

OPINION NO. 72-078**Syllabus:**

Under Section 3313.201, Revised Code, a board of education has the power to purchase liability insurance on driver education vehicles which are leased or donated to such board but not owned by it, as well as on those which the board owns.

To: Joseph T. Ferguson, Auditor of State, Office of Auditor of State, Columbus, Ohio

By: William J. Brown, Attorney General, August 29, 1972

I have before me your request for my opinion, which reads as follows:

"Our school section has had occasion over the past few years to advise Boards of Education that under Section 3313.201, Revised Code, they may not directly pay the cost of insurance on driver education vehicles which are leased or on loan but may pay such cost indirectly if it is included in the lease or rental cost of vehicles.

"As more and more Boards of Education are using vehicles which are leased or donated, we respectfully ask for your consideration and opinion on the following question:

"May a Board of Education pay insurance costs, directly or indirectly, for liability coverage on driver education vehicles which are leased or donated to the Boards of Education, title remaining with the donor?"

Section 3313.201, Revised Code, reads as follows:

"The board of education of any school district may procure a policy or policies of insurance insuring officers, employees and pupils of the school district against liability on account of damage, or injury to persons and property, including collision, medical payments and comprehensive insurance on vehicles operated under a course in drivers education certified by the state department of education and including liability on account of death or accident by wrongful act, occasioned by the operation of a motor vehicle, motor vehicles with

auxiliary equipment, or all self-propelling equipment or trailers owned or operated by the school district. Whenever the board deems it necessary to procure such insurance, it shall adopt a resolution setting forth the amount of insurance to be purchased, the necessity thereof, together with a statement of the estimated premium cost thereon, and upon adoption of said resolution the board may purchase said insurance. The premiums for such insurance shall be paid out of the general fund." (Emphasis added.)

In the absence of specific statutory authority, a board of education is not authorized to purchase liability insurance, because it is already protected from liability by the doctrine of sovereign immunity. The syllabus of my Opinion No. 71-028, Opinions of the Attorney General for 1971, reads as follows:

"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."

Among the "certain risks" mentioned in that Opinion are those respecting driver education programs, under Section 3313.201.

Your question goes to the scope of that Section, which requires that the vehicle be "owned or operated by the school district." The question is whether a vehicle leased or donated to the board of education, which does not qualify as "owned" by such board, qualifies as "operated" by it.

In Opinion No. 1535, Opinions of the Attorney General for 1960, my predecessor answered a quite similar question. He construed Section 3375.401, Revised Code, which authorizes a board of library trustees to insure its officers and employees from liability "occasioned by the operation of a motor vehicle owned or operated by said library." He advised that such insurance could cover a vehicle owned by the officer or employee rather than the board, "when being driven for or on behalf of the library." My predecessor reasoned as follows:

"The motor vehicles used on library business in the instant case are not owned by the library. Section 3375.401, *supra*, provides that such motor vehicles must be owned or operated by the library. The question then is whether the motor vehicles in the instant case are 'operated' by the library so as to justify the expenditure of public funds for the purchase of insurance. In Pappas v. The Jeffrey Manufacturing Co., 139 Ohio St., 637 at page 640 the Court said:

"A corporation can be the operator of a motor vehicle only by and through its agent or employee. If the automobile being driven by Wilson, the defendant's employee, were owned by the defendant corporation, it properly could be considered the operator as well as the owner of the automobile. When the automobile was being driven by Wilson for and on behalf of the corporation, as is conceded, it was the operator thereof, even though Wilson was the owner.* * *

In accordance with the rule set forth in the Pappas case, supra, I am of the opinion that when motor vehicles are being driven by officers and employees of the library for and on behalf of the library, such library is the operator thereof, even though the officers and employees are the owners of such motor vehicles.* * *

On the basis of this reasoning, I conclude that the motor vehicles in question are "operated" by the board of education, and therefore may be insured by it under Section 3313.201. This construction conforms with the evident purpose of the Section, which is to allow a board to insure all of its officers, employees and students involved in drivers education courses from potential liability from accidents which occur during the behind-the-wheel training. Their potential liability is the same whether or not the board owns the vehicle. I can see no reason why the legislature would authorize such insurance only if the vehicle is owned by the board. See also Opinion No. 72-007, Opinions of the Attorney General for 1972.

In specific answer to your question it is my opinion, and you are so advised, that under Section 3313.201, Revised Code, a board of education has the power to purchase liability insurance on driver education vehicles which are leased or donated to such board but not owned by it, as well as on those which the board owns.