

## OPINION NO. 71-028

**Syllabus:**

1. In the absence of statutory authority, a board of education has no power to purchase insurance for a liability arising out of risks other than certain ones pertaining to the operation of motor vehicles.

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To: Vincent E. Gilmartin, Mahoning County Pros. Atty., Youngstown, Ohio  
By: William J. Brown, Attorney General, June 4, 1971

You have requested my opinion concerning the following question:

"A request has been received in this office from the Jackson-Milton Board of Education relative to the

propriety of expending Local School District funds for liability insurance of individual board of education members."

Your request apparently refers to the propriety of expending school district funds for the payment of premiums for general liability insurance for the benefit of board of education members. Three statutes bear on this problem. Section 9.83, Revised Code, authorizes the purchase of automobile liability insurance; Section 3327.09, Revised Code, authorizes the purchase of liability insurance protecting school pupils transported under board of education action; and Section 3313.201, Revised Code, authorizes liability insurance respecting driver education programs.

The types of insurance available for purchase by a board of education have been considered by my predecessors.

Opinion No. 1214, Opinions of the Attorney General for 1952, after reviewing a number of cases in which it was held that a board of education is generally immune from suit, sets forth the following conclusion at page 194:

"In view of these decisions, we must regard the law as well settled in Ohio that, in the absence of statute imposing such, no liability exists on the part of the board of education, in its corporate capacity, with respect to personal injuries or property losses sustained by reason of negligence of such board either in the construction and operation of school buildings or in the conduct of courses of instruction prescribed by such board. In the absence of such liability, it is clear that there is no eventuality against which the board may properly insure itself, and it must necessarily follow, as a general rule, that the expenditure of public funds in payment of the cost of insurance or purported insurance of the so-called liability type in such instances is not authorized by law."

Shortly after the passage of Section 3313.201, supra, effective August 31, 1955, one of my predecessors considered the relationship between it and Section 3327.09, supra. Opinion No. 7245, Opinions of the Attorney General for 1956, page 753, contains the following:

"It may be noted that it has repeatedly been held by this department that public officers and boards are not authorized to expend public funds for liability insurance where no liability can exist. See Opinion No. 5949, Opinions of the Attorney General for 1943, page 181; No. 2128, for 1947, page 431, and No. 2498, for 1950, page 730.

"One thing is clear, viz., that the statute did not undertake to authorize a board of education to protect officers or employees of the board, by insurance, from personal liability."

In discussing the import of Section 3313.201, supra, it was concluded that a board of education was authorized to obtain liability insurance only for those risks arising out of the operation of motor vehicles owned or operated by the school district and used in driver education programs.

Again, in 1962, a question arose whether a board of education could legally buy liability insurance. In Opinion No. 3138, Opinions of the Attorney General for 1962, it was held that the power to purchase liability insurance by a board of education was limited to the types enumerated in Sections 9.83, 3313.201 and 3327.09, supra. Referring to those three Sections, it was stated, at page 541:

"You will observe that the above statutes refer to liability arising out of the operation of motor vehicles. I have been unable to find any statutory authority for boards of education to purchase insurance covering liability for damages to persons injured while on school property, whether as a member of a group using such property or otherwise. In the absence of such authority, I must conclude that boards of education have no power to carry liability insurance covering damages to persons injured while on school property.

"My conclusion is strengthened by the fact that boards of education are not liable in tort for such damages, and therefore would not need such insurance."

Nothing has appeared in the interim indicating a need to reconsider the doctrine followed by my predecessors in this area. I, therefore, concur in the expressions quoted above.

In specific answer to your question, it is my opinion and you are hereby advised that in the absence of statutory authority, a board of education has no power to purchase insurance for a liability arising out of risks other than certain ones pertaining to the operation of motor vehicles.