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EDUCATION—BONDS

1. CLERK OF BOARD OF EDUCATION MUST GIVE BOND; AMOUNT TO BEAR REASONABLE RELATIONSHIP TO AMOUNT OF MONEY HANDLED DURING TERM OF OFFICE
2. BUS DRIVER BOND MAY NOT BE WAIVED BY BOARD OF EDUCATION—§3327.10 RC
3. BUS DRIVER BOND REQUIRED REGARDLESS OF METHOD OF DRIVER'S EMPLOYMENT
4. BUSINESS MANAGER, CITY SCHOOL DISTRICT; BOND MANDATORY, AMOUNT TO BEAR REASONABLE RELATIONSHIP TO DUTIES AND MONEY HANDLED DURING TERM OF OFFICE

SYLLABUS:

1. The clerk of a board of education must furnish bond in amount to be approved by the board, but the amount of the bond must bear a reasonable relationship to the duties of the clerk and to the amount of money and property coming into his control during his term of office.
2. A board of education may not waive the provisions of Section 3327.10, Revised Code, requiring a school bus driver to furnish bond.

3. Bond must be furnished for a school bus driver, regardless of whether he is employed directly by the board of education or by one who has contracted with the board to supply bus drivers.

4. It is mandatory that the business manager of a city school district furnish bond in an amount to be approved by the board of education, but the amount of the bond must bear a reasonable relationship to his duties and to the amount of property coming into his hands during his term of office.

Columbus, Ohio, July 3, 1957

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

Dear Sir:

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

“An opinion is respectfully requested as to whether or not:

“(1) The Clerk of a school district *must* furnish a bond and what, if any, amount of the bond furnished should be or whether the amount should be left entirely to the discretion of the board.

“(2) Whether a board may waive the provisions of Section 3327.10 of the R. C. requiring a bond for a Bus Driver.

“(3) Whether or not a contract Bus Driver is required to furnish a bond for those drivers which such contractor employs to drive the busses in which he furnishes transportation to pupils of the school district.

“(4) Whether or not the Business Manager of a school district as set forth in Section 3319.05 of the R. C. *must* provide a bond before entering upon his duties and what, if any, amount that bond shall be.”

In regard to your first question the applicable statute is Section 3313.25, Revised Code, which reads in part as follows:

“Before entering upon the duties of his office, the clerk of each board of education shall execute a bond, in an amount and with surety to be approved by the board, payable to the state, conditioned for the faithful performance of all the official duties required of him.”

It is a generally accepted rule of statutory construction, to which there are few exceptions, that the use of the word “shall” indicates a

mandatory legislative intent, and not merely directory. In the absence of a determination by the courts to the contrary, it must be assumed that "shall" is mandatory here, and it therefore follows that the clerk of the board of education must furnish a bond.

The statute states that the bond of the clerk is to be conditioned upon faithful performance of all the official duties required of him and in an amount to be approved by the board. Although the board is thereby given discretion of fixing the amount of the clerk's bond, that discretion should not be abused. A discussion of the clerk's bond is found in Opinion No. 4711, Opinions of the Attorney General for 1955, page 19, where at page 20 it is said:

"It follows that if the purpose of an official bond made in favor of the state is to protect the public from loss occurring from the failure on the part of an officer to perform his duties in accordance with law, or to account for money or property which comes into his possession or control during his term of office, *there should be some correlation between the amount of money to be handled by the officer during his term and the nature of the duties of the officer and the amount of the bond approved by the agency given that discretion*, in this instance the board of education. It may be assumed then that in exercising this discretion, the board of education will take into consideration the nature of its clerk's duties and the amount of money and property coming into his control during his prospective term of office."
(Emphasis added.)

Thus, the amount of the clerk's bond is left entirely to the discretion of the board, but that discretion is to be tempered by the aforementioned considerations. Otherwise the purpose of requiring a bond may be entirely defeated.

Coming to your second question, Section 3327.10, Revised Code, reads in pertinent part:

"No person shall be employed as driver of a school bus or motor van who has not given satisfactory and sufficient bond and who has not received a certificate from the county board of education of the county in which he is to be employed, in case such person is employed by a school district under the supervision of the county board, or by the superintendent of schools, in case such person is employed by the board of a city or exempted village school district, certifying that such person is at least twenty-one years of age and is of good moral character and is qualified physically and otherwise for such position."

This same rule of statutory construction should be applied here, *i.e.*, the use of the word "shall" indicates a legislative intent that the furnishing of bond be mandatory. This is true regardless of Section 3313.201, Revised Code. Section 3313.201 reads in part 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."

A board of education of a school district is not liable for the torts of its officers and employees. This principle was discussed at length in Opinion No. 1632, Opinions of the Attorney General for 1928, page 211, in this manner:

"This latter rule of law, however, known as the rule of respondeat superior, is held not to apply to sovereign states or subdivisions thereof in the exercise of governmental functions in the public interest and for public purposes, as distinguished from the exercise of purely proprietary functions.

"Since the pronouncement of this rule by the Supreme Court of Ohio in its decisions in the cases of *Aldrich v. City of Youngstown*, 106 O. S. 342, and *Board of Education v. McHenry*, 106 O. S. 367, it has generally been recognized that boards of education in carrying out the provisions of law relating to the transportation of pupils are engaged in the performance of a governmental duty in the public interests and for public purposes, and following the early case of *Finch v. Board of Education*, 30 O. S. 37, such boards cannot be held to respond in damages for injuries inflicted in the performance of this duty."

