

OPINION NO. 66-087

Syllabus:

1. Under the provisions of Section 3313.202, Revised Code, a local board of education may not purchase health insurance on a family plan, but must limit the coverage to individual employees, whether teaching or non-teaching.

2. The local board of education may not purchase health insurance for owners of buses who contract independently with the board for the transportation of pupils.

3. Pursuant to Section 3313.202, Revised Code, the local board of education may purchase health insurance for

drivers of contract school buses, substitute drivers of privately owned school buses, substitute drivers of buses owned by the school district, substitute non-teaching employees and substitute teaching personnel.

To: C. Howard Johnson, Franklin County Pros. Atty., Columbus, Ohio
By: William B. Saxbe, Attorney General, May 9, 1966

I have before me your request for my opinion which states:

"1. May a local board of education purchase health insurance on a family plan basis, or must the coverage be limited to the individual employee (teaching or non-teaching)?

"2. Would it be proper to purchase insurance for individuals who are in the following categories?

"a. Owners of buses who contract independently with the local school board for the transportation of pupils.

"b. Drivers of the buses in category (a).

"c. Substitutes for drivers of buses in category (a).

"d. Substitutes for drivers of board-owned school buses.

"e. Substitutes for other non-teaching employees, such as in the cafeteria.

"f. Substitutes for teaching personnel."

Your request for my opinion requires an interpretation of Section 3313.202, Revised Code, which states:

"The board of education of a school district may procure and pay all or part of the cost of group hospitalization, surgical, or major medical insurance, or a combination of any of the foregoing types of insurance or coverage, whether issued by an insurance company or a hospital service association duly licensed by the state of Ohio, cov-

ering the teaching or nonteaching employees of the school district, or a combination of both; provided if such coverage affects only the teaching employees of the district such coverage shall be with the consent of a majority of such employees of the school district, or if such coverage affects only the nonteaching employees of the district such coverage shall be with the consent of a majority of such employees. If such coverage is proposed to cover all the employees of a school district, both teaching and nonteaching employees, such coverage shall be with the consent of a majority of all the employees of a school district. As used in this section 'teaching employees' means any person employed in the public schools of this state in a position for which he is required to have a certificate pursuant to sections 3319.22 to 3319.31, inclusive, of the Revised Code. 'Nonteaching employees' as used in this section means any person employed in the public schools of the state in a position for which he is not required to have a certificate issued pursuant to sections 3319.22 to 3319.31, inclusive, of the Revised Code."

Few principles of law are better settled than that a public body which is created by statute have only such powers as are expressly delegated to them by statute, and such as are necessarily implied from those so delegated. See The State, ex rel. Stoer v. Raschig, Director of Department of Public Works, 141 Ohio St., 477.

This same legal principle has been applied to boards of education. As stated in 48 O. Jur., 2d, 481, Section 78:

"Boards of education in Ohio are creatures of statute and their duties as well as their authority are clearly defined by the state legislation on the subject. Their authority or jurisdiction is derived solely from statute and is limited strictly to such powers as are clearly and expressly granted to them or are clearly implied and necessary for the execution of the powers expressly granted. They have special powers which are to be strictly construed and which they cannot exceed, and since boards of education have only such authority as is conferred by law, when they take action of and against

the plain provisions of the law, such action is absolutely void."

As the statute authorizing the expenditure of public funds to purchase this type of insurance by school boards is new and has not been subject to interpretation, this problem must be resolved on the basis of the construction given like statutes in this area of legislation.

When school boards were authorized to purchase liability insurance under the provisions of Section 3313.201, Revised Code, (effective 8-19-59), the statute was strictly construed under the legal guidelines previously mentioned. See Opinion No. 2071, Opinions of the Attorney General for 1958, page 277; Opinion No. 1811, Opinions of the Attorney General for 1958, page 139; and Opinion No. 1806, Opinions of the Attorney General for 1958, page 135.

Section 3313.202, *supra*, provides (1) for the expenditure of public funds and (2) for the expenditure of such funds for the benefit of teaching and non-teaching employees of such board of education.

Therefore, it is my opinion, on the basis of established rules of statutory interpretation in this area of the law, that the expenditures authorized by Section 3313.202, Revised Code, may be made only for the individual employees and cannot be expended on a family plan basis.

Since I have concluded that the provisions of Section 3313.202, *supra*, are applicable only to employees of a public school district, your second question requires a determination of whether or not the enumerated personnel are employed by the local board of education within the language of Section 3313.202, Revised Code.

