



**THE ATTORNEY GENERAL  
OF TEXAS**

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**AUSTIN, TEXAS 78711**

November 5, 1971

*Overrule M-475  
where conflicts*

Honorable Ned Price, Chairman  
State Board of Insurance  
1110 San Jacinto Boulevard  
Austin, Texas

Opinion No. M-989

Re: Whether a school district  
may purchase with public  
funds insurance policies  
providing described  
coverage against bodily  
injury and property  
damage, and related  
questions.

Dear Sir:

In your recent letter you have requested the opinion  
of this office on the following questions:

1. May a school district purchase with  
public funds an insurance policy protecting the  
district against claims for bodily injury, where  
the coverage afforded by the policy is broader  
than the liability imposed on the district by  
the Texas Tort Claims Act because of exceptions  
provided in that Act? The proposed coverage is  
limited to bodily injury liability only.

2. Whether a school district may purchase  
with public funds an insurance policy protecting  
the individual officers and employees of the  
district while engaged in their official duties,  
against tort claims for both bodily injury and  
property damage.

3. Whether a school district may purchase

with public funds an insurance policy protecting persons not officers or employees of the district against tort claims for bodily injury and property damage.

Article 6252-19, Vernon's Civil Statutes, the Texas Tort Claims Act, authorizes the purchase by school districts of insurance to protect themselves against claims against them brought under the provisions of the Act. The Act limits those claims to damages for "personal injuries or death," commonly called "bodily injury" in insurance contracts.

In reply to your first question, our opinion is that under Article 6252-19 a school district may legally purchase insurance protection against claims against it for bodily injury arising only from the risks recognized under Section 3 of that Article even though the policy does not expressly exclude those claims set out as exemptions in Section 14 of that statute. We recognize that the Tort Claims Act applies to school districts only insofar as it concerns motor vehicles. Art. 6252-19, Sec. 19A.

We have reached this conclusion because of the nature of a liability insurance policy, whereby the insurer agrees to indemnify the insured for claims for which the insured is legally liable. In any action brought under Article 6252-19 against a school district for damages arising from bodily injury, any exemption provided by Section 14 must be utilized as a defense. Department of Public Safety v. Great Southwest Warehouses, 325 S.W.2d 493 (Tex.Civ.App. 1961, error ref. n.r.e.). Whether the exemption is a valid defense, under the facts of the case, would be a matter for judicial determination. If the school district were held liable, it would obviously be for the reason that the complained-of tortious act did not fall within the exclusions listed in the statute, and liability would be imposed under the general provisions of the Tort Claims Act. We see no constitutionally invalid use of public funds in this circumstance.

We recognize the difficulties that are faced by the Insurance Commission, insurance carriers and units of government.

in writing insurance coverage for the exposures imposed by the Tort Claims Act in the absence of special policies tailored for governmental units. The standard liability policies simply are not, in our view, adequate vehicles for the special problems that exist. This is not to say, of course, that any illegality arises from the use of standard policies, but their continued use makes a difficult problem that much harder. We would also point out that the continued use of standard liability policies may well make the rate adjustment duties of the Insurance Commission more burdensome than should reasonably be expected. See Attorney General's Opinion M-546 (1969), wherein we observed that the Commission has a duty under Articles 1.04(b) and (c) and 5.01, Texas Insurance Code to fix and maintain fair, reasonable, and just insurance premium rates in accordance with its published rules and regulations in this connection. Therefore, regardless of the form of policy used, we presume that one of the principal factors considered in setting premium rates will be the risks to which the governmental unit is exposed under the Texas Tort Claims Act.

In your second question you inquire whether a school district may legally purchase, with public funds, liability coverage to protect its officers and employees, while engaged in their official duties, against tort claims for both bodily injury and property damage.

