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RELATIONSHIPS OF SCHOOL BOARD PRACTICES
TO TORT LIABILITY IMMUNITY IN
SELECTED OHIO SCHOOLS

DISSERTATION
Presented in Partial Fulfillment of the Requirements
for the Degree Doctor of Philosophy in the
Graduate School of The Ohio State
University

By
THOMAS BERTON SOUTHARD, A. B., M. A.

* * * * *

The Ohio State University
1962

Approved by

John A. Ramseyer
Adviser
Department of Education
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CHAPTER I

BACKGROUND TO THE STUDY

While it does not seem necessary to relate in this study the history and development of public education, it is important to note that education is not a system that has simply emerged in a vacuum; rather, it is an instrumentality of society for carrying out a function which society has judged desirable. In the United States people have come to expect that education must serve all the children of all the people. It is judged to be the role of education to provide an education for all educable American youth.

Society is dynamic and ever changing. Values held even a decade ago seem obsolete and not applicable today. Someone aptly has said that the greatest argument for needed change in schools today is to determine whether or not anything has remained unchanged for a ten-year period. As previously stated, schools are created to serve the youth and society. They reflect the values of the society which fosters them. As the values of society change so should the schools.

Presently schools throughout the nation are feeling a growth impact that is much sharper than in any period in
history. Enrollments have sky-rocketed in proportion to over-all national growth. Technology has created an ever-increasing body of knowledge. Schools strain under an attempt to reconcile educational philosophy with this spiraling body of knowledge. School boards, teachers, and administrators are asking themselves how this body of knowledge can be imparted and assimilated realistically. Should the school day be lengthened, the school week, the school year? With the economy at a level of attracting both the father and mother to employment, the schools find themselves expected by public acclaim to enter more and more the areas formerly reserved to parents.

Transportation of students from suburbia becomes a greater budget factor each year. School lunch programs place boards of education in a new proprietary role. New emphases on the various areas of the curriculum bring new responsibilities to the boards of education. As an example, President Kennedy has called for a revitalization of the public school physical education program. This involves masses of youngsters in activities that could cause physical harm as well as physical benefits. Perhaps the acceptance of this program implies a responsibility to the boards of education for physical examinations as well as a type of supervision not required even a year ago. Broadening other curriculum areas implies the extension of such activities as
tournaments, contests, and field trips—activities that were not nearly so common place in the past.

Statement of the Problem

The study reported here was designed to determine a theoretical framework within which boards of education and administrators could find a tenable position in directing and permitting various practices in the schools in relation to social trends and court decisions relating to tort liability.

Illustrations which will be given later indicate that the historical immunity to tort liability granted to boards of education is changing. Thus there is a need to develop a theoretical framework as a means of directing practices among schools.

There were three objectives of the study. The first was to establish a sound theoretical position for boards to measure their practices in relationship to possible liability in the light of national trends and social change.

The second objective was to discover and analyze practices currently carried on in selected public schools of Ohio that might possibly be judged proprietary or now governmental and to determine how these boards either protect themselves from tort liability or justify their immunity.

The third objective was to compare these practices with the theoretical position developed from a synthesis of the literature in the field corroborated by expert opinion
as a means of developing certain guidelines that may be used by boards and administrators as they face the developments, expansions and involvements of the "soaring sixties."

The Need for the Study

As the total school-child involvement increases with society's sanction and acclaim, how rapidly will the conceptual patterns change in the judgment of courts? What position should a board of education take in regard to athletic insurance, pupil accident insurance, tort liability insurance? Should school boards and administrators request permissive legislation to protect the public from injury resulting from board or administrative error in judgment? Should boards look more closely at the different roles they are called upon to assume and refuse to enter into proprietary functions even though the public clamors for it?

The public, board of education, teachers and administrators are squarely faced with a highly important question. In the light of modern developments, should a school district be immune from liability for tortiously inflicted personal injury to a pupil or the public arising out of the neglect of the board of education or its agents in carrying out a directive of the board?

Over the nation courts are questioning the inept principle of "rex non innuria" which originated in England in 1788 but not even there applied to schools.
Ohio boards of education and administrators not only need to know their legal position on matters involving possible tort liability according to law of this state, but also need to know how courts are looking at these problems over the nation.

Already five states have enacted statutory provisions directly imposing liability on school districts to pay claims, damages, or judgments resulting from actions for pupil injuries. Three states refuse to permit suits against a school district for any reason whatsoever. The remaining forty states have taken a compromise between the two extremes.¹ Official reports do not yet include data on Hawaii and Alaska.

New York is the only state in which tort liability is imposed on the school district by judicial precedence in the absence of express statutory provisions. The New York courts imposed liability on school districts in 1907. In this case a parent sued the board of education for negligence in the injury of his child. The court found in favor of the child and held the school district liable.²

California is the only state in which complete liability is imposed on school districts by express statutory


provisions. California's first statute abrogating school board immunity appeared in 1923.\(^3\)

Washington in 1869 passed a statute permitting court action for torts against school districts for an injury to the rights of the plaintiff arising out of act, or omission, of the district.\(^4\)

Oregon as early as 1862 had a law abrogating immunity to a board of education. In 1914, however, this law was nullified by interpretation and has continued to be since that time.\(^5\)

Recently Illinois has passed legislation which limits a board's liability to a dollar amount. It is currently being tested to see whether liability once established can be limited even by statute.

A review of companion studies and literature in the field further point out the need for this study. There seems to be little current assistance that can be found since most studies were done over a decade ago. Boards are seeking a tenable position in terms of various practices that will permit them to carry on their roles in the best interest of the general public.

\(^3\)California Political Code (1923), p. 675, sec. 2.

\(^4\)Schaerer and McGhehey, op. cit., p. 28.

\(^5\)Ibid., p. 29.
The Setting for This Study

To amplify and describe the setting for this study, it seems desirable to first discuss the legal basis of public education. Such legal basis for American education can be found by referring to three primary sources: one, the federal constitution and the decisions of the United States Supreme Court relating to it; two, the laws of the various states as found in their constitutions and as enacted by their legislatures; and three, the policies of local boards of education which may well have the effect of law for the district concerned. Despite the level of legal authority there are important interrelationships which affect the youth of the nation.

The Federal Constitution

Few realize that no explicit elements of a plan for education were incorporated in the federal constitution. However, the educational structure of our nation gains its "rights of establishment" from the tenth amendment. Federal responsibilities for education are implied in Clause I, section 8, of Article I of the federal constitution. School and school district organization is influenced

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by the fourteenth amendment commonly known as the "Citizenship and Equal Rights" amendment. The tenth amendment reserves to the states all matters not delegated to the Federal Government. Since education was not mentioned in the first ten articles of the federal constitution, education as a matter of national law became the responsibility of the individual states.

Two specific provisions of the Constitution have involved the Federal Government in local educational policies and programs: First, Clause 1, Section 8, of Article I, states that "the Congress shall have the power to lay and collect taxes, duties, imports and excises to pay the debts and provide for the common defense and general welfare of the United States."

Second, the fourteenth amendment prohibits any state from making or enforcing any law abridging "the privileges or immunities of citizens of the United States"; or from depriving any person of "life, liberty, or property without due process of law"; or from denying, "to any person within its jurisdiction the equal protection of the law."

The action of the Federal Government in education based upon these two constitutional provisions and on decisions of the Supreme Court relating to these provisions has been in the area of (one) federal financial aid to promote and improve education on the local level and (two), the integration of local schools where students have been
segregated according to race. The latter, of course, was a Supreme Court decision May 17, 1954, based on the fourteenth amendment. Although local education has been affected in other ways by Supreme Court decisions, the involvement of education is always incidental through other questions. Nonetheless, it is often quite significant. Edgard L. Morphet et al., in a recent book points out that, according to Spurlock, forty-five cases involving education to a rather significant extent came before the Supreme Court between the time the Constitution was adopted and 1954. Most of these cases have been concerned with the question of state or Federal power and function, civil rights under the first and fifth amendments, and due process of law and equal protection of the law under the fourteenth amendment. Most of these occurred during the past thirty-five years. Until 1925 there had been eighteen cases concerning education. Of these, only nine had occurred before the beginning of the present century. Since 1925 there have been twenty-seven cases. Many of these recent cases have touched on conflicts between individual rights and state requirements, conflicts relating to church and state, and conflicts over segregation. Through these constitutional provisions and supreme court

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9Ibid., pp. 41-42.
decisions, the education of children in local communities has been and will be affected by federal decisions.

The State Constitution

The concept that provision for education is a state rather than a Federal function evolves directly from the tenth amendment to the Constitution of the United States. That amendment reads, "the powers not delegated to the United States by the constitution nor prohibited by it to the states, are reserved to the states respectively, or to the people." Since education is not directly mentioned in the constitution, power over its resides in the state. This does not mean, however, that the Federal level of government is unimportant in relation to the legal aspects of school operation.\(^\text{10}\)

Based then upon the tenth amendment to the Constitution of the United States, education is considered to be a function of the local State governments. There are in all of the states, state constitutions, providing for the establishment of a system of free public schools. These constitutions over the years have been implemented by literally thousands of laws or statutes passed by state legislatures, decisions of our state departments of education that assume proportions of the law, and local school policies that have as their foundation the laws of the state. The laws, decisions, and policies of the various states and their political subdivisions have their legal basis in the various decisions.

of local and state courts. These decisions directly affect only the education in the state or in the states where other court decisions have been based on them.\(^{11}\)

Different states throughout the United States have voluminous sections varying in number of pages regarding statute and annotation of school legal experiences. It would be difficult to conclude specific principles from the many statutes and cases which at times seem to be in conflict, however, certain basic principles have been sufficiently well established to permit some generalization about state laws and court decisions basic to the state control of education:

The courts are generally agreed that education is a function of the state and that the control and management of public schools is an essential aspect of state or sovereignty.

The state legislature has full and complete power to legislate in matters concerning the schools and management of the schools of the state unless there are respects in which that power is restricted specifically by the state constitution or by the Federal constitution.

The legislature may delegate certain powers and responsibilities for education to designated state and local agencies, but it may not delegate all of its powers. It must establish reasonable limits that are required to be observed by state or local agencies as they exercise their delegated responsibilities.

Public schools are state, not local institutions. In reality the public school program is a partnership program between the state and local unit

\(^{11}\)Smith, Krouse and Atkinson, op. cit., p. 27.
created by the state. Boards of education are considered quasi corporations created by the state legislature to carry on the function of education locally. The state may create local school districts and delegate to them definite powers for the organization, administration, and operation of the schools. These districts may be especially created for school purposes or may be municipal or county school districts, however, the municipality or county has no authority or power over the schools within its boundaries except as such authority is granted definitely by the state.

School districts are not liable for the negligence of their officers or agents acting in their official capacity unless there is a state law specifically imposing such liability. Although only three states have such laws—New York, Illinois, and California, there seems to be a tendency during recent years for the courts to recognize increasingly the responsibilities and liability of the state and its agencies.

The legislature has the full power to enact laws regarding the schools as long as these laws do not conflict with the Federal or state constitutions.12

Local Policy

It has been generally accepted that all matters not specifically described by the federal constitution, or by state constitution, or statutes are left to the local boards of education for carrying out the local boards' functions. These actions of local boards are commonly called or placed under the general heading of policies. This means that policies of local boards of education, if they do not violate established laws, may be conceived as actually being law. They are held this way unless a local court decision rules

12Morphet et al., op. cit., p. 43.
them to be unconstitutional, unreasonable, or in opposition to the established laws of the state. It should be noted here that historically courts have refused to impose their opinions upon discretionary judgment of local boards of education. Most constitutions or statutes of the state specifically say that local boards of education have wide powers of discretion and as long as members of the board of education exercise these discretionary powers in the absence of fraud, collusion, or arbitrary acts, courts generally hold the discretionary powers of the board to be tenable from the board's position.\textsuperscript{13}

Companion Studies and Literature in the Field

There seems to be a dirth of study in the area of school district and board liability. Upon reviewing the literature in the field, the writer has found very few related studies. The last study was made in 1940 by Edgar Fuller at Harvard entitled Liability for School Accidents. In this study Fuller gives the common-law background and challenges the principle of "rex non innuria." Presently, David V. Martin at Duke University is making a study entitled Trends in Tort Liability of School Districts as Revealed by Court Decisions under the direction of Dr. Ed. C. Bolmeier. While neither study discussed the relationship of liability to practices, each is a companion to the present

\textsuperscript{13}Smith \textit{et al.}, \textit{loc. cit.}, p. 27.
study because they developed in them a rationale related to the present study.

The literature in the field is generally limited although there are several sources that become salient for all interested in principles of school law. Corpus Jurus Secundum, fifty-five volumes published till 1948, serves as a basic guide to problems and principles of law. Under the general heading of schools in American Jurisprudence, Volume 47, Section 56, discusses tort liability of school districts and relates that as a general proposition, a school district, being merely an agency of the state, is not, in the absence of a statute imposing such liability, liable for torts committed by its trustees or employees. Even the school board itself cannot render the district liable in tort, for when it commits a wrong or tort, it does not in that respect represent the district. Various reasons are assigned why a school district should not be liable in tort. Some authorities place it on the ground that the relation of master and servant does not exist; others take the ground that the law provides no funds to meet such claims. (Finch v. Board of Education, 30 Ohio St. 37, 27 Am Rep. 414.) Still other authorities hold that school directors in performing the duties required of them exercise merely a public function as an agency for the public good, for which

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they receive no private or corporate benefit. Many authorities do not base their holding on any single ground, but rely on two or more of them at the same time.

Contrary to what appears to be the English rule, (under the English rule, the local educational authority has been held liable where the injuries are shown to have resulted from its negligence or that of its agents, officers, or servants) in this country, in the absence of a statute imposing liability, a school district, municipal corporation, or school board is not liable for injuries to pupils of public schools suffered in connection with their attendance there at.

