

OPINION NO. 76-008**Syllabus:**

There is no authority for the purchase of accident insurance for high school athletes from funds derived from ticket sales at athletic events and deposited in the student activity fund pursuant to R.C. 3315.062.

To: William F. McKee, Richland County Pros. Atty., Mansfield, Ohio
By: William J. Brown, Attorney General, January 30, 1976

I have before me your request for my opinion which reads in pertinent part as follows:

" . . . I ask your opinion as to the legality of expending money from the athletic budget, student activities account, for the payment of the premium for accident insurance coverage for varsity high school football players. These funds are derived entirely from ticket sales for athletic events, and are not tax revenue."

With respect to expending public funds, it is well settled that Boards of Education may do so only when authorized by statute. The statute to which you refer involves monies collected at athletic events and subsequently paid into the special activity funds account established by the board of education pursuant to R.C. 3315.062. That statute states in part:

"If more than fifty dollars a year is received through a student activity program, the moneys from such program shall be paid into an activity fund established by the board of education of the school district. The board shall adopt regulations governing the establishment and maintenance of such fund, including a system of accounting to separate and verify each transaction and to show the sources from which the fund revenue is received, the amount collected from each source and the amount expended for each purpose. Expenditures from the fund shall be subject to approval of the board."

While R.C. 3315.062 may grant a board of education broad discretion in the establishment and maintenance of a student activity fund, it does not indicate what type of expenditures may be properly approved by the board.

Article VIII, Section 4, of the Ohio Constitution requires that public funds must be used for a public purpose when it states:

"The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation whatever;
"

This provision has been interpreted as prohibiting the use of public funds for something which has essentially a private purpose. See, State, ex rel. Dickman v. Defenbacher, 164 Ohio St. 142 (1955). It has further been interpreted to apply to funds which are not produced by taxes. See, State, ex rel. Saxbe v. Brand, 176 Ohio St. 44 (1964).

Thus, monies paid into the student activity fund are to be considered public funds and it must, then, be determined whether the purchase of accident insurance by a board of education is a statutorily authorized expenditure of public funds for a valid public purpose.

The legislature has authorized the purchase of various types of insurance by a board of education in several sections of the Ohio Revised Code. R.C. 3327.09 authorizes a board to purchase accident insurance for pupils riding on school buses. R.C. 3313.202 permits a board to procure and pay for group life and medical insurance for its employees, while 3313.203 permits a board to purchase liability insurance for its members. In permitting these purchases of insurance, the legislature has evidently determined that there exists a public purpose behind such expenditures. However, I am unable to locate any statute specifically or impliedly authorizing the purchase of accident insurance to protect students while they are engaged in extracurricular athletic competition.

In addition, it has been well established in Ohio that statutes authorizing expenditures of public funds must be strictly construed. Accordingly, I concluded in 1971 Op. Att'y Gen. No. 71-034 that R.C. 3327.09, authorizing the purchase of accident, liability, and property damage insurance for school buses, did not permit the purchase of uninsured motorist coverage. The fundamental issue in that opinion was whether the board of education had the legal power to expend public funds for uninsured motorist coverage in the absence of express statutory authority.

In support of the position that the purchase of such coverage would be improper, I stated in Op. No. 71-034, supra that:

"In the case of the uninsured motorists or limited accident protection, it does not appear that a sufficient consideration moves to a board of education to justify the expenditure of public funds, under any implied powers of the board. Such coverage protects only the members, employees and students to whom the board owes no legal duty of protection from accidents resulting from acts or omissions of uninsured motorists. A deeply felt concern for the protection of such classes, properly shared by all officials cannot substitute, however, for the legal obligation that must be the premises for expenditure of public funds."

(Emphasis added.)

Accident insurance operates to pay the medical costs of an injured person and is different from liability insurance in that there is no need for a finding of negligence. Whenever an insured is injured, the insurance carrier indemnifies him for the costs of his treatment, pursuant to the terms of the policy. Your office has indicated that the insurance proposed for high school football players would cover costs sustained under \$5000 with the balance, in the event of a more serious injury, being paid by a policy which is maintained by the Ohio High School Athletic Association, a private organization.

Although a school may conceivably receive some indirect benefit from such an expenditure, it is obvious that the direct benefit of this type of insurance program would inure to those persons who would otherwise have to pay for the insurance or costs of medical treatment, namely the parent or guardian of the child. Thus, the primary benefit would not be to the school and, in the absence of express or implied statutory authority, any expenditure of funds from a student activity fund by a board of education for accident insurance for high school athletes would be an improper use of public funds. See 1947 Op. Att'y Gen. No. 1606.

Therefore, it is my opinion and you are so advised that there is no authority for the purchase of accident insurance for high school athletes from funds derived from ticket sales at athletic events and deposited in the student activity fund pursuant to R.C. 3315.062.