SCHCOLS: The School District is not liable for damages in case of personal injuries sustained by persons in the building.

June 24, 1937

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Mr. C. K. Allen
Secretary, Consolidated
School District No. 6,
Rothville, Missouri

Dear Sir:

Your request for an opinion, dated June 22nd and addressed to General McKittrick, has been handed to me for reply.

The contents of your letter is as follows:

> "We, being servants of the public, Members of the Board of Consolidated School District #6, Chariton County, Missouri, are in need of some legal advice. We can think of no better place to turn for it than to a Chariton County man, who is also a servant of the Public in the Higher Ranks.
>
> "Our School Building was planned by a licensed architect, who specialized in plans for school buildings, in 1924, and the plans were approved by the State Department of Education, and the building has been in use for something like thirteen years. It was built facing the south and there has the front entrance. There are two rear entrances on the north. On the east side at the northeast corner was built an outside stairway to the furnace room and coal bin, the opening to this stairway being at the northeast corner of the building with an iron railing around all but the entrance to the stairway.

"This Spring at a Music Festival participated in by a number of the County High Schools, one of the high school girls from a neighboring Town, about the hour of 10:00 P. M., went out one of the rear doors to consult with the bus driver. She then started around the east side of the building to get in a car that was waiting for her. In going around this corner of the building she entered the stairway and fell to the bottom of same, breaking her leg. She spent a considerable time in the Hospital, but is recovering and will eventually be as good as new it seems. Her Father is now asking that the School Board pay him a sum of $800.00 to compensate him for the money expensee incident to this accident.

"While we are very sympathetic with both the Girl and her Parents, we cannot see that the School District is liable, as it seems apparent to us that this building was planned and built about as other buildings that have outside stairways, and that the accident came about by the thoughtlessness of the Girl in not being more careful in strange surroundings.

"What is your opinion? Would this School Board have any right to settle with this party, using the taxpayers money that has been collected for school purposes?

"May we hear from you at an early date, and we assure you that we sincerely appreciate your service in this connection."

We appreciate the full and complete facts with which you have favored us. The incident which you relate is very unfortunate for the young lady who was injured, and in rendering you this opinion we are not unmindful that it is a sad incident, and merits the sympathy of every one. However, as your letter presents purely legal questions and requests our conclusion regarding the same, we must treat it from the standpoint of what is commonly termed 'cold law'.

The Supreme Court of the State of Missouri in the decision of Cochran vs. Wilson, 287 Mo. 210, had before it a situation almost identical with the one you present. The decision reviews all cases in which a similar principle is involved. We quote extensively from the same, l.c. 218:

> "This board is a quasi-corporation and bears a like relation to the State or its educational system to that sustained by a school district. (Art. XIII, chap. 106, R. S. 1909; Art. XVI, chap. 102, R. S. 1919.) Even more definite in terms and comprehensive in scope than the laws defining the corporate existence of ordinary school districts is that in relation to such a district as is authorized to be created in a city of 500,000 inhabitants or over, or that at bar. (Secs. 11030 et. seq., R. S. 1909; Secs. 11456 et seq., R. S. 1919.) The reasons prompting legislative action in the creation of school districts has been judicially defined many times, nowhere perhaps more fully or clearly than in Freel vs. School of Crawfordsville, 142 Ind. 27, in which recovery was sought by a laborer in a suit against a school district for injuries while working on a school building. A demurrer to the petition was sustained and there was judgment

for the defendant. This was affirmed on an appeal to the Supreme Court. In discussing the quasi-corporate capacity of the district as a ground of non-liability, at page 28, the court said, in effect:

"They are involuntary corporations, organized, not for the purpose of profit or gain, but solely for the public benefit, and have only such limited powers as were deemed necessary for that purpose. Such corporations are but the agents of the State for the sole purpose of administering the state system of public education. It is the duty of the school trustees of a township, town, or city, to take charge of the educational affairs of their respective localities, and, among other things, to build and keep in repair public school buildings. In performing the duties required of them, they exercise merely a public function and agency for the public good, for which they receive no private or corporate benefit. School corporations, therefore, are covered by the same law in respect to their liability to individuals for the negligence of their officers or agents, as are counties and townships. It is well established that where subdivisions of the State are organized solely for a public purpose by a general law, no action lies against them for an injury received by a person on account of the negligence of the officers of such subdivision, unless a right of action is expressly given by statute. Such subdivisions, then, as counties, townships, and school corpora-

tions, are instrumentalities of government and exercise authority given by the State and are no more liable for the acts or omissions of their officers than the State.

"The question as to the liability of quasi-corporations for the negligence of their directors, officers or employees has, in regard to other than school districts been frequently considered by this court. In Reardon v. St. Louis County, 36 Mo. 555, an action was brought by a widow against the county for the death of her husband alleged to have been caused by the negligence of the county in failing to keep a bridge in repair. A demurrer was sustained to the petition and upon appeal to this court the judgment was affirmed."

l. c. 222:

"On the ground, therefore, of its legal character alone as a quasi-corporation the Board of Education is not answerable in this connection for the negligence charged.

