

787.

SUBDIVISIONS MAY INSURE PUBLIC PROPERTY, HOW—  
INSURABLE PROPERTY INCLUDES PERSONAL PROP-  
ERTY—INSURANCE IN MUTUAL COMPANIES MAY IN-  
CLUDE, WHAT—SUBDIVISIONS MAY NOT BECOME  
SHAREHOLDERS IN MUTUAL INSURANCE COMPANY—  
MAY BECOME MEMBER OF AND INSURE IN, WHEN.

*SYLLABUS:*

1. *Under Article VIII, Section 6 of the Constitution of Ohio, political subdivisions may insure public buildings or property in mutual insurance associations or companies.*

2. *Insurable property contemplated in Article VIII, Section 6 of the Constitution of Ohio includes personal property such as road machinery and equipment and public owned motor vehicles, assuming that such personal property is acquired by a political subdivision in a manner prescribed by law.*

3. *Insurance in mutual companies may include fire, theft and collision insurance on county or school district motor vehicles, road machinery, equipment, etc., and fire, theft and collision insurance on township equipment, road machinery, etc., and by virtue of the liability created by Section 3298-17, General Code, includes property damage and public liability insurance on township owned motor vehicles, equipment and road machinery while such vehicles and machinery are being operated in furtherance of the official duties of the township.*

4. *A political subdivision is not authorized to pay a membership fee or become a shareholder in a mutual insurance company.*

5. *A political subdivision may become a member of and insure in a mutual association where loss is covered entirely by assessment.*

COLUMBUS, OHIO, June 25, 1937.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN: This will acknowledge receipt of your letter of recent date which reads as follows:

“In connection with Article VIII, Section 6, of the Constitution, we submit the following question upon which we respectfully request your written opinion:

Does insurable property contemplated in this section include personal property, such as road machinery and equipment, and public-owned motor vehicles?

Does insurance in mutual companies, contemplated in this section, include fire, theft, collision insurance on county or school district motor vehicles, road machinery, equipment, etc.; and fire, theft, collision, and property damage and public liability insurance on township equipment, road machinery, etc.?

We do not find in the statutes that a membership fee in mutual companies is provided for, and we are informed by the Insurance Department of the State that there is no such provision, but that many mutual companies, through their by-laws and constitution, establish a membership fee.

Is a public subdivision authorized to pay a membership fee in a mutual insurance company?

A number of mutual companies, we are informed, require that the insured person or political subdivisions, purchase a share of stock in the company precedent to procuring insurance.

May a political subdivision become a stockholder in a mutual insurance company?

Where members of local subdivision boards are stockholder in mutual insurance companies, is it permissible for the subdivisions to insure in companies, stockholders of which are members of the local boards?

Section 6, Article VIII, includes mutual associations.

May a political subdivision become a member of and insure in a mutual association where loss is covered entirely by assessment; or where the policy of insurance contains a rider to the effect that the insured is subject to additional assessment?"

The first problem presented by the questions outlined in your letter is whether or not a political subdivision has the authority to insure its public buildings or property in mutual insurance associations or companies. It is true that with few exceptions there are no express statutory provisions which authorize the political subdivision to insure its buildings or property. However, there are many provisions in the General Code which vest in administrative bodies of political subdivisions the authority to acquire, possess and hold both real and personal property. It is well settled that the express authority extended to political subdivisions to acquire, possess and hold property includes the power to protect such property so as to secure the political subdivision in case of loss. Cooley's Briefs on Insurance, Vol. I, page 104, citing *French vs. City of Millville*, 67 N. J. Law 349; Couch on Insurance, Vol. I, par. 226.

Prior to 1912, because of the inhibition contained in Article VIII, Section 6 of the Constitution of Ohio as in effect at that time, administrative boards of political subdivisions had no authority without exception

to give or loan the credit of the political subdivision in aid of any association or corporation or become a joint owner or shareholder in any company or association, which would be in effect becoming a member of a mutual fire association or a mutual insurance company. Thus, the Attorneys General at that time held that a political subdivision might not insure its property in mutual associations or companies. Annual Report of the Attorney General for 1911-12, pages 246 and 1690.

