has been ordered and allowed by the board of commissioners of the county while in regular or special session, or by a court of competent jurisdiction; that nothing herein shall affect the issuing of warrants relating to the management of the common or congressional school fund or insanity inquests.” (Our emphasis)

In view of this provision, it is my opinion that when the Marion County Juvenile Court enters an order authorizing the expenditure of public funds for the support and maintenance of a dependent child made a ward of the Marion County Department of Public Welfare that the County Auditor of Marion County would be authorized to pay the welfare claims for the care of such child including the purchase of clothing, without the signatures of the Marion County Commissioners.

OFFICIAL OPINION NO. 33

July 20, 1955

Mr. Harry E. Wells
Insurance Commissioner
240 State House
Indianapolis, Indiana

Dear Mr. Wells:

I have your recent letter which reads as follows:

"Sec. 39-1818-1820, inclusive, of Burns’ Indiana Statutes, 1952 Replacement, sets out the provisions that insurance policies may be purchased by municipal corporations providing that such policies contain a provision that the carrier will not set up as a defense the immunity of municipal corporations insured in the event of a claim under the policy.

"In the case of Hummer vs. School City of Hartford City (112 N. E. (2d) 891) Judge Achor stated:

“Generally speaking, school officers acting within the scope of their duty are only responsible individually for the injuries resulting from corrupt motives and not from mistake of law or judgment.’
1955 O. A. G.

“We also have reports of several insurance companies denying liability under these policies on the theory of the freedom of municipal corporations from tort liability.

“In view of the above, I would like an official opinion on the question: In the light of our Indiana Law and Decisions, do Insurance Companies issuing these policies in effect, accept premiums for insurance risks which may not actually exist?”

The statute in question is Acts of 1941, Ch. 52, Sec. 2 as found in Burns' Indiana Statutes (1952 Repl.), Section 39-1819, and reads as follows:

“The state, or any municipal corporation thereof, is hereby empowered to purchase policies of insurance insuring the officers, appointees, agents and employees of the state or municipal corporation against loss or damage because of the liability imposed by law upon such officers, appointees, agents and employees for loss or damage resulting from bodily injury to, or death of, or property damage sustained by, any person or persons, caused by accident and arising out of the ownership, maintenance, hire, or use of any motor vehicle owned by the state or such municipal corporation, and any real or other personal property whatsoever, owned, hired, or used by the state or such municipal corporation, in the business of the state or such municipal corporation, and to pay the premiums thereon out of public funds. In no event shall the state or any municipal corporation thereof be liable, in any case, in any amount in excess of the maximum amount of valid insurance in full force and effect and covering the particular motor vehicle or particular real or personal property involved in the accident causing such loss or damage: Provided, That wherever the state or any municipal corporation thereof enters into a contract for the hire or use of any automobile owned and operated by a private individual, such insurance, as set out above, shall be purchased by the owner of such automobile and funds for the payment thereof may be included in the contract for hire. No such policy of insurance shall be purchased by or
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issued or delivered to the state or to any municipal corporation thereof by any insurance carrier unless such carrier is duly authorized to transact such insurance business within the state of Indiana, and the policy so issued shall conform to the requirements of chapter 162, article IX, sec. 177 of the Acts of 1935 [§ 39-4309], nor unless there shall be contained within such policy a provision that if there arises or may arise a claim, suit or cause of action in relation thereto, such insurance carrier will not set up, as a defense, the immunity of the state or of such municipal corporation, but such insurance carrier shall be permitted to plead and interpose every other defense that would be available to the insured if such insured were a natural person or a private corporation. In no event shall the insurance carrier be liable, in any case, in any amount in excess of the maximum amount named in the policy of insurance."

The above-cited statute has been considered by the Appellate Court in Hummer v. School City of Hartford City (1953), 124 Ind. App. 30, 112 N. E. (2d) 891. Petition to transfer to Supreme Court denied October 27, 1953. In that case the Court said at page 898:

"Significant to the consideration of this case is the fact that the insurance policy in issue named the School City of Hartford City as the sole 'insured' and that said school city was made the sole defendant in this case, although our statute makes no provision for the purchase of insurance insuring municipal corporations themselves. To the contrary, by express terms, it merely empowered the 'purchase [of] policies of insurance insuring the officers, appointees, agents and employees of the * * * municipal corporation * * *.§ 39-1819, supra.

"Furthermore, by the clear terms of the statute, § 39-1819, supra, it only presumes to authorize the purchase of insurance insuring said officers, etc., 'against loss or damage because of the liability imposed by law upon such officers, * * *.' And, as heretofore discussed, in this state there is no 'liability imposed by law' upon school corporations as such because of the negli-
gence of school officers and employees. Freeland v. The School City of Crawfordsville, *supra*. The existing 'liability imposed by law upon such officers' of school corporations is expressed in the following reported cases of our courts: In the case of Adams v. Schneider, 1919, 71 Ind. App. 249, 124 N. E. 718, this court held that members of a school board may be held personally liable for negligence in the performance of their ministerial acts in connection with a 'Field Day (athletic) Exhibition,' as distinguished from their discretionary acts. Also, in an earlier decision our courts held that a township trustee was personally liable for an assault and battery committed by him in connection with the eviction of a teacher from a school building. White v. Kellogg, 1889, 119 Ind. 321, 21 N. E. 901." (Court's emphasis)

In the same opinion, at page 900, the Court again stated that:

"However, as heretofore stated, personal liability has been imposed upon the officials of school corporations, in the cases of Adams v. Schneider, *supra*, and White v. Kellogg, *supra*, as restricted in the case of Medsker v. Etchison, *supra*. These cases would seem to justify the procurement of insurance insuring its officials, etc., against the problematical 'liability imposed by law' as provided in our statute § 39-1919, *supra*. In this particular the statute has logical application to school cities as municipal corporations and must be so construed." (Court's emphasis)

It is therefore my opinion that insurance companies issuing policies insuring the officers, appointees, agents and employees of a municipal corporation, under and pursuant to the terms of the foregoing statute, are accepting premiums for existing insurable risks since the law does, under certain circumstances, impose a liability upon such officers, appointees, agents and employees.