

OPINION NO. 73-057

Syllabus:

A board of county commissioners has authority to purchase vandalism insurance on the public buildings under its control.

To: Eugene R. Weir, Coshocton County Pros. Atty., Coshocton, Ohio
By: William J. Brown, Attorney General, June 19, 1973

An opinion has been requested by your predecessor in answer to the following question:

Is there any requirement, statutory or otherwise, that the Board of County Commissioners maintain vandalism insurance on public buildings under their control? If not, is it permissible for them to purchase such insurance?

I find no requirement, statutory or otherwise, that a board of county commissioners maintain vandalism insurance on public buildings under their control. In my opinion, however, it is permissible for a board of county commissioners to purchase said insurance if, in the exercise of sound discretion, the board deems it advisable to do so in order to preserve the property under its control against loss.

It is well settled in Ohio that county commissioners are vested with only such powers as have been granted to them. As administrative boards created by statute, their powers are necessarily limited to such powers as are clearly and expressly granted by the statute, and such implied powers as are necessary to carry into effect the powers expressly granted. In considering this principle of law, the Supreme Court of Ohio in the case of State ex rel. Locher, v. Menning, 95 Ohio St. 97 (1916), said:

The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.

This has been interpreted to mean that a board of county commissioners must necessarily have authority, whether it be called implied or inherent, to do all things which must necessarily be done, in order to accomplish that which it is

expressly authorized and directed to do. In other words, each specific detail of the carrying out of an express purpose need not be expressly stated before the board may exercise its authority with respect to such detail, for an express authority to do an act carries with it the authority to do the necessary incidental acts to accomplish the purpose for which the express authority was given as fully as though each such incidental detail were expressly authorized in separate and distinct terms.

Although there is no requirement, statutory or otherwise, that a board of county commissioners maintain vandalism insurance on public buildings under its control, it would seem that it must do so under the general provisions of the Code which clothe the county commissioners with implied authority to perform acts to preserve the corporate property of the county over which they have control.

In an analogous situation, it was said in Opinion No. 4006, Opinions of the Attorney General for 1941, which was written in response to a request for an opinion as to the authority of a board of county commissioners to enter into a contract to insure property of the county against loss by fire, that "this power seems to be well established in Ohio." As authority for the foregoing statement, the Opinion cited Opinion No. 1221, Opinions of the Attorney General for 1927, in which my predecessor said at page 2163:

Cognate sections of the General Code direct the county commissioners to furnish, at the expense of the county, necessary books, stationery, and similar supplies as may be needed for the county offices. This express authority to provide office equipment and supplies necessarily includes within it the authority to protect and preserve this physical property against losses by fire, theft, robbery or burglary. The same rule would apply to other county property which it is the duty of the county commissioners to provide and care for.

In addition, Opinion No. 4006 referred to G.C. 204 (now R.C. 305.07), which reads in part as follows:

* * * the board may make any necessary order or contract in relation to the building, furnishing, repairing, or insuring the public buildings * * *

and concluded that this section specifically empowers a board of county commissioners to enter into a contract insuring public buildings of the county.

An analogy may be drawn between the power of a board of county commissioners to enter contracts insuring public buildings in its charge and the power of a board of education to enter contracts insuring buildings in its charge. In Opinion No. 1214, Opinions of the Attorney General for 1952, Syllabus No. 1 of the Opinion stated:

A statute which confers express authority

on a public officer, public corporation, or public organization to construct, maintain, and operate a public building, by implication confers also on such officer, corporation, or organization the authority to protect such public property by the expenditure of public funds to defray the cost of fire and windstorm insurance coverage thereon.

Opinion No. 1214 begins with the observation that boards of education are creatures of statute and possess only such powers as are expressly or impliedly conferred on them by statute, and adds the caveat that the expenditure of public funds for any but a public purpose is unlawful. It then goes to say that the expenditure of public funds to procure insurance against loss of public buildings or other property is recognized as being lawful, if not impliedly authorized, by the following proviso in Article VIII, Section 6, Ohio Constitution:

" * * * provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. * * *"

Opinion No. 1214, supra, continues:

The existence of implied authority to procure insurance against loss of public property despite the lack of any express statutory authority therefor is noted in Opinion No. 787, Opinions of the Attorney General for 1937, page 1452, in the following language:

" * * * It is true that with few exceptions there are no express statutory provisions which authorize the political subdivision to insure its buildings or property. However, there are many provisions in the General Code which vest in administrative bodies of political subdivisions the authority to acquire, possess and hold both real and personal property. It is well settled that the express authority extended to political subdivisions to acquire, possess and hold property includes the power to protect such property so as to secure the political subdivision in case of loss. * * *"

There is, of course, ample statutory authority for the acquisition and construction of school buildings by boards of education, and it is my conclusion that there is an implied authorization in these statutes to protect such buildings by the expenditure of public funds to procure insurance against loss or damage by fire or windstorm.

Opinion No. 1214, supra, was reaffirmed and approved in Opinion No. 1489, Opinions of the Attorney General for 1960, page 428.

A previous Attorney General had said in Opinion No. 2738, Opinions of the Attorney General for 1928, at page 2378:

While it has been repeatedly held by the courts that boards of education being creatures of statute, are limited in their powers to those expressly granted, and to those which may be said to be included within the powers so expressly granted in order to effectuate their purpose, the right of a board of education to insure school buildings under its control against loss by fire or otherwise, has never been questioned notwithstanding the fact that no express statutory authority is granted therefor. As no statutory direction is given how this insurance may be effected, it is left to the discretion of the board to provide for the insurance in any manner it sees fit, so long as no law is violated in so doing.

And Syllabus No. 1 of Opinion No. 3764, Opinions of the Attorney General for 1935, reads:

A board of education may lawfully pay from public funds under its control, for insurance against loss of furniture, fixtures and other equipment in its school buildings which may be occasioned by burglary or robbery.

The Opinion reaches its conclusion through the following reasoning:

At no place will be found express statutory authority for a board of education to expend public funds for providing insurance against the perils of burglary or robbery either of furniture, fixtures or other equipment of school buildings, * * *. If a board of education possesses that power, it necessarily must be derived from the express power granted to acquire and hold such property. * * *

The express authority extended to boards of education to acquire, possess and hold property, * * * includes the power to protect the property * * * so as to secure the school district in case of loss. Inasmuch as the law makes no provision as to how this protection will be afforded, it is a matter within the discretion of the board.

The applicability and pertinence of the analogy of a board of education insuring its school buildings and other property against loss occasioned by fire, windstorm, burglary or theft, and a board of county commissioners insuring the public buildings in their charge and under their control against loss occasioned by vandalism, is readily apparent. The situations are so similar that no valid distinction based on any substantive provision of the law can be drawn between them, although there may exist some immaterial technical distinctions as to their respective powers and duties. My conclusion, therefore, based on the numerous Opinions of my predecessors cited above which affirm the authority of a board of education to insure the buildings under its control, is that the same reasoning

may be applied to a board of county commissioners. This conclusion is supported by P.C. 305.07, which confers express authority upon the board of county commissioners to insure public buildings under their control.

In specific answer to your question it is my opinion, and you are so informed, that a board of county commissioners has authority to purchase vandalism insurance on the public buildings under its control.