

OFFICIAL OPINION NO. 73-19, Authority of school district to carry liability insurance for school board members.

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

June 19, 1973

Harvey M. Crow, Jr.
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McIntosh, South Dakota 57641

OFFICIAL OPINION NO. 73-19

Authority of school district to carry liability insurance for school board members.

Dear Mr. Crow:

You have submitted the following factual situation:

A school board in Corson County is considering the purchase of liability insurance to protect itself against liability suits which might be brought against it for acts done in the performance of its duties as a school board, and to use public funds for the purchase. SDCL 196713-8-39 provides the school boards with the power to " carry liability and other insurance ... ," and SDCL 1967 13-10-9 provides the school board with the power to carry liability insurance on its employed personnel. In the 1965566 report of the Attorney General at page 112, an opinion interpreting apparently identically worded statutes answered the question, "May a school district legally expend public funds for liability insurance in addition to the authority to carry liability insurance protecting its employees for suits and negligence," was answered in the affirmative.

Based on the factual situation you have requested an opinion on the following questions:

1. Does the apparent authority that: the school district has to purchase liability insurance additional to that protecting its employees, extend to the purchase of liability insurance, with public funds, to protect the school board against liability suits brought against them for acts in the performance of their duties as a school board?

2. Whether the term "employees" as used in SDCL 1967 13-10-9 encompasses the school board within its meaning?

In an official opinion 1965-66 AGR 112, my predecessor was asked the question:

May a school district legally expend public funds for liability insurance in addition to the authority to carry liability insurance protecting its employees for suits and negligence?

My predecessor said in answer to the above question, after reviewing a recent amendment to SDCL 13-8-39, SDC 1960 Supp. 15.3815, the following:

It is my opinion that it was the intent of the legislature, by making the above change, to broaden the authority of the school district board and authorize them to carry liability insurance over and above that authorized by SDC 1960 Supp. 15.3815. Therefore, the answer to your specific question is in the affirmative.

I concur in and reaffirm the above opinion.

SDCL 13-8-39 reads as follows:

As provided and limited by law, the school board shall have general charge, direction, and management of the schools of the district and control and care of all property belonging to it and shall have power to levy taxes, borrow money, employ any necessary personnel, to lease real and personal property, carry liability and other insurance, purchase all necessary books and equipment and purchase real property and erect necessary buildings for the operation of such schools.

SDCL 13-10-9 reads as follows:

Any school board shall have power to carry public liability insurance protecting its employed personnel against liability suits which might be brought against them for acts of negligence while performing their duties as employees of the school district.

SDCL 58-9-13 reads as follows:

"Casualty insurance" includes liability insurance, insurance against legal liability for the death, injury, or disability of any human being, or for damage to property; and provision of medical, hospital, surgical, disability benefits to injured persons and funeral and death

benefits to dependents, beneficiaries, Or personal representative of persons killed, irrespective of legal liability of the insured, when issued as incidental coverage with or supplemental to liability insurance.

Subsequent to the issuance of the above cited opinion the legislature enacted SDCL 3-19 in 1969 and such statute creates an obligation against the state and its political subdivisions to indemnify its officers and employees when exercising official duties or responsibilities.

In answer to your specific question No.1, it is my opinion that the term "carry liability and other insurance" as used in SDCL 13-8-39 authorizes a school district to carry liability insurance for its school board members, therefore, the answer to your question is YES.

In answer to your specific question No.2, it is my opinion that the term "employees" as used in SDCL 13-10-9 does not include school board members, therefore, the answer to your question is NO (see 1963-64 AGR 16).

Respectfully submitted,

Kermit A. Sande
Attorney General