

3138

A BOARD OF EDUCATION MAY LEGALLY CARRY MOTOR VEHICLE LIABILITY INSURANCE—THE BOARD OF EDUCATION MAY PERMIT THE USE OF SCHOOL PROPERTY FOR PUBLIC MEETINGS AND RECREATION BUT IS NOT LIABLE FOR TORT DAMAGES TO PERSONS INJURED WHILE ON SUCH SCHOOL PROPERTY—§§9.83, R.C., 3313.201, R.C., 3327.09, R.C., OPINION 2826, OAG, 1931.

SYLLABUS:

1. Under the provisions of Sections 9.83, 3313.201, and 3327.09, Revised Code, boards of education may legally carry motor vehicle liability insurance.
2. Under the provisions of Sections 3313.75 to 3313.79, inclusive, Revised Code, boards of education may permit the use of school property for public meetings and recreational purposes, but such boards are not liable in tort for any damages to persons injured while on such school property, regardless of whether such persons are, or are not, members of a group having permission to use the school property.

Columbus, Ohio, July 13, 1962

Hon. John G. Peterson, Prosecuting Attorney  
Greene County, Xenia, Ohio

Dear Sir:

Your request for my opinion concerns three questions posed by counsel for a board of education reading as follows:

"1. Can Boards of Education legally carry liability insurance in Ohio?

"2. Is the Board of Education responsible if an accident happens to a member or members of a group or organization that is using a school building or school grounds?

"3. Is the Board of Education responsible if an individual is injured while on school property but is not there with an organization or group using the property?"

In any discussion of the power of boards of education to expend public funds, whether for insurance or otherwise, two rules should be kept in mind. The first rule is set forth in paragraph two of the syllabus in *The State ex rel., Clarke v. Cook*, 103 Ohio St., 465 (1921) reading as follows:

"2. Boards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted. (St., ex rel. Locher, Pros. Att., v. Menning, 95 Ohio St., 97, approved and followed.)

The second rule is set forth in 44 Ohio Jurisprudence 2d, 381, Public Funds, Section 18, reading as follows:

"Public funds can be disbursed only by clear authority of law, and upon compliance with statutory provisions relating thereto. In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power. \* \* \*"

With these two rules in mind, I have searched the code to find the statutory authority, if any, for boards of education to purchase liability insurance.

Section 9.83, Revised Code, provides :

“The state and any political subdivision may procure a policy or policies of insurance insuring its officers and employees 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 state or a political subdivision, while said vehicle is being used or operated in the course of the business of the state or the political subdivision.”

Section 3313.201, Revised Code, provides :

“The board of education of any school district may procure a policy or policies of insurance insuring officers, employees and pupils of the school district against liability on account of damage or injury to persons and property, including collision, medical payments and comprehensive insurance on vehicles operated under a course in drivers education certified by the state department 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.”

Section 3327.09, Revised Code, provides :

“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 affected in one or more recognized insurance companies authorized to do business in this state.”

You will observe that the above statutes refer to liability arising out of the operation of motor vehicles. I have been unable to find any statutory authority for boards of education to purchase insurance covering liability for damages to persons injured while on school property, whether as a member of a group using such property or otherwise. In the absence of such authority, I must conclude that boards of education have no power to carry liability insurance covering damages to persons injured while on school property.

My conclusion is strengthened by the fact that boards of education are not liable in tort for such damages, and therefore would not need such insurance. In this regard, your attention is directed to Opinion No. 2826, Opinions of the Attorney General for 1931, Volume I, page 22, the syllabus of which reads as follows :

“A board of education which permits the use of playgrounds, under its jurisdiction, by others, for the playing of baseball, football, or other games, and exacts a reasonable and proper charge for the use of said grounds, is not liable in tort for any damages accruing to patrons of the game, or anyone else, by reason of negligence in the construction or maintenance of the said playground or the grandstand or bleachers thereon.”

In Opinion No. 2826, *supra*, the then Attorney General cited Section 7622 *et seq.*, General Code, which is analogous to the present Sections 3313.75 to 3313.79, Revised Code, regarding the power of boards of education to permit the use of school property for public meetings and recreational purposes and to charge a reasonable fee therefor. He did not feel, however, that the charging of a fee authorized the boards to engage in any enterprise for profit so as to change the rule regarding the non-liability of boards of education. There has been no change in this rule since Opinion No. 2826, *supra*, was written. See *Wolf v. Ohio State University Hospital*, 170 Ohio St., 49 (1959).

It is my opinion, therefore, and you are accordingly advised :

1. Under the provisions of Sections 9.83, 3313.201, and 3327.09, Revised Code, board of education may legally carry motor vehicle liability insurance.

2. Under the provisions of Sections 3313.75 to 3313.79, inclusive, Revised Code, boards of education may permit the use of school property

for public meetings and recreational purposes, but such boards are not liable in tort for any damages to persons injured while on such school property, regardless of whether such persons are, or are not, members of a group having permission to use the school property.

Respectfully,

MARK MCELROY

Attorney General