In a few states, the courts recognize the rule that while the members of a school board acting officially in the discharge of their corporate duties are not individually liable, the board, as a corporation, may be liable if injury results from official action amounting to negligence, since the negligence is that of the board.15 "Where a girl pupil is negligently directed by one of the teachers during school hours to poke the fire and draw the damper of a stove in the teachers' common room, where the teacher proposes to have her lunch, and while the pupil is carrying out the order, her pinafore catches fire and she is severely burned, the corporation is liable to the pupil for the teacher's

negligence, the act of the latter being within the scope of her employment, which is not strictly confined to teaching."
(Smith v. Martin (1911) 2KB (Eng.) 775. Am. Cas. 1912 A 334-CA.)

Application of the general rule of non-liability has involved injuries to pupils arising from the dangerous condition or improper construction of buildings, failure to repair, dangerous conditions of school grounds, unsuitable, defective, or dangerous appliances, unsafe transportation, and the negligent acts of officers, servants or agents.

In some states, the common-law rule of immunity has been radically modified by statute. Statutes sometimes referred to as "safe place" or "public liability" statutes have been held to embrace school districts in a number of states with the result that they may be held responsible for failure to keep buildings or premises in a safe condition. Elsewhere, however, statutes requiring an employee or owner to construct or maintain a place or building that is safe have been construed as not embracing schools or school districts, and a statute providing that a school corporation may sue and be sued does not change the general rule of non-liability. So also, school districts have been held not to be included within the terms of the statute making

counties and other public corporations liable for injuries arising from acts of omission.

In harmony with the general doctrine governing liability in the case of injury to a pupil, it is established that ordinarily a school board, district, or municipal corporation operating a school is not, in the absence of statute, liable to one other than a pupil for personal injuries sustained on account of the condition of the school premises. Thus liability has been held not to attach to a school district or corporation on account of injury to a laborer engaged in the repair of a school building, or even for injuries to members of the public passing at a distance from the school premises, resulting from the negligence of those engaged in the construction of the school building. In the jurisdictions the corporate body charged with the maintenance of schools is held responsible for injuries due to its own corporate negligence. In still other states, liability may be imposed on school districts as a result of statutes of a general nature. Such a result may arise under a statute requiring owners of public buildings to maintain them so as to render the place safe, or under public liability statutes imposing liability upon certain governmental bodies, including school district, for negligence with respect to places under its control.\footnote{American Jurisprudence, \textit{op. cit.}, p. 336.}
That a school district voluntarily undertakes to operate a lunchroom in a school building under statutory authority, and is not compelled to do so, does not make its act other than governmental so as to render it liable for personal injuries caused by negligence in the operation of the lunchroom. 18 General principles of practice and procedure are, doubtless, controlling in actions against school authorities or officers growing out of tort.

Section 320 of Corpus Juris Secundum states that since school districts and other local school organizations are agencies or instrumentalities of the state and considered as corporations, are public or quasi-municipal in character, it is the generally accepted rule that such a district or its directing board or a municipality in charge of local schools is not liable for torts. 19 In at least one jurisdiction, a school district or board of education is held liable for tort generally and for its own negligence. Thus it is liable for tort generally and for its own negligence in the exercise of powers or in the performance of duties imposed by law directly on it, and this is true even though the performance of the duty requires the intervention of agents or employees, and the board cannot escape liability on the ground that the doctrine of respondent does not apply to it.

18 Krueger v. Board of Education, 310 Mo. 239, SW 811, 40 AIR 1086.

The exemption of a municipality from corporate liability in connection with the maintenance and operation of public schools may be modified or ended by statute and the legislature has power to impose liability on a school district for tort while acting in any capacity; such intention to impose such liability must be clearly expressed. So under a statute to such effect, a school district is liable for any judgment against it because of injury to a pupil arising out of its negligence. Under some statutes, the board may insure itself and be sued for injuries, and a judgment obtained against it may measure the liability of the insured carrier. Various statutes, however, have been held not to impose liability on school districts for their torts. So a statute merely authorizes the bringing of actions against a district or conferring on it power to be sued does not abrogate its immunity from liability for negligence or for tort generally.\textsuperscript{20}

\textit{Ohio Jurisprudence} is quite adament in its discussion of tort liability in Ohio. It points out that school districts and boards of education are mere public agencies of the state established for the sole purpose of administering the state system of public education and in the performance of their authorized duties or functions, they take on a purely public or governmental character. They are,

\textsuperscript{20}\textit{Ibid.}, p. 324.
therefore, entitled to the same degree of tort immunity with which the state itself is clothed. There is no question in this respect as to whether they are exercising governmental or proprietary functions, as they exercise only governmental functions. Nor is there any distinction with regard to their tort immunity, between duties or functions which are mandatory in character and those which are discretionary or optional. A board of education is not authorized to commit a tort or to be careless or negligent, and if a tort is committed or there is negligence, the board neither binds nor represents the school district in that respect. A board of education is not liable for the negligence of its officers, agents or employees and this exemption from liability applies even where the negligence consists in the non-performance of a public or statutory duty which renders the negligent persons criminally liable.

By the well-settled and generally accepted adjudications of the courts, school districts are not liable to an action in damages for negligence in the performance of their duties unless made so by a legislative enactment which clearly, in terms that are neither doubtful nor ambiguous, imparts a legislative intention to abrogate or modify the rule of immunity. There is no common-law liability of a board of education for damages for its negligence or want of care and there is no statute creating such a liability for a tort to either person or property, either expressly or
impliedly, by either a general or special provision. The statutes merely granting power to a board of education to sue or be sued and granting it broad powers to contract and to acquire, use, and dispose of property for school purposes do not affect its tort liability.

The rule of immunity of school districts and boards of education from tort liability has been applied or recognized to preclude recovery against such boards for the personal injuries, illness, or death of pupils attending the public schools. Thus a board of education is not liable in its corporate capacity for damages for an injury resulting to a pupil while attending school, from its negligence in the discharge of its official duty in the erection and maintenance of a school building under its charge in the absence of a statute creating such liability. Also, it has been held that a board of education cannot be held liable for injury to a pupil caused by its negligence in failing to provide guards for dangerous machinery in industrial arts rooms as required by statute; for negligence in employing an incompetent dentist who fractured a pupil's jaw in extracting a tooth; or for negligence in the operation of a lunchroom and cafeteria under discretionary authority.

A board of education is not liable in its corporate capacity for damages where, in excavating on its own lots for the erection of a school building, it wrongfully and negligently carries the excavation below the statutory depth,
thereby undermining and injuring the foundation and walls of a building of an adjoining owner. A statute creating a liability against an owner or possessor of premises whereon a wrongful and unlawful excavation is made, for injuries to buildings or walls on adjoining property, does not apply to boards of education holding title to the lot or land being excavated for school and school building purposes.

The authorities of a school district are not liable to persons injured from the insufficient or dangerous character of school houses therein or from the careless construction or the negligent keeping or control of them. Nor is a board of education liable in its corporate capacity for damages for an injury resulting to one from the collapse of bleacher seats on school district property, even though the injured person paid an admission fee to occupy one of the seats.21

The rule of immunity would undoubtedly apply with regard to actions for damage for personal injuries to teachers and employees, but it is to be noted in this respect that school districts are by statute expressly made subject to the Workmen's Compensation Law in respect to every person within their service including the members and executive officers of boards of education (RC 4123.01 (A)(B)).

Hamilton and Mort in their publication entitled *The Law and Public Education* point out that constitutional provisions, statutory enactments, and judicial decisions determine the structural pattern of education and the mode of operation.\(^{22}\) A combination of these three bodies of authority constitute a mental picture—a conceptual design. Statutes and decisions are being continually modified to conform to this conceptual design, as old methods prove inadequate, as new problems arise, and as the conceptual design itself undergoes change. States, however, with few exceptions have undertaken a redrafting of basic law to reflect emerging conceptual designs. Changes are usually piecemeal. The search for trends, the commonality of changes in law is in reality a search for the characteristics of the conceptual design prevailing in the minds of people. More directly as Hamilton and Mort point out, it is the search for the expression of the prevailing conceptual design in an administrative structure. Conceptual design and the structural pattern of law in public education then become the two bases for interpretation. Courts have little if any trouble in making decisions according to the structural design, or structural pattern providing such pattern is not lagging behind social changes. Again referring to Hamilton

Mort, while the conceptual design at any one time is internally consistent, the same does not hold for the structural pattern. Usually the latter contains perhaps once existing remains of elements or conceptual designs now abandoned. It is always in flux and always lagging behind. At any one time it is a combination of three types of elements; one, past practices—some good and some outmoded solidified in law; two, new features representing the current change in conceptual design as expressed in legislative acts and judicial decisions; three, extra-legal practices often manifestations of an emerging change in conceptual design destined for acceptance or rejection by mutual consent by all parties concerned, legal acceptance by the extension of the law, or acceptance or rejection by action of the courts. The first of these three resists change. It makes both for stability and for the inefficiency that comes from a structure that lags behind the conceptual design. It is important to note that both actual law and legal theory fall within this category. The legal structure goes back to conceptual design prevalent at the time of its creation. The legal theory operating in its interpretation and in the interpretation of new law and questioned practices may reach much farther back to the legal culture and may be even more restrictive than the legal structure itself. The second of the three represents conscious attempts to bring structure into line with changes of conceptual design of which there
is a rather extended consciousness in the public's mind. Frequently abortive attempts to obtain changes in legislation pay for the efforts in dramatizing a change in the conceptual design and in understanding it. The third, the extra-legal practices, represents the frontier of change in conceptual design. What appear to those concerned as necessary steps to meet problems they face often proceed unmolested for a period of years before their significance is widely enough understood to result in either the movement for permissive legislation or an ultra vires case in the court. Together with the prevailing conceptual design there are the forces that continually strive for change in both conceptual design and structural pattern. They are the dynamic elements. They constitute the loadstone that is continually drawing practice out of its outworn setting of the past. To ignore them would be to ignore an important part of the legal framework of an institution. One needs to look only about himself to see the change that has come about in almost any phase of society during the past decade. With this change, of course, has come an expanded role of public education. All of this change slowly but surely changes the conceptual pattern of school law. In any society disputes and differences of opinion as to the rights and liability of its members are inevitable, and it follows that if the society is to continue to exist there must be an agency or agencies created within it for the settlement of
controversies. That agency in this country is normally the court. However, as society becomes more and more complex it becomes unreasonable to think that courts can be specialists in all fields and render sound decisions on all problems that are brought before them. Sometimes special agencies are set up by the courts to become specialists in particular areas. An example of this is the National Labor Relations Board.

The public schools exist by the operation of law. They are creatures of the legislature under the authority of the several state constitutions. Since both constitutional provisions and legislative enactments are usually drawn in language more or less general, what may or may not be done under the law becomes a matter of interpretation by the courts.23 If the law is general, the final determination of whether particular acts are legal must become the function of the court. Whenever there are controversies, they are brought before the courts and the courts attempt to interpret the structural pattern of the law; however, this is seldom a clean-cut or a black of white answer.

In the majority of cases decisions may well be one way as the other as far as the letter of the law is concerned. For example, the law states that a board of education may use school funds for supporting the schools and shall be used only for school purposes. In this case purposes are

23Ibid., p. 22.
not well defined and so the job falls to the courts to interpret what is a legitimate school purpose. Another example would be the use of school funds to support interscholastic athletics. Courts have held quite generally that public funds may not be used for supporting school athletics, yet, it has been held that school funds may be used to pay a coach or an athletic director. When an attempt is made to draw a line between educational and non-educational activities, it becomes quite difficult and the courts are asked to judge this on the basis of what is right within the intention of the law. In other words, the courts are required to answer a purely educational question as distinguished from a purely legal one, and they can answer it only in accordance with the conceptual design in their minds at the time the decision is rendered. There is, of course, nothing else to guide them. Structurally the function of the court is to interpret legislative enactments and constitutional provisions. The courts are one department of the government; theoretically they may not encroach upon the power of the executive or legislative department, and theoretically they do not encroach. However, when it is remembered that they have the power to interpret both the constitution and the statutes, in so many cases more than one interpretation is possible. Perhaps this is the basic

\[24^{\text{Ibid.}, \ p. \ 23.}\]
reason why courts have so often held that they will not interfere with the discretionary judgment of a board of education when there is no evidence of fraud, collusion, or arbitrary action.

**Limitations of the Study**

Obviously no one person can, under the circumstantial limits within the amount of work for dissertation purposes, cover the entire subject. Thus the following limitations were imposed at the outset of the study:

1. Tort liability immunity commonly granted to boards of education limits this study. Because of the broad implications of this facet, however, the writer did not choose to go into such related areas as employee liability or individual board member liability.

2. This study reviews some of the practices of certain boards of education in Ohio. The number of boards interviewed was naturally less than if a questionnaire had been used. Yet the writer feels this is justified on the basis of quality of response as well as from the point of view that in the beginning it was hypothesized that certain well defined areas of practice lend themselves to suits of tort liability. In design it was agreed that depth interviews would be superior to questionnaire to get at the reason for actions of administrators and boards of education.
Procedures Used in This Study

In adapting the procedures to the purposes of this study, a medley of sources were used to secure data and basically two different techniques of research were used.

In order to pursue the first purpose of this study in establishing a theoretical position for boards to take in relation to tort liability, the writer reviewed the literature in the field including the writings of such eminent authors as Hamilton, Mort, Edwards, Garber, Gauerke, Drury, Punke, Remmlein, Reutter and others. Text materials found in legal libraries greatly assisted in the discussion of the background to this subject.

To consummate the first purpose of the study and corroborate the positions of the writers in the field, the writer developed an interview guide of general issues surrounding the subject of tort liability and proceeded to interview four experts in the general area of school law. Robert Drury, legal consultant for the Ohio Education Association; Dr. Theodore J. Jenson, Professor of Education, The Ohio State University, and Dr. Warren E. Gauerke, Professor of Education, Wayne State University, both recognized authorities in school law; and Dr. Lee O. Garber, Professor and writer in the area of school law at the University of Pennsylvania. Each interview required approximately an hour. In order to get complete statements each interview was taped
and later transcribed. Each person interviewed was sent a copy of his statement for editing.

