any rule of admission to practice such vocation which would require such applicants for certificates either to be educated in the diagnosis or treatment of brain or nervous disorders. I am further informed that osteopathic physicians are not examined in the diagnosis or treatment of brain or nerve disorders as a condition precedent to the issuance of their license by the medical board.

Since the certificate evidencing the license of an osteopathic physician does not purport to authorize him to practice medicine and further, since the medical board has not required an applicant for an osteopathic physician's license to be examined as to his knowledge of mental and nerve disorders or the general practice of medicine, I am not persuaded that the opinion of my predecessor is incorrect.

Specifically answering your inquiry it is my opinion that an osteopathic physician is not a registered physician, having at least three years experience in the practice of medicine, within the meaning of Section 1956, General Code, and is therefore, not qualified to act as a medical witness in lunacy proceedings held pursuant to Sections 1954 et seq. General Code. Opinion of a former Attorney General appearing in Opinions of the Attorney General for 1917, Vol. 3, page 1994, followed.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1675.

BOARD OF EDUCATION—MAY BUT IS NOT REQUIRED TO PROCURE LIABILITY AND PROPERTY DAMAGE INSURANCE COVERING SCHOOL WAGON, MOTOR VAN AND PUPILS.

SYLLABUS:

1. *Under the provisions of section 7731-5, General Code, a board of education may, but is not required to, procure liability and property damage insurance.*

2. *A board of education, by virtue of this section, may take out insurance covering pupils who are transported in school busses which are owned by the board of education, or are transported in busses which are not owned by the board of education.*

COLUMBUS, OHIO, October 5, 1933.

HON. W. J. SCHWENCK, *Prosecuting Attorney, Bucyrus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

> "The Legislature enacted a law, effective September 25, 1933, which law has been numbered 7731-5 G. C.
>
> This is the Section of the Statute that authorizes Boards of Education to procure liability and property damage insurance, covering each school wagon or motor van.
>
> One of our local school boards has asked me whether or not this law is mandatory.

Question No. 2: Whether or not this law would apply in a case where the school district does not own the busses in which the children are transported."

Section 7731-5, General Code, enacted by the 90th General Assembly, reads as follows:

"The board of education of each school district may procure liability and property damage insurance covering each school wagon or motor van and all pupils transported under the authority of such board of education. This insurance shall be procured from a recognized insurance company authorized to do business of this character in the state of Ohio, and shall include compensation for injury or death to any pupil caused by any accident arising out of or in connection with the operation of such school wagon, motor van or other vehicle used in the transportation of school children. The amount of liability insurance carried on account of any school wagon or motor van shall not exceed one hundred thousand dollars."

Your first question relates to whether the procuring of such insurance is mandatory or permissible. The statute here in question uses the word "may." The ordinary and accepted use of that word is that it indicates permission to do an act rather than a mandate to perform some act. The word "may" is often said to be the opposite of "must" or "shall." Hence, the word should be given its ordinary meaning unless the plain import of the statute or some rule of statutory construction requires an opposite conclusion. There has grown up in the law a well established rule that in certain cases the word "may" in a statute is to be interpreted as "must." This rule is stated in 2 Lewis' Sutherland Statutory Construction at page 1149 as follows:

"Permissive words in respect to courts or officers are imperative in those cases in which the public or individuals have a right that the power so conferred be exercised. Such words, when used in a statute, will be construed as mandatory for the purpose of sustaining and enforcing rights, but not for the purpose of creating a right or determining its character; they are peremptory when used to clothe a public officer with power to do an act which ought to be done for the sake of justice, or which concerns the public interest or the rights of third persons. A direction contained in a statute, though couched in merely permissive language, will not be construed as leaving compliance optional, when the good sense of the entire enactment requires its provisions to be deemed compulsory."

The courts of Ohio have followed this rule. In the case of *Stanton* vs. *Realty Company,* 117 O. S. 345 at page 355, the following is stated by Marshall, C. J.:

"It is urged in this case that it was discretionary on the part of the court of common pleas whether it would call witnesses and consider other evidence. With this argument we cannot agree. It is a settled rule of law that the word 'may' will be construed as 'shall' in a certain class of cases. In *Lessee of Swazey's Heirs* vs. *Blackman,* 8 Ohio, 5, it was held, at page 18:

'May' means 'must', in all those cases where the public are interested, or where a matter of public policy, and not merely of private right, is involved."

