2740.

BOARD OF EDUCATION, CITY SCHOOL DISTRICT — MAY NOT ELECT TO BECOME SELF-INSURER UNDER SECTION 1465-69 G. C. — OBLIGATED UNDER WORKMEN'S COMPENSATION ACT TO CONTRIBUTE TO PUBLIC INSURANCE FUND, PREMIUMS, DETERMINED BY INDUSTRIAL COMMISSION OF OHIO.

SYLLABUS:

A board of education of a city school district is, under the provisions of the Workmen's Compensation Act of Ohio, obligated to contribute to the public insurance fund the premiums determined by the Industrial Com-

mission, and may not elect to become a self-insurer under the provisions of Section 1465-69, *General Code.*

Columbus, Ohio, September 10, 1940.

Bureau of Inspection and Supervision of Public Offices,
Department of Auditor of State,
Columbus, Ohio.

Gentlemen:

This will acknowledge receipt of your request for my opinion, which reads as follows:

> "Under the provisions of Section 1465-60, General Code, and related sections of the Workmen's Compensation Act, is a City Board of Education obligated to pay to the Industrial Commission premiums covering employees of such board; or may the Board of Education withdraw from such state operated unit, and become self insurers of its employees?"

Section 1465-60, General Code, designates and defines two classes of employers which are amenable to the provisions of the Workmen's Compensation Act, and reads as follows:

> "The following shall constitute employers subject to the provisions of this act:
>
> 1. The state and each county, city, township, incorporated village and school district therein.
>
> 2. Every person, firm and private corporation, including any public service corporation, that has in service three or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract or (of) hire, express or implied, oral or written. Any member of a partnership, firm or association, who regularly performs manual labor in or about a mine, factory or other establishment, but not including a household establishment, shall be considered a workman or operative in determining whether or not such person, firm, or private corporation or public service corporation has in its service three or more workmen. The income derived from such labor shall be reported to the commission as part of the payroll of such employer, and such member shall thereupon be entitled to all the benefits of an employee as defined in this act."

A city school district is expressly designated as a class of employer which is included in sub-division 1 of this section and is, therefore, subject to the provisions of Section 1461-62, General Code, which reads as follows:

> "Every employer mentioned in subdivision one of section 1465-60 *shall contribute to the public insurance fund* the amount of money determined by the industrial commission, and the manner of determining such contributions and the classification of such employers shall be as provided in sections 1465-63 to 1465-67, inclusive." (Emphasis the writer's.)

The language used in this section is clear and unambiguous, and should require no statutory construction. In 25 Ruling Case Law at page 957, it is pertinently and succinctly stated:

> "A statute is not to be read as if open to construction as a matter of course. It is only in the case of ambiguous statutes of uncertain meaning that the rules of construction can have any application. Where the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself. When the meaning of a law is evident, to go elsewhere in search of conjecture in order to restrict or extend the act would be an attempt to elude it, a method which, if once admitted, would be exceedingly dangerous, for there would be no law, however definite and precise in its language, which might not by interpretation be rendered useless."

It, therefore, becomes apparent that employers embraced within the language of subdivision 1 of Section 1465-60, General Code, not only *should* "contribute to the public insurance fund," but *must* contribute to the public insurance fund in view of the fact that the language of Section 1465-62, General Code, is clearly mandatory in nature.

In Black on Interpretation of Laws (2nd Ed.) at page 531 the following interpretation of the meaning of the word "shall" may be found:

> "On the other hand, 'shall' and 'must' are words of command. Taken in their usual and proper meaning, they leave no room for choice or discretion, but are imperative; and they will be presumed to have been used in this sense, unless something in the character of the statute or the subject to which it relates, or in the context, shows that this could not have been the intention of the legislature."

It is thus quite clear that the language used in Section 1465-62, General Code, imports a positive and imperative duty on the part of city school boards to contribute to the public insurance fund, and negatives any discretion vested in such a board to elect to abide by the provisions of Section 1465-69, relating to self-insurers.

This conclusion is strengthened by an examination of section 1465-69, General Code, the pertinent provisions of which read as follows:

> "*Except as hereinafter provided, every employer mentioned in subdivision 2 of section* 1465-60, *General Code,* shall * * * pay into the state insurance fund the amount of premium determined and fixed by the industrial commission of Ohio * * *. *And provided further,* that *such employers* who will abide by the rules of the industrial commission of Ohio and as may be of sufficient financial ability * * * may, upon a finding of such fact by the industrial commission of Ohio, elect to pay individually such compensation, * * *." (Emphasis the writer's.)

A careful canvas of the Workmen's Compensation Act reveals that Sections 1465-62 and 1465-69, General Code, are the only sections in the Act designating the funds into which the two classes of employers mentioned in Section 1465-60, General Code, are required to pay. It is thus reasonable to read these sections together as they are *in pari materia* and in doing so it becomes relevant to observe that Section 1465-69 contains a definite proviso that employers embraced in subdivision 2 of Section 1465-60, General Code, may elect to become self-insurers, while Section 1465-62, General Code imposes an imperative duty upon city school boards to "contribute to the public insurance fund" and incorporates no proviso that would import a discretion to elect to become a self-insurer.

It consequently becomes proper to invoke a familiar and elementary rule of statutory construction which is expressed in 25 R. C. L. at page 985, as follows:

> "A proviso which operates to limit the application of the provisions of a statute, general in their terms, should be strictly construed to include no case not within the letter of the proviso. As the natural and appropriate office of a proviso is to restrain or qualify some preceding matter, it should be confined to what precedes, unless it is clear that it was intended to apply to subsequent matter."

Upon application of this rule, it becomes obvious that the provisions of Section 1465-69, General Code, refer in their entirety to employers mentioned in subdivision 2 of Section 1465-60. And, furthermore, it is manifest that the elective proviso of Section 1465-69, General Code, relating to self-insurers, is limited and confined in its application to employers mentioned in subdivision 2.

Therefore, in specific answer to your inquiry, it is my opinion that:

A board of education of a city school district is, under the provisions of the Workmen's Compensation Act of Ohio, obliged to contribute to the

public insurance fund the premiums determined by the Industrial Commission, and may not elect to become a self-insurer under the provisions of Section 1465-69, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.