In order to achieve the second purpose of this study (i.e., to discover and analyze non-governmental or proprietary practices currently carried on in public schools in Ohio and to determine how these boards either protect themselves or justify their immunity) the writer employed the questionnaire-interview technique to be used in a personal interview with sixteen selected Ohio school heads. Based upon the writer's reading of the literature in the field, areas most likely to be judged proprietary were selected to determine the extent and nature of practices among the selected schools. These general areas were: Athletics, Use of School Facilities by Outside Groups, Student Accident Insurance, Employee Liability, School Food Service and other general practices.

To be able to get a representative sampling of schools for interview, the writer first selected schools according to the categories commonly used by the National Education Association. Next he selected the number of schools in each category to interview roughly proportionate to the total number of such size schools in the state. He then selected two exempted village districts representing the smallest and the largest enrollments among exempted village districts together with two local districts also representing the smallest and largest enrollments among the local districts
in Ohio. Each district had at least the twelve grades. Table 4 in Appendix D shows the districts selected. The writer believes that any compromise here with representativeness is justified by the depth possibility of personal interview.

The third purpose of the study was achieved by comparison of the results of the questionnaire-interview with the synthesis of opinion of legal experts.

**The Organization of the Report**

Chapter I has given an introduction to the study, a statement of the problem, a review of studies, the need for such a study, the setting of the study, the literature relating to this study, the setting of the study reported in detail, the limitation of the study, the procedures used and the organization of the report.

Chapter II contains a historical presentation of the abrogation of immunity in those states where boards of education are currently held liable for their torts. A purpose of this chapter is to further show the evolvement of conceptual changes.

In Chapter III the writer discusses the reactions of the experts in the field regarding the current medley of interpretations by courts of tort liability and immunity to tort liability for public corporations. The writer also synthesizes these remarks and observations into a
theoretical position for school boards in relation to acts possibly involving suits in tort liability.

In Chapter IV the writer reports the practices of selected schools in Ohio and attempts to analyze them in terms of present board of education policy. He then compares these practices with the theoretical position of the experts.

In Chapter V the writer restates the purposes of the study, summarizes each of the chapters, and presents findings, conclusions and recommendations, of the study.
CHAPTER II

A HISTORY OF THE ABROGATION OF IMMUNITY TO TORT LIABILITY IN FIVE STATES

Either by legislative action or court decision five states, New York, California, Washington, Oregon and Minnesota, have enacted provisions directly imposing liability on school districts to pay claims, damage, or judgments resulting from actions for pupil injuries. Three states, Alabama, Arkansas, and West Virginia, whose state constitutions have provisions that expressly prohibit suits against the states even for breach of contracts, have held rigidly in the principle that boards of education are not liable for any tort whatsoever.

Abrogation of Immunity in New York State

New York is the only state in which tort liability is imposed on school districts by judicial precedence in the absence of express statutory provision. The courts have held that: the school district is not a civil division of the state but a governmental agency; that the school district and board of education are liable for negligence and their own derelictions; three, individual members of the
board are not held responsible; four, the school district
can be sued directly (under the save-harmless statute) for
the negligence of its employees; and five, actions for
damages must be instigated within sixty days after injury.

A New York court held in 1921 in the case (Jaked v.
Board of Education, 198 App. Div. 113, 189 N.Y.S. 697
(1921) that the New York rule applied only to the torts of
district officers and not to district servants or employees.
In other words the district is liable for its own torts but
not for those committed by its servants to whom certain
duties must, from the very nature of the duties to be per­
formed, be delegated. At this time this limiting decision
could only have been explained on the theory that the New
York courts were willing to modify but not abrogate com­
pletely the doctrine of non-liability. However, the New
York State education law as amended to July 2, 1956 states:
"Notwithstanding any inconsistent provision of law, general,
special or local, or the limitation contained in the provi­
sions of any city charter, it shall be the duty of each
board of education, trustee or trustees, in any school dis­
trict having a population of less than 1,000,000 and each
board of cooperative educational services establish pursuant
to section 1958 of this chapter to save harmless and protect
all teachers and members of supervisory and administrative
staff or employees from financial loss rising out of any
claim, demand, suit or judgment by reason of alleged
negligence or other act resulting in accidental bodily injury to any person within or without the school building, provided such teacher or member of the supervisory or administrative staff or employee at the time of the accident or injury was acting in the discharge of his duties within the scope of his employment and/or under the direction of said board of education, trustee, trustees, or board of cooperative educational services; and said board of education, trustee, trustees, or board of cooperative educational services may arrange for and maintain appropriate insurance with any insurance company credited by or under the laws of this state, or any insurance company authorized by law to transact business in this state, or such board, trustee, trustees, or board of cooperative educational services may elect to act as self insurers to maintain the aforesaid protection. A board of education, trustee, board of trustees, or board of cooperative educational services, however, shall not be subject to the duty imposed by this section unless each teacher or member of the supervisory and administrative staff, or employee shall, within ten days of the time he is served with any summons, complete, process, notice, demand or pleading, deliver the original or a copy of the same to such board of education, trustee, trustees, board of trustees, or board of cooperative educational services."

\[1\text{New York State Educational Law as amended to July 2, 1956, Title 4, section 3023 (1957), pp. 392-393.}\]
The precedent case that broke the back of the doctrine of governmental immunity for New York School District was in 1907. In this case the parent sued the board of education for negligence in the injury of his child. The court found in favor of the injured pupil and held the school district liable.

On the basis of this court precedent many cases followed, and by 1925 the Supreme Court of New York handed down the following decision: The board of education is a governmental agency of the state; it, however, remains liable for its own negligence.

"When the state rendered to the board a portion of its sovereign power and delegated to it a duty imposed upon the state by the constitution, and it accepted the trust, it undertook to perform with fidelity the duties which the law imposed upon it. It is not immune from suit. The state has not created an irresponsible instrument of government and vested it with power to put children at work at dangerous machinery which would be a statutory offense against its laws to use in private industry."^2

The New York Courts were fully aware of the break they were making of the older principle of immunity and were cognizant also of the implications of the new ruling.

We fully appreciate the far-reaching effect the principles we have stated as to the liability of school districts may have on the matter of expense of rural education and the particular consequences which necessarily fall on the residents and taxpayers of the district. But we deem the protection of small, helpless children from avoidable injury of still greater importance.\(^3\)

In 1937 the New York Legislature passed its first "save harmless" statute which has been interpreted by the courts since that time as to give a direct right of action against the New York School District from the negligence of its employees. Many cases obviously followed this statute. In review some of the cases in New York State, it appears that the courts have been quite liberal in their interpretation of liability from the standpoint of the injured person.

For example, going up the stairs the reasonable person may well stop to consider the condition and the color of the tread, the location of the handrails, the heights of the railings and the adequacy of the lighting for only the general rule of immunity from tort liability has enabled schools to escape liability in many of the suits that have followed severe accidents caused by inadequacies in these respects. Under a statute waving such immunity a normal school in New York was held negligent in the case of Hovey

\(^3\)Williams v. Board of Education of District No. 1, 210 Capp. Div. 161, 205 N.Y.S. 742 (1924).
v. State, 261 App. Div. 759, 27 N.Y.S. 2d 195 (1941) where a student sustained injury while descending an unlighted stairway consisting of black slate steps and black wood railings. She was leaving the building late one afternoon with a number of books under her arm after attending a music rehearsal. While groping in the darkness for the handrail, which stopped several feet short of the landing, she slipped and fell. In that case it was not any one of these faults that imposed liability, but the combination of dark steps, the absence of light, short rail, and the student being encumbered with books which together created a dangerous situation which should have been foreseen and avoided, so said the courts. In another New York case where weakened plaster fell causing injury, the school board was forced to pay a large award.¹ The court held that the school authorities either "knew or should have known" of the dangerous condition and awarded substantial damages.

There have been at least five cases that have involved injury to persons resulting from the fall of flagstaffs. Some were made of inferior wood, some became rotten as time went on, and one, though constructed of steel, was so constructed that water and snow seeped into its joints and unions so that it became rusted and weak.

In New York where these cases have been tried, the courts have decided invariably in favor of the injured person.\(^5\)

Under the avalanche of cases caused by these court interpretations the New York Legislature, to reduce the number of cases, enacted a statute mandating that claims for injury from accident must be instituted within sixty days after injury or no recourse is available. Courts again reinterpreted this statute in a case the court held that this statute does not apply to infants because the limitation does not take away the infant's right to sue during infancy. However, a later case stated that for infants one year from date of injury was considered sufficient time to allow suit to be filed, and if not done within this time limit, it is a bar to suit.

**Abrogation of Immunity in California**

California is the only state in which complete liability is imposed on school districts by express statutory provisions. Its abrogation of immunity has been so complete the public school districts are practically on a par with individual and private corporations. Three statutes in this state waive its immunity:

1. One statute imposes liability caused by the defect or dangerous condition of buildings, grounds, works or

property of the district if the condition is not remedied after reasonable notice.

2. A section of the motor vehicle act makes the district liable for injury or damages caused through the negligent operation of motor vehicles owned by the district.

3. A provision in the school code makes the district liable on account of injuries to persons or property arising because of the negligence of the district, its officers or employees.  

Because of these statutes abrogating immunity, California through the years has usually lead in the number of damage suits brought against a school district although it contests with New York frequently for this distinction.

California's first abrogation statute appeared in 1923 and reads as follows:

School districts shall be liable for injuries to persons and property resulting from the dangerous or defective condition of buildings, grounds, and property in all cases where the managing board of a school district, officer, or person having authority to remedy such condition has knowledge or notice of the dangerous or defective condition of such buildings, grounds, or property, and failed or neglected, for a reasonable time after acquiring such knowledge or receiving such notice to take such action as may be reasonably necessary to protect the public.  

Simultaneous with the above law, the following law was passed: "Boards of school trustees, high school boards,  

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6 California School Laws (1937).
7 Ibid., p. 675, sec. 2.
junior college boards, and boards of education are liable as such in the name of the district for any judgment against the district on account of injury to any pupil arising because of the negligence of the district or its officers or employees and they must pay any judgment out of school funds. 8

Following the enactment of these laws, the flood gates of school immunity were opened. Because of this the state legislature felt that some method must be used to plug the gap and save the schools from an unnecessary number of cases. This was much like New York. The typical action was resorted to in California in 1933. The legislature enacted the following restrictions:

A verified claim for damages must be presented in writing and filed with the secretary or clerk of the school district within ninety days after such accident occurred. The claim shall specify the name and the address of the claimant, the date and the place of the accident and the extent of injuries or damages received. 9

Modifying the New York Courts' interpretation regarding the time limit of filing for minors injured, the California Courts have upheld the statute and ruled that the right to sue in such a case is a statutory right. It is necessary to fulfill the mandatory requirements of the statute as to filing of claims; that the injured person is a minor is no excuse for non-filing.

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8 Ibid., p. 298, sec. 1623.
9 California School Laws (1937), sec. 1007.
The third abrogation act pertaining to motor vehicles reads as follows:

Every school district owning any motor vehicle is responsible to every person who sustains any damage by reason of death or injury to person or property as the result of negligent operation of any said vehicle by an officer, agent or employee, or as a result of the negligent operation of any other motor vehicle by any officer, agent, or employee, when acting within the scope of his office, agency, or employment; and such person may sue the school district in any court of competent jurisdiction in this state in the manner directed by law.\(^{10}\)

One attitude which has been of great assistance to school districts in California has been the severity of which California courts mandate the injured party to prove beyond a doubt that the school, school board, or employee was negligent. The evidence of this would determine the verdict handed down by some California courts. One of the courts said that school districts or employees are not liable for injuries which have resulted from the acts of fellow students, be it accidental, woeful, malicious acts of students. Another court said that school districts are not insurers of the safety of pupils at play or elsewhere even though a statute explicitly authorized suits to be brought against them for negligence. The contention of the third court was that it knew of no authority that holds that a school district may be sued for injuries caused by the negligent act of students.

\(^{10}\text{iibd. (Vehicle Code), sec. 400.}\)
A rather unique case, involving the responsibility of the school district to arrange for safe transportation of a pupil from school to his home is Kerwin v. the County of San Mateo, 1 Cal. Rptr. 437 (1959), decided by the district court of appeal of California. Two brothers, Richard and Thomas Courtney, eleven and six years old respectively, were pupils at different schools in the same district. Richard was at home on the day the accident involved in the case happened. Thomas also became ill while in attendance at his school. The school authorities called the Courtney home and directed Richard, who was at home alone, to come to school and take Thomas home. Richard proceeded to school on his bicycle, took Thomas on the bicycle with him and started home. The bicycle tipped over and Richard was injured. Thomas was not hurt. Suit was brought against the district for damages. It will be remembered that California is one of the states in which school districts are liable for the negligent acts of their employees. It was the contention of the boy that the district owed a duty of reasonable care for the protection of the boy on his way home (a) because of the school district—pupil relationship, (b) by affirmatively placing the boy in a position of danger. The suit was unsuccessful. There was no showing that the district knew that the boys were riding one bicycle. It did not direct the method of transportation and Richard was
free to use any form of transportation he might select.

Furthermore, the injured boy did not go to school as a pupil. He was there at the request of the district to take his brother home. The court said:

No reason is alleged why an eleven-year old boy could not safely return home. Thousands of eleven-year old school boys, as well as those much younger, travel to and from school daily without school supervision. The school district had the right to assume unless something occurred to put it on notice to the contrary that the two boys would walk home. Nothing is alleged to cause the school district to believe otherwise or that an eleven-year-old boy could not substantially appreciate the dangers to be encountered on the streets.11

Other very interesting cases have been adjudicated in California. In the case of Hanson v. Reedley Joint Union High School District, 43 California 2d. 643, 111 p. 2d. 415, the tennis teacher made an arrangement with one of the boys on the team to take five others home from practice each night. This action was approved by the officials of the district who furnished gasoline for this purpose. The car was described as a stripped-down, souped-up "bug" and the teacher knew that the student was a harum-scarum driver with a tendency toward recklessness. One night the car collided with another, one of the student passengers was killed, and another one injured. Under the California law referred to the above, the district was held liable for the negligence

11 Kerwin v. the County of San Mateo, 1 Cal. Rptr. 437 (1959).
of the teacher in failing to use due care in the selection of safe transportation for his charges. While the teacher was not sued in this case, there is no doubt that he would have been equally liable with the district or alone in most states for the amount of the verdict—$6,500 had he been sued.

