a board of education is authorized by favor of the above statute, to enter into.

It is equally clear, upon consideration of the terms of the policy submitted with your inquiry, that this policy does not provide for compensation for injury or death to any pupil caused by *any* accident arising out of or in connection with the operation of the school busses described in the policy. It provides merely for insurance against the negligence of the school bus drivers or, to be more specific, insurance against any loss which these drivers may suffer by reason of any accident.

In my opinion No. 1438 rendered under date of August 25, 1933, which opinion will be found in the published Opinions of the Attorney General for 1933, at page 1310, it was held with respect to said Section 7731-5, General Code:

"Said section contemplates what is commonly known as accident insurance as well as liability insurance."

In the course of the opinion, after quoting that part of the statute which provides that the insurance that may be effected by favor of such statute shall include compensation for injury or death to any pupil caused by any accident arising out of or in connection with the operation of a conveyance used for the transportation of school children, it is said:

"This sentence contemplates something besides liability insurance,

otherwise it would have been unnecessary to insert this provision as the language of the first sentence of the act is sufficient to authorize liability insurance. This provision does not limit the insurance to cover injuries or death resulting from the negligence of the board but provides that it 'shall include compensation for injury or death to any pupil caused by any accident arising out of or in connection with the operation of such school wagon,' etc. In my opinion, the language used shows the intention to provide that there shall be included in every policy issued under the authority of this statute provision for compensation for such injury or death, regardless of whether the accident was caused by the negligence of the board and regardless of the freedom from negligence on the part of the pupil injured or killed."

I am therefore of the opinion in specific answer to your question that, the policy submitted, does not provide for such insurance as is contemplated by Section 7731-5, General Code.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

3674.

FORM OF BOND OF AGENT FOR THE SALE OF PRE-PAID SALES
 TAX RECEIPTS DRAFTED AND SUBMITTED.

COLUMBUS, OHIO, December 20, 1934.

HON. HARRY S. DAY, *Treasurer of State, Columbus, Ohio*

DEAR SIR:—This acknowledges receipt of a recent communication over the signature of your assistant, Ray Martin, which communication reads as follows:

"Section 7 of Amended House Bill 134 (Sales Tax) provides for the appointment by the Treasurer of State of agents for the purpose of selling Prepaid Tax Receipts and such agents are required to furnish bond or other security.

We would appreciate receiving from you a form of bond which we shall require such agent to furnish before receiving appointment under this act."

Section 7 of Amended House Bill No. 134, passed at the second special session of the 90th General Assembly, reads in so far as pertinent here:

"All prepaid tax receipts procured by the commission (tax commission) shall be immediately delivered to the treasurer of state, who shall execute duplicate receipts therefor, showing the number of and aggregate face value of each denomination received by him, and deliver such receipt to the commission and a duplicate thereof to the auditor of state. The treasurer of state shall be accountable for all prepaid tax receipts