In 1912, Article VIII, Section 6 of the Ohio Constitution was amended to read as follows :

“No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever ; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association ; provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed providing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state or doing any insurance business in this state for profit.”

The adoption of the constitutional amendment when considered in light of the constitutional provision which existed prior to the amendment shows a clear intent that the purpose of the amendment was to vest authority in political subdivisions to insure their property in mutual associations or companies. The Attorney General in 1928 thus recognized the purpose of the amendment and held in Opinions for that year, Vol. III, page 2375 :

“Boards of education may legally insure school buildings under their control, in mutual insurance associations or companies.”

It would seem, therefore, that a political subdivision which acquires, possesses and holds property in a manner prescribed by law would have the authority incidental thereto to insure such property and by virtue of Article VIII, Section 6 of the Constitution of Ohio may legally insure such property in mutual insurance associations or companies.

The first question stated in your letter is rather general in nature. Whether or not insurable property contemplated in Article VIII, Section 6 of the Constitution includes personal property, such as road machinery and equipment and public owned motor vehicles, must be determined by

an examination of the provisions of the General Code relating to particular political subdivisions for the purpose of ascertaining whether or not the political subdivision has the authority to acquire such property. It is well to bear in mind that political subdivisions cannot acquire property as freely as a private citizen, for they may only acquire property, which may include road machinery and equipment and motor vehicles, in a manner prescribed by law. 11 O. Jur. p. 479. Assuming, therefore, that the personal property mentioned in your first question is acquired by a political subdivision in a manner prescribed by law, the political subdivision would under such circumstances have, incidental to the authority to acquire such property, the power to insure same against loss. It necessarily follows, therefore, that insurable property contemplated in Article VIII, Section 6 of the Constitution includes not only road machinery and equipment and motor vehicles but all personal property which may be acquired, held or possessed by a political subdivision under authority of the provisions of the General Code relating to such subdivision.

Mutual insurance associations may be organized in this state under the provisions of Section 9593 of the General Code and related sections for the purpose of insuring their members "against loss by fire and lightning, cyclones, tornadoes or wind storms, hail storms and explosions from gas, on property in this state." Under the provisions of the General Code relating to mutual insurance associations, such associations are not authorized to insure property against loss by theft, collision, property damage or public liability.

Mutual insurance companies may be organized under Section 9607-2, General Code, for the purpose of transacting all kinds of insurance with the exception of life insurance.

Under Article VIII, Section 6 of the Constitution, there are no limitations which would prevent a political subdivision from contracting with mutual insurance associations or companies for any kind of insurance and it is therefore reasonable to assume that a political subdivision would be authorized to enter into a contract of insurance with a mutual insurance association for fire insurance.

The question now presents itself as to whether or not a political subdivision has the authority to enter into a contract of insurance for the kinds of insurance mentioned in your letter. A distinction should be made between fire, theft and collision insurance on the one hand, and property damage and public liability insurance on the other. In the first case, the insurance is for the protection and preservation of the property owned by the political subdivision. In the second, the insurance is for the purpose of protecting the person or property of others.

My predecessors in office have on several occasions held that po-

litical subdivisions may insure to protect themselves against loss by fire, burglary or robbery.

In Opinions of the Attorney General for 1937, Vol. III, page 2160, the then Attorney General said at page 2163:

“Cognate sections of the General Code direct the county commissioners to furnish, at the expense of the county, necessary books, stationery and similar supplies as may be needed for the county offices. This express authority to provide office equipment and supplies necessarily includes within it the authority to protect and preserve this physical property by insurance or otherwise, whether that insurance be against losses by fire, theft, robbery or burglary. The same rule would apply to other county property which it is the duty of the county commissioners to provide and care for.”

Again, in Opinions of the Attorney General for 1934, Vol. III, page 1915, my predecessor in office held as disclosed by the first branch of the syllabus:

“A board of education may lawfully pay from public funds under its control, for insurance against loss of furniture, fixtures and other equipment in the school buildings which may be occasioned by burglary or robbery.”