Homecoming and other parades have become an accepted part of school activities. Strangely enough few, if any, cases in this area have reached the appellate courts. For this reason, Lehmuth v. Long Beach Unified School District, 2 Cal. Rptr. 279 (1960), which reached the Supreme Court of California is of particular interest to all school administrators.

The facts show that three students of the school district were employed as technicians on the public address crew of the associated student body of Long Beach City College. The student body had arranged a homecoming parade on the streets of Long Beach for the evening of November 10, 1955. The parade was conducted under the supervision of faculty members of the college. One of the technicians was directed to handle the sound trailer with the assistance of one of the other technicians. The trailer had been purchased with funds from the student body, but was registered in the name of the college. It was planned to take the sound trailer downtown and plug the sound equipment into the electrical outlet so that the floats would be
announced as they passed by. A technician had borrowed a car for use in towing the trailer, using a new hitch which had been furnished by the dean of activities of the college. Although the California statute expressly required it, no safety chain was used while the trailer was being towed. The technician had never seen a safety chain on a trailer or anywhere else and had not been told to use one. In fact, the subject had never been mentioned to him. He did not know that it was customary and necessary and had no information about the statutory provision of the state requiring it. As the trailer was being towed, it struck a rough place in the street, broke loose, went over the curb, struck two girls seriously injuring them. They were students of the college. They brought an action against the district, the student body and the technician. The jury returned verdicts in favor of the technician and the student body while assessing damages against the district, (a) in favor of one of the girls for $10,178 which was later reduced to $5,178; and (b) in favor of the other girl the sum of $277,844.

This judgment was affirmed by the Supreme Court. In the usual case in which a principal is sued for damages alleged to have been caused by the negligence of his agent, a verdict releasing the agent from liability also releases the principal. On behalf of the district, it was contended that its liability depended upon the negligence of the
technicians and since they had been held free from negligence, it followed that the district was not liable.

The court held that the liability of the district was a primary one created by statute and not to derive from the act of its employees. Thus it appears that the failure of the district to provide the necessary safety devices when it authorized the towing of the trailer, constituted negligence on the part of the district itself.

In even another case in California were damages are relatively infrequent, was a case which involved injuries in an athletic contest. A case of this kind should give pause to every coach and administrator as well as boards of education. The case referred to is *Welch v. Dunsmuir Joint Union High School District*, 326 P. 2d. 633 (1958), decided by the district court of appeal of California.

Two high school coaches arranged an inter-school scrimmage between their football teams. The coaches were on the field directing and supervising the play and there were no game officials present. Each team alternated in carrying the ball. At the end of each series of plays, the activity would be stopped and instructions would be given to the players. No downs were called, no score was kept and the game was solely for practice and instructional purposes.

The boy who was injured carried the ball on a quarterback sneak and was tackled as he crossed the line of scrimmage. Another player fell upon him and he was unable to get
to his feet. His coach suspected a neck injury. A doctor was present at the scrimmage but only as a spectator. He was not present at the request of or as an employee of the district. The evidence was conflicting as to whether the doctor examined the boy before he was removed from the field. In fact there was some evidence that he made no examination. In any event this action is completely inexcusable. No one directed the removal of the boy from the field. He was carried off the field by eight boys, four on each side of him. No stretcher or substitute device was used. At the trial the medical testimony showed that the removal of the boy without the use of the stretcher was an improper medical practice in the light of the symptoms. It is almost unbelievable that coaches would fail to provide a stretcher for such emergencies in view of the nature of the game of football.

It will be remembered that in California school districts are liable for injuries caused by the negligence of their employees. The injury here resulted in the boy becoming a permanent quadriplegic caused by damage to his spinal cord. He sued the district for damages and the jury returned a verdict in his favor of $325,000; however the verdict was reduced to $207,000 by the court.

Upon appeal by the district the reduced verdict was affirmed. The district complained of the instructions to the jury which it contended imposed a higher standard of
conduct upon those removing the injured boy than the law requires. Nevertheless the court approved the instruction. In such cases the standard required is that of reasonable care; however, the court was of the opinion that extreme care was no more than reasonable care when an injured person is being removed. The amount of caution required varies in direct proportion to the danger known to be involved in the undertaking.

Under the law, one who engages in a dangerous sport assumes the risk of injury inherent in his participations. On the other hand he is not bound to assume the risk that in case he is injured he will be cared in a careless and negligent manner. ¹²

Abrogation of Immunity in Washington

Washington in 1869, passed a statute permitting court action for torts against school districts for an injury to the rights of the plaintiff arising out of act, omission of the district. The original law reads:

An action may be maintained against a county, or other of the public corporations mentioned or described in the preceding section (which includes school districts) either upon a contract made by such county or other public corporation in its corporate character and within the scope of its authority, for an injury to the rights of the

plaintiff arising from some act or omission of such county or other public corporation.\textsuperscript{13}

However, it was not until 1907 that the court was called upon to apply this regulation. Under it they allowed recovery against the school.\textsuperscript{14} Based upon the court precedent a rash of cases developed against the school district as it had at prior times in New York and California. By 1915 the cases were so numerous and the judgments so high that school districts began to express their concern. The Washington Legislature in response to the schools' concern passed a restrictive act which limited action under the old law most severely. The restriction act reads as follows:

\textbf{28.58.030 Tort Liability.} No action shall be brought or maintained against any school district or its officers for any non-contractual act or omission of the district, its agents, officers, or employees, relating to any park, playground, or field house, athletic apparatus or appliance, manual training equipment, whether situated in or about the school house or elsewhere, owned, operated, or maintained by the school district.\textsuperscript{15}

This law eliminated most court suits for injuries which occurred in athletic or shop activities. It thereby created only limited liability for school districts. Since

\textsuperscript{13}Remington's Revised Statutes Annotated, Title 6, sec. 951.

\textsuperscript{14}Redford v. School District No. 3, 48 Wash. 85, 92, cp. 770, (1907).

\textsuperscript{15}The section from the revised code of Washington quoted above is taken from chapter 92 of the laws of 1917. It was quoted in a letter addressed to the writer from Llewellyn O. Griffith, Consultant of administrative service, State of Washington, Superintendent of Public Instruction, dated April 27, 1962.
the enactment of this law, action for pupil injuries other
than those expressly prohibited by the law have been suc-
cessfully maintained against the school District. The law,
of course, practically eliminated further cases.

Abrogation of Immunity in Oregon

Oregon as early as 1862 had a statute imposing liabil-
ity upon governmental agencies. In 1887 it amended this
statute still further to include all of its governmental
bodies acting in its corporate character and within the
scope of its authority. This statute reads as follows:

An action may be maintained against any county or
other public corporation within the state, in its
corporate character and within the scope of its
authority, for an injury to the rights of the
plaintiff arising from some act or omission of
such corporation.16

This law was not tested until 1914. The courts
starting with this first case, continuing on down through
history, have nullified this law by interpretation. In the
first case, the courts maintained that school boards cannot
commit a tort and if they do they are acting outside their
authority (ultra vires), and, therefore, the statute does
not apply. In the second, the court declared that all
matters concerned with operating schools were governmental
in character and hence not applicable under the law.

Only in one case found among Oregon cases did the
court waiver and grant a judgment against an Oregon School

16Oregon Compiled Laws Annotated, sec. 8-702.
District, and this case through the years has been known as the exception. Since 1929, of course, there have been no exceptions. Within the same year and less than two months after the exceptional Luke case, the court went back and began interpreting the statute so as to nullify it and grant the schools complete immunity.

Perhaps in no other place, however, has the results of the conceptual pattern of law at work been better pointed out. In a most recent case on the specific point involved, the Supreme Court of Oregon in Vendrell v. School District No. 260 Mahleur County, 360 P. 2d., 282 (1961), used as a basis for its decision against the statutes that had existed in Oregon for a long time. Even though courts prior to the Supreme Court had tended not to follow the original law, but granted almost complete immunity to boards of education. Apparently the conceptual pattern of the times caused it to take a new look at the problem of immunity.

The Supreme Court again considered the liability of the district, the superintendent and the principal of a high school for an injury sustained by a high school football player which it is alleged resulted from over matching their teams. The football coach was not sued, but the reason for not including him in the case does not appear in the


official report. The football game in question was played between Nyssa and Vale High Schools. The injured player was a member of the Nyssa team.

The boy was fifteen years of age at the time of his injury. He sued after he became 21 years of age. His injury occurred when he was tackled by two members of the Vale team. Among other injuries he suffered a broken neck which resulted in a paraphlegia. It was alleged that the boy was an inexperienced football player and was not physically coordinated. It was stated that the opposing team consisted of various large boys and a highly experienced and rough team all of which was well known to the Nyssa school authorities. When the boy had played in the game a very short time, he was tackled hard by two opposing players which resulted in the injuries described. It was the boy's further contention that the injuries were directly and approximately caused by the negligence of the school authorities in that they sent their inexperienced football team to play against a far superior team. Also it was alleged that they permitted this boy to participate in a varsity football game without proper or sufficient instruction and that they did so without the consent and knowledge of his parents.

It was not necessary for the court to consider the liability of members of the board since it was held that they had violated no legal duty to the injured boy. Board members are not charged with the responsibility of supervising
the detailed activities involved in the conduct of athletic programs. The members of the board, the superintendent and the principal did not have the duty to ascertain whether each player of the Nyssa team had received adequate coaching and instruction relating to his manner of play. They had at most the duty of general supervision of the athletic program, not the duty of supervising specific sport activities. This is the general law in such cases. Contention of over matching the team was not tenable either. This is common, of course, in contests for one team to be better than the other. It is also quite common that one team will be more experienced, playing boys who are upper classmen whereas the other team may well be less experienced playing younger boys. The court said it is possible that two football teams may be so disparate in size and ability that those responsible for supervising the athletic program violate their duties in permitting the teams to play. This, if properly alleged would be a question of fact to be established by the evidence, but the complaint in the case at bar does not contain sufficient allegations to state a breach of duties in this regard. As we have already pointed out, the allegation that the plaintiff was uncoordinated and an inexperienced player weighing 140 pounds simply describes the average freshman player who goes out for football. The additional allegation that the opposing team was of superior experience again states a normal condition under which teams engaged in
competition. Although complaint alleges that the Vale team contained large and rough boys, there is nothing to negate the idea that the Nyssa team also contained large and rough boys all be it inexperienced. "It is our opinion that the allegations do not describe a breach of duty on the part of the school district, or of its agents or servants."¹⁹

The writer in pointing out this particular case as an additional exception to court action in Oregon did so because as one reads the above he notices the conceptual pattern of the court's thinking, i.e., had the court been able to have determined that there was a breach of duty on the part of the school districts. It seems by the language and logic the courts used that it would have held that the board of education was not immuned to the liability resulting from such a breach of duty.

Abrogation of Immunity in Minnesota

Minnesota has had on its statute books since 1851 a law similar in its wording and apparently in intent to that of Oregon. It reads as follows:

An action may be brought against them (any school district) in their official capacity, either upon a contract made by such officers in their official capacity, and within the scope of their authority, or from an injury to the rights of the plaintiff, arising from some act or omission of such officers of the district.


²⁰Minnesota Laws (1851), Ch. 79, secs. 12-16.
The courts of Minnesota reflecting an attitude of strict constructionism held, when the first case was brought before it in 1892, that it could not have been the intent of the legislature to abrogate the common-law immunity and so the court in 1892 held the non-liability of the school district.

Since this structural pattern or the doctrine of stare decisis has been the basis of thinking of the Minnesota Courts, they have retained this interpretation and have consequently qualified the statute. Therefore, for all practical purposes to date as far as interpretation goes, Minnesota school districts still maintain their governmental immunity.

**Abrogation of Immunity in Illinois**

At a very recent date, July 22, 1959, the legislature of Illinois officially abrogated the immunity to school districts, but at the same time limited the amount of liability. This was an act relating to damages recoverable against school districts and non-profit private schools for injuries occurring as the result of negligence in the conduct of schools. The Illinois law reads:

Section 1, Public Policy. The general assembly finds and hereby enacts that it is the public policy of the State of Illinois that public schools in the exercise of purely governmental functions should be protected from excessive diversion of their funds for purposes not directly connected with their statutory functions. If there is a liability
imposed by any court and that there should be a reasonable distribution among the members of the public at large of the burden of individual loss from injuries incurred as a result of negligence of the conduct of school district affairs; and that non-profit private schools conducted by bona fide eleemosynary or religious institutions should be protected from excessive diversion of their funds for purposes not directly connected with their educational functions, and also that there should be a reasonable contribution by non-profit private schools conducted by bona fide eleemosynary or religious institutions toward alleviation of the burden of individual loss arising from injuries incurred as a result of negligence in the conduct of such non-profit private schools.

Section 2. Limitation of Action. No civil action shall be commenced in any court against any school district or non-profit private school by any person for any injury to his person or property unless it is commenced within one year from the date that the injury was received or the cause of action accrued.

Section 3. Filing Statement of Injury. Within six months from the date of such injury was received or such cause of action accrued, any person who is about to commence any civil action in any court against any school district for damages on account of an injury to his person or property shall file in the office of the school board attorney, if there is a school board attorney, and also in the office of the clerk or the secretary of the school board, either by himself, his agent or attorney, a statement in writing signed by himself, his agent or attorney, giving the name of the person to whom the cause of action has accrued, the name and residence of the person injured, the date and about the hour of the accident, the place or location where the accident occurred, and the name and address of the attending physician, if any.