"Independent, however, of the foregoing, another reason exists for the non-liability of the Board of Education in a proceeding of this character. Public education is a governmental function. This is clearly recognized in our organic law, which declares that a general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this State between the ages of six and twenty years. (Art. XI. sec. 1, Const. Mo.)

"Prompted by this provision, the General Assembly has legislated liberally concerning public schools and especially so in the statute creating the Board of Education of the City of St. Louis (Art. XIII, chap. 106, supra,) which is clothed with the supervision, control and management not only of the public schools but of the school property of said city, and to effect the purpose of its creation such powers have been conferred and duties enjoined upon it as the Legislature in its wisdom deemed necessary. In defining the corporate character of the Board of Education this court has said: "The School Board of St. Louis is an instrumentality created by the laws of the State to administer the trust created and assumed by the State for the education of the children of the State. (State ex rel. O'Connell v. Board, 112 Mo., l.c.218.)

"Speaking of school districts generally, we said in the later case of State ex rel. School District v. Gordon, 231 Mo. 547, l.c. 574: 'But a school district is but the arm and instrumentality of the State for one single and noble purpose, namely, to educate the children of the district, a purpose dignified by solemn recognition in our Constitution.

"These conclusions are sufficiently indicative of school districts to authorize their classification as instrumentalities engaged in the performance of governmental functions and hence subject to the same rules as to nonliability for negligence as other subdivisions of the State charged with the performance of like duties.

"In Murtaugh v. St. Louis, 44 Mo. 479, the plaintiff sought to hold the city liable for injuries alleged to have been received by him through the negligence of employees while he was a patient at the city hospital. In holding the city not liable this court thus stated the rule: "The general result of these adjudications seems to be this: where the officer or servant of a municipal corporation in the exercise of a power conferred upon the corporation for its private benefit, and injury ensues from the negligence or misfeasance of such officer or servant, the corporation is liable, as in the case of private corporations or parties; but when the acts or omissions complained of were done or omitted in the exercise of a corporate franchise conferred upon the corporation for the public good, and not for private corporate advantage, then the corporation is not liable for the consequences of such acts or omissions on the part of the officers and servants.

"In Ulrich v. St. Louis, 112 Mo. 138, this court held that since the maintenance of the city workhouse was in pursuance of the governmental functions of the city of St. Louis it was not liable for injuries received by a prisoner therein, although caused by the negligence of the city's employees. In ruling upon this question the court said: 'The rule of law is well settled in this State that a municipal corporation is not answerable in damages for the negligent acts of its officers in the execution of such powers as are conferred on the corporation or its officers for the public good. (Murtaugh v. City, 44 Mo. 479; Armstrong v. City, 79 Mo. 319; Kiley v. City, 87 Mo. 103; Carrington v. City, 89 Mo. 208; Keating v. City, 84 Mo. 415; 2 Dillon on Municipal Corporations (4 Ed.), sec. 965a.)' "

l. c. 224:

> "If the operation of a city hospital, the maintenance of a workhouse or the collection of garbage are properly referable to the governmental functions of a city, no argument is required to establish the fact that the education of youth partakes of the same, although it may be of a higher character, and that the instrumentality, namely, a board of education, through which this function is exercised is consequently immune from actions for damages on account of negligence. Cases from courts of last resort elsewhere give added force to this conclusion. (Hill v. Boston, 122 Mass. 344; Wixon v. Newport, 13 R. I. 454; Folk v. Milwaukee. 108 Wis. 359.)"

* *

> "Another equally cogent reason why the Board of Education cannot be required to respond to an action of the character of that at bar is the nature of the fund entrusted to its care and distribution. School funds are collected from the public to be held in trust by boards of education for a specific purpose. That purpose is education. An attempt, therefore, to otherwise apply or expend these funds is without legislative sanction and finds no favor with the courts. Cases in which hospitals have been held exempt from actions for damages for negligence on account of their character as charitable institutions may not inappropriately be cited in this connection."

The above quoted decision was followed approvingly by the Supreme Court in the recent cases of Pearson vs. Kansas City, 331 Mo. 885, l.c. 891, and Eads vs. Young Women's Christian Association, 325 Mo. 577, l. c. 590.

As the decision in the case of Cochran vs. Wilson quoted, supra, is decisive in the matter and has been followed continuously, we shall not burden this opinion with further quotations from cases.

CONCLUSION.

We are of the opinion that due to the fact that school districts are not liable for damages or torts, in the instant case which you present, there is no liability on the part of the Board of the Consolidated School District No. 6, Chariton County, Missouri, for the unfortunate accident which happened to the young lady during the Music Festival, and that you have no authority as members of the Board to settle this claim with the funds of the school district.

Respectfully submitted,

OLLIVER NOLEN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General.

ON/R