It is to be noted from the above authorities that administrative boards of political subdivisions have the authority to insure personal property against loss by fire, robbery or burglary. Nowhere can I find an expression as to the authority of an administrative board of a political subdivision to insure personal property against loss by collision. However, it would seem that collision insurance is in a class with fire or theft insurance in that the purpose is for the protection of property owned by the political subdivision and it is therefore my opinion, in view of the holdings of this office, that an administrative board of a political subdivision may insure its personal property against loss by fire, theft or collision.

As to property damage and public liability insurance, suffice it to say that this office has consistently held that a political subdivision cannot legally enter into a contract and expend public moneys for the payment of premiums on public liability or property damage insurance covering damages to property and injury to persons unless there is a liability created against the political subdivision by statute. Opinions of the Attorney General for 1934, Vol. II, page 1120. Where there is a lia-

bility created, however, the Attorney General in 1931 in the opinions for that year, Vol. I, page 303, held as disclosed by the syllabus:

“By reason of the liability created by Section 3298-17, General Code, boards of township trustees may lawfully protect themselves against liability for damages by procuring liability or property damage insurance upon township owned motor vehicles and road building machinery while such vehicles and machinery are being operated in furtherance of the official duties of said trustees.”

In view of the above, I am of the opinion that insurance in mutual companies contemplated in Article VIII, Section 6 of the Constitution of Ohio, includes fire, theft and collision insurance on county or school district motor vehicles, road machinery and equipment, and includes fire, theft, collision insurance on township equipment and road machinery and by virtue of the liability created by Section 3298-17, General Code, includes property damage and public liability insurance on township motor vehicles, equipment and road machinery while such vehicles and machinery are being operated in furtherance of the official duties of the trustees of the township.

Whether or not a political subdivision is authorized to pay a membership fee in a mutual company in my opinion should be determined by the provisions of the General Code which authorizes the organization of such companies. Nowhere in this section is there a provision which authorizes a mutual insurance company to charge a membership fee as a condition to entering into a contract of insurance. It would seem that a political subdivision, which is a creature of the law, would have no authority to enter into a contract of insurance in any manner other than as prescribed by law.

I am therefore impelled to the conclusion that a political subdivision, in the absence of any statutory provision authorizing a mutual insurance company to charge a membership fee, could not legally pay such fees to a mutual insurance company.

Under the provisions of the General Code, neither mutual insurance fire associations nor mutual insurance companies are now permitted to issue insurance under the stock plan under any circumstances. It would seem, therefore, that a political subdivision cannot become a stockholder in a mutual insurance company where no authority exists for such companies to incorporate and authorize the issuance of shares. In view of this conclusion, there is no necessity to comment upon your next to the last question.

Coming now to your last question, it would seem that inasmuch as

there is no law prohibiting political subdivisions from insuring their property in a mutual association where a loss is covered entirely by assessment, it is my opinion that it would not be illegal for them to do so. The Attorney General in Opinions of the Attorney General for 1928, Vol. III, page 2375, stated that although in his opinion it might be inadvisable for persons in charge of public property to insure such property under the assessment plan of insurance, thus subjecting the political subdivision to the possibility of a large contingent liability, nevertheless he recognized no objection for a board of education from entering into a contract for such insurance, as there was no law prohibiting them from doing so.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

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788.

APPROVAL—GRANT OF EASEMENT EXECUTED TO THE  
STATE OF OHIO BY MADGE A. CRAIN, ET AL, FOR USE  
AS PUBLIC FISHING GROUNDS.

COLUMBUS, OHIO, June 25, 1937.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain grant of easement executed to the State of Ohio by Madge A. Grain, et al., conveying to the State of Ohio, for the purposes therein stated, a certain tract of land in Bethel Township, Clark County, Ohio. This grant of easement is No. 873.

By the above grant there is conveyed to the State of Ohio, certain lands described therein, for the sole purpose of using said lands for public fishing grounds, and to that end to improve the waters or water courses passing through and over said lands.

Upon examination of the above instrument, I find that the same has been executed and acknowledged by the grantors in the manner provided by law and am accordingly approving the same as to legality and form, as is evidenced by my approval endorsed thereon, all of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*