With respect to non-profit private schools a statement in writing required hereunder shall be filed in the office of the superintendent or principal of such school.

Section 4. Failure to File. If the notice as provided by section 3 is not filed as provided therein, any such civil action commenced against any school district or non-profit private school
shall be dismissed and the person to whom any such cause of action accrued for any personal injury or property damage shall be forever barred from further suing.

Section 5. Amount Recoverable. The amount recovered in each separate cause of action against a public school district shall not exceed $10,000 except as is otherwise provided by law. The amount recovered in each separate cause of action against a non-profit private school shall not exceed $10,000.21

Further provisions of the Illinois law provided for injuries accrued prior to the effective date of this act. Section 10 of this law reads regarding construction liability, "Nothing contained in this act shall be deemed to authorize the bringing of any action against a school district, non-profit private school, nor the entry of a judgment of any such action."22

It is interesting to here note that this law followed closely the famous case of Molitor et al. v. Kaneland Community Unit School District No. 302, 163 N.E. 2d. 89 (1959). A complete copy of the supreme court documentation of this case may be found in the appendix. On Monday, May 11, 1959 the Supreme Court of Illinois rendered a decision in which the rule of non-liability of school districts for torts of its agents or officers were expressly abrogated.

Before coming to the supreme court, this case had been tried

21 School Code of Illinois Circular Series A No. 149, the office of Superintendent of Public Instruction, the State of Illinois, sec. 1-11, pp. 462-464.

22 Ibid., pp. 462-464.
in lower courts and the board of education immunity had been held. However, the supreme court as is usual in cases in which a court reverses previous decisions on a point considered very carefully the history of the rule in Illinois and the bases on which it rests. The rule was established in Illinois in 1898 and it appears that the supreme court of that state has not reconsidered it for over fifty years. The doctrine of stare decisis, i.e., let the decision stand, has been followed on the point. No allegation was made in the complaint that the school district carried insurance. Such allegation was expressly omitted in order that the court might have squarely before it the question of complete and total repudiation of tort immunity rule.

A case arose out of a suit against a school district by a school child for personal injuries sustained by the child on a school bus when the school bus in which he was riding left the road, allegedly as a result of the driver's negligence, hit a culvert, exploded and burned. When the district denied liability because of the immunity rule, a single, narrow question was presented to the court. As to the question itself the court said,

Thus we are squarely faced with a highly important question in the light of modern developments, should a district be immune from liability for tortiously inflicted personal injury to a pupil thereof arising out of the operation of a school bus owned and operated by said school district?
The court answered this question in the negative and expressly struck down the immunity of school districts. It pointed out that the general assembly had frequently indicated its dissatisfaction with the doctrine of sovereign immunity and had made a number of statutory changes in it. For example, school districts in Illinois are now subject to liability under the Workmen's Compensation and occupational disease acts. Furthermore under the 1945 court of claims act, the state is made liable for torts up to $7500 for the negligence of its officers, agents, or employees. Other similar laws exist in Illinois. Taken together statutes of this type would appear to indicate a developing philosophy in Illinois of governmental immunity in tort can no longer be defended in a modern society. In reply to the contention of the school district that its immunity should be sustained on concept of sovereign immunity, the court quoted many authorities on the subject, writers in the field, and experts in the field and then in substance said,

We are of the opinion that school district immunity cannot be justified on this theory. As stated by one court, the whole doctrine of governmental immunity from liability for tort rests upon a rotten foundation. It is almost incredible that in this modern age of comparative sociological enlightenment in any republic the medieval absolutism supposed to be implicit in the maxim, the king can do no wrong, should exempt the various branches of the government from liability for their torts, and that the entire burden of damage resulting from the wrongful acts of a government should be imposed upon the single individual who suffers the injury,
rather than distributing the entire community constitution the government, where it could be borne without hardship upon any individual, and where it justly belongs.\textsuperscript{23}

The court went on to say the other basis for denying district liability has been the payment of damage claims is a diversion of educational funds for an improper purpose. In rejecting this theory the court said, "In the first place analysis of the theory shows that it is based on the idea that the payment of damage claims is a diversion of educational funds to an improper purpose."\textsuperscript{24} As many writers have pointed out, the fallacy in this argument is that it assumes the very point which is sought to be proved, i.e., the payment of damage claims is not a proper purpose. To predicate immunity the theory of a trust fund is merely to argue in a circle, since it assumes an answer to the very question at issue, to wit what is an educational purpose?\textsuperscript{25}

It was argued by the district that if the immunity rule was abandoned, the district would be completely bankrupt. In reply to the argument the court simply pointed out that California, New York, Washington and other states that had operated under the abrogation of immunity have not been obliged to shut down their schools since the abrogation of the immunity rule has been in effect.

\textsuperscript{23}Supreme Court Decision of the Molitor Case.
\textsuperscript{24}Ibid.
\textsuperscript{25}Ibid.
In a substantial number of cases in which it has been sought to induce a court to abandon the immunity rule, the courts have said that if the doctrine is to be abolished, it should be done by the legislature and not by the courts. The court in question rejected this idea completely and it said,

Defendent school districts strongly urge if said immunity is to be abolished, it should be done by the legislature, not by this court. With this contention we must disagree. The doctrine of school district immunity was created by this court alone. Having found that doctrine to be unsound and unjust under present conditions, we consider that we have not only the power, but the duty, to abolish that immunity. We close courtroom doors without legislative help and we can likewise open them.26

Soon after this case was adjudicated, the tort liability law became effective in Illinois. Undoubtedly, the authors of this law profited by the example of New York, California and Washington. The reader will notice at the very outset a provision was put into the law for reporting claims within a one-year period after they happened. It is interesting to note here that the New York law arranged for a sixty-day period, and the California law a ninety-day period. However, the experience of the states where immunity had been abrogated was put to bear upon the Illinois statute.

Here again it is interesting to see the conceptual pattern taking place in the State of Illinois prior to the effective date of the Tort Liability Law, July 22, 1959.

26Ibid.
In 1945 the case of Tracy v. Davis et al., 123 F. Supp. 160 (1945) was tried and decided by the United States District Court, Eastern District, Illinois. A number of parties were involved in the case, but the principal question before the court was whether a suit against a school district for damages caused by the alleged negligence of employees of the district should be dismissed under the familiar of the old doctrine that a district is not liable for its torts. There was no allegation that the district had insurance or other means of paying judgment against it without impairing its public funds. The federal judge concluded that it is now "clearly established" that a charitable corporation is not immune to tort liability. However, according to the court, the execution on the judgment, i.e., the collection on the judgment, is limited to non-public funds. Also, the court said, non-public funds need not even be available at the time the judgment is entered as they may be acquired afterwards and be made available for payment of the judgment.

The court distinguishes very clearly the difference between a district being liable to suit for its torts and the ability of the successful plaintiff to recover from the district on its judgment. On this point the court quoted with approval the following language from an earlier Illinois case.

The question of insurance in no way affects the liability of the institution, but would only go to
the question of the manner of collecting the judgment which might be obtained without interfering with or subjecting the trust funds or trust-held property to the judgment. The question is to whether or not the institution is insured in no way affects its liability any more than whether a charitable institution holding private non-trust property or funds would affect its liability. These questions would only be of importance at the proper time when the question arose as to the collection of any judgment out of non-trust property or assets.27

Following the evolvement of conceptual pattern is noted in Thomas v. Broadlands Community Consolidated School District, 348 Ill. App. 657, 109 N.E. 2d. 636 (1952) where it was held that the district that had procured insurance against liability waived its immunity and could be sued by a child injured on the playground. Since the reason ascribed by the Illinois court for the rule of immunity was the protection of public funds, and since these funds were protected by the insurance, the doctrine of immunity was held to cease to exist when the reason for the rule ceased. In that case the defendant district (probably through the insurance company's lawyers) argued that such insurance was void because there was no statutory authority permitting the district to take it out. However, the court refused to allow the district to defend the suit on the grounds that its own act was illegal. The next year the legislature adopted a statute that authorized a school board to insure against the liability of the district or any of its personnel, and provided that the insurance company shall not claim

the immunity of the district as a defense. Like the Wyoming act, the Illinois law is discretionary, and districts may or may not purchase such insurance, as they choose. By pointing out these cases in Illinois just prior to 1959, the writer has attempted to show how gradually the conceptual pattern of thinking in the courts of Illinois changed.

There are two other states currently, Kentucky and Tennessee whose courts have deviated the general rule of immunity. They have charted a new legal course. They hold that permissive legislation to purchase liability insurance does waive the governmental immunity up to the amount of the insurance coverage. The Tennessee Court held,

The reason for non-liability of school districts was the fact that the county had so few funds out of which satisfaction for judgment for damages thus inflicted could be held; however, in this case the school district should be liable since there was a fund out of which judgment could be satisfied, namely, liability insurance covering the risk and taken out for the protection of the school district, but in no case would the judgment be made good for more than the amount the plaintiff might recover from the insurance company.28

The Kentucky court in deciding such a case stated:

The legislature has the authority to impose liability on the school district. It also has the authority to take a middle course by providing that the district may be liable up to and only out of the amount of an insurance policy,

28 Taylor v. Cobble 187 S.W. 2d. 648 (Ct. App. Tenn. (1945)).
otherwise the insurance would be a fraud on the district.29

This case was pointed out to show the importance of insurance policies stipulating districts' liability for negligence. The legality of school bus insurance has been thoroughly considered by the Court of Appeals of Kentucky in a series of cases. In the case just quoted the court construed the Kentucky statute on the point. Also it described a stipulation in the insurance policy which is very important to school men. The Kentucky statute is fairly typical and is as follows:

Each board of education may set aside funds to provide for insurance against the negligence of drivers or operators of school buses owned or operated by the board. If the transportation of pupils is let out under contract, the contract shall require the contractor to carry insurance against negligence in such amount as the board designates. In either case the policy shall bind the company, pay any final judgment rendered against the insured district for damages to the property of any school child or death or injury to any school child or other person.

Originally the Court of Appeals of Kentucky held that this statute did not render the board liable for the negligence of its bus drivers. On this point the court follows the general rule, however, according to the court the statute does permit the district to be sued to determine the amount the insurance company shall pay. The district still pays nothing, thus school funds do not suffer. The important

policy stipulation referred to above is that the insurance company agreed not to deny liability, by reason of the insured, i.e., the district, being a state agency if suit is brought to enforce a claim on the policy. The reason underlying such a provision is obvious. An insurance company is liable on a claim only if the person or agency it insures is liable on it. In other words if the district is not liable for the damage caused, by the negligence of its bus drivers neither is the insurance company, thus, unless the company agrees not to set up the non-liability of the district when claim is sued upon the insurance is worse than worthless. Just to be certain one would be well advised to ask the insurance company for such an endorsement to any policy on school buses.  


Other States Where Compromise
In Immunity is Maintained

Twenty-one state constitutions in Arizona, California, Delaware, Florida, Idaho, Indiana, Kentucky, Louisiana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Washington, Wisconsin, and Wyoming authorize suits in one form or another against governmental bodies. In other states
permission to sue governmental bodies is so vaguely stated as to require court interpretation.31

CHAPTER III

A THEORETICAL CONCEPT OF BOARDS OF EDUCATION
PRACTICES IN RELATION TO TORT LIABILITY

The writer selected four experts in the field of school law in an attempt to establish a theoretical position for a board of education against which to check his own concept as derived from historical study, in relation to the medley of court decisions questioning the long held immunity of boards to suits of liability. Such questions arise as: should boards of education protect the public interest with a program of liability insurance recognizing that at any time courts could and in some states have changed their point of view regarding board immunity? Should boards of education restrain themselves from the public demand for such programs as pupil accident insurance, liability insurance for employees, and proprietary function in permitting use of school facilities by the public?

In establishing a theoretical position for boards of education, the writer interviewed Mr. Robert Drury, legal advisor to the Ohio Education Association; Dr. Lee O. Garber, professor of school law, University of Pennsylvania; Dr. Warren E. Gauerke, professor of education, Wayne State
University; and Dr. Theodore J. Jensen, professor of education, The Ohio State University and recognized authorities in school law.

Before interviewing these people, the writer prepared an interview guide including the following questions:

1. Have you sensed a changing attitude by courts in respect to the common law and tort liability immunity historically granted to boards of education?

2. What should the position of boards of education be in respect to the assumption of liability for student accidents as well as employee accidents?

3. In states where liability immunity for boards has traditionally been held, would the policy of allowing a pupil group accident policy, premiums paid by the parents, tend to be construed as an admission of moral liability and thus impute legal liability?

4. Could you give some broad principles of reasoning that have caused courts in some states to take a new look at board of education liability immunity?

5. Where enabling legislation has permitted boards to assume liability from what source has been the impetus for such legislation?

6. Are you aware of any state where boards of education are permitted to purchase group accident insurance for students and athletes and/or employee liability insurance?
7. In states where a specified limit of liability is prescribed by statute, do you believe that courts may hold that if there is liability such liability can be limited by fact only?

in order to show that even experts in the field of school law have divergent opinions, the writer will list each question and follow with answers received in the several interviews:

1. Have you sensed a changing attitude by courts in respect to the common law and tort liability immunity historically granted to boards of education?

