

Note from the Attorney General's Office:

1967 Op. Att'y Gen. No. 67-008 was modified by
1982 Op. Att'y Gen. No. 82-037.

OPINION NO. 67-008**Syllabus:**

1. The purchase of uninsured motorists insurance by a board of county commissioners, even though insurers are required to offer the same, would constitute an unauthorized and illegal expenditure of public funds.

2. A board of county commissioners is not authorized to purchase uninsured motorists coverage for its officers and employees and must reject such coverage when the same is offered.

To: Harlan R. Spies, Tuscarawas County Pros. Atty., New Philadelphia, Ohio
By: William B. Saxbe, Attorney General, January 12, 1967

Before me is your request for my opinion on the following question:

"Is the expenditure of county funds for the purchase of the coverage as set forth in said Section 3937.18 of the Revised Code, and in the present instance being the amount of \$152.00, a legal and proper expenditure of a political subdivision?"

The problem presented is due in part to recently enacted Section 3937.18, Revised Code, which requires insurers to offer what is commonly referred to as uninsured motorists coverage in policies of the type which counties are authorized to purchase. This section reads as follows:

"No automobile liability or motor vehicle liability policy of insurance insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in section 4509.20 of the Revised Code, under provisions approved by the superintendent of insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, that the named insured shall have the right to reject such coverage; and provided further that, unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured has rejected the coverage in connection with a policy previously issued to him by the same insurer." (Emphasis added)

The sole authority of a board of county commissioners to purchase motor vehicle liability insurance is found in Section 307.44, Revised Code, and is set forth below:

"The board of county commissioners may procure policies of insurance insuring officers and employees of the county against liability on account of damage or injury to persons and property, including liability on account of death 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 county. Whenever the board deems it necessary to procure

such insurance, it shall adopt a resolution setting forth the necessity therefor, together with a statement of the estimated premium cost, and upon adoption of the resolution the board may purchase such insurance. The premium for such insurance or any other insurance covering county vehicular equipment may be paid out of the county road fund."

(Emphasis added)

A reading of the above statutes presents a problem which is more apparent than real. On one hand a county may purchase motor vehicle liability insurance by virtue of Section 307.44, *supra*, but the provisions of this section are silent regarding the purchase of uninsured motorists coverage. On the other hand Section 3937.18, *supra*, requires insurers to offer (not purchasers to accept) uninsured motorists coverage in or supplemental to all policies of motor vehicle liability insurance delivered or issued for delivery in this state provided that the insured has the right to reject such coverage.

In my opinion a board of county commissioners when purchasing motor vehicle liability insurance must reject the uninsured motorists portion of the coverage because there is no authority for them to purchase this coverage. Such authority cannot be found in either of the above or any other statutes. Further, such authority cannot be implied and in so holding I am aware that there are strong public policy reasons for requiring companies to offer uninsured motorists coverage. Such policy is based on the proposition that innocent motorists who suffer bodily injury at the hands of those who fail to comply with the financial responsibility laws of this state ought to be compensated.

However, assuming as I must, the lawful use of county vehicles, should such injuries be sustained by county officers and employees, compensation is available by virtue of the workmen's compensation laws. It should also be noted that under standard policy provisions any recovery available by virtue of uninsured motorists coverage would be reduced by the amount of any available workmen's compensation awards. Thus this coverage would be of little if any value to county officers and employees.

In light of the foregoing it is my opinion and you are advised that:

1. The purchase of uninsured motorists insurance by a board of county commissioners, even though insurers are required to offer the same, would constitute an unauthorized and illegal expenditure of public funds.

2. A board of county commissioners is not authorized to purchase uninsured motorists coverage for its officers and employees and must reject such coverage when the same is offered.