The law has remained the same on that point. In 36 Ohio Jurisprudence, page 381, the author says:

"By the well settled and generally accepted adjudications of the courts, school districts are not liable to actions in damages for negligence in the performance of their public duties unless made so by legislative enactment."

I find no such legislative enactments.

This immunity from liability does not extend to the officers and employees themselves. Authority for this is found in Opinion No. 1655,

Opinions of the Attorney General for 1928, at page 254, where the syllabus reads:

“A driver of a school wagon or motor van used in the transportation of pupils to and from the public schools is individually liable for injuries caused by the negligence of such driver in the operation of such wagon or motor van, even though such driver was at the time employed by board of education and was engaged in the performance of a public duty required by the law to be performed by such board of education. Such liability may be enforced in a civil action sounding in tort. In addition, under the holding of *United States Fidelity and Guaranty Company v. Samuels*, 116 O. S. page 586, 157 N. E. 325, a driver of a wagon or motor van used in the transportation of pupils to and from the public schools, together with the sureties, are liable on the bond of the driver required to be given by Section 7731-3 General Code, for the negligent operation of the school wagon or motor van by such driver, in the performance of the duties for which he was employed, and such liability may be enforced against the driver and his sureties in a proper action brought for that purpose.”

The conclusion regarding immunity of boards of education was reaffirmed in Opinion No. 1438, Opinions of the Attorney General for 1933, page 1310, and it was there said to apply where pupils were injured while being transported to and from public schools. The principle was again affirmed in Opinion No. 7245, Opinions of the Attorney General for 1956, page 750.

The purpose of the bond required of the driver, therefore, is not to protect the board of education from liability. The bond must be for the benefit of the pupils being transported and for the benefit of the board of education in so far as their property may be damaged.

Although the board of education has discretion in determining what the amount of the bond shall be, the rules stated earlier in this opinion should be applied so that there will exist some correlation between the amount of the bond and the responsibility of the driver. In determining the amount of the bond that should be required, the board may take into consideration the fact of whether or not the board has procured insurance under the authority of Section 3313.201, Revised Code. That section contemplates the purchase of insurance insuring officers and employees of the school district against liability arising out of negligence. Thus both the bond and insurance indirectly benefit the pupils transported. But the

insurance contemplated by Section 3313.201, Revised Code, would provide protection only against injuries connected with the operation of a motor vehicle. The bond, it is assumed, would be conditioned upon the faithful performance of duties and would encompass a wider range of activities than that covered by the insurance. The purpose of requiring a bond is not obviated even when the board acquires insurance.

The answer to your third question has already been given in several earlier opinions of this office. The syllabus of Opinion No. 5811, Opinions of the Attorney General for 1943, page 76, reads as follows:

“The driver or person who actually operates a vehicle for the transportation of school children should give a sufficient and satisfactory bond as required by the provisions of Section 7731-3, General Code, whether or not such driver is employed directly by the board of education or by a contractor of the board who is contracting to furnish transportation by means of one or more vehicles.”

Turning now to your fourth and last question relating to the business manager of a city school district, Section 3319.05, Revised Code, reads in part as follows:

“He shall give such bond as prescribed by the board for the faithful discharge of his duties.”

I find no cases interpreting this section, so I must reiterate the aforementioned rule of statutory construction by saying that the use of the word “shall” indicates a legislative intent that the furnishing of bond by a city school business manager is mandatory. I believe the wording of the last sentence of this section cannot be construed so as to allow the board to dispense entirely with bond. Clearly the sentence means that a bond shall be given and that the board is to determine the amount of such bond.

The powers and duties of a business manager are set forth in Section 3319.04, Revised Code, in this manner:

“The business manager shall have the care and custody of all property of the school district, real or personal, except moneys, supervise the construction of buildings in the process of erection, and the maintenance, operation, and repairs thereof, advertise for bids, and purchase and have custody of all supplies and equipment authorized by the board. He shall assist in the preparation of the annual appropriation resolution, shall appoint and may discharge, subject to confirmation by the board, noneducational

employees, and shall prepare and execute all contracts necessary in carrying out this section. He may sign all checks as provided by section 3313.51 of the Revised Code.”

It is apparent that his duties are many and his responsibility great. The amount of his bond, again, should bear a reasonable relationship to his duties and to the amount of property handled by him during his term of office. These factors will vary from school district to school district and so the amount of the bond required may vary from district to district. But the bond should, at all times, be in such a reasonable amount as would indemnify the district in the event the business manager did not faithfully discharge his duties.

Accordingly, you are advised that:

1. The clerk of a board of education must furnish bond in an amount to be approved by the board, but the amount of the bond must bear a reasonable relationship to the duties of the clerk and to the amount of money and property coming into his control during his term of office.
2. A board of education may not waive the provisions of Section 3327.10, Revised Code, requiring a school bus driver to furnish bond.
3. Bond must be furnished for a school bus driver, regardless of whether he is employed directly by the board of education or by one who has contracted with the board to supply bus drivers.
4. It is mandatory that the business manager of a city school district furnish bond in an amount to be approved by the board of education, but the amount of the bond must bear a reasonable relationship to his duties and to the amount of property coming into his hands during his term of office.

Respectfully,
WILLIAM SAXBE
Attorney General