

1811

EDUCATION—TRANSPORTATION OF PUPILS UNDER CONTRACT; NO AUTHORITY TO PURCHASE LIABILITY INSURANCE—§§3327.09, 3313.201 R.C.—ACCIDENT INSURANCE FOR ALL PUPILS TRANSPORTED, §3327.09 R. C.

**SYLLABUS:**

A board of education is without authority under the provisions of either Section 3327.09 or Section 3313.201, Revised Code, to procure insurance against liability on the part of persons or corporations with whom the board has contracts for transporting pupils.

Columbus, Ohio, March 6, 1958

Hon. James A. Rhodes, Auditor of State  
State House, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“Section 3327.09 of the Revised Code authorizes boards of education to 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.

“In the case of contract haulers, may the school district procure such insurance covering the pupils transported or shall the contractor provide such insurance.”

Section 3327.09, Revised Code, to which you refer, reads as follows:

“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 any 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. The amount of liability insurance carried on account of any school bus or motor van shall not exceed one hundred thousand dollars. Such insurance coverage may be effected in one or more recognized insurance companies authorized to do business in this state.”

This section which, in substantially the same language, has been in force for many years, has been regarded by several former attorneys general as confusing. It was formerly known as Section 7731-5, General Code. In Opinion No. 1438, Opinions of the Attorney General for 1933, p. 1310, the then attorney general held:

“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."

That opinion proceeded to point out the well established rule of law that in the absence of a statute a board of education is not subject to liability in its corporate capacity for injuries resulting from its negligence or the negligence of its servants in the discharge of its official duties. Citing among others, *Finch v. Board of Education*, 30 Ohio St., 47; *Board of Education v. Volk*, 72 Ohio St., 469; *Board of Education v. McHenry*, 106 Ohio St., 357.

In the course of that opinion it was said :

"Its language is not, in my opinion, susceptible of being construed as evidencing an intention on the part of the Legislature to impose on boards of education liability for damages for injuries suffered by school pupils or other persons from accidents arising out of or in connection with the transportation of school children."

The legislature, presumably recognizing the proposition above stated that said Section 7731-5, General Code, did not create any liability upon the part of boards of education, but that they and their employees might incur liability for their individual torts, saw fit to enact Section 3313.201, Revised Code, which became effective August 31, 1955, and read as follows :

"The board of education of any school district may procure a policy or policies of insurance insuring *officers and employees of the school district* 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 school district*. Whenever the board deems it necessary to procure such insurance, it 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, and upon adoption of said resolution the board may purchase said insurance. The premiums for such insurance shall be paid out of the general fund." (Emphasis added)

Both of the above sections were under consideration in an opinion by my immediate predecessor in Opinion No. 7245, Opinions of the Attorney General for 1956, p. 750. There it was held :

“Under the provisions of Section 3313.201 Revised Code, a board of education is authorized to procure insurance in such amount as the board may determine, protecting its officers and *employees, including drivers* of school buses, against liability for damages to persons and property, growing out of the operation of motor vehicles owned or operated by such board, and the amount of such insurance is in no way affected by the provisions of Section 3327.09, Revised Code.” (Emphasis added)

Again, the vagueness of said Section 3327.09, Revised Code, was recognized by this statement:

“We can only speculate as to the reasons that impelled the legislature to enact the statute which apparently authorized boards of education to purchase insurance against a risk which could not exist. I believe we may assume either that it was not fully informed of the law on that subject, or that it was considered a wise precaution against the possibility of liability on the part of a board of education.

“It may be noted that it has repeatedly been held by this department that public officers and boards are not authorized to expend public funds for liability insurance where no liability can exist. See Opinion No. 5949, Opinions of the Attorney General for 1943, page 181; No. 2128, for 1947, page 431, and No. 2498, for 1950, page 730.

“One thing is clear, viz., that the statute did not undertake to authorize a board of education to protect officers or employees of the board, by insurance, from personal liability.”

