

OPINION NO. 84-011**Syllabus:**

Except to the extent authorized by R.C. 9.83, a soil and water conservation district may not use public funds to purchase liability insurance to protect its supervisors from liability which may accrue to them for acts within the scope of their office. (1981 Op. Att'y Gen. No. 81-060, syllabus 3, approved and followed.)

To: Myrl H. Shoemaker, Director, Department of Natural Resources, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 26, 1984

I have before me your request for my opinion concerning the authority to purchase personal liability insurance to protect soil and water conservation district supervisors from liability which may accrue to them for acts taken within the scope of their duties under R.C. Chapter 1515. As you note in your request, my predecessor in office provided an answer to this identical question in 1981 Op. Att'y Gen. No. 81-060. My predecessor concluded:

Unless liability has been specifically imposed by statute, a soil and water conservation district supervisor acting within the scope of his authority will not, in the absence of bad faith or corrupt motive, be found personally liable for failure to properly perform a duty involving judgment and discretion. However, such supervisor may face potential personal liability for failure to properly perform a ministerial duty.

. . . .

A soil and water conservation district is implicitly authorized, by virtue of the statutory liability imposed by R.C. 1515.08(G), to expend public funds to purchase liability insurance to protect itself against liability for the torts of its officers, employees, or agents acting within the scope of their employment. A district, pursuant to R.C. 9.83 and 1515.09, may use public funds to purchase liability insurance to protect its employees from liability which may accrue to them for acts within the scope of their employment; however, except to the

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extent authorized by R.C. 9.83, a district may not use public funds to purchase liability insurance to protect its supervisors from liability which may accrue to them for acts within the scope of their office.

Op. No. 81-060 (syllabi 1 and 3). Your specific questions are whether the decision of the Ohio Supreme Court in the case of Haverlack v. Portage Homes, Inc., 2 Ohio St. 3d 26, 442 N.E.2d 749 (1982) in any way affects the conclusions reached in Op. No. 81-060 and, if so, is the purchase of liability insurance for soil and water conservation district supervisors now implicitly authorized.

Although recognizing that soil and water conservation district supervisors could be held personally liable in certain circumstances for actions taken within the scope of their duties under R.C. Chapter 1515, my predecessor concluded in Op. No. 81-060 that a soil and water conservation district could not use public funds to purchase liability insurance to protect its supervisors from liability for acts within the scope of their office, except as provided in R.C. 9.83, which generally authorizes the procurement of insurance against liabilities occasioned by the operation of certain motor vehicles. My predecessor's reasoning in support of this conclusion was as follows:

Generally, I have opined that political subdivisions may not expend public funds to underwrite the individual responsibilities of their officers and employees, for such an expenditure would be an impermissible diversion of public funds for a private purpose. [Citations omitted.] As previously mentioned, there must be express statutory authority for a public body created by statute to provide liability insurance, "except where there is some statutory liability to be insured against." Op. No. 79-084, at 2-268. There being no statutory imposition of liability on the district's supervisors or employees, the authority of the district to purchase liability insurance for its supervisors or employees must be expressly granted by statute.

Op. No. 81-060 at 2-242. I agree with my predecessor's statement of the general rule regarding the expenditure of public funds to provide liability insurance and the application of the rule in this instance. I also note that the provisions of R.C. Chapter 1515 have not been amended to either impose statutory liability on soil and water conservation district supervisors or to authorize the procurement of liability insurance on behalf of such supervisors.

Your specific question, however, is whether the Haverlack decision has any bearing on this issue. In my opinion, it does not. The significance of Haverlack is that the Court therein abrogated the judicially created doctrine of municipal sovereign immunity. The Court held that "the defense of sovereign immunity is not available, in the absence of a statute providing immunity, to a municipal corporation in an action for damages allegedly caused by the negligent operation of a sewage treatment plant." 2 Ohio St. 3d at 30, 442 N.E.2d at 752. The Haverlack holding is inapposite to the conclusions reached in Op. No. 81-060 with respect to the liability of, and the procurement of insurance for, soil and water conservation district supervisors for two reasons. First, the General Assembly itself waived the defense of sovereign immunity with respect to soil and water conservation districts in 1933 Ohio Laws, Bk. I, 495-496 (Am. S.B. 160, eff. Nov. 6, 1969) by enacting R.C. 1515.08(G) which provides that the district may "be sued and impleaded in its own name with respect to its contracts or torts of its officers, employees or agents acting within the scope of their employment. . . ." Second, the Haverlack holding affects only sovereign immunity; it does not purport to redefine the concept of "official immunity" discussed in Op. No. 81-060 at 2-240 and summarized in Op. No. 81-060 syllabus one.

Accordingly, it is my opinion, and you are advised, that except to the extent authorized by R.C. 9.83, a soil and water conservation district may not use public funds to purchase liability insurance to protect its supervisors from liability which may accrue to them for acts within the scope of their office. (1981 Op. Att'y Gen. No. 81-060, syllabus 3, approved and followed.)