

**OPINION
42-100**

August 31, 1942(OPINION)

SCHOOL FUNDS

RE: Expenditures of - Purposes

I have your letter of August 26th in which you inquire whether the expenditure of school funds for the payment of liability insurance premiums on your school buses in the district is a legal expenditure.

The general rule is that in the absence of specific statute a public corporation is not liable for the negligence of its agent when they are engaged in a governmental function. From this general rule it is apparent that the school district would not be liable for the torts of its employees in the exercise of a governmental function. Where the school district furnishes the transportation it is my opinion that the district is engaged in a governmental function since the maintenance of schools has been held to be a governmental function.

It is, therefor, my opinion that you do not have the authority to spend public funds for liability insurance to protect the district from a liability which does not exist. To do so would, in fact, be permitting the expenditure of public funds without any returns for the same.

The immunity of the school district against actions for damages does not, however, extend to and protect the employee of the school district and the general rule is that such employee is personally liable for acts of negligence in the exercise of his duties as an employee of the district even though in the exercise of such duty he is exercising a governmental function. It appears to me that the general public should be protected from the negligence of such employee. I am, therefor, of the opinion that the school district could, and perhaps should, for the protection of the public as well as for the protection of its employees, require, as a condition of employment of such persons operating the school buses upon the public highways, that such employee carry public liability insurance. This would give effective protection to the general public as well as to the employee himself. To that end the school district might arrange for liability insurance on the buses it operates and upon such of its employees as operate such buses in the course of their employ upon the highways. Such insurance would be paid by the employee, however. Perhaps a blanket policy could be secured upon all such employees at a lower rate than if each employee took out his own insurance.

I am of the opinion that the school district would be justified in requiring such insurance as a protection not only to the public but to the employees of the district as well.

ALVIN C. STRUTZ
Attorney General