SCHOOL DISTRICTS:-School District not liable for negligence in operation
TORTS: tion of bus hired by it to transport athletic teams; school superintendent, as agent for school board, would not be liable.

11456

11-10

FILED
10
58

November 9, 1933.

Mr. B. W. Bradley, Superintendent
Peculiar Consolidated Schools,
Peculiar, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"I should like to know:

(1) Can a school board be held liable if they hire a school bus, which is insured and approved by the state, to haul basket ball teams to and from games;

(2) Can a Superintendent of Schools be held liable if he hires a school bus, which is insured and approved by the state, to haul basket ball teams to and from games?

This school bus is used every day by our adjoining school district to bring their students to and from school."

I

SCHOOL BOARD NOT LIABLE FOR NEGLIGENCE IN THE OPERATION OF BUS HIRED BY IT.

In Dick v. Board of Education, 238 S. W. 1073, the Supreme Court says:

"There can be no doubt that when the state establishes and provides for the maintenance, operation, and management of public schools for the education of all children alike, at the expense of the public, it is acting in pursuance of a governmental policy founded solely in the public good. When these duties are, as in this case (section 11456, R. S. Mo. 1919), confided by law to a quasi corporation created for that purpose, such corporation is charged with the use of public funds devoted by law to that object. To that extent it is simply an instrument of the state government, and is entitled to no pecuniary profit from its services, which are devoted solely to the public.

> We discussed this principle in the light of numerous authorities cited in our opinion, in Zummo v. Kansas City, 285 Mo. 222, 225 S. W. 934, and held, in substance, that, while a municipal corporation in this state is generally liable for damages resulting from its negligence in the construction and maintenance of the public highways within its limits because the power and duty of the municipality in that respect is conferred upon it largely for the pecuniary profit of the owner and dedicator of the land to such uses and his successors as members of the corporation, there was no such ground for liability in the operation of a hospital under a special provision of its charter, as well as a general power relating to the public health. That the same principle applies to the liability for negligence of the quasi corporate instrumentalities charged by law with duties respecting public education has, since this appeal was taken, been upon full consideration decided by this court in Division No. 2 in the case of Cochran v. Wilson et al, 229 S. W. 1050. This leaves nothing further to be said. The judgment of the circuit court for the city of St. Louis if therefore affirmed."

In the Dick case above a school board in the district was held not to be liable for injury to a student resulting from the operation of its motor truck.

In Cochran v. Wilson, 229 S. W. 1050, referred to above, it is said at page 1053:

> "These conclusions are sufficiently indicative of the nature 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 recent years the trend of public opinion has been such as to conclusively make recreation of the students a part of the functions of public education. Athletics are a very necessary part of that division of public education, and football and basketball teams of institutions are recognized as a proper field of recreation. When the school district therefore is transporting its teams, we believe that it may be safely said that they are engaged in carrying out one of the functions of education, as is today generally recognized, and such acts would be acts done by it in its proper public and corporate capacity. Such being true, we are of the opinion that the school board would not be liable for negligence in the operation of a bus which they hired to transport their teams.

II.

SUPERINTENDENT OF SCHOOLS WOULD NOT BE PERSONALLY LIABLE

FOR THE HIRING OF BUS TO TRANSPORT TEAMS.

Much has been said by the courts as to the liability of agents for non-feasance, misfeasance and malfeasance. The rule which is applicable to this case we believe is expressed in Canfield v. Railroad Company, 59 M. A. 354, l. c. 364, where it is said:

> "No action will ordinarily lie against an agent for the misfeasance, or for the negligence of those whom he has retained for the service of his principal by his consent or authority, any more than it will lie against a servant who hires laborers for his master at his request, for their acts; unless, indeed, in either case, the particular acts which occasion the damage are done by the orders or directions of such agent or servant. The action, underother circumstances, must be brought either against the principal or against the immediate actors in the wrong."

If you, as Superintendent, employ a bus to transport teams of your school, you are acting as the agent or servant of the school board or district of which you are superintendent. These acts are done by you in your official capacity as school Superintendent and as agent for your principal, the school board. The bus is hired by you for and on behalf of your principal, the school board, and under the above case the hiring of a bus for and on behalf of the board would not create any personal liability upon you because your act in so hiring is the act of your principal. This principle is well-recognized as applicable to private corporations as well, and in the Canfield case above the Superintendent of the Railroad Company was held not liable because he had employed, for and on behalf of the corporation, the individuals who were guilty of the wrong.

It is therefore the opinion of this Department that if you, as Superintendent of Schools, hire a bus for and on behalf of the school board, that you would not be personally liable for the negligence of the driver of the bus.

CONCLUSION.

It is therefore the opinion of this Department that the school board would not be personally liable for the negligent operation by the driver of the bus which they had hired to transport their athletic teams, and that the Superintendent of Schools, acting for and on behalf of the school board, would not be personally liable for the negligent operation of the bus hired by him to transport athletic teams.

Very truly yours,

Stanley W. Hayes

Assistant Attorney General.

APPROVED:

Attorney General.