

Opinion No. 53-5700

March 13, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Abner Schreiber Assistant District Attorney Los Alamos, New Mexico

{*93} In your letter of March 9, 1953, you request an opinion relative to the authority of Los Alamos County Board of Educational Trustees to put into effect school boy patrols at school crossings. You also inquire as to the liability of the Board while such patrols are in operation and the responsibility for the safety of school children going home after leaving the school grounds.

There is no prohibition against school boards putting into effect school boy patrols at school crossings as a part of the training and safety program of the schools. Should injuries result due to the negligence of agents or employees of the Board, the weight of authority is that the School Board would not be liable therefor. This is true even though the Board is authorized to sue and to be sued. In this connection, I am enclosing a copy of Opinion No. 5108, dated November 25, 1947, dealing with the question of liability of public school boards in tort actions. The school board is considered as a state agency and enjoys the same immunity as the state from liability except where consent to be sued has been given. In *Vigil v. Penitentiary*, 52 N.M. 224, 195 P. 2d 1014, the Supreme Court refused to allow an action in tort against a corporate agency of the State even though the corporate agency was given the power to sue and to be sued.

This immunity of public school boards, of course, does not extend to private schools who may be liable for negligence of their employees. *McMullen v. Ursuline Order of Sisters*, 56 N.M. 570, 246 P. 2d 1052.

If a statute requires a school district to come under the Workmens' Compensation Act in connection with employees engaged in hazardous work, then the school board could be liable for injuries to such employees {*94} under the authority and consent to be sued contained in the statute. See *Scotfield v. Lordsburg Municipal School District*, 53 N.M. 249, 205 P. 2d 834.

If the school board is not liable for injuries received on the school grounds and at school crossings, it naturally would not be liable for injuries received by pupils upon leaving the school grounds and returning to their homes. However, the board does have some responsibility for the conduct and discipline of the pupils after leaving the school grounds and until they reach their homes and should also be concerned with safety precautions in connection therewith.

By: C. C. McCulloh

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