

OPINION NO. 88-044**Syllabus:**

Pursuant to R.C. 1711.24, the board of county commissioners of a county in which there is a county agricultural society is required to insure the buildings on the grounds of the county agricultural society. Should the board of county commissioners choose to procure an insurance policy with a deductible payment in the event of a loss, the board may not require the county agricultural society to pay the deductible amount.

To: Steven D. Maurer, Director, Department of Agriculture, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 21, 1988

I have before me your request for my opinion concerning the insurance of buildings on the grounds of a county agricultural society. In particular you ask:

Under section 1711.24 of the Revised Code [is the board of] county commissioners required to carry insurance for the full value of covered buildings or are they authorized to carry a deductible policy, requiring the agricultural society to pay the amount of the deductible.

In essence your question presents two issues: (1) whether the board of county commissioners is under a mandatory duty to insure the buildings on the grounds of the county agricultural society; and, (2) whether the board of county commissioners may require that the county agricultural society bear some portion of the risk of loss by requiring the agricultural society to pay the deductible amount specified in the insurance policy in the event of a loss.

As you note in your letter, R.C. 1711.24 specifically discusses the insurance of buildings on the grounds of the county agricultural society, providing that:

The board of county commissioners of a county in which there is a county agricultural society shall insure the buildings on the grounds of such society for the benefit of such society.

Where the General Assembly has employed the word "shall" in a statute, the language is usually held to impose a mandatory duty. *State ex rel. City of Niles v. Bernard*, 53 Ohio St. 2d 31, 372 N.E.2d 339 (1978); *Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971); *Cleveland Railway Co. v. Brescia*, 100 Ohio St. 267, 126 N.E. 51 (1919). However, the word "shall," depending upon the context of its use, may be interpreted as allowing the exercise of discretion by a governmental entity. *Lindsey v. Public Utility Commission*, 111 Ohio St. 6, 144 N.E. 729 (1924); *State ex rel. Methodist Children's Home Association v. Board of Education*, 105 Ohio St. 438, 138 N.E. 865 (1922).

The provisions of R.C. 1711.24 do not contain any limiting language which might suggest that the General Assembly intended for the board of county commissioners to exercise its discretion in determining whether or not to insure the buildings on the grounds of the county agricultural society. To the contrary, the history of R.C. 1711.24 indicates that the General Assembly intended to impose a mandatory duty upon the board of county commissioners to insure such buildings. As amended in 1902, the predecessor to R.C. 1711.24, G.C. 9899, read:

[T]he county commissioners of any county are hereby authorized to keep insured all buildings owned by a county agricultural society, or by a county, for the benefit of the agricultural society, or the county, as the case may be, *if deemed proper by said commissioners.* (Emphasis added.)

93 Ohio Laws 40 (H.B. 283, passed March 10, 1898). As noted by one of my predecessors in 1946 Op. Att'y Gen. No. 1109, p. 567, under this provision a board of county commissioners was permitted, but not required, to insure the buildings on the grounds of the county agricultural society. R.C. 1711.24 was amended to substantially its present form in 1919. See 108 Ohio Laws Part I, p. 385 (H.B. 474, passed April 17, 1919). It is a well-established rule of statutory construction that an amendment to a statute is presumed to have a substantive effect. See R.C. 1.30; *Dennison v. Dennison*, 165 Ohio St. 146, 134 N.E.2d 574 (1956); *Lytle v. Baldinger*, 84 Ohio St. 1, 95 N.E. 389 (1911). Such statutory modifications may properly be considered in the construction of a statute's language. See *State v. Schmuck*, 77 Ohio St. 438, 83 N.E. 797 (1908); *Heck v. State*, 44 Ohio St. 536, 9 N.E. 305 (1886). Thus, I conclude that the board of county commissioners is under a mandatory duty to insure the buildings on the grounds of the county agricultural society.

You also question whether the board of county commissioners may require the county agricultural society to pay some portion of the cost of the insurance on such buildings through a deductible. It is a well-established rule of construction that words not in a statute must not be read into it. *Wheeling Steel Corporation v. Porterfield*, 24 Ohio St.2d 24, 263 N.E.2d 249 (1970); *Columbus Suburban Coach Line, Inc. v. Public Utilities Commission*, 20 Ohio St. 2d 125, 254 N.E.2d 8 (1969). As quoted above, R.C. 1711.24 simply states that the board of county commissioners "shall insure the buildings on the grounds of [the county agricultural] society." (Emphasis added.) Thus, the county board of commissioners may, if it so chooses, carry a deductible policy of insurance on the buildings on the grounds of the county agricultural society. However, I am compelled to conclude that the board of county commissioners is under a statutory duty to pay the amount of the deductible in the event of a loss.¹

¹ My conclusion is also in accord with the decisions of my predecessors in 1946 Op. Att'y Gen. No. 1109, p. 567, and 1930 Op. Att'y Gen. No. 1764, p. 616, which concluded that where a building on the grounds of a county agricultural society is destroyed, the proceeds of the insurance carried on such buildings by the county should not be paid to the county agricultural society but should be paid into the general fund of the county. Thus, while the county is required to carry insurance on the buildings on the grounds of a county agricultural society, such payments are not extended to the society as a gratuity.

Accordingly, it is my conclusion and you are hereby advised that, pursuant to R.C. 1711.24, the board of county commissioners of a county in which there is a county agricultural society is required to insure the buildings on the grounds of the county agricultural society. Should the board of county commissioners choose to procure an insurance policy with a deductible payment in the event of a loss, the board may not require the county agricultural society to pay the deductible amount.