

Opinion No. 70-09

January 26, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Major General John P. Jolly Director, Department of Military Affairs Office of Civil Defense Santa Fe, New Mexico

QUESTION

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It is the responsibility of the Office of Civil Defense to develop plans for the protection of New Mexico citizens in the event of natural or man-made disasters. It is necessary in the formulation of these plans that the Office of Civil Defense know:

1. At what point does the safety of children traveling to or from school property become the responsibility of the school authorities; and
2. Is the responsibility of the Office of Civil Defense in disaster situations in any way dependent on school authorities' responsibility for pupils' safety?

CONCLUSIONS

1. A school district is under no duty and possesses no authority to supervise or provide for the protection of its pupils on their way to or from school property. Whatever responsibility lies with the school results only from the duties associated with an affirmative undertaking to supply transportation.
2. The responsibilities of the Office of Civil Defense arise independently of, and are in no way related to, the obligations of schools in pupil supervision and protection.

OPINION

{*13} ANALYSIS

1. There appears to exist a fundamental misconception based in large measure on entirely commendable motives, among school authorities of the nature of the schools' responsibility for pupils during the time they are moving between home and school. While it is widely supposed that the school assumes responsibility for the safety and conduct of children during the entire period of their absence from home, there is no support in law for such a belief.

This office first considered the duties of the schools to regulate and supervise conduct of students during non-school hours in 1957. In Attorney General Opinion No. 57-9,

issued January 24, 1957, we declared it beyond the authority of school officials to designate a popular student gathering-place "off limits." Finding that "there is no statutory authority which directs or permits such action", this office acted in accord with the great weight of authority from other jurisdictions. The most recent -- and the most forceful -- expression of the principle involved was made by a California court in **Kerwin v. County of San Mateo**, 1 Cal. Rptr. 437 (1959):

"A school district is under no duty to supervise, or provide for the protection of, its pupils on their way home, unless it has undertaken to provide transportation for them."

It should be observed that if the school district or individual institution has established a system of transportation, it will be required to operate that system safely, and this duty will extend to the regulation of conduct on buses and at regular stops. **Archuleta v. Jacobs**, 43 N.M. 425, 94 P.2d 706 (1939); **Krametbauer v. McDonald**, 44 N.M. 473, {*14} 104 P.2d 900 (1940). Similarly, if a school maintains shelters or crossings for pupils, these must be built and kept in a safe condition. These rules, however, merely reflect the duties which are incumbent upon any person, private group, or corporation which may elect to supply transportation or shelter; schools are under no special duty or obligation.

2. In the broader context of the Office of Civil Defense's responsibility, the protection of school children in emergency situations does not depend on whether they are in school, on school property, or traveling to or from classes. The responsibility of the Office in matters of civil defense derives from the Civil and Defense Mobilization Act, Sections 9-13-15 through 9-13-24, N.M.S.A., 1953 Compilation. In its relevant parts, the Act provides:

"9-13-16. PURPOSE OF ACT. -- The purpose of the State Civil and Defense Mobilization Act [9-13-15 to 9-13-24] is:

A. to create the office of civil and defense mobilization within the executive office of the governor, and to authorize the creation of local offices of civil and defense mobilization in the political subdivisions of the state;

B. To confer upon the governor and upon the governing bodies of the state emergency civil and defense mobilization powers;

C. To provide a plan of civil and defense mobilization for the protection of life and property in the state adequate to deal with disasters resulting from enemy attack, sabotage, or other hostile action, or from fire, flood, earthquake, or other causes;

D. to provide that all civil and defense mobilization functions of this state be coordinated with the comparable functions of the federal government, other states and localities, and of private agencies;

E. To initiate programs to render aid in the emergency restoration of facilities, utilities and other installations essential to the safety and general welfare of the public;

F. To receive, assist and care for persons under emergency disaster conditions, or persons who are displaced by war emergencies."

With particular reference to the development of plans for citizen protection, the Governor acting through the Office is authorized to:

"(2) Make, amend, and rescind the necessary orders, rules and regulations to carry out the provisions of the State Civil and Defense Mobilization Act;

(3) Prepare a comprehensive plan and program for the civil and defense mobilization of the state, and to integrate the plan and program with the civil and defense plans of the federal government and other states, and to co-ordinate the preparation of plans and programs for civil and defense mobilization by the political subdivisions of this state;

(4) Procure supplies and equipment, to institute training programs and public information programs, and to take all preparatory steps, including the partial or full mobilization of state and local governments in advance of actual disaster, to insure the furnishing of adequately trained and equipped emergency forces of government and auxiliary personnel in time of disaster or enemy attack;

(5) Enter into mutual aid arrangements with other states and to co-ordinate mutual aid plans between political subdivisions of the state."

Section 9-13-21, N.M.S.A., 1953 Compilation, permits the Office of Civil Defense to co-ordinate and supervise local plans and programs:

"A. Each political subdivision may, in co-operation with other public and private agencies within the state, develop mutual aid arrangements for reciprocal civil and defense mobilization aid and assistance in case of disaster in any political subdivision, which cannot be adequately controlled by the political subdivision alone.

B. Arrangements for local aid shall be consistent with the state civil and defense mobilization plan, and in time of emergency it shall be the duty of each local organization for civil and defense mobilization to render assistance in accordance with the provisions of the program and { *15 } plan promulgated by the state office of civil and defense mobilization."

Thus, the duties of the Office of Civil Defense are to be exercised in a manner which will insure the safety of all citizens, without regard to age, and without limitation in regard to whether they are temporarily under the supervision and control of some other group. Though close cooperation with school authorities is undoubtedly advisable, and is certainly not to be discouraged whenever the protection of pupils may be served, the

duties and responsibilities of the Office of Civil Defense are in no way dependent on or limited by those of the schools.

By: Richard J. Smith

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