

authorized in the premises. I likewise find that this lease and the provisions thereof are in proper form.

The lease is accompanied by contract encumbrance record No. 20 which has been executed in proper form and which shows that there are unencumbered balances in the appropriation account sufficient in amount to pay the monthly rentals under this lease for February, March, April, May and June, 1938. This is a sufficient compliance with the provisions of Section 2288-2, General Code. This lease is accordingly approved by me and the same is herewith returned to you.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2439.

BOARD OF EDUCATION—NO AUTHORITY TO ENTER INTO
CONTRACT OF GROUP INSURANCE FOR EMPLOYES—
TEACHERS—SCHOOL BOARD.

SYLLABUS:

A board of education has no authority to enter into a contract of group insurance for its employes.

COLUMBUS, OHIO, May 11, 1938.

HON. E. N. DIETRICH, *Director of Education, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date which reads as follows:

“Several times during the last year we have had inquiries concerning the possibility of group insurance plans for various groups of school employes. In discussing these proposals with several reliable insurance companies, we find that they do not wish to give answers to these inquiries to local teacher groups until we have a statement of legal rights of boards of education concerning such a program. We should appreciate your reply to the following specific questions:

1. Has any school board the legal right to enter into a contract of group insurance for their teachers?
2. Is it legally possible for any school board to enter into an arrangement which involves deductions from the pay check of the individual?

3. Has a school board the right under the law to pay any portion of the cost of a plan of group insurance of teachers in their jurisdiction?"

It is well settled in this state that in the absence of any statutory authority a board of education has no power to bind its school district by a contract. In the case of *Board of Education vs. Volk*, 72 O. S. 469, the court referring to the authority of a board of education to enter into a contract, said at page 479:

"It may contract and be contracted with, but a contract not authorized by statute is ultra vires and cannot be enforced although the board is capable of suing and being sued. It has no power to bind the school district which it represents on contracts not authorized by law, and it has been so held repeatedly."

See also Opinions of the Attorney General for 1932, Vol II, page 1006.

In view of the above, it is necessary to find some statute wherein a board of education is authorized to enter into a contract of group insurance for its teachers. Under Section 7896-2, General Code, a state teachers retirement system is established for the teachers of the public schools of this state "for the payment of retirement allowances and other benefits under the provisions of this act". Other benefits referred to in the above section are allowances upon superannuation retirement, provided for in Section 7896-35, General Code; allowances upon disability retirement under Section 7896-38, General Code; and payments of death benefits to beneficiaries elected by contributors to the state teachers retirement fund as provided in Section 7896-41 and 7896-42, General Code.

Under Section 7875, General Code, and the following sections, provision is made for a school custodians' fund for the purpose of paying some benefits to persons "regularly employed to have charge of the janitorial work of a building or of buildings under the custody and care of the board of education."

Under Sections 7896-65, et seq., General Code, effective July 14, 1937, a state public school employes retirement system is established for the employes of the public schools of this state who are not members of the state teachers retirement system or of any other retirement system established under the laws of this state "for the payment of retirement allowances and other benefits under the provisions of this act." Similar benefits provided for teachers of the public schools under the provisions of Section 7896-2, et seq., are provided for public school employes who are not members of the state teachers retirement system.

The General Assembly under the provisions of the foregoing sections has authorized the boards of education to make certain contributions to the respective funds for the purpose of paying the benefits therein enumerated to the various employes of such boards. However, a review of the foregoing sections reveals no authority vested in a board of education to enter into any contracts of group insurance for any of its employes.

The only other statute which need be considered for the purpose of this opinion is Section 9426-1, General Code, relating to group life insurance, which, in part, reads as follows:

“Group life insurance is hereby declared to be that form of life insurance covering not less than fifty employees with or without medical examination, written under a policy issued to the employer, the premium on which is to be paid by the employer or by the employer and employees jointly, and insuring all of his employees, or all of any class or classes thereof, determined by conditions pertaining to the employment, for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the employer; provided, however, that when the premium is to be paid by the employer and employe jointly and the benefits of the policy are offered to all eligible employees, not less than seventy-five per centum of such employees may be so insured.”

The legislature in paragraph (2) of the above section declared certain forms of life insurance to be group life insurance. However, employes of a school board are not included in any of the groups outlined in the foregoing provision. Although it might be contended that the term “employes” used in Section 9426-1, *supra*, includes employes of a school board, yet a review of all provisions relating to group life insurance reveals no authority in a board of education to enter into a contract for such insurance.

In view of the above, it is quite evident that the legislature has made no provision whereby a board of education may enter into a contract of group insurance and for that reason the conclusion is inescapable that your first question must be answered in the negative.

Having reached this conclusion, it is not necessary to consider the remaining questions since such questions are predicated on an affirmative answer to your first question.

Respectfully,

HERBERT S. DUFFY,

Attorney General.