

Note from the Attorney General's Office:

1971 Op. Att'y Gen. No. 71-034 was modified
by 1982 Op. Att'y Gen. No. 82-037.

OPINION NO. 71-034

Syllabus:

A board of education is not authorized to expend public funds for the payment of premiums for uninsured motorists coverage as otherwise provided for in Section 3937.18, Revised Code.

To: Joseph T. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, July 22, 1971

I am in receipt of your request for my opinion which is as follows:

"May a board of education expend public funds for the payment of premiums for uninsured motorists insurance coverage under the provisions of Sections 3937.18 and 3327.09, Ohio Revised Code, or any other statutory authority and, if so, for what class of people?"

In 1965, the Ohio Legislature enacted Section 3937.18, Revised Code, requiring liability insurers to offer uninsured motorists coverage. In its current form this Section is, in part, as follows:

"No automobile liability or motor vehicle liability policy of insurance insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in section 4509.20 of the Revised Code, under provisions approved by the superintendent of insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom; provided, that the named insured shall have the right to reject such coverage; * * *." (Emphasis added)

As expressly pointed out in Section 3937.18, supra, uninsured motorists coverage, " * * * is designed to protect persons injured in automobile accidents from losses which, because of the tortfeasor's lack of liability coverage, would otherwise go uncompensated". Abate v. The Pioneer Mutual Casualty Co., 22 Ohio St. 2d, 161, 165 (1970); Curran v. State Automobile Mutual Insurance Co., 25 Ohio St. 2d, 33, 38 (1971).

The statutory language makes such coverage mandatory for liability insurance policies respecting motor vehicles, unless the insured rejects such coverage. The insured's privilege to reject is, of course, a privilege accorded to reduce the cost to him of the liability insurance, the additional coverage being one that involves cost.

The question then becomes the power of a board of education to incur costs for uninsured motorists coverage. Such coverage is not expressly authorized by the various statutory provisions respecting the purchase by boards of education of insurance related to motor vehicles. These are, in pertinent part, as follows:

Section 9.83, Revised Code

"The state and any political subdivision may procure a policy or policies of insurance insuring its officers and employees 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 state or a political subdivision, while said vehicle is being used or operated in the course of the business of the state or the political subdivision." (Emphasis added)

Section 9.90, Revised Code

" * * * [T]he board of education of any school

district, may, in addition to all other powers provided in the Revised Code, contract for, purchase or otherwise procure from an insurer or insurers licensed to do business by the State of Ohio for or on behalf of such of its employees as it may determine, life insurance, or sickness, accident, annuity, endowment, health, medical, hospital, dental or surgical coverage and benefits, or any combination thereof, by means of insurance plans or other types of coverage, family, group or otherwise,* * *." (Emphasis added)

Section 3313.201, Revised Code

"The board of education of any school district may procure a policy or policies of insurance insuring officers, employees and pupils of the school district against liability on account of damage or injury to persons and property, including collision, medical payments and comprehensive insurance on vehicles operated under a course in drivers education certified by the state department of education and 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 * * *." (Emphasis added)

Section 3327.09, Revised Code

"The board of education of each school district may procure liability and property damage insurance covering each school bus or motor van and accident insurance covering all pupils transported under the authority of such board. This insurance shall be procured from a recognized insurance company authorized to do business of this character in the state, and such accident insurance shall provide compensation for injury or death to any pupil caused by an accident arising out of or in connection with the operation of such school bus, motor van, or other vehicle used in the transportation of school children, in such amounts and upon such terms as may be agreed upon by the board and the insurance company * * *." (Emphasis added)

Sections 9.83, 3313.201 and 3327.09, supra, cover liability insurance under certain circumstances and Sections 3327.09 and 9.90, supra, cover accident insurance under certain circumstances. Liability coverage contemplates negligence by school officers and employees, whereas accident insurance contemplates compensation to the insured, irrespective of negligence. 30 O. Jur. 2d 524 §587; 6 O Jur. 2d 296 §62; Opinion No. 7245, Opinions of the Attorney General for 1956.

Uninsured motorists coverage on the other hand is a limited

form of accident insurance. 6 O. Jur. 2d 243 §4. In Motorists Mutual Insurance Co. v. Bittler, 14 Ohio Misc. 23 (1968), the Court stated at Syllabus No. 1 as follows:

"A standard uninsured motorists endorsement to an automobile insurance policy provides the named insured a limited, personal accident insurance effective at all times and under all circumstances in which he sustains injury caused by an accident as a result of the operation of an uninsured automobile."

Thus, a board of education is already authorized to obtain accident insurance related to motor vehicles for its employees and for its pupils while the pupils are being transported by vehicles designated by the board. For protection from such risks, it is doubtful that an uninsured motorists coverage would afford substantial additional protection. It may also be added that workmen's compensation affords employees a measure of protection against accidents.

Notwithstanding the questionable degree of benefit to be derived from the uninsured motorists coverage, the determination of which in purely judgmental areas would be for a board of education to make, the fundamental issue is the legal power of a board to expend public funds for this purpose, in the absence of express statutory authority. In a well reasoned Opinion, one of my predecessors has made a wide-ranging analysis of that issue. Opinion No. 1214, Opinions of the Attorney General for 1952. In effect, he held that insurance might be purchased by a board of education where the cost thereof was incurred for a consideration of value to the board. Thus (1) a building might be insured against casualty as impliedly authorized by Article VIII, Section 6 of the Ohio Constitution, in order to secure it against loss and consequent additional cost to the public treasury; (2) a building in process of construction could be similarly insured where a reduction in contract price could be reasonably anticipated in exchange, and (3) such insurance on rented property might be provided as required by the owner-lessor in the rental or lease agreement for such owner's protection. As to liability insurance, however, it was held that no consideration moved to the board for it was not generally liable in tort due to its governmental immunity and, hence, expenditure of public funds could not be justified under any implied power of the board. (As noted above, authority now exists by statute to purchase some types of liability insurance.) As to the last point summarized from my predecessor's Opinion, I have had occasion recently to state my concurrence (Opinion No. 71-028, Opinions of the Attorney General for 1971) and to discuss other Opinions of my predecessors that have adhered to a similar view.

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 premise for expenditure of public funds.

Accordingly, I must conclude that a board of education has no power to incur the additional premium cost for the uninsured motorists protection.

In specific answer to your question, it is my opinion and you are so advised that a board of education is not authorized to expend public funds for the payment of premiums for uninsured motorists coverage as otherwise provided for in Section 3937.18, Revised Code.