At the outset we would point out that officers and employees of State agencies are authorized to have full automobile liability coverage purchased for them by the specific language of Articles 6166z-10, 6252-19a, and 6674s-10, Vernon's Civil Statutes. (We note that authority to expend appropriated funds for this purpose is removed by the 1971-72 General Appropriation Act.) Further, by virtue of Section 9 of Article 6252-19, all units of government are authorized to purchase insurance for the unit and its officers and employees, to cover liabilities imposed by the Texas Tort Claims Act. However, such officers and employees have an individual exposure to liability for acts arising out of their official duties, and this exposure is much broader in scope than the liability imposed by the Tort Claims Act upon units of government. We

consider that it would be an extremely rare circumstance where an employee's individual liability would be a problem other than in an automobile case, and for this reason will limit our discussion to the problem of purchasing automobile liability coverage for employees of school districts.

We have been unable to find any specific authority for school districts to purchase automobile liability coverage for their employees. On the other hand, we find no specific rule making such purchases improper, and it is our view that school districts have the implied authority to provide this coverage. We base this opinion on the fact that these units of government have the authority to set employee pay levels and that the purchase of insurance coverage by employers is a universally accepted element of employee salaries. Viewing the purchase of insurance as an element of employee compensation, on the same basis as pension plans, group life and group health and accident policies, we find no violation of Article III, Section 51, Texas Constitution. See Byrd v. City of Dallas, 118 Tex. 28, 6 S.W.2d 738 (1928); Friedman v. American Surety Co. of New York, 137 Tex. 149, 151 S.W.2d 570 (1941). You are accordingly advised that it is the opinion of this office that school districts may properly purchase necessary liability insurance for officers and employees of such units in the name of such employees or for the employees as a group, who are exposed to individual liability by virtue of their official duties. Attorney General's Opinion M-475 (1969) is overruled to the extent of its conflict with this holding.

Your third question asks about the incidental coverage that is provided for third parties by virtue of the omnibus clause of the standard Texas liability policies. In asking this question, you cite the example of driver training students who receive coverage by virtue of the fact that they drive school-insured cars with the permission of the school district.

Although we recognize how deeply ingrained the omnibus clause is in the insurance industry in Texas, it is our duty to take a strict view of the power of school districts to spread a mantle of protection further than that authorized

by Constitution and statute. With regard to your specific question, the liability of school districts is limited by the Texas Tort Claims Act. The actions of third parties do not impose liability upon these governmental units, particularly since we note that governmental vehicles may only be used by authorized governmental personnel. In the specific example cited by you, school districts do not own driver education vehicles, but these cars are the property of local automobile dealers. Omnibus clause coverage for student drivers would thus appear to be the responsibility of persons other than the school district. You are accordingly advised that it is the opinion of this office that no school district may legally purchase liability insurance except to insure against risks that have been imposed on it by law because to do otherwise would constitute a gift or donation of public funds in violation of Article III, Section 51, Texas Constitution.

#### S U M M A R Y

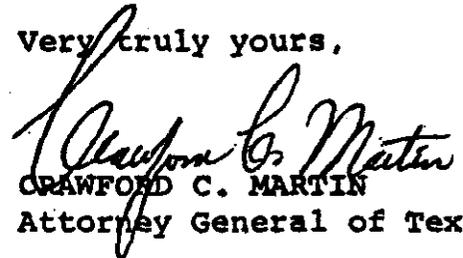
School districts may legally purchase insurance protection against claims for bodily injury arising out of only the risks recognized by Section 3 of Article 6252-19, Vernon's Civil Statutes, even though the policy does not expressly exclude those claims set out as exemptions in Section 14 of that statute.

As an element of government employees' compensation, school districts may properly purchase necessary liability insurance in the name of such employees who are exposed to individual liability by virtue of their official duties.

A school district may not legally purchase with public funds an insurance policy protecting persons not its officers or employees against tort claims for bodily injury and property damage.

Hon. Ned Price, page 6 (M-989)

Very truly yours,

  
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