Respondent A: "Yes, there is a changing attitude on the part of courts all right. You see, New York, California and Illinois have statutes that change this attitude and I understand Michigan has done it, now, by court edict, but I have not seen that case. In addition, there have been more and more dissenting opinions. There has been one in Pennsylvania, for example, in which at least one member of the court would overthrow the whole thing. Now, I think it is only a matter of time that more and more of the present majority will side with the minority and the minority will become the rule. In Pennsylvania, for example, many of us believe that we are on the verge now of changing the rule by court edict. You see, we have a case here in Mt. Lebanon, Pennsylvania where a school district was maintaining a recreation program in the summertime. Part of that recreation program includes swimming. The swimming pool belonged
to the city, but the school district employed the instructor. A little girl drowned. The parents brought an action against the school district, the lower court threw it out without hearing testimony on the grounds that the district was immune from liability. They went to the higher court. The higher court said a school district has always been immune from liability in this state in the case of governmental activities, but it said this is a proprietary function, and it justified its action on the grounds it made a charge for the use of the swimming pool. So the swimming pool was a proprietary function, which means then, that in Pennsylvania the courts are attempting to differentiate between governmental and proprietary. Now you look back at the history of tort liability in this state and you will find the courts have always said that school districts are immune from liability while engaged in the performance of governmental functions, but every function practically has been held to be governmental. We have two interesting lower court decisions. In one case a spectator of football game was injured, I believe a refreshment stand collapsed, or something. Well, when that thing collapsed—a spectator was injured. The spectator sued. The lower court gave the spectator judgment against the district on the grounds that this football game was a proprietary function. Short time later up in Oliphant, I believe the first case was Scranton, the second was in Oliphant, a boy went up for football, the
coach was negligent because he gave him a headgear that was defective. The boy was injured. He sued the district, the court said no you cannot collect because football is part of the extracurricular activities so the board in permitting the football game is engaged in a form of governmental function. Well, that does not make sense. Football, from the point of view of the spectator was proprietary and from the point of view of the student was governmental. Those cases never went to the higher courts. But now the highest court in Pennsylvania has said we are interested in only school districts or engaged in the performance of proprietary functions. What is a proprietary function? No one knows. Yet, on the lunch program, is that proprietary? The court in the Mt. Lebanon case, where the girl drowned in the swimming pool, said a proprietary function is a function is a function not required but sanctioned, or one that another agency might as well perform, or one of which a fee is charged. Well, we have lunch programs in Philadelphia operated by private agencies. I believe Litten has a contract with the City of Philadelphia. They put out the lunch program in one of two schools. Well, is it proprietary? How about a football game, a basketball game, a concert? I am sure the courts are going to hold that they are of proprietary nature. Now, I have talked to a number of attorneys and they believe, in reality, that what the courts are doing is making a gradual change from the old doctrine of immunity
to one of complete liability. They are in one fell-swoop taking the opportunity of doing this gradually. So, we believe the school district better get on the ball and take out insurance. Because I firmly believe that the next clear-cut case that goes to the Supreme Court of Pennsylvania, the court is going to say that you are liable. They are going to quit differentiating between governmental and proprietary."

Respondent B: "Most assuredly, there is a changing attitude by courts in respect to the common law or tort liability immunity which has protected boards from suit. The recent case in Illinois (not sure of the name nor date) and the following Williams case in Michigan indicate this changed attitude:

STATE OF MICHIGAN
SUPREME COURT

Charlotte L. Williams, Administratrix of the Estate of Arden H. Williams, deceased, Plaintiff and Appellant
v.
City of Detroit, a Municipal Corporation;

BEFORE THE ENTIRE BENCH

Edwards, J.

From this date forward the judicial doctrine of governmental immunity from ordinary torts no longer exists in Michigan. In this case, we overrule preceding court-made law to the contrary. We eliminate from the case law of Michigan an ancient rule inherited from the days of absolute monarchy which has been productive of great injustice in our courts. By so doing, we join a major trend in this country toward the righting of an age-old wrong. See Muskopf v. Corning Hospital District, 11 Cal Rptr 89; Molitar v. Kaneland Community Unit District No. 302, 18
Few cases could portray the problem with the exactness of the one before us. The plaintiff is the widow of a workman by a fall down the elevator shaft of a 6-story building owned and operated by the City of Detroit. The fall occurred while the deceased was employed by a moving company moving furniture out of the building. Plaintiff's declaration alleges that at the time of his death deceased was loading large pieces of furniture on an elevator on the 6th floor and that he stepped or was pushed into an unguarded space 30 inches wide beside the floor of the elevator and fell 100 feet to his death.

The declaration alleges that defendant City of Detroit failed properly to protect and enclose the elevator shaft, in violation of its own ordinances, and that such failure was negligence which caused her husband's death without any contributory fault on his part. The individual defendants are the commissioner and an inspector of the department of buildings and safety engineering which had charge of enforcement of the ordinance. They are not directly involved in this appeal.

The City of Detroit in its answer denied negligence and claimed contributory negligence on the part of plaintiff's husband. The factual issues thus framed have, of course, never been tried. A motion to dismiss based solely on the theory that the City of Detroit was engaged in a governmental function and hence was immune to suits for ordinary torts was filed by defendant city. The trial judge conducted a hearing at which the basic facts pertaining to the city's operation of the building in question were agreed upon. The trial judge found that the city's operation of the building was a governmental function. Basing his decision squarely on the governmental immunity which Michigan case law has up to this date accorded municipalities, he granted the motion to dismiss.

On appeal, the single question presented is as to whether or not Michigan continues to adhere to governmental immunity from torts.

On appeal, and after briefing and argument, this Court decided to review this doctrine. We, therefore, on our own motion scheduled the case for reargument and invited the attorney general and other interested parties to file briefs, particularly addressing themselves to "the effect, if any, on the doctrine of governmental immunity of legislative enactments in the field of governmental liability--and, secondly, to the distinction, if any should be drawn,
between a possible abrogation of governmental immunity as to ordinary torts and governmental freedom from liability for those governmental decisions which lie specifically within the authorized discretion of the governmental body or agent concerned."

The hearing has been conducted and a total of 9 briefs has been received and considered. The issues are as clearly posed before us as they ever will be.


The last 3 of these cases, however, serve to show growing dissatisfaction in this court with the doctrine. In the Richards Case, the desirability of legislative attention to this problem was pointed out (p 520): "The clear-cut remedy to the problem of governmental immunity undoubtedly lies with State legislation of the nature and character of that adopted within recent years by the Federal government through Congress. Court action to achieve the same goal by repudiation of this long established common-law doctrine is hampered by unnumbered precedents and the doctrine of stare decisis. It cannot come as can legislative change after ample public discussion and with full warning to those bodies upon whom liability would be trust to take such measures of an insurance nature as they might deem desirable."

Four years have passed since then without legislative action. The legislature has, of course, every right to say to us, "The courts created this problem. The courts can solve it."

Since our consideration of immunity in the Richards Case, a number of state supreme courts have acted in this field. Supreme Courts in Florida, Illinois and California have squarely rejected the doctrine of governmental immunity. Hargrove v. Town of Cocoa Beach, supra; Molitor v. Kaneland Community Unit District No. 302, supra; Muskopf v. Corning Hospital District, supra.

In the most recent of these cases, the California Supreme Court said: "After a re-evaluation of the rule of governmental
immunity from tort liability we have concluded that it must be discarded as mistaken and unjust. . . . The rule of governmental immunity for tort is an anachronism, without rational basis, and has existed only by the force of inertia. . . . Only the vestigial remains of such governmental immunity have survived; its requiem has long been foreshadowed. . . . in holding that the doctrine of governmental immunity for torts for which its agents are liable has no place in our law we make no startling break with the past but merely take the final step that carries to its conclusion on established legislative and judicial." Muskopf v. Corning Hospital District, 11 Cal Rptr 89, 90, 92, 95.

It is interesting to note that in Michigan, too, we have completed a trend begun both by this court and the legislature.

The legislature has specifically imposed liability upon political subdivisions for keeping streets and highways reasonably fit and safe for travel. CIS 1956, S 242.1 (Stat Ann 1958 Rev. 9.591).

It has much more recently exempted from the immunity rule negligence actions against political subdivisions of the State pertaining to motor vehicles. CL 1948, 691.151, 691.152 (Stat Ann 1960 Rev. 9.1708 (1), 9.1708 (2).

In the court of claims act, it has applied the same exemption from the judicial immunity rule to the State itself as to torts arising from motor-vehicle or aircraft accidents. PA 1960, No. 133, amending CL 1948, 691.141 (Stat Ann 1959 Cum Supp 27.3548 (41).)

Moving somewhat in the same direction, this court has adopted the expedient of refusing the immunity rule to governmental units where the activity engaged in was of a revenue-producing or "proprietary" nature. Hodgins v. Bay City, 156 Mich 687 (132 Am St Rep 546); Foss v. City of Lansing, 237 Mich 633 (52 ALR 185); Matthews v. City of Detroit, 291 Mich 161.

The trend toward responsibility is pictured with a much wider horizon at the conclusion of Borchard's historic treatise (36 Yale LJ 1099, 1100): "The whole course of history, with slight though frequent interruptions, has been toward responsible government, that is, responsible toward those for whose benefit and needs it presumably

1See, also PA 1961, No. 236, 6475.
exists. If this has gradually tended toward evolving legal conceptions by which to judge the acts of those in authority, this is a reflection of modern political development. Force and arbitrariness are thus limited by rule, rule administered by societal agents, usually courts, judicial or administrative . . . if, in property and contract relations, definite rules have been evolved in most States for determining the relations between the government and the governed, and if foreign countries, for the most part, bring tort relations into the same legal orbit, there seems no valid reason why the United States should continue to employ antiquated postulates as if they constituted reasons in order to escape what the rest of the world regards as both moral and legal obligations."

These trends would, of course, avail the present plaintiff nothing. If the doctrine of governmental immunity from torts is to continue as it has existed in Michigan, she plainly cannot maintain her suit.

Indeed, at the outset, it is suggested that she cannot, because this Court has no power to change or later the common law. In this regard, reliance is had upon the language of the Michigan Constitution of 1850, section 1 of the schedule: "The common law and the statute laws now in force, not repugnant to this Constitution, shall remain in force until they expire by their own limitations or are altered or repealed by the legislature."

This same language was indeed re-enacted in the Michigan Constitution of 1908, section 1 of the schedule, but with a most significant omission: "The common law and the statute laws now in force, not repugnant to this Constitution, shall remain in force until they expire by their own limitations, or are altered or repealed."

Reference to the Legislature in the preceding (1850) section, which might be read as depriving this Court of all power to alter a rule of common law, was thus specifically deleted. Clearly, the constitution presents no barrier to removal of an unjust rule--by the action of the Court which made it.

It should be noted that even this type of "reception" clause has not prevented judicial review and modification of common-law doctrines. See Penny v. Little (Ill, 1841) 4 Scammon 301; Will of Wehr (1945), 247 Wis 98; Wilkins v. Jewett (1885), 139 Mass 29, Woods v. Lancet (1951), 303 NY 349.
From all that has been presented to us, we glean no substantial argument for depriving this widow of her right to have a jury determine whether or not defendant City of Detroit negligently caused her husband's death without contributory fault on his part.

There is, of course, no question but that she would have this right if the building in question had been owned by an individual or by a private corporation.

The chief legal argument pertains to the desirability of rigid application herein of the doctrine of stare decisis. As to the fundamental nature of this doctrine, we entertain no doubt. The common law, as we know it in this country and Great Britain, is founded upon the following of case precedent. By this rule, our society preserves the best of the wisdom and morality of past ages.

But stare decisis in its most rigorous form does not prevent the courts from correcting their own errors, or from establishing new rules of case law when facts and circumstances of modern life have rendered an old rule unworkable and unjust.

In his introduction to a symposium on governmental tort liability, Dean Stason noted the vitality of the doctrine--the king can do no wrong--and commented (29 NYU L Rev. 1321-1324); "Yet the law does change. The legal system provides not only for stability, so that men will, in their actions of today, be able to rely upon the rules of yesterday, but also it includes a mechanism permitting the effectuation of changes to meet the changed conditions of tomorrow. And certainly one of the changes taking place today, not only in the United States but also in many of the other countries of the world, is a transition from individualism to collective security--and this includes an assumption by the body politic of much of the devastation created by all manner of individual tragedies, whether due to accident, or disease, to an act of God, or of the State, or of man. A part and parcel of this trend is the gradual expansion of the tort liability of the State.

"One could go on and on demonstrating the great vitality shown in recent years by the private law of torts, ever expanding to meet new needs, and, especially growing space to spread the losses occasioned by the injuries more or less inevitably arising out of a complex, technological, and ever more mechanized society. Naturally, a heavy burden is placed on defendants, and if it were not for the protection of casualty insurance, many business enterprises would certainly find the going to be hazardous and perhaps impossible.
But insurance is another way of spreading the risk, performing a function akin to that of the tax roll that assume the burden in case of public liability. The trend then, in private tort law, is markedly in the direction of spreading the burden of losses so that injured parties will not be left without relief.

"There is no reason to anticipate any different trend in those phases of tort law that relate to public liability for injuries caused by the State and its subdivisions. The expansion will not be so rapid. Fear of 'an infinity of actions' milking the public treasury gives pause to legislatures as well as to courts. But other nations are doing it without bankruptcy, and so will we, give us time."

The classic answer to those who would regard stare decisis as an immutable rule requiring the courts to set their course by the frozen compass of the ancient past is that given by Mr. Justice Oliver Wendell Holmes: "It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past." Oliver Wendell Holmes, Collected Legal Papers (1920), p. 187.

The rule of governmental immunity has as legal defense only the argument that age has lent weight to the unjust whim of long-dead Kings. It is hard to say why the courts of America have adhered to this relic of absolutism so long a time after America overthrew monarchy itself!

The unsatisfactory answers available to this question (which we will not repeat) have been explored at length by legal authorities with practical unanimity of condemnation of the immunity rule as applied to ordinary torts. Borchard, Government Liability in Tort, 34 Yale LJ I, 129, 229; Borchard, Governmental Responsibility in Tort, 36 Yale LJ 1, 757, 1039; Fuller, Municipal Tort Liability in Operation, 54 Harvard L. Rev. 437; Leflar and Kantrowitz, Tort Liability of the States, 29 NYU L Rev. 1363.

It is a fascinating quirk of legal history that England, the land which gave this doctrine birth, has retained a vestigial monarchy; but English courts have for generations allowed tort actions against municipalities and school districts. Lyme Regis v. Henly (1834), 2 Clark & F 331 (6 Eng Rep. 1180, 1 Eng Rul Case 601); Shrimpton v. Hertfordshire County Council (1911), 104 Law Times Rep 145 (2NCCA 238); Ching v. Surrey County Council (1910) 1KB 736 (2NCCA 234); Smith v. Martin and the Corporation of Kingston-Upon-Hull (1911), 2 KB 775 (2NCCA 215).
If we examine the practical arguments advanced against change of this rule, we find, if anything, even less substance. Each brief speaks of the crushing weight of negligence awards which might bankrupt a small governmental unit. Most of the briefs filed to support appellee city avoid mention of public liability insurance as if it were a new and barely tried invention of which the courts could not possibly have knowledge.

