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BOARD OF EDUCATION—AUTHORITY TO PROCURE LIABILITY INSURANCE—OFFICERS AND EMPLOYEES INCLUDING BUS DRIVERS—SECTION 3313.201 R. C.

SYLLABUS:

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.

Columbus, Ohio, October 11, 1956

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

Dear Sir:

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

“Under the authority of R. C. 3327.09 the amount of liability insurance carried on account of any school bus or motor van shall not exceed \$100,000.00.

“On August 31, 1955, R. C. 3313.201 became effective and many inquiries have been received as to whether or not the passage of this Act authorizes school districts to carry liability insurance in excess of the \$100,000.00 limit contained in R. C. 3327.09.

“An opinion is requested as to whether or not the procuring of liability insurance by a Board of Education enlarges the responsibility of a school board so that in addition to the \$100,000.00 carried on a school bus a school district might insure its school bus drivers, holding such drivers liable for any negligence on their part while transporting school children.”

Long prior to the enactment of Section 3327.09, Revised Code, to which you refer, Section 7731-5 of the General Code, was in force, reading 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."

That section was succeeded by Section 4558-6 of the new School Code of 1943, which, without substantial change, became 3327.09 of the Revised Code which 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." (Emphasis added.)

Just what the legislature meant by "liability and property damage insurance covering each school bus or motor van," I find it somewhat difficult to determine. Manifestly, the insurance was for the protection of someone, presumably the board of education. My predecessor, in an opinion found in Opinions of the Attorney General for 1933, page 1310, found the same difficulty. The syllabus of that opinion reads as follows :

"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."

In the course of the opinion, it was said :

“It is well settled that, in the absence of statute, a board of education is not subject to liability in its corporate capacity for injuries resulting from its negligence in the discharge of its official duties in connection with the maintenance of the public schools. *Finch vs. Board of Education*, 30 O. S. 37; *Board of Education vs. Volk*, 72 O. S. 469; *Board of Education vs. McHenry, Jr.*, 106 O. S. 357; *Vonrad vs. Board of Education*, 29 O. A. 317. This rule of non-liability has been applied to cases of injuries sustained by pupils while being transported by the board of education to and from the public schools, on the ground that in transporting pupils the board acts as an agent of the state and performs a public or governmental duty for the benefit of the public and for the performance of which it receives no profit or advantage. *Harris vs. Salem School District*, 72 N. H. 424; *Consolidated School District vs. Wright*, 128 Okla. 193; *Horton vs. Bienville Parish School Board*, 4 La. App. 123; *Allen vs. Independent School District*, 216 N. W. 533 (Minn.).

“The legislature has the right to provide by statute that boards of education shall be liable in their corporate capacity for damages or injuries resulting from their negligence in the performance of their official duties, but I am unable to find that it has done so. Certainly, the statute in question does not create any such liability; it only authorizes the boards to carry certain insurance.”

Referring to Section 7731-5, General Code, the opinion states :

“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.”

It will be noted that the statutes above quoted appear to attempt to provide for two classes of insurance: (1) *liability* insurance protecting the board of education from liability in damages growing out of the operation of a school bus; and (2) *accident* insurance for the benefit of pupils riding in the bus. It is manifest that these two kinds of insurance are totally unrelated, the first being based on negligence, and the second being based on a schedule of compensation for injuries of various degree growing out of accidents, irrespective of negligence.

It is also to be observed that the limitation of \$100,000.00 on account of each school bus, relates only to liability insurance. Any limitation on

the amount of accident insurance which may be collected by a pupil or a group of pupils is presumably left to the provisions of the policy.

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.

We turn, then, to the recently enacted Section 3313.201 of the Revised Code, which became effective August 31, 1955, and reads 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.”

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. By comparison of this section with Section 3327.09 *supra*, we note that the later statute was not passed as an amendment or supplement to the earlier,

and makes no reference to it; it is placed in a different chapter of the Code. It makes no reference to transportation of pupils. It deals with a wider classification of motor vehicles than mere school buses. It imposes no limitation on the amount of insurance that may be purchased, but specifically authorizes the board of education to fix the amount. Therefore, I can see no ground on which I could conclude that the limitation in the earlier statute could carry over into the later.

It is accordingly my opinion that 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.

Respectfully,

C. WILLIAM O'NEILL
Attorney General