

of study in branches embraced within the regular curriculum which is suited to their age and state of advancement, or be expelled from school, subject to the restrictions contained in Section 7685, General Code.

In the absence of any statute on the subject, a rule of a board of education in this state requiring pupils in the public schools under its jurisdiction to participate in patriotic exercises conducted in the school, involving the saluting of the American Flag and the pledging of allegiance thereto, is not subversive of the "liberty" protected by the "due process" clause nor the "privileges and immunities" clause nor the "equal protection" clause of the 14th Amendment to the Federal Constitution, nor does it constitute an invasion of a citizen's right to worship Almighty God according to the dictates of his own conscience nor to interfere with the right of conscience, as guaranteed by Section 7 of Article I, of the Constitution of Ohio.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5004.

DRIVERS' FINANCIAL RESPONSIBILITY LAW—TWO TYPES OF LIABILITY POLICIES—VEHICLE RESPONSIBILITY— DRIVERS' RESPONSIBILITY—SURETY BONDS.

SYLLABUS:

1. Section 6298-7, General Code, defining "Motor vehicle Liability Policies" as "ability to respond in damages" provides two types of liability policies, one a vehicle type of liability and the other a drivers' type of liability policy. In the vehicle type of policy the insurance company is liable for judgments which result from the ownership, maintenance, use, or operation of the particular motor vehicles described in the policy by the insured or by any person using such vehicles with the consent of the insured. Under the drivers' type of liability policy the insurance company is liable for judgments resulting from the maintenance, operation, or use by the insured of any motor vehicle except such vehicles as are registered in the name of the insured.

2. Under surety bonds or other evidence of ability to respond in damages in lieu of a motor vehicle liability policy defined in Section 6298-7, General Code, the liability of the obligor is for judgments rendered against the principal on account of his ownership, maintenance, use or operation of any motor vehicle.

3. Section 6298-7, General Code, defining motor vehicle liability policies is not in conflict with Section 6298-5, General Code, nor with the

general provisions of the Ohio Drivers' Financial Responsibility Law. A motor vehicle policy issued under Section 6298-7, General Code, complies with the requirements of Section 6298-5, General Code.

COLUMBUS, OHIO, December 17, 1935.

HON. FRANK WEST, *Registrar, Bureau of Motor Vehicles, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication with respect to the Ohio Drivers' Financial Responsibility Law (Sections 6298-1 to 6298-25, both inclusive, General Code).

Your inquiry may be simmered down to substantially three questions, namely:

1. What type of motor vehicle liability policies must insurance companies provide, and what is the limit of their liability under the terms of the Motor Vehicle Responsibility Act?
2. May the liability of insurance companies under the Act in some instances be less than is required under a surety bond, or other proof of ability to respond, in damages?
3. Does a motor vehicle liability policy of either type prescribed in Section 6298-7, General Code, comply with the requirements of Section 6298-5, General Code?

You conclude that the provisions of Section 6298-7, General Code, defining "Motor Vehicle Liability Policies", are inconsistent with the general provisions of the law, and particularly with those relating to surety bonds and other proof of ability to respond in damages. You ask my opinion as to the form of surety bonds and of insurance policies which are to be received as proof of ability to respond in damages, the extent of the liability of insurance companies issuing such policies, and whether any inconsistency necessarily exists between such surety bonds and insurance policies.

The pertinent sections of the Ohio Drivers' Financial Responsibility Law read as follows:

Sec. 6298-5, General Code:

"A person shall be deemed to have ability to respond in damages, as required by this act, if, and only if he can satisfy a judgment, or judgments, thereafter rendered against him on account of his ownership, maintenance, use or operation of a motor vehicle, which do not exceed the following:

(a) The sum of five thousand dollars (\$5,000.00) in an action for wrongful death or personal injury;

(b) The aggregate sum of ten thousand dollars (\$10,000.00) in two or more actions for wrongful death and/or personal injury to two or more persons, arising out of one accident;

(c) The aggregate sum of one thousand dollars (\$1,000.00) in one or more actions for damages to property arising out of one accident.”

Sec. 6298-6, General Code:

“Proof of ability to respond in damages, as required by this act, may be made only by showing that there has been issued to or for the benefit of the person making such proof:

(a) A motor vehicle liability policy or policies, as hereinafter defined, covering a period of one year and dated not longer than thirty (30) days prior to the date of making proof; or

(b) A bond of a surety company authorized to do business in this state, or with individual sureties, owning unencumbered real estate within this state, subject to execution and worth above all exemption, the sum of eleven thousand dollars (\$11,000.00), in the form prescribed by, and to the satisfaction of the registrar, conditioned for the payment of a judgment, or judgments, of the nature and in the amounts set forth in section 5 of this act, which may be rendered against the person making proof upon causes of action arising within one year after the date of making proof; or, by the deposit with the registrar of motor vehicles of the sum of eleven thousand dollars (\$11,000.00) in money, or bonds of the United States of America, of the state of Ohio, or of a political subdivision of the state of Ohio of that par or face value, for the purpose of securing the payment of judgments of the nature and in the amounts set forth in section 5 of this act, which may be rendered against the person making proof upon causes of action arising within one year after the date of such deposit.”