No such scheme for prepaying and sharing risk did exist in any common form at the time when the courts of this country adopted the doctrine of governmental immunity. The probabilities are strong that this fact, and the possibility of a crushing liability falling upon a small governmental unit, had as much to do with adoption of the rule as did stare decisis and the fact that Kings had no inclination to be liable in damage to their subjects.

In 1961, however, liability insurance is no new and untried device. We take judicial notice that it serves private citizens and private corporations as a means of prepaying and sharing just the sort of unexpected burden with which we deal in this case.

This Court has just heard and rejected this same practical argument in relation to hospitals in this State. Parker v. Port Huron Hospital, 361 Mich 1. Many of the smaller Michigan hospitals, absent liability insurance, would, of course, be much harder pressed by abolition of charitable immunity than any governmental unit in Michigan will be by this decision. In abolishing the doctrine of charitable immunity, this Court not only took judicial notice of the change of circumstance represented by the availability of public liability insurance, but also made the decision prospective in effect under the Sunburst doctrine of the United States supreme court (Great Norter R. Co. v. Sunburst Oil & Refining Co., 287 US 358 (53 S Ct 145, 77 L ed 360,85 ALR 254). This was done in order to give notice of the change and enable the hospitals to protect themselves in advance.

In this case we follow the same course for the same reasons in relation to the previously immune governmental units. We do not ignore the fact that this decision cast in this form will, of course, occasion some minor increase in the tax burden due to purchase of insurance. It would also serve to assure each taxpayer that if by chance a catastrophe befell him as a result of an ordinary tort committed by a public employee, the economic impact thereof would be shared with all other insureds, rather than falling with awesome tragedy upon the innocent victim alone.
Nor do we ignore the fact that some such victims must exist whose causes of action are barred by the prospective nature of this order and that as to them this decision affords no relief from the previous unjust doctrine. Such differences are created by every change in case law (or statutory law for that matter). If this decision were not to be made prospective in its nature, its application would still fail to remedy the problem of the persons whose cause of action accrued 3 years and 1 day ago. CLS 1956, 609.13 (Stat Ann 1959 Cum Supp 27.605). Each case of great public concern presents hard choices. We believe prospective abrogation of the judicial doctrine of governmental immunity accomplishes the nearest approach we have available to the just and common-sense solution of a great problem which has festered in the courts for years.

We deal in this case with a declaration which would clearly state an ordinary tort claim against a private individual or a private corporation. Our holding herein is limited to the statement that there is no longer any judicial doctrine of governmental immunity as to such a claim.

There is, of course, no doubt of legislative authority to act in this area. The Michigan legislature may, if it sees fit to do so, reinstitute governmental tort immunity by statute. Or, as it has already done in some instances, it may specify the terms and conditions of suit. Our holding in this case does not affect any existing statute in the field concerned, or imply any limitation on legislative power to act where to date it has not acted.

Also, there are and will continue to be many situations in relation to which real or fancied grievances exist where governmental freedom from liability will persist on wholly different grounds. Legislative bodies, for example, have the right to make many types of decisions which may do harm to some. Subsequent history may clearly demonstrate that some of those decisions were wrong. Discretion implies the right to be wrong. So long as those decisions are within the discretion vested in the legislative body, there is clearly neither breach of duty nor a right to damages. The instant case, a tort action, does not in any manner alter the fact that actions or decisions of a legislative executive or judicial character which are performed within the scope of authority of the governmental body or officer concerned continue to enjoy freedom from liability.

The people place great powers of decision making in the hands of their government. In the exercise of discretionary power, governmental duty runs to the benefit of the whole
It is of great importance that this crucial function of democratic decision making be unhampered by litigation.3

No such considerations are involved in the area of ordinary tort actions. As we have indicated, we see no legal, practical or moral justification for continuation of the court-decreed doctrine of governmental immunity from such actions. To the extent we have indicated, we hereby overrule that doctrine and the preceding Michigan case law which was founded thereon.

Few, if any, important changes in case law are made without some disagreement. Nor will this be. Mr. Justice Carr concedes that the doctrine of governmental immunity was created by judge-made case law and was made applicable to this State by this Court. His opinion cites no statutory provision upon which this doctrine rests because there is none. Nor does he defend the doctrine itself. In effect, he suggests that once judicial error has gained the respectability of age, it becomes somehow invulnerable to correction by the branch of government which made it.

This argument, although by no means novel, has the weight of legal opinion and precedent against it. Indeed, it is the peculiar genius of the common law that no legal rule is mandated by the doctrine of stare decisis when that rule was

3"Government officials are liable for the negligent performance of their ministerial duties . . . but are not liable for their discretionary acts within the scope of their authority . . . , even if it is alleged that they acted maliciously . . . . Such immunity is not designed to protect the guilty, for if it were possible in practice to confine such complaints to the guilty, it would be monstrous to deny recovery. The justification for doing is that it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute or the most irresponsible, in the unflinching discharge of their duties. . . . In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation." Learned Hand, J. in Gregoire v. Biddle, 177 F2d 579, 581. Muskopf v. Corning Hospital District, 11 Cal Rptr 89.
conceived in error or when times or circumstances have so changed as to render it an instrument of injustice. See, on this topic, Bricker v. Green, 313 Mich 218; Sheppard v. Michigan National Bank, 348 Mich 577, 595 ff; Girouard v. United States, 328 US 61 (66 S Ct 826, 90 L ed 1084); Brown v. Board of Education of Topeka, 347 US 483 (74 S Ct 686, 98 L ed 873, 38 AIR 2d 1180); Woods v. Lancet, 303 NY 349 (NRzd 691); Blaustein & Field, "Overruling" Opinions in the Supreme Court, 57 Mich L. Rev. 151 (December, 1958); William O. Douglas, Stare Decisis, 49 Col. L Rev. 735.

The highest appellate court of New York recently dealt with a similar argument: "Our court said, long ago, that it had not only the right, but the duty to re-examine a question where justice demands it (citing cases) . . . it is the duty of the court to bring the law into accordance with present day standards of wisdom and justice rather than 'with some outworn and antiquated rule of the past.' . . . We act in the finest common-law tradition when we adapt and alter decisional law to produce common-sense justice." Woods v. Lancet, supra. 354, 355.

In a case wherein all the same arguments of adherence to precedent were rejected, this Court unanimously overruled the long-established doctrine of imputed negligence. The unanimous opinion of the Court which dealt at length with the problem which divides us here quoted reasoning which fits our present case. The opinion in Bricker v. Green, supra. 234, 235 said: "Mr. Justice Cardozo, in his William L. Storrs Lectures before the Law School of Yale University in 1921, had this to say, as printed in his book, entitled, 'The Nature of the Judicial Process,' pp 142, 150: "'But I am ready to concede that the rule of adherence to precedent, though it ought not to be abandoned, ought to be in some degree relaxed. I think that when a rule, after it has been duly tested by experience, has been found to be inconsistent with the sense of justice or with the social welfare, there should be less hesitation in frank avowal and full abandonment. We have had to do this sometimes in the field of constitutional law. Perhaps we should do so oftener in fields of private law where considerations of social utility are not so aggressive and insistent. There should be greater readiness to abandon an untenable position when the rule to be discarded may not reasonably be supposed to have determined the conduct of the litigants, and particularly when in its origin it was the product of institutions or conditions which have gained a new significance or development with the progress of the years. In such circumstances, the words of Wheeler, J., in Dwy v. Connecticut Co., 89 Conn 74, 99 (92 Atl 883, LRA 1915E, 800 Ann Cas 1918 D, 270), express
the tone and temper in which problems should be met:
"That court best serves the law which recognizes that the rules of law which grew up in a remote generation may, in the fullness of experience, be found to serve another generation badly, and which discards the old rule when it finds that another rule of law represents that should be according to the established and settled judgment of society and no considerable property rights have become vested in reliance upon the old rule. It is thus great writers upon the common law have discovered the source and method of its growth, and in its growth found its health and life. It is not and it should not be stationary. Change of this character should not be left to the legislature."

"If judges have woefully misinterpreted the mores of their day or if the mores of their day are no longer those of ours, they ought not to tie, in helpless submission, the hands of their successors."

"Ever since 1872 we have adhered to the imputed negligence rule. We have recognized from time to time the changes brought about by the innovations of science and engineering, and we have carefully considered at much length the implications of the rule, its application, and the effect of its abandonment. As a result of our study and observation, we are convinced that in the long run the application of the rule is more harmful than helpful and results in more injustice than it prevents; and that we should not continue the invariable application of the so-called imputed negligence rule merely and solely on the ground that the injured person was voluntary, gratuitous passenger in an automobile, the driver of which was guilty of negligence which was a contributing proximate cause of an accident and injury to such passenger."

In the present case, we conclude likewise that in relation to the doctrine of governmental immunity, "the application of the rule is more harmful than helpful and results in more injustice than it prevents."

One of the opinions in this case while agreeing with our fundamental holding that the immunity rule was applied below represents historic injustice and should be overruled prospectively, criticizes the fact that we seek to follow the precedent set in Parker vs. Port Huron Hospital, supra, and to apply the overruling likewise to this case in which the decision is being made.

The choice in this regard is, of course, difficult—but it is deliberate. We have pointed out that any date or point of change involves the application of the old (and unjust) rule to some, and its alteration as to others. This
Court has overruled prior precedent many times in the past. In each instance the Court must take into account the total situation confronting it and seek a just and realistic solution of the problem occasioned by the change.

In overruling the imputed negligence rule in Bricker v. Green, 313 Mich 218, the Court applied the new rule to the case at bar and to "pending and future cases," p. 236.

In shifting the burden of proof as to contributory negligence from plaintiffs to defendants, this Court adopted a rule change wholly prospective in its operation and effective "in all negligence cases tried after the effective date hereof." This date was set 1½ months ahead to allow for adequate notice to the bar and time to amend pleadings in pending cases. Court Rule 23, 3a.

In holding that, contrary to prior precedent, interest should be payable on workmen's compensation awards from the date when the claim should have been paid, this Court applied the overruling to the case at bar but stated "This decision shall not, however, be regarded as retroactive." Wilson v. Doehler-Jarvis, 358 Mich 510, p. 517.

And in Parker v Port Huron Hospital, supra, this Court overruled the doctrine of charitable immunity in the case at issue and otherwise gave the new rule effect as of the date of decision.

It is evident that there is no single rule of thumb which can be used to accomplish the maximum of justice in each varying set of circumstances. The involvement of vested property rights, the magnitude of the impact of decision on public bodies taken without warning or a showing of substantial reliance on the old rule may influence the result.

In no instance which we have discovered, however, has this Court's decision taken the benefit of the change from the party whose case occasioned it--even though retroactivity may have been limited to a greater or lesser degree.

The reasons for denying general retroactivity in this case we have already discussed. The reasons for including

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4Recently the Wisconsin Supreme Court, by unanimous decision, has cited and relied upon Parker v. Port Huron Hospital, supra, in overruling Wisconsin's charitable immunity doctrine prospectively except as to the case before the court. Kojis v. Doctors Hospital, 12 Wis2d 467 (107 NW2d 131) supplemental opinion, 12 Wis2d 367 (107 NW2d 292).
the case which occasioned the change lies in the court's basic interest in preserving the vitality of the common law. The parties and lawyers who are certain of defeat for a lawsuit may well be deterred from bringing the appeal which would best illustrate the need for alteration of a rule. Nor (assuming some prosperous law offices might undertake such litigation as a matter of public service or long range self-interest), should we limit the presentation of precedent-making cases to a particular classification of attorneys.

It should be noted that both Parker v. Port Huron Hospital and this case involve single injury problems. In the Molitor case the Supreme Court of Illinois applied the Sunburst prospective overruling doctrine, and also allowed recovery in the case establishing the change. This case, however, involved a situation wherein 18 students had been in the same bus accident. While we follow the same principle as Molitor in this single injury situation, we do not bind ourselves to the same result in a multiple injury situation.

The Molitor case, of course, presented the most dramatic opportunity possible for arguing denial of equal protection. The father who had prevailed in the principal case in the Illinois Supreme Court on behalf of one son presented the constitutional argument on behalf of another son also injured in the same accident whose suit dismissed. Although not conclusive of the legal issue it is interesting to note that certiorari was denied. Ronald Molitor v. Kaneland Community Unit District #302, 18 Ill.2d 11; 163 NE2d 89; cert denied 362 US 968; 4 L Ed 2d 900; 80 S. Ct. 955.

There is, of course, ample precedent not only in Michigan but elsewhere for prospective overruling with the new rule applied to the case in which decision is made. Dooling v. Overholser, 243 F 2d 825; Shioutakon v. District of Columbia, 236 F 2d 666; Durham v. United States, 214 F2d 862; Parrior v. New England Mortgage Security Co., 92 Ala. 176, 9 So. 532; Naskett v. Maxey, 134 Ind. 182, 33 N.E. 358; Dauchey v. Farney, 173 N.Y. Supp. 530; Kojis v. Doctors Hospital, supra.

Finally, it is suggested that the Sunburst case (Great Northern Railway Co. v. Sunburst Oil and Refining Company, supra) is authority for rejecting Mrs. Williams' pleas for damages for her husband's death. We believe that the opinion of Mr. Justice Cardozo for the United States Supreme Court has much broader significance than mere ratification of the Montana Supreme Court's decision to change a rule wholly prospectively. Levy, Realistic Jurisprudence and Prospective Overruling, 109 U. Penn. L. Rev. 1 (1960). The question, as to whether or not the Montana Court could
have applied the otherwise prospective ruling to the case at bar (as we seek to do here) was not presented, discussed or decided. But the thrust of the Cardozo opinion may be found in the following quotation which we read as affirming the power of a state supreme court in overruling prior precedent to apply the most practical and most just solution it has available under the circumstances presented by that case.

