

OPINION NO. 81-012**Syllabus:**

Pursuant to R.C. 3313.201, a board of education is authorized to procure liability insurance containing the coverages enumerated in R.C. 3313.201, protecting its officers, employees and pupils against liability occasioned by the operation of motor vehicles owned or operated by the school district in conjunction with the teaching of a course in vocational auto mechanics.

To: Daniel R. Gerschutz, Putnam County Pros. Atty., Ottawa, Ohio
By: William J. Brown, Attorney General, March 25, 1981

March 1981

I have before me a request from your predecessor for my opinion on the following question:

May a local board of education purchase garage liability insurance to protect the teachers and students of the school district from liability arising out of the operation of motor vehicles used in conjunction with the teaching of courses in vocational auto mechanics?

According to the information you have provided, it is my understanding that vocational auto mechanics courses combine classroom textbook instruction with supervised practical experience in the repair of motor vehicles. During the practical experience portion of these courses it is necessary for the teacher and students to test drive the vehicles being repaired. The motor vehicles upon which the students make repairs are not necessarily owned by the school district but are on occasion loaned to the school by private citizens to be repaired as a part of the practical experience portion of the vocational auto mechanics course.

It is my further understanding that the type of insurance policy which you refer to as "garage liability insurance" is a policy which includes coverage for liability resulting from damage to persons or property and collision and comprehensive coverage on motor vehicles entrusted to the vocational auto mechanics class for servicing and repair, to insure the teachers and pupils who operate those vehicles during the time said vehicles are under the care and custody of the vocational auto mechanics class.

I note, as did one of my predecessors, that in R.C. 9.83, 3313.201 and 3327.09, the legislature has authorized boards of education to purchase various types of liability insurance coverage for the operation of motor vehicles. See 1962 Op. Att'y Gen. No. 3138, p. 538. R.C. 3327.09, which pertains to liability and property damage insurance covering pupils transported under the authority of a board of education, is clearly not applicable to your situation.

R.C. 9.83 authorizes the state to purchase insurance protecting its officers and employees against liability occasioned by the operation of motor vehicles used or operated in the course of business of the state. By statutory definition the term "state," as used in R.C. 9.83, includes boards of education. See R.C. 9.82. However, R.C. 9.83 names only officers and employees among the class of persons for whom insurance coverage may be provided; pupils are not mentioned. Further, the insurance coverage which a board of education may purchase pursuant to R.C. 9.83 is limited to liability insurance protecting state officers and employees against liability for causing damage or injury to persons or property, including liability on account of death or accident by wrongful act, arising out of the use or operation of a motor vehicle in the course of state business. No mention is made in R.C. 9.83 of procuring comprehensive or collision coverage. Therefore, I must conclude that although R.C. 9.83 authorizes the purchase of certain types of liability coverage for teachers, it does not authorize the purchase of liability insurance covering pupils. Nor does R.C. 9.83 authorize the purchase of a policy containing collision and comprehensive insurance covering teachers and pupils.

Of greatest interest is R.C. 3313.201, which reads as follows:

The board of education of each school district shall 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 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. Each board of education may supplement said policy or policies of insurance with

collision, medical payments, comprehensive, and uninsured motorists insurance. Before procuring such insurance each board of education shall adopt a resolution setting forth the amount of insurance to be purchased, the necessity thereof, together with a statement of the estimated premium cost thereon. Insurance procured pursuant to this section shall be from one or more recognized insurance companies authorized to do business in this state. (Emphasis added.)

Shortly after R.C. 3313.201 became effective on August 31, 1955, one of my predecessors considered the effects of this section on the authority of a board of education to purchase liability insurance for its school bus drivers. 1956 Op. Att'y Gen. No. 7245, p. 750. With respect to R.C. 3313.201 he stated at 753:

Here there is a manifest intention on the part of the legislature to authorize the board of education to procure a policy of liability insurance protecting the officers and employees of the school district against liability on account of damages arising from injury to persons or property in the operation of a motor vehicle owned or operated by the school district.

In 1959 the legislature amended R.C. 3313.201 by adding "pupils" of a school district to the list of persons for whom liability insurance could be purchased and increased the types of coverage that could be purchased. 1959 Ohio Laws 620 (Am. H.B. 177, eff. Aug. 19, 1959). In 1976 the legislature again amended R.C. 3313.201 by adding uninsured motorist coverage to the types of coverages which a board of education could purchase. 1976 Ohio Laws, Part II, 2733 (Am. H.B. 607, eff. July 14, 1976). In 1979 R.C. 3313.201 was amended with minor changes to its present form. Am. Sub. H.B. 44, 113th Gen. A. (1979) (eff. Jan. 16, 1980). Therefore, in its present form, R.C. 3313.201 authorizes a board of education to provide insurance coverage for officers, employees (e.g., teachers) and pupils of the school district, protecting them against liability on account of damage to persons or property arising out of the operation of motor vehicles owned or operated by the school district. The board may supplement each liability insurance policy with collision coverage, medical payments coverage, comprehensive coverage and uninsured motorists coverage.