The following is found in the case of *Columbus, Springfield & Cincinnati Railway Company* vs. *Mowatt,* 35 O. S. 284 at page 287:

"Where authority is conferred to perform an act which the public interest demands, 'may' is generally regarded as imperative."

See also *State, ex rel. Myers,* vs. *Board of Education,* 95 O. S. 367; Opinions of the Attorney General, No. 1142, rendered July 26, 1933.

However, I do not believe the public interest requires that the word "may" in section 7731-5 be interpreted as "must." It is significant to note that the word "shall" is used throughout the entire section, with the exception of the first sentence. Obviously, the legislature in enacting this section intended to authorize boards of education to take out the insurance only if they cared to do so. If this statute makes boards of education liable for the negligent transportation of school children, there would be a stronger reason for construing the statute as mandatory, since boards of education would be permitted to insure against such liability. However, this statute does not create such liability against boards of education. In my opinion No. 1438, rendered August 25, 1933, I held as disclosed by the syllabus of that opinion:

"1. Section 7731-5, General Code, does not create any liability upon the part of boards of education for accidents resulting from the negligence of such boards in the transportation of school children under their authority.

2. Said section contemplates what is commonly known as accident insurance as well as liability insurance."

While the public does have a great interest in the safety of their children, I do not feel that it can be said to be such as to require boards of education to spend public funds for accident insurance. The expenditure of public funds should be closely guarded and a public officer or board should not be required to spend public money unless such duty clearly exists. Section 7731-3, General Code, requires that the driver of a school bus furnish a "satisfactory and sufficient bond" and, to a certain extent, this bond will give pupils being transported some protection.

Without further extending the discussion of this question, I am of the opinion in answer to your first question that the provisions of this section as to procuring insurance are not mandatory.

You next inquire whether or not section 7731-5, supra, applies if the board of education does not own the busses in which the children are transported. You will note that this section reads in part as follows:

"The board of education * * * may procure * * * insurance covering each school wagon or motor van and *all pupils transported under the authority of such board of education.*" (Italics, the writer's.)

The language of the statute indicates that it applies to situations in which the board of education does not own the busses. It is to be noted that the statutes

relating to the duties of boards of education make it the duty of a board of education, under certain circumstances, to provide for the transportation of pupils. It is well recognized that in the performance of this duty boards of education may purchase busses and transport the pupils, or they may contract with a third party to transport the pupils. In an opinion to be found in Opinions of the Attorney General for 1930, Vol. III, page 1716, the following appears:

> "Boards of education are authorized by statute to furnish transportation for school children attending the public schools, under certain circumstances. In some instances the duty to furnish such transportation is mandatory. There is no specific statutory direction as to whether this transportation be furnished by contract or whether the board purchase vehicles and employ drivers and provide the transportation under the direct supervision of the board instead of having it provided by an independent contractor. Either method has always been recognized as lawful."

See also Opinions of the Attorney General for 1930, Vol. II, page 1133. The legislature when they enacted section 7731-5 must be presumed to have known that boards of education very often do not own the busses that are used in the transportation of pupils. *City of Cincinnati* vs. *Connor,* 55 O. S. 82 at page 89.

Hence, it is my opinion, in specific answer to your questions:

1. Under the provisions of section 7731-5, General Code, a board of education may, but is not required to, procure liability and property damage insurance.

2. A board of education, by virtue of this section, may take out insurance covering pupils who are transported in school busses which are owned by the board of education, or are transported in busses which are not owned by the board of education.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1676.

BEER—CLASS A PERMITTEE CANNOT SELL OR SHIP BEER MANUFACTURED IN OHIO FROM BRANCH WAREHOUSE OR PLANT WITHOUT SECURING CLASS B PERMIT.

SYLLABUS:

By virtue of the provisions of Section 6212-54, *General Code, as amended in Amended Senate Bill No.* 380, *a class A permittee cannot sell or ship beer manufactured in Ohio from a branch warehouse or from a branch plant wherein beer is only sold and shipped but not manufactured, without first securing a class B permit.*

COLUMBUS, OHIO, October 5, 1933.

HON. L. L. FARIS, *Director, Ohio Liquor Control Commission, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter requesting my opinion as to whether the Ohio Liquor Control Commission can adopt the following rule and regulation: