

1535

BOARD OF LIBRARY TRUSTEES MAY, UNDER SEC. 3375.22, R.C. PROCURE INSURANCE POLICIES INSURING OFFICERS AND EMPLOYEES OF LIBRARY WHEN DRIVING MOTOR VEHICLES OWNED BY THEM FOR AND ON BEHALF OF THE LIBRARY. NO AUTHORITY FOR PURCHASE OF INSURANCE COVERING THESE PRIVATELY OWNED VEHICLES WHEN NOT DRIVEN FOR OR ON BEHALF OF SUCH LIBRARIES. SEC. 3375.401, 3375.33, R.C. OAG NO. 1252—1960.

SYLLABUS:

1. Each board of library trustees appointed pursuant to Sections 1713.28, 3375.06, 3375.10, 3375.12, 3375.15 and 3375.22, Revised Code, may, under the provisions of Section 3375.401, Revised Code, procure policies of insurance insuring officers and employees of the library against liability occasioned by the operation of motor vehicles owned by such officers and employees when such motor vehicles are being driven for and on behalf of the library.

2. No authority exists under the provisions of Section 3375.401, Revised Code, for the expenditure of public funds for the purchase of insurance insuring officers and employees of the libraries referred to in Section 3375.33, Revised Code, against liability occasioned by the operation of motor vehicles owned by such officers and employees when such motor vehicles are not being driven for or on behalf of such libraries.

Columbus, Ohio, July 7, 1960

Hon. John T. Corrigan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Ohio Revised Code Sec. 3375.401 provides as follows:

‘Paragraph 3375.401 Authority to purchase liability Insurance.

‘Each board of library trustees appointed pursuant to sections 1713.28, 3375.06, 3375.10, 3375.12, 3375.15 and 3375.22 of the Revised Code may procure policies of insurance insuring officers and employees of the library against liability on account of damage or injury to persons and property, including liability on account of death by wrongful act, occasioned by the operation of a motor vehicle *owned* or *operated* by said library. Whenever the board deems it necessary to procure such insurance, it shall adopt a resolution setting forth the necessity thereof, together with a statement of the estimated premium cost, and upon the adoption of the resolution the board may purchase such insurance. Premium for such insurance shall be paid from the current expense fund of the library. The amount of liability insurance carried on any motor vehicle operated by said public library may be distributed among more than one insurance company.’

HISTORY 128 v. H 140, Par. 1. Eff 11-9-59.

“The Office of the Auditor of State is instructing its employees to report ‘that no authority exists for the expenditure of library funds for liability insurance on employee owned motor vehicles,’ and that statement is made without qualification. There are many cases in this County where library employees, regularly and substantially, use their own cars, at the request of a public library on library business. It is cheaper and more practical in many cases for a library to use an employee’s car for part time work than it is to buy automobiles therefor. Moreover this Code Section provides for the insurance of *officers* and *employees* of the library; not the library itself. We all know that in its agent-of-the-sovereign capacity a public library is ordinarily not liable for torts.

“As I understand R.C. 3375.401, in order to comply with that Code Section, a library board must first find that the use of an officer’s or employee’s car is necessary. Then, if that use is of sufficient importance and frequency the board may pay for policies of insurance described in this Statute insuring such officers and employees against the liabilities mentioned in said Code

Section. It also appears to me that under this and other Code Sections relating to the libraries covered by R.C. Section 3375.401 the concerned library trustees have a sound discretion in the practical use of this Statute, which discretion is limited by necessity, practicality, reasonableness and economy of public funds. Of course this discretion must not be abused.

"I have advised concerned libraries in this County in accord with my understanding of the Statute as above expressed. But since there appears to be a conflict between the ideas of the Office of the Auditor of State and myself concerning this Statute I request your opinion as to the rights of concerned libraries under the Statute."

In Opinion No. 1252, Opinions of the Attorney General for 1960, issued April 12, 1960, I held in the syllabus as follows:

"The public library boards referred to in Section 3375.33, Revised Code, are not subject to liability for claims arising in tort and, therefore, have no authority to purchase liability insurance as to such claims."

The question in Opinion No. 1252, *supra*, was whether a board of library trustees had any authority to purchase public liability insurance as to claims arising in tort against the trustees individually, or as a corporate body. In this regard, I noted:

"As to Section 3375.401, Revised Code, which authorizes the purchase of certain insurance by public library boards, it is to be noted that said section does not authorize the purchase of such insurance to protect the board, but says:

"* * *

"This section authorizes the insuring of officers and employees, and therefore cannot be interpreted as being an acknowledgment of liability as to the board."

Your question is whether a board of library trustees has authority under the provisions of Section 3375.401, Revised Code, to purchase liability insurance as to claims arising in tort against the officers and employees of the library occasioned by the operation of motor vehicles owned by such officers and employees when regularly and substantially used, at the request of the library, on library business.

In Opinion No. 1252, *supra*, we first asked whether or not there was any liability on the part of the board of library trustees from which it was to be protected because, if there was no liability, there could be no

justification for an expenditure of public funds for the purchase of insurance. We might well begin the present opinion by asking whether there is any liability on the part of officers and employees of the library from which they to be protected. In this regard, the Restatement of the Law of Agency, 2d, Section 347, provides in part as follows:

“(1) An agent does not have the immunities of his principal although acting at the direction of the principal.

“* * *

“Illustrations:

1. A, the driver of a municipal fire wagon, drives recklessly to a fire, injuring T. Aside from statute, A is liable to T, although the municipality is not.

“* * *

The officers and employees of a public library, therefore, do not have the governmental or sovereign immunity which their principal, the library, has and they may, therefore, be liable for torts occasioned by the operation of motor vehicles used on library business.

The motor vehicles used on library business in the instant case are not owned by the library. Section 3375.401, *supra*, provides that such motor vehicles must be owned or operated by the library. The question then is whether the motor vehicles in the instant case are “operated” by the library so as to justify the expenditure of public funds for the purchase of insurance. In *Pappas v. The Jeffrey Manufacturing Co.*, 139 Ohio St., 637 at page 640 the Court said:

“A corporation can be the operator of a motor vehicle only by and through its agent or employee. If the automobile being driven by Wilson, the defendant’s employee, were owned by the defendant corporation, it properly could be considered the operator as well as the owner of the automobile. When the automobile was being driven by Wilson for and on behalf of the corporation, as is conceded, it was the operator thereof, even though Wilson was the owner. * * *”

In accordance with the rule set forth in the *Pappas* case, *supra*, I am of the opinion that when motor vehicles are being driven by officers and employees of the library for and on behalf of the library, such library is the operator thereof, even though the officers and employees are the owners of such motor vehicles. On the other hand, when such motor vehicles

are not being driven for and on behalf of the library, such library is not the operator, hence there would be no justification for an expenditure of public funds for the purchase of insurance under these circumstances.

Accordingly, it is my opinion and you are advised:

1. Each board of library trustees appointed pursuant to Sections 1713.28, 3375.06, 3375.10, 3375.12, 3375.15 and 3375.22, Revised Code, may, under the provisions of Section 3375.401, Revised Code, procure policies of insurance insuring officers and employees of the library against liability occasioned by the operation of motor vehicles owned by such officers and employees when such motor vehicles are being driven for and on behalf of the library.

2. No authority exists under the provisions of Section 3375.401, Revised Code, for the expenditure of public funds for the purchase of insurance insuring officers and employees of the libraries referred to in Section 3375.33, Revised Code, against liability occasioned by the operation of motor vehicles owned by such officers and employees when such motor vehicles are not being driven for or on behalf of such libraries.

Respectfully,

MARK McELROY
Attorney General