

Opinion No. 60-235

December 27, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Simon J. Bustamante State Representative P. O. Box 126 Las Vegas, New Mexico

QUESTION

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1. May a county or municipal school board contract for liability insurance covering school buses under contract to the system, the coverage of which would extend to protection during school business?
2. May the school district pay an increased premium which would also afford protection for private business of operator while using the same school bus?

CONCLUSIONS

1. Yes.
2. No.

OPINION

{*658} ANALYSIS

Your first question is determined by § 5-6-19, N.M.S.A., 1953 Compilation, (P.S.), which reads as follows:

"The state, county, city, **school district, district**, state institution, public agency or public corporation **may insure** its officers, deputies, assistants, agents and employees **against any liability for damages** for death, personal injury or property damage resulting from their negligence or carelessness **during the course of their service or employment** as part of the consideration for such employment, and for {*659} such damages resulting from the dangerous or defective condition of public property, which condition is allegedly due to their negligence or carelessness. The state, county, city, school district, district, state institution, public agency or public corporation may insure its officers, either duly admitted or through a surplus line law, against any liability for injuries or damages resulting from false arrest or false imprisonment. The premium for the insurance is a proper charge against the treasury of the state, county, city, school district, district, public agency or public corporation." (Emphasis supplied)

There is no question from the language in the above cited statute that the school district may insure its employees against any liability resulting from their negligence or carelessness during the course of their service or employment.

The answer to your second inquiry is determined by Section 14 of Article IX of our State Constitution which reads as follows:

"Neither the state, nor any county, school district, or municipality, except as otherwise provided in this Constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation, or in aid of any private enterprise for the construction of any railroad; provided, nothing herein shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons."

Private business of the bus operator cannot be insured and paid for by the school district as it would be in violation of the above quoted article and section of our State Constitution.

By: Hilario Rubio

Assistant Attorney General