Sec. 6298-7, General Code, reads in part:

“ ‘Motor vehicle liability policy’ as used in this act, shall mean a policy of liability insurance issued by an insurance company or carrier authorized to issue policies of insurance of the kind and nature set forth in this act under the laws of this state, or the state in which the insured resides, to the person therein named as insured, which policy shall either (1) designate, by explicit description or other adequate reference, all motor vehicles with respect to which coverage is intended to be granted by said policy, and shall

insure the insured named therein and any other person using or responsible for the use of any such motor vehicle with the consent, express or implied, of such insured, against loss from the liability imposed by law upon such insured or upon such other person for injury to or death of any person, (other than (a) the insured, (b) other persons covered by such policy, and (c) employees of the insured, injured or killed while on duty and in the course of their employment), and for damage to property, except property damaged while in charge of the insured, or his employees or agents; growing out of the ownership, use, maintenance or operation of any such motor vehicle within the continental limits of the United States of America, or the Dominion of Canada; or which policy shall, in the alternative (2) insure the person therein named as insured against loss from the liability imposed by law upon such insured for injury to or death of any person (other than such insured, and employees of the insured, injured or killed while on duty and in the course of their employment) and for damage to property, except property damaged while in charge of the insured or his employees or agents; growing out of the maintenance, operation or use by such insured of any motor vehicle, except a motor vehicle registered in the name of such insured, and occurring while such insured is personally in control, as driver or occupant of such motor vehicle within the continental limits of the United States of America or the Dominion of Canada, in either case, to the amount or limit of \$5,000.00, exclusive of interest and costs on account of injury to or death of any one person, and subject to the same limits as respects injury to or death of any one person, of \$10,000.00, exclusive of interest and costs, on account of any one accident resulting in injury to or death of more than one person; and of \$1,000.00 for damage to the property of others, as herein provided, resulting from any one accident; provided, however, that this section shall not be construed as preventing an insurance company or carrier from granting in a 'Motor Vehicle Liability Policy' any lawful coverage in excess of or in addition to the coverage herein provided for, or from embodying in such policy any agreements, provisions or stipulations not contrary to the provisions of this act, and not otherwise contrary to law, and provided further, that separate concurrent policies, whether issued by one or several carriers, covering respectively, (a) personal injury or death, as aforesaid, and (b) property damage as aforesaid, shall be termed, 'A Motor Vehicle Liability Policy,' within the meaning of this act. * * *

Section 6298-8, General Code:

"Each person required to tender a 'Motor Vehicle Liability Policy,' bond or deposit, to the registrar of motor vehicles, pursuant to this act, shall concurrently with the acceptance of the same, pay to the registrar a fee of \$2.00. The registrar shall upon acceptance of a bond with individual sureties, forward to the county recorder of the county in which sureties' real estate is located, a notice of such deposit and pay to the recorder a fee of \$1.00 for the filing and indexing of such notice. The recorder shall receive and file such notices and keep an index of the same. Each such bond deposited with the registrar shall constitute a lien in the name of the state upon the real estate of such sureties, which lien shall exist in favor of any holder of a final judgment rendered against the person who has filed such bond, on account of damage to property, or injury to, or death of, a person occurring within one year after the deposit of such bond, and resulting from the ownership, maintenance, use, or operation of a motor vehicle as of the date notice of deposit of such bond is filed by the registrar in the office of the county recorder of the proper county."

Sec. 6298-9, General Code, reads in part:

"Any bond, money, or collateral filed or deposited by or on behalf of any person under the provisions of this act, shall be held by the registrar to satisfy an execution, or executions, issued against such person on a judgment or judgments, for damages arising out of his ownership, maintenance, use, or operation of a motor vehicle, and money or collateral so deposited shall not be subject to attachment for any other claim or levy of execution upon a judgment based on any other claim. * * *"

From a reading of Sections 6298-6, 6298-8 and 6298-9, General Code, it is apparent that the surety bonds and deposits of money and collateral therein provided for as proof of ability to respond in damages are not to be classified and conditioned on the ownership or non-ownership of motor vehicles since there is no provision for such classification as is made in the case of insurance policies by virtue of Section 6298-7, General Code. Surety bonds and deposits must be made in form to answer for an execution or executions issuing on a judgment or judgments against a person for damages arising out of his ownership, maintenance, use or operation of any motor vehicle whether owned by him or not.

Section 6298-7, General Code, provides that motor vehicle liability policies may either insure the owner of explicitly described vehicles against loss from liability arising from the ownership, maintenance, use or operation

thereof, or in the alternative may insure a person against loss from liability growing out of the maintenance, operation or use of any vehicle except those registered in his name. The Ohio Drivers' Financial Responsibility Law is all embracing in character; it includes drivers who own motor vehicles and drivers who do not own motor vehicles. Reading Section 6298-7, General Code, with this in mind, it is apparent that the first type of policy therein mentioned is intended for those who own motor vehicles, whereas the second type of policy is provided for those who do not own motor vehicles. The Ohio law closely resembles the New York Drivers' Financial Responsibility Act (Consolidated Laws of New York, Chap. 64a, Section 94a-94L). The sections defining "Motor Vehicle Liability Policies" in the two acts are almost identical. The administrative practice in New York since the inception of their act in 1929 has been to require the first type of policy from automobile-owner drivers and the second type of motor vehicle liability policy from drivers who do not own motor vehicles. This practice accords with the provisions of the Ohio law.

The liability of companies issuing motor vehicle liability policies must be determined by the usual rules applicable in construing such policies. It is a well recognized rule that the language used in an insurance contract must be given a fair, reasonable, and sensible construction; if the words used are clear and unambiguous they are to be understood in their plain, ordinary and popular sense (14 *R. C. L.* page 931; 32 *C. J.*, pp. 1148, 1149 and 1151). Applying this principle to the insurance policies authorized by Section 6298-7, General Code, it is evident that a policy of the first type therein defined would impose liability on the insurer for damage arising from the ownership, maintenance, use or operation of only the vehicle or vehicles explicitly described in such policy and would not extend to other vehicles which the insured might drive. A policy of the second type would impose liability on the insurer only for damage arising from the maintenance, operation or use of motor vehicles not registered in the name of the insured and would not extend to vehicles registered in his name.

It does not necessarily follow, however, that Section 6298-7, General Code, is inconsistent with the general provisions of the law nor with those provisions relating to surety bonds and deposits with the Registrar of Motor Vehicles. The usual forms in which motor vehicle liability policies have been issued in the past and differences existing between the various forms of security which are authorized as proof of ability to respond in damages, justify the imposition of different conditions on the various securities and the incorporation of different provisions in them.

Nor can it be said that any necessary inconsistency exists between the provisions of Section 6298-5 and 6298-7, General Code. The former section provides that "a person shall be deemed to have ability to respond in damages, as required by this act, if, and only if he can satisfy a judgment or judgments

thereafter rendered against him on account of his ownership, maintenance, use or operation of a motor vehicle, which do not exceed the following: * * *." Section 6298-6, General Code, defining what shall be considered "proof of liability to respond in damages" as used in Section 6298-5, General Code, provides that "proof of ability to respond in damages, as required by this Act, may be made only by showing that there has been issued to or for the benefit of the person making such proof: (a) A motor vehicle liability policy or policies, as hereinafter defined * * *." Section 6298-7, General Code, defines "Motor Vehicle Liability Policy" as used in the preceding section. These sections are progressive steps, each succeeding one defining, clarifying, and refining the more general terms used in those sections preceding it. It is believed that no inconsistency exists between Sections 6298-5 and 6298-7, General Code.

In specific answer to your inquiries, it is my opinion that:

1. Section 6298-7, General Code, defining "Motor Vehicle Liability Policies" as "ability to respond in damages" provides two types of liability policies, one a vehicle type of liability and the other a drivers' type of liability policy. In the vehicle type of policy the insurance company is liable for judgments which result from the ownership, maintenance, use, or operation of the particular motor vehicles described in the policy by the insured or by any person using such vehicles with the consent of the insured. Under the driver's type of liability policy the insurance company is liable for judgments resulting from the maintenance, operation, or use by the insured of any motor vehicle except such vehicles as are registered in the name of the insured.

2. Under surety bonds or other evidence of ability to respond in damages in lieu of a motor vehicle liability policy defined in Section 6298-7, General Code, the liability of the obligor is for judgments rendered against the principal on account of his ownership, maintenance, use or operation of any motor vehicle.

3. Section 6298-7, General Code, defining motor vehicle liability policies is not in conflict with Section 6298-5, General Code, nor with the general provisions of the Ohio Drivers' Financial Responsibility Law. A motor vehicle policy issued under Section 6298-7, General Code, complies with the requirements of Section 6298-5, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.