Another weakness in that section is that it purports to authorize liability insurance, not for any named person, but “covering each school bus or motor van.”

The new provision contained in Section 3313.201, *supra*, evidently recognized the principle, which is also well established, that while a board of education cannot be held liable as such in tort for injuries due to negligence, and while the members of such board cannot be held individually for their official actions as members of such board, yet they and their officers and employees may be liable at law for independent torts in which their own negligence causes injury to another. I do not consider it necessary in this connection to pursue the question as to such liability but call attention to extensive notations in 32 A.L.R., 1107, where it is indicated that much depends on the particular activity in which the officer or employee is engaged and the character of his negligence.

If, as indicated by the opinions to which I have referred, neither the board of education nor its members or employees were made liable by the provisions of Section 3327.09, Revised Code, and if the insurance provided for in that section was really intended merely as accident insurance for the benefit of the pupils transported in buses, it would seem clear that its provisions could not be stretched to cover the liability of contract haulers for negligence in the operation of such buses.

The foregoing discussion is perhaps only introductory to a consideration of the precise question which you present, which reads:

“In the case of contract haulers, may the school district procure such insurance covering the pupils transported or shall the contractor provide such insurance?”

Just what you mean by “such insurance covering the pupils” is difficult to understand. You have already referred to “*accident insurance covering all pupils*,” and if that is what you are referring to, I should say that such accident insurance is fully taken care of, and the school board is authorized to procure and pay for it.

As to the liability insurance, as I have already pointed out, there can be no liability so far as the board itself is concerned, and there is certainly nothing in the language of said Section 3327.09, Revised Code, which undertakes to authorize the board to spend public money to protect either its own members, or its officers and employees from liability arising from their own negligence.

Much less is there manifested any intention to authorize such board to purchase liability insurance in favor of an individual or corporation with whom it has made a contract.

Neither, in my opinion, do the provisions of Section 3313.201, *supra*, extend to the protection of persons or companies with whom the board of education has a contract for transportation of pupils. This latter section, as its language plainly indicates, was designed to insure “officers and employees of the school district” including among its employees, its school drivers, against liability on account of damage or injury to persons and property and cannot by any construction be extended to confer authority to insure contract haulers.

Up to this point I have been considering the provisions of Section 3327.09, *supra*, as relating to liability insurance. Since, as I have already

indicated, it appears that the statute is principally designed to provide for accident insurance for the protection of pupils, the question arises, where such pupils are being transported by a contract carrier, may the school district procure accident insurance for the protection of such children or shall such accident insurance be provided by the contractor?

It appears to me that the language of the section in question makes it very clear that the accident insurance provided for is intended for "*all pupils transported under the authority of the board of education*" and that the authority of the board to provide and pay for such insurance is in no way limited to those who are transported in buses owned and operated by the board of education. (Emphasis added)

Further on in the section it is provided that such accident insurance "shall provide compensation for injury or death to *any* pupil caused by *any* accident arising out of or in connection with the operation of such school bus, motor van, or other vehicles used in the transportation of school children." This provision in no way limits the obvious intent and purpose of the statute to accidents occurring in vehicles owned or operated by the board. The protection is intended for all children who come under the supervision of the board of education as pupils.

I see nothing whatever in the statute that suggests that the contract with the independent hauler should shift upon him the burden of providing such accident insurance.

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

1. A board of education is without authority under the provisions of either Section 3327.09 or Section 3313.201, Revised Code, to procure insurance against liability on the part of persons or corporations with whom the board has contracts for transporting pupils.

2. Section 3327.09, Revised Code, authorizes the board of education of each school district to procure accident insurance covering all pupils transported under the authority of such board whether in vehicles owned by the board or in vehicles owned and furnished by one with whom the board has contracted for such transportation.

Respectfully,  
WILLIAM SAXBE  
Attorney General