

1806

EDUCATION—LIABILITY INSURANCE—BOARD CANNOT EXPEND PUBLIC FUNDS FOR SUCH INSURANCE WHEN NO LIABILITY EXISTS.

SYLLABUS:

Boards of education are without authority to expend public funds in procuring liability insurance against damages resulting from the use of possible explosion of steam boilers.

Columbus, Ohio, March 5, 1958

Hon. Fred E. Jones, Prosecuting Attorney  
Warren County, Lebanon, Ohio

Dear Sir:

You have requested my opinion as to the power of a board of education to purchase steam boiler liability insurance.

It is very well settled that in the absence of a statute imposing such liability, a board of education is not liable for damages for injury to person or property by reason of negligence of the board or its employees in the discharge of its official duties in connection with the maintenance of the public schools. *Finch v. Board of Education*, 30 Ohio St., 37; *Board of*

*Education v. Volk*, 72 Ohio St., 469; *Board of Education v. McHenry, Jr.*, 106 Ohio St., 357; *Conrad v. Board of Education*, 29 Ohio App., 317.

It has been repeatedly held by this office that public officers and boards have no authority to expend public funds for liability insurance where no liability exists. See Opinion No. 5949, Opinions of the Attorney General for 1943; p. 181; Opinion No. 2128, Opinions of the Attorney General for 1947, p. 431; Opinion No. 2498, Opinions of the Attorney General for 1950, p. 730; Opinion No. 7245, Opinions of the Attorney General for 1956, p. 750.

I note that you have been unable to find any statute imposing liability on a board of education for damage resulting from steam boiler explosion. I too am unable to discover any such legislation.

You suggest that certain insurance companies are urging on boards of education that Section 3313.201, Revised Code, authorizes such insurance. That section reads as follows:

“The board of education of any school district may procure a policy or policies of insurance insuring officers and employees of the school district against liability on account of damage or injury to persons and property, including liability on account of death or accident by wrongful act, occasioned by the operation of a motor vehicle, motor vehicles with auxiliary equipment, or all self-propelling equipment or trailers owned or operated by the school district.”

The absurdity of such a claim is obvious on reading the section. There is not a syllable in it which even suggests steam boilers or steam boiler insurance. It is limited strictly to the subject of the “operation of a motor vehicle, motor vehicles with auxiliary equipment, or all self-propelling equipment or trailers owned or operated by the school district.”

Section 9.83, Revised Code, enacted by the 102d General Assembly, extends precisely the same authority to the state departments and to political subdivisions generally.

In specific answer to your question, you are advised that in my opinion boards of education are without authority to expend public funds in procuring liability insurance against damages resulting from the use or possible explosion of steam boilers.

Respectfully,  
**WILLIAM SAXBE**  
Attorney General