You have expressed some concern over the possible limiting effect of the phrase "including insurance on vehicles operated under a course in drivers education certified by the state department of education." Your concern is that this language acts as a limitation of the authority granted to a board of education by R.C. 3313.201, thus restricting the purchase of insurance to insurance on motor vehicles used only in certified drivers education courses.

The rule of statutory construction to which you refer is the doctrine of expressio unius est exclusio alterius. This general rule of statutory construction and the exceptions to the rule are discussed in the case of Wachendorf v. Shaver, 149 Ohio St. 231, 241, 78 N.E.2d 370, 376 (1948) (quoting Springer v. Government of the Phillipine Islands, 277 U.S. 189 (1928)), as follows:

The general rule that the expression of one thing is the exclusion of others is subject to exceptions. Like other canons of statutory construction it is only an aid in the ascertainment of the meaning of the law and must yield whenever a contrary intention on the part of the lawmaker is apparent. Where a statute contains a grant of power enumerating certain things which may be done and also a general grant of power which standing alone would include those things and more, the general grant may be given full effect if the context shows that the enumeration was not intended to be exclusive. (Emphasis added.)

In applying this rule of construction to R.C. 3313.201, I find that a board of education is granted a general power to purchase insurance which protects its officers, employees and pupils from liability arising out of the operation of certain

March 1981

motor vehicles. The motor vehicles which may be covered by such insurance are those motor vehicles "owned or operated" by the school district. Taken in context, the phrase "including insurance on vehicles operated under a course in drivers education certified by the state department of education" merely enumerates one member of the class of vehicles which, if owned or operated by a board of education, may be insured. The general power granted a board of education to insure motor vehicles owned or operated by the school district, standing alone, would include those vehicles operated under a course in drivers education. Therefore, I am of the opinion that the phrase, "including insurance on vehicles operated under a course in drivers education certified by the state department of education," does not limit the authority of a board of education to the purchase of insurance only on motor vehicles used in drivers education courses.

Further, the legislature has provided that when interpretating the effect of a clause in a statute on the statute as a whole, "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." R.C. 1.42. The phrase in question starts with the word "including." "Include" is defined as meaning, "to consider as part of a whole; take into account; put in a total, category, etc." Webster's New World Dictionary 711 (2d college ed. 1972). With this in mind, a literal reading of R.C. 3313.201 indicates that a board of education is authorized to purchase insurance protecting its officers, employees and pupils against liability occasioned by the operation of a motor vehicle owned or operated by the school district. Included among the vehicles owned or operated by the school district for which insurance may be purchased are those "vehicles operated under a course in drivers education certified by the state department of education."

You have indicated that some of the motor vehicles used in the practical experience portion of these vocational auto mechanics courses are loaned to the school district by private citizens. R.C. 3313.201 authorizes a board of education to purchase liability insurance on motor vehicles owned or operated by the school district. This raises the question of whether motor vehicles loaned to the vocational auto mechanics program are vehicles owned or operated by the school district for purposes of R.C. 3313.201.

In 1972, I was asked a quite similar question. 1972 Op. Att'y Gen. No. 72-078. The question asked involved the authority under R.C. 3313.201 to purchase liability insurance on motor vehicles donated to a board of education for use in drivers education courses. I stated that because a school board can act only through its agents or employees, a vehicle being driven for or on behalf of the board is considered to be "operated" by the board. I concluded, therefore, that a motor vehicle used in a course of drivers education was "operated" by the board for purposes of R.C. 3313.201. In your situation, the motor vehicles loaned to the school district are employed as part of the vocational auto mechanics course. Therefore, based on the reasoning expressed in Op. No. 72-078, I conclude that these motor vehicles loaned to the vocational auto mechanics program are "operated" by the board of education and therefore may be insured by it under R.C. 3313.201.

In specific answer to your question, it is my opinion, and you are so advised, that, pursuant to R.C. 3313.201, a board of education is authorized to procure liability insurance containing the coverages enumerated in R.C. 3313.201, protecting its officers, employees and pupils against liability occasioned by the operation of motor vehicles owned or operated by the school district in conjunction with the teaching of a course in vocational auto mechanics.