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EDUCATION, BOARD OF—MAY IN ITS DISCRETION PROCURE INSURANCE, LIABILITY AND PROPERTY DAMAGE, TO COVER CONVEYANCES USED TO TRANSPORT SCHOOL PUPILS—SAME AS TO ACCIDENT INSURANCE COVERING ALL CHILDREN TRANSPORTED UNDER AUTHORITY SUCH BOARD—SECTION 7731-5 G.C.

SYLLABUS:

A board of education may, in pursuance of the authority extended to it by Section 7731-5, General Code, in its discretion, procure liability and property damage insurance covering conveyances used in the transportation of school pupils and/or accident insurance covering all pupils transported under the authority of such board of education.

Columbus, Ohio, May 2, 1941.

Hon. Wm. G. Batchelder, Jr., Prosecuting Attorney,
Medina, Ohio.

Dear Sir:

I have your recent inquiry, as to whether or not boards of education may lawfully procure liability and property damage insurance covering school buses without including in such procurement accident insurance covering pupils transported in such conveyances.

Prior to the amendment of Section 7731-5, General Code, in 1939, the said section as enacted in 1933 (115 O.L., 111), read 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."

While the aforesaid statute was in force in the form quoted above, it was held several times by a former Attorney General that unless the insurance effected by authority of the statute included not only liability and property damage insurance but what practically amounted to accident insurance for the pupils transported, it was not such insurance as the law contemplated and therefore it was not lawful for a board of education to procure liability and property damage insurance without including therewith accident insurance covering the pupils transported. In an opinion of the then Attorney General which will be found in the reported Opinions of the Attorney General for 1933, at page 1310, it was held:

"Said section (section 7731-5, General Code) contemplates what is commonly known as accident insurance as well as liability insurance."

In another opinion of the same Attorney General, found in the published Opinions of the Attorney General for 1934 at page 1806, it was held:

"Unless a contract of insurance entered into by a board of education provides for compensation for injury or death to any school pupil caused by any accident arising out of or in connection with the operation of a school bus or other vehicle used in the transportation of school children it is not such a contract as a board of education is authorized to enter into by favor of Section 7731-5, General Code."

And again, in the reported Opinions of the Attorney General for 1936, at page 1774, appears the following:

"The class of insurance which a board of education is authorized to effect by the terms of Section 7731-5, General Code, is what is popularly known as liability or casualty insurance covering the legal liability for personal injury or property damage growing out of the operation of conveyances used in the transportation of school children to and from school or school events under the jurisdiction of the assured, providing the actual use of the vehicle is at the time with the permission of the assured board of education, and providing further that the insurance effected by the proposed policy covers not only liability or casualty insurance as above described, but as well compensation for injury or death to any school pupil caused by

any accident arising out of or in connection with the operation of the conveyance covered by the policy while used in the transportation of such school pupils.”

In 1939 (118 O. L., 404), Section 7731-5, *supra*, was amended to read 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 accident insurance covering 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 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 wagon, motor van or other vehicle used in the transportation of school children, in such amount or amounts and upon such terms and conditions as may be agreed upon by the board of education and the insurance company. The amount of liability insurance carried on account of any school wagon or motor van shall not exceed one hundred thousand dollars. Such insurance coverage as is provided herein may be effected in one or more recognized insurance companies authorized to do business in this state.”

It, of course, will be conceded that some purpose was intended to be accomplished by the amendment of the statute. It will be observed that in amending the statute, the clause which had formerly provided that the insurance authorized thereby should include what the Attorney General had held practically amounted to accident insurance for the pupils was, in effect deleted from the statute upon its amendment.

It would thus appear that the purpose of this deletion, in the light of the circumstances, was to do away with the requirement that the bodily injury and property damage insurance authorized by the statute must necessarily include accident insurance for the pupils. Under the plain terms of the statute as amended, boards of education are authorized to procure bodily injury and property damage insurance covering conveyances used in the transportation of pupils, and accident insurance covering the pupils transported. It is not provided therein that one class of insurance shall *include* the other, as had the former statute. The procurement of neither type of insurance is mandatory under the present statute, and there is nothing in its terms to include an intention on the part of the Legislature that if one class of insurance is procured the other

class must also be procured. It is my opinion that a board of education may, in its discretion, procure one or the other class of insurance named in the statute, or both, or neither.

Respectfully,

THOMAS J. HERBERT,
Attorney General.