

## No. 281

**SCHOOLS AND SCHOOL DISTRICTS—TRANSPORTATION—TRUSTEES' LIABILITY FOR NEGLIGENCE OF DRIVER EMPLOYED BY PARENTS RECEIVING PAYMENTS IN LIEU OF BUS TRANSPORTATION**

**Held:** When parents or guardians receiving payments in lieu of bus transportation agree to pay such payments to a pupil driver, or to any other driver, for transporting their children to school, the board of trustees would not be liable to the pupils transported by such driver or to their parents for any injury caused by the negligence of the driver so engaged by the parents or guardians receiving payments in lieu of bus transportation.

October 23, 1941.

Mr. Earl C. Ammerman  
County Attorney  
Park County  
Livingston, Montana

Dear Mr. Ammerman:

The board of trustees of your county high school pays transportation money in lieu of bus transportation to parents of certain pupils, which parents then pay the transportation money to another pupil to transport their children to school. Under these facts, your board members would like to know whether they could be held liable in any capacity for injury arising out of such transportation and caused by the negligence of the pupil acting as driver, who is a minor under the age of twenty-one years.

Under Section 7 of Chapter 152, Laws of 1941, the board of trustees may pay "to the parents or legally appointed guardian" of eligible pupils amounts provided in the schedule set out in said section "in lieu of furnishing bus transportation." When this payment has been made, the obligation of the board with respect to transportation or services in lieu thereof has been discharged. The means or method of having the pupils transported to school with the money paid under the schedule is clearly the problem and responsibility of the parent or legally adopted guardian.

It is a general principle of law "there is no liability without fault." Since the driver transporting the pupils is not an employee or agent of the board in any sense of the terms, the board members could not be held liable under the doctrine of "respondeat superior." The driver has no connection, directly or indirectly, with the school officers and, accordingly, they are in no way to be held responsible for his acts. Your suggestion that care be taken to pay transportation money directly to the parents or guardians of eligible pupils—rather than to any designated pupil—will not only make certain there is no connection between the school officials and the driver engaged by the parents or guardians, but is required under the law. You will notice, under Section 7 of Chapter 152, Laws of 1941, the amounts that may be paid "in lieu of bus transportation" are to be paid "to the parents or legally appointed guardian." There is no provision for making payment in any other manner.

It is my opinion that, when parents or guardians receiving payments in lieu of bus transportation agree to pay such payments to a pupil driver, or to any other driver, for transporting their children to school, the board of trustees would not be liable to the pupils transported or to their parents or guardians for any injury caused by the negligence of the driver so engaged by the parents or guardians receiving payments in lieu of bus transportation.

Sincerely yours,

JOHN W. BONNER  
Attorney General