

sumed that the term was used not only to create the office but was intended to carry its full meaning as defined by Section 1(c) as well.

The proviso set forth in Section 3 of Chapter I of the Act requires that membership on the retirement board of non-teaching members of the system not exceed the ratio of non-teaching to teaching members of the system. The definition of "member" appearing in Section 1(c) of Chapter I of the Act applies to the office of member of the retirement board. This definition includes non-teaching members of the retirement system. In appointing from their membership in the system to the retirement board, the ratio of non-teaching to teaching members of the system must be observed.

There is no authority in the Act for the appointment of a non-member of the system, teaching or non-teaching, to the office of member of the retirement board created by Section 3 of Chapter I of the Act.

In accordance with the above reasons, and with the history of Retirement Board membership during which no non-member of the System has ever served as a member of the Retirement Board, it is my opinion that an appointee to the office of member of Michigan Public School Employees' Retirement Board, as set forth in Section 3 of Chapter I of the Act, must be a member of the retirement system. Therefore, Mr. Seys would not be eligible to serve as a member of that Board.

FRANK J. KELLEY,
Attorney General.

64110.1

SCHOOLS: Requirement of insurance as a condition for students to participate in interscholastic athletic activities.

The board of education of a school district is without authority to bar students, otherwise eligible, from participation in interscholastic athletic activities because the student is not covered by insurance.

No. 4324

November 10, 1964.

Hon. Frederic J. Marshall
State Representative
White Marble Springs
Allen, Michigan

You have requested my opinion on the following questions:

1. Does the board of education of a school district have authority to bar a student from participation in sports if he is not covered by insurance?
2. Does the board of education of any school district have the legal right to compel parents to purchase insurance from an insurance company selected by the board of education as a condition for the participation of their children in sports?

Your letter does not specify the type of insurance which is involved.

Act 269, P.A. 1955, as amended, being CLS 1961 § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001 et seq., is known as the school code of 1955.

Boards of education of school districts have only such powers, express or implied, as the statute confers upon them. *Jacox v. Board of Education of Van Buren Consolidated School District*, 293 Mich. 126 (1940).

I find no express statutory authority reposed in boards of education of school districts to condition participation of students in interscholastic athletic activity upon the purchase by their parents of insurance against injury to the student. Nor may such power be implied.

Section 781 of the school code of 1955 requires every pupil attending the public schools of this State, so far as he or she is physically fit and capable of doing so, to take a course in physical education. In school districts having a population of 3,000 or more, the legislature has imposed a duty upon their respective boards of education to engage competent instructors of physical education and to provide the necessary facilities for instruction in health and physical education.

Section 784 of the school code of 1955 provides as follows:

"The superintendent of public instruction shall have supervision and may exercise control over the interscholastic athletic activities of all the schools of the state."

The legislature has conferred control over interscholastic athletic activities in the Superintendent of Public Instruction, *Watson v. School District of the City of Bay City*, 324 Mich. 1 (1949), and has withheld such power from the boards of education of school districts.

The Superintendent of Public Instruction has from time to time adopted rules and regulations for the conduct of interscholastic athletic activities pursuant to the authority vested in him by the provisions of the school code of 1955, and the rules and regulations are found in the Michigan Administrative Code. Although the Superintendent of Public Instruction has promulgated specific rules to determine eligibility of students to participate in interscholastic athletic activities both on the senior and junior high school level, he has not adopted a rule that makes any student, otherwise qualified, ineligible for interscholastic athletic activity because he is not covered by insurance.

The power to adopt reasonable rules and regulations requiring students participating in interscholastic athletic activities to be covered by insurance is not reposed by statute, either expressly or by implication, in boards of education, since the school code of 1955 grants authority to the Superintendent of Public Instruction to supervise interscholastic athletic competition.

A board of education may recommend to parents of students participating in interscholastic activities that they purchase insurance for the protection of their children, but may not require that they do so as a condition to the student taking part in such athletic events. The legislature must amend the school code of 1955, *supra*, to make such a requirement mandatory.

Therefore, it is the opinion of the Attorney General that the board of education of a school district is without power to bar a student from participation in interscholastic athletic activities if the student is not covered by insurance.

The answer to the first question makes it unnecessary for me to answer the second question.

FRANK J. KELLEY,
Attorney General.

641201.1

SCHOOLS: Intermediate School Districts, property of.

COUNTIES: Boards of Supervisors, powers of.

Intermediate school district as the successor of the county school district is the owner of all furniture and equipment of the county school district. The board of supervisors of a county has authority to lease space in a county building to an intermediate board of education to house its staff.

No. 4328

December 1, 1964.

Mr. Donald L. Munro
Prosecuting Attorney
Ontonagon County
Ontonagon, Michigan

You have requested my opinion upon the following questions:

1. To whom does the furniture and equipment purchased by the board of county supervisors for the county board of education belong since the legislature has created an intermediate board of education as a successor to the county board of education?
2. Is the county board of supervisors empowered to charge a rental for space used by the intermediate board of education in the county building?

Act 269, P.A. 1955, as amended, being C.L.S. 1961 § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001, et seq., is known as the School Code of 1955.

As originally enacted Section 291 of the School Code of 1955, specified that each county of the state was to constitute a county school district to be supervised and controlled by a county board of education to be composed of five members as set forth in Section 292.

Pursuant to Section 297(i) of the School Code of 1955, in its original form, the county board of supervisors was authorized to appropriate money to the county board of education for the support of the county school district. The Attorney General has ruled that the authority of the county board of supervisors to appropriate money to the county board of education was discretionary. O.A.G. 1955-56, Vol. II, page 28. However, the power of the county board of supervisors over the county school district was limited to making the appropriation. O.A.G. 1957-58, Vol. I, page 135. See also *Sturgis v. County of Allegan*, 343 Mich. 209 (1955) and O.A.G. 1957-58, Vol. I, page 28.

The furniture and equipment of the county school district in question must have been provided by the county board of supervisors pursuant to grant of Section 297(i) of Act 269, P.A. 1955, as originally enacted and were the property of the particular county school district.