SCHOOLS:
INSURANCE:

All functions which a school district is authorized to perform are "governmental" functions and the school district is not liable for its negligence while performing those functions. Therefore, a school district may not expend public funds to purchase liability insurance to protect itself from liability resulting from authorized functions of the district such as allowing its swimming pool and auditorium to be used by non-profit organizations, repairing automobiles through a district's Vocational Technical School, and licensing concessionaires at athletic events.

OPINION NO. 312

November 4, 1970

FILED
312

Honorable John Crow
Prosecuting Attorney
Greene County Court House
Springfield, Missouri 65802

Dear Mr. Crow:

This is in response to your request of April 7, 1970, which reads as follows:

> "The attorneys for Reorganized School District R-12, Greene County (Springfield), have asked that I request your opinion in the following matter.
>
> "The School District
>
> > "(1) proposes to allow its swimming pool to be used by non-profit organizations provided such organizations pay the expenses of such use;
> >
> > "(2) furnishes its auditorium to non-profit organizations and collects fees to cover the expenses;
> >
> > "(3) through the Vocational Technical School repairs cars for the public without charge for labor, but sells the parts at a mark-up;
> >
> > "(4) licenses concessionaires at athletic events (for consideration received).
>
> "Because of the fact that the activities referred to do involve substantial exposure to liability

the attorneys for the School District would like answers to the following questions:

> "Question 1: Are the aforementioned activities 'proprietary functions' such that the School District would not be able to raise the defense of sovereign immunity to a tort action arising out of these activities?
>
> "Question 2: If the answer to Question 1 is in the affirmative, can the School District purchase liability insurance to protect itself?"

Before we answer the specific questions you asked, we must first determine if the school board of a six-director district is authorized to conduct the activities set forth in your letter. We have determined that activities (1) and (2) are authorized by Section 177.031(2), RSMo 1969, which reads as follows:

> "2. The school board having charge of the schoolhouses, buildings and grounds appurtenant thereto may allow the free use of the houses, buildings and grounds for the free discussion of public questions or subjects of general public interest, for the meeting of organizations of citizens, and for any other civic, social and educational purpose that will not interfere with the prime purpose to which the houses, buildings and grounds are devoted. If an application is granted and the use of the houses, buildings or grounds is permitted for the purposes aforesaid, the school board may provide, free of charge, heat, light and janitor service therein when necessary, and may make any other provisions, free of charge, needed for the convenient and comfortable use of the houses, buildings and grounds for such purposes, or the school boards may require the expenses to be paid by the organizations or persons who are allowed the use of the houses, buildings and grounds. All persons upon whose application, or at whose request, the use of any schoolhouse, building, or part thereof or any grounds appurtenant thereto, is permitted as herein provided, shall be jointly and severally liable for any injury or damage thereto which directly

> results from the use, ordinary wear and tear excepted." [Emphasis added]

The school district is authorized to permit the use of its swimming pool and its auditorium to non-profit organizations for "free discussion of public questions or subjects of general public interest, for the meeting of organizations of citizens and for any other civic, social and educational purpose." The school board may provide these facilities free of charge or may require the user to pay the expenses of providing these facilities.

The fourth activity is specifically authorized by Section 177.121, RSMo 1969, which states:

> "The school district may charge and receive reasonable tolls or admission charges and may grant, for consideration and under terms and conditions that the board of directors determines, concessions or exclusive rights to sell in and about the stadium refreshments, programs, emblems and similar articles related to the activity carried on, and the exclusive rights to make radio or television broadcasts of the games, contests or other exhibitions that are held therein; and may permit temporary use of the stadium by others when not in use by the schools, upon terms and for consideration, if any, that the board of directors determines."

With reference to the third activity, Sections 178.420 through 178.580 authorize a school district to have a vocational education program. We believe that the power to repair automobiles for the public without charge for labor could reasonably be inferred from these statutes. We find it unnecessary in this opinion to decide whether a school district can make a charge for parts in excess of the cost of the parts to the district because your question is only as to the district's tort liability and authority to purchase liability insurance.

Having determined that the school district is authorized to conduct these activities, we believe that they are "governmental" functions of the school district. Political subdivisions of the state, which are often called quasi or public corporations, are authorized to perform only "governmental" functions and come under the cloak of sovereign immunity when performing those functions. Municipal corporations, on the other hand, are authorized to perform both "governmental" and "proprietary" functions and their

liability depends on the type of function. This distinction between public corporations and municipal corporations was described by the Missouri Supreme Court in Cullor v. Jackson Township, Putnam County, 249 S.W.2d 393, 395 (Mo. 1952):

> ". . . it is important to bear in mind the distinction between municipal corporations (in the strict and proper sense), such as cities, towns and villages, and quasi corporations, such as counties and townships. Municipal corporations exercise both governmental and proprietary (sometimes called corporate) functions. Their liability or nonliability in tort depends on the character of the particular function involved as being governmental on the one hand, or proprietary on the other."

The court held that the defendant was not liable because it was a political subdivision citing the following from Cassidy v. City of St. Joseph, 247 Mo. 197, 206, 152 S.W. 306, 309 (1912):

> ". . .'Neither the State nor these quasi-corporations consisting of political subdivisions which, like counties and townships, are formed for the sole purpose of exercising purely governmental powers, are, in the absence of some express statute to that effect, liable in an action for damages either for the nonexercise of such powers, or for their improper exercise, by those charged with their execution. . . .' . . . " [Emphasis added]

Because a political subdivision is formed only to perform "governmental" functions, all functions it is authorized to perform must be "governmental" functions.

This idea is so strongly entrenched that the courts only discuss "proprietary" versus "governmental" functions when a municipal corporation is involved. For example, see Todd v. Curators of University of Missouri, 347 Mo. 460, 147 S.W.2d 1063 (1941) where the court held a political subdivision was not liable in suits for negligence arising out of the performance of a governmental function. The court did not go on to discuss the possible result if the political subdivision was performing a "proprietary" function apparently assuming that whatever a political subdivision does is a "governmental" function. In fact, in the most recent case on the liability of a school district for negligence, Smith v. Consolidated School Dist. No. 2, 408 S.W.2d 50, 54 (Mo. en banc 1966), the court merely said:

> ". . . For more than a century the courts of Missouri have uniformly held generally that political subdivisions of the state are not subject to liability in suits for negligence. [citations omitted] School districts are political subdivisions of the state. Art. 10, § 15, Constitution of Missouri, V.A.M.S., § 70.210, RSMo 1959, V.A.M.S. As such, school districts have long been held immune from liability in tort for negligence. . . ."

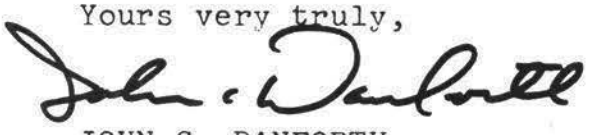
The court in the Smith decision dropped the "in performance of a governmental function" qualification used by the earlier courts and appears to have given school districts a blanket immunity against negligence. This might be overstating the rule because the court was discussing a request to abolish the doctrine of sovereign immunity, however, it supports our conclusion that school districts are immune from liability for negligence when performing functions which are authorized by statute.

CONCLUSION

All functions which a school district is authorized to perform are "governmental" functions and the school district is not liable for its negligence while performing those functions. Therefore, a school district may not expend public funds to purchase liability insurance to protect itself from liability resulting from authorized functions of the district such as allowing its swimming pool and auditorium to be used by non-profit organizations, repairing automobiles through a district's Vocational Technical School, and licensing concessionaires at athletic events.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Yours very truly,



JOHN C. DANFORTH
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