

Opinion No. 31-90

March 19, 1931

BY: E. K. Neumann, Attorney General

TO: Miss Thelma McCully, County School Superintendent, Roswell, New Mexico.

{*52} This is in reply to your letter of March 16, 1931 in which you ask what is the extent of the liability of the members of the County Board of Education and of bus drivers for accidents and injuries to children while riding in the conveyance maintained by the county for school transportation purposes. In most cases I assume that the relation between the County Board of Education and the school bus driver is that of parties to a contract in which the bus driver is what is known as an independent contractor.

"The liability of an employer for the acts and contracts of one employed to work for his interest often turns on the distinction between agent or servant on the one hand, and independent contractor on the other. For the acts of the agent or servant within the scope of his employment the employer is in general liable; for the acts of the independent contractor he is not. In so far as the employer retains the right of general control and management of the work he makes the employee his agent or servant, but in so far as the employer leaves the choice of means and methods to the employee, he makes him an independent contractor. The independent contractor like the agent undertakes to accomplish a certain end. In the work to be done and the means to be adopted to attain the end he is, even more than the agent, free from the control and direction of the employer. As a rule his acts are his own and for them he, not the employer, is responsible." 2 C. J. 424.

The bus driver or his employer would, no doubt, be liable for accidents and injuries caused by the negligent operations of the bus. However, where the bus driver or his employer is an independent contractor the county Board of Education would not in my opinion be liable.

By Quincy D. Adams,

Assistant Attorney General