When called upon to define "employee", the court of appeals stated in Board of Education of City School District of City of Cincinnati, Appellant v. Rhodes, Auditor, et al., Appellees, 109 Ohio App., 415, 417:

"The Ohio courts have many times stated the test to be applied in determining whether or not an individual is an employee of a named employer. See Gillum v. Industrial Commission of Ohio, 141 Ohio St., 373; Coemcell v. Douglas, 163 Ohio St., 292; and Bobik v. Industrial Commission, 146 Ohio St., 187. It is apparent from those cases that the principal test to apply in determining whether or not an employer-employee relationship exists is the reservation of the right to control the manner or means of doing the work by the person or company for whom the service is being performed. See also the discussion in Snyder, Adm. v. The American

Cigar Company, 22 C.C. (N.S.) 45, and Ohio Bell Telephone Company v. Ray, 19 Abs. 294. It is apparent from these cases that it is possible for one who is in the general employ of one person to become, by a sort of adoption, the employee also of another."

When confronted with the question of whether drivers of contract buses were employees of the local board of education within the terms of the School Employees Retirement System, the Supreme Court stated in State ex rel., Board of Education of North Canton Exempted Village School District v. Holt, 174 Ohio St., 55, pages 57, 58:

"* * *the court is of the opinion that Section 3327.01, 3327.03, 3327.10 and 4511.76, Revised Code, grant the ultimate control over these school-bus drivers to the board of education and place the obligation upon the board to exercise sufficient ultimate control over these school-bus drivers to make them, at least for purposes of membership in the retirement system and contributory payments thereto, employees of the board of education.

"The above sections make the board responsible for the time schedule of the drivers and the loading depots, require certificates for the drivers from the board of education, grant the power to revoke such certificates for improper conduct and authorize the adoption of regulations by the Department of Education, which regulations set up requirements for maximum hours of drivers and for designating all stops, instructions for loading and unloading, load distribution, supervision of pupil conduct, assignment of seats, overloading, transportation of equipment and safety patrols, and detailed traffic regulations. Such regulations are, by Section 4511.76, Revised Code, required to be made a part of any contract for the transportation of school children by privately owned and operated school buses.

"The board is given the right to cancel the employment of the driver in the event of violation of any of these laws or regulations.

"It is the duty of the board of education to control the conduct and employment of the bus drivers, whether their contract is directly with the board or with the owner of the buses.

"This court is of the opinion that for the purposes of membership in the retirement system and contributory payments to the system, the school-bus drivers of the North Canton Exempted Village School District are employees of the board of education of that district."

Applying the legal reasoning established by the Supreme Court to determine that contract bus drivers are employees within the terms of the School Employees Retirement System, I conclude that they are employees within the provisions of Section 3313.202, Revised Code.

However, a different relationship exists between a school bus owner and the board of education. As stated in Olson v. Cushman, 276 N. W., 780:

"A school bus owner who received monthly pay for transporting students to schools, but furnished bus, paid all expenses, and was at liberty to perform any other kind of work when not so engaged is an independent contractor and not an employee."

In your letter of request you refer to the bus owners as persons "who contract independently with the local school board". Although I have no knowledge of the provisions on these contracts, I assume from your question that the relationship between the board and such bus owners legally establishes the owners as independent contractors.

Therefore, it is my opinion that a school bus owner who contracts with the local school board for the transportation of pupils is not an employee eligible to participate in the insurance plans permitted by Section 3313.202, Revised Code.

There is no distinction made between regular or substitute school bus drivers by Section 3327.10, Revised Code, which establishes the statutory qualifications for such drivers. See also Opinion No. 2312, Opinions of the Attorney General for 1934, page 193.

Neither is there any distinction made between regular or substitute teachers by Section 3319.09, Revised Code, which defines teachers, or Section 3319.30, Revised Code, which establishes the necessity of certification.

Under the provisions of Section 3319.081, Revised Code, which provides for contracts for non-teaching employees there is no distinction made between regular or substitute employees.

Therefore it is my opinion and you are hereby advised:

1. Under the provisions of Section 3313.202, Revised

Code, a local board of education may not purchase health insurance on a family plan, but must limit the coverage to individual employees whether teaching or non-teaching.

2. The local board of education may not purchase health insurance for owners of buses who contract independently with the board for the transportation of pupils.

3. Pursuant to Section 3313.202, Revised Code, the local board of education may purchase health insurance for drivers of contract school buses, substitute drivers of privately owned school buses, substitute drivers of buses owned by the school district, substitute non-teaching employees and substitute teaching personnel.