

**Schools—School Trustees—Transportation—Pupils—
Liability.**

The board of school trustees is not liable as such for injuries resulting to pupils being transported in a school bus operated by a third person under contract with the school board as provided by law. The members of the board are liable as individuals if in letting the contract they fail to exercise reasonable care and diligence in the selection of a competent driver and safe conveyance, or if injuries arise from causes the existence of which the board as such had notice prior to the accident and by reasonable diligence could have remedied but failed to do so.

George W. Gustafson, Esq.,
Chinook, Montana.

August 20, 1929.

My dear Mr. Gustafson:

You have requested an opinion of this office with reference to the following state of facts:

The school board under the provisions of Section 1010 R.C.M. 1921, as amended by Chapter 102, Laws of 1929, contracts for the transportation of pupils to and from school. The bus is owned by the driver and in the course of transporting some pupils in the bus a pupil is injured. I assume that your question is based upon an injury caused by the negligence of the driver of the bus.

You desire to know, first: Is the board liable, as a board, for damages? Second: Are the members of the board liable individually?

Both of these questions may be answered simultaneously. The rule of *respondet superior*, that is, the doctrine of the master's liability for the tort of a servant, does not apply to the school board. While the board is a quasi-corporation yet it is of statutory origin and of limited powers. In letting contracts for the transportation of pupils the board of trustees exercises only the powers conferred by Section 1010 as amended in 1929. No pecuniary profit accrues to them and they are mere creatures of the statute for the performance of the acts provided by that code section.

While our own Supreme Court has never passed upon the question it seems most likely that it would follow the majority rule which is that the school board is not liable as a board for injuries to pupils caused by the operation of the school bus. (See *Dick vs. Board of Education of St. Louis*, 21 L.R.A. 1327 and note).

However, it is the duty of the board in letting contracts of this kind to exercise reasonable care and diligence in the selection of a competent driver and safe conveyance, failing in which the members would become personally liable for any injury resulting from the incompetency

of the driver or the dangerous or unsafe condition of the vehicle. They would likewise be liable individually for injuries arising from causes, the existence of which the board as such had notice prior to the accident and by reasonable diligence could have remedied but failed to do so.

Very truly yours,

L. A. FOOT,
Attorney General.