"This is a case where a court has refused to make its ruling retroactive, and the novel stand is taken that the Constitution of the United States if infringed by the refusal.

"We think the federal constitution has no voice upon the subject. A state in defining the limits of adherence to precedent may make a choice for itself between the principle of forward operation and that of relation backward. It may say that decisions of its highest court, though later overruled, are law none the less for intermediate transactions. . . . On the other hand, it may hold to the ancient dogma that the law declared by its courts had a Platonic or ideal existence before the act of declaration, in which event the discredited declaration will be viewed as if it had never been, and the reconsidered declaration as law from the beginning. Tidal Oil Co. v. Flanagan, supra; Fleming v. Fleming, supra; Central Land Co. v. Laidley, 153 U.S. 103, 112; sec., however, Montana Bank v. Willowstone County, supra. The alternative is the same whether the subject of the new decision is common law (Tidal Oil Co. v. Flanagan, supra) or statute. Gelpke v. Dubuque, supra; Fleming v. Fleming, supra. The choice for any state may be determined by the juristic philosophy of the judges of her courts, their conceptions of law, its origin and nature. We review not the wisdom of their philosophies, but the legality of their acts. The State of Montana has told us by the voice of her highest court that with these alternative methods open to her, her preference is for the first. In making this choice, she is declaring common law for those within her borders. The common law as administered by her judges ascribes to the decisions of her highest court a power to bind and loose that is unextinguished, for intermediate transactions, by a decision overruling them. As applied to such transactions we may say of the earlier decision that it has not been overruled at all. It has been translated into a judgment of affirmance and recognized as law anew. Accompanying the recognition is a prophecy, which may or may not be realized in conduct, that transactions arising in the future will governed by a different rule. If this is the common law doctrine of adherence to precedent as understood and enforced by the courts of Montana, we are not at liberty, for anything contained in the constitution of the United
States, to thrust upon those courts a different conception either of the binding force of precedent or of the meaning of the judicial process." Great Northern Railway v. Sunburst Co., 287 US pp 364, 365, 366.

For reasons set forth above this case should be:

Reversed and remanded for trial.

Respondent C. "Well, in Ohio, I haven't seen any change at all. For quite a number of years the courts of Ohio have held that a Board of Education is not liable for tort claims even if there is negligence on the part of board employees.

"In Ohio the Supreme Court decides this on the basis of constitutional law rather than common law. Two years ago there were two cases by the Ohio Supreme Court. One case had to do with the situation wherein an employee in The Ohio State University Hospital was negligent. The injured patient pleaded in the law suit brought an action for damages against The Ohio State University Board of Trustees, which, of course, is in management control of all university operations. In this case The Supreme Court held in substance that under the Ohio Constitution the State of Ohio, or a state agency or instrumentality is not suable in tort unless the State Legislature specifically authorized suits to be brought. The court further pointed out the State Legislature had not authorized any suit of that kind to be brought against the State. They also pointed out, of course, that The Ohio State University is
clearly a state agency. In my judgment that opinion would also apply to a suit against a board because we have substantial authority to the effect that a school district or a board of education is a state instrumentality—state agency. We in the court use the word state agency or state instrumentality the same along the lines as a state; then obviously that would also apply to a board of education in a corporate capacity.

"In your opinion, do you think that the State Supreme Court, while it is making its judgments now in a frame of reference of constitutional law, is the Supreme Court apt to change its frame of reference? In other words, we know that things are happening rapidly, society is changing in Ohio, the constitution of Ohio has probably picked up in tempo of becoming obsolete. Because of that, is it likely that the court will change the frame of reference of its judgments? I don't believe so. In view of the fact that it has to do with judicial interpretation of a definite part of the constitution.

Respondent D. "Yes, there definitely has been a change in attitude by the courts and by the so-called will of the people—public policy with respect to the common-law concept of tort liability and immunity granted to boards of education. The evidence of this is rather pronounced in certain states which have safe place statutes and in other states called safe harmless statutes—notably
California, Wisconsin, Washington and New York, and by the back door method of court decision somewhat the same in Illinois and a few other states. The feeling has been that even the state may not do just as it pleases in regard to negligence insofar as leaving open pits unguarded and unlighted stair wells. In the common language of the welfare of people, the state also assumes tort liability for such nuisances or for such neglect that may be some means or other cause damage to people or involve tort consequences.

2. What should the position of a board be in respect to the assumption of liability for student accidents as well as employee accidents?

Respondent A. "Well, of course, in employee accidents in this state the board is liable under the Workmen's Compensation Law. But I don't know if the board of education should take any action. You see, what should the position of a board be? I don't know what its position should be. I would say if it should take any position at all, if it felt the time was coming when it was to be held liable, maybe it better get legislation in now similar to what the Illinois Legislature enacted, $10,000 limit per person/per accident. At least $10,000 afforded some protection."

Respondent B. "School districts increasingly face the possibility of loss due to damage to persons. Therefore, the only sane course for the board to take, where the law is unclear and unsettled, is to purchase adequate
coverage. This means a policy for about $1,000,000 with provision for payment of an annual premium of around $600-$700."

Respondent C. "In reference to your second question, under the existing law in Ohio, a board of education clearly has no right to expend public funds to procure accident insurance covering its students except in reference to the transportation of such children to and from school or school functions. I know of no legislation or law in Ohio that would authorize a board of education to expend public funds to procure accident insurance to cover their employees. Incidentally, I might say though that in reference to the employees they do have protection while they are on their duty assignments by means of the Workmen's Compensation Law, and since they do have that protection, I am very dubious as to whether or not that the Legislature would pass a law that would authorize boards to give them the same kind of protection which in effect they get from the Workmen's Compensation Law.

Respondent D. This would vary in regard to the statutes within the state. Where for instance the statute provides such as safe harmless, safe place statutes, the board must assume certain assumptions of liability for student accidents involving the kinds of things that are safe played negligence—the lack we talked about in question number one. In other instances the boards have generally
felt that student accidents are of themselves separate and apart from the same relationship that may exist with employee relations—for instance the Workmen's Compensation Act in many states would cover employees but would not necessarily cover students because they are not deemed to be employers and the relationship would be one of a different nature between the student and the board of education and the district and the employee and the board of education and the district.

3. In states where liability immunity for boards has traditionally been held, would the policy of allowing a pupil group accident policy, premiums paid by parents, tend to be construed as an admission of moral liability and thus impute legal liability?

**Respondent A.** "I doubt if it could be. Now you say in Ohio you have pupil insurance and that the parents pays it. We have had that in Pennsylvania for a number of years. Now there are certain elements of that, the legality of that which has yet to be tested, and I am not sure that it is a good thing at all. First of all, why should the school district go into the insurance business? Should teachers sell milk? They sell savings bonds, they are interested in every drive, now they are handling insurance. There are a number of questions that can arise in connection with that, that haven't yet, although one almost did in the district in which I live. A principal's safe was robbed and they thought about $1500 in money, collected from parents for this insurance, was in the save. A check later showed less than $100.
Well, immediately the superintendent said to the insurance company, what about the insurance? The insurance company said it is your money; the superintendent said it isn't our money. Whose money is it? No one knows. Is the teacher or the principal the agent for the insurance company? We had a parochial school case in New Jersey of a different type—where the court held the teacher not the agent of the insurance company. Now there is another question involved in this pupil insurance. Now, in this state for example, everyone selling insurance must have a license from the insurance division. Someone, I understand, went to the insurance division and said they were now selling insurance through the schools. Must these teachers have licenses? The response was—we have never brought it up—we had hoped that question would never be raised. So immediately the question was withdrawn. What the answer is, I don't know. But I know of an administrative assistant out here in one district that in the fall when they sell insurance, he goes around, picks it up from the principal, and will have as high as $4000 or $5000 in cash on him which he has to take to the bank to deposit. Now he is running quite a chance. Whose money has he got if he is held up? Is he liable, is the district liable, is he the principal's agent? No one knows. I don't like this pupil insurance myself. Not only that, but the history of it. I had a man here at Penn and you may want to get in touch with him,
John Kushma. John is superintendent of schools at Clifton Heights. John did his thesis on this pupil insurance and the history of that is that rates begin to increase—you put it in at a dollar, it goes to $1.25, and $1.50 and so on. Now there is a reason for that, of course, I talked to an insurance man, a district representative for an insurance company in Harrisburg, and he said in an open meeting, safety council in Chicago, that the insurance company was losing money on this pupil insurance, but was glad to do it because he said we can go and knock at a door and say, Mr. Jones, I want to tell you about our insurance plan. Mr. Jones is not interested, but you knock at the door and you say, Mr. Jones, I want to talk to you about your son's insurance. We have a foot in the door and before we leave we will sell the old man insurance. Now, I don't believe the school has any business propagandizing insurance. Well, that is my point of view. Take it for what it is worth."

Respondent B. "To my knowledge there is little or no evidence which would lead to the conclusion you suggest. Where premiums are paid privately (by parent or teacher), no assumption could be made of the lessening of liability since there is no expenditure by government of funds for a purpose which may be construed as "weakening the wall."

Respondent C. "In reference to your third question, under the suppositions expressed in that question, I do not believe that if there were a state law or policy established
of allowing pupil accident policies, with the premiums to be paid by parents, I don't believe that would tend to be construed as an admission of moral liability on the part of the board and thus impute legal liability. I believe that, of course, it would be possibly construed as an act of the board seeking to protect the children from accidents— not because of any moral or legal liability or responsibility on the board as such, but rather as a prudent desirable protection that the board might have some ability to promote.

Respondent D. "This is a difficult question to answer on the basis of the limits which you have set for it. Although there has been some tendency on the part of courts to construe any kind of effort in relationship to liability as leaning in that direction although it may not necessarily be imputed that they have legal liability, it might be imputed that they have a tendency to accept responsibility as a lead toward possible, sometime, legal liability. I think this is probably what you have reference to here. It is a lead in this direction.

4. Could you give some broad principles of reasoning that have caused courts in some states to take a new look at board of education liability immunity?

Respondent A. "Yes, I think that I could do that with about three things. First of all, it is frequently argued in court, in a dissenting opinion, that the districts should be held immune, or should be held liable. The
majority say, no, the law in this state is immunity if the law is changed, let the legislature change it. But the answer to that is—who made the law—the courts made it in the beginning so then it is up to the courts to change it. So there is one argument. Another is that we are living in a different day and age, and that is argued over and over. Today everybody is security minded, and so the schools ought to change as well. Not only that in the beginning when this doctrine of immunity was first announced it was not possible to get insurance coverage as you can today, but today insurance is available. Now, you know that charitable agencies have the same degree of immunity as does the state as a rule. It is interesting, however, that at least a dozen and I suppose by this time twenty states have overthrown the doctrine of immunity for charitable agencies. I did an article with Marshall on the liability of hospitals. It is a 105-page manuscript. It was printed in a single issue of the Modern Hospital. In that we noted that this doctrine was fast evaporating as far as charitable agencies were concerned. We did that five or six years ago and since that time three or four more states have overthrown the doctrine of immunity for charitable organizations."

Respondent B. "This can best be answered by referring to the Williams case. Here the court cites many pertinent references which contain many of the broad principles which you seek."
Respondent C. "In reference to your question number four, personally, I am not acquainted with any broad principles of reasoning that some courts actually may have utilized to take a new look at boards of education liability immunity. I have no reluctance to state some general principles which I imagine some courts might consider and possibly some have considered it. Going back to this so-called traditional idea of tort immunity, from the standpoint of common law, it is essentially that a governmental unit while engaged in a governmental function, is not liable for torts. I appreciate the fact, however, that possibly there has been some tendency on the parts of some courts to find some conceivable liability against boards of education in reference to their so-called proprietary functions and we have to face the problem from this general principle. As I understand the law, which I may be corrected on, that a common law principle, as such, cannot be reversed by a court. Now, I understand that it is possible for the law-making body, under certain circumstances to enact a law which is contrary to or in conflict with a common law principle and too, in effect, repeal a common law principle. I do not think that a court by judicial reasoning or interpretation has the same power that a legislature has to abrogate a common law principle. On the other hand, the court if they find out that the liability of the governmental unit is not in relation to the performance of a governmental
function, it goes into this proprietary area, then it would be conceivable that courts could hold that there was liability against governmental bodies. Now, there is a case in Illinois, as I remember, where the court said that there could be tort liability against a board of education. They could have adjudicated their ruling substantially, as I understand it on the fact that the state legislature had passed a law authorizing the procurement of public liability insurance and the court in effect then held that since the state legislature has passed this type enabling legislation whereby insurance could be purchased in effect that possibly there was a repeal of this common-law principle.

Respondent D. "I suppose one of the basic principles is that negligence is negligence wherever it is and by whomever perpetrated it. If a district can be absolved from negligence in doing kinds of things and providing kinds of hazards and nuisances and what nots, it is also according to another principle the public welfare. Another facet of this, it seems to me that is coming on us more and more is the insurance consciousness of people. Whenever anyone is in anyway damaged, immediately they look for someone to sue, someone to retrieve, someone to gain a remedy from. Of course, we have ample evidence of this in automobile insurance and in other kinds of insurance involving liability and tort cases. It seems to me this pressure from John Q. Public for a remedy, for a want, is pushing the
reasoning for people to say so what if the school district is responsible, then let's gain some remedy from them. Other evidences the inter-pleading done by a number of cases in which they immediately try to tie in the governmental unit for instance than the principles involved so they get the broadest coverage possible for some remedy, for some damages. Invariably in these cases that come up, the district, the board, and the principal and who all else may be involved are inter-pleaded in the thing so that they gain the best possible advantage. Then since districts have had to defend themselves, another principle seems to me might arise that since they have to defend themselves anyway in a good number of these kinds of cases it causes them to take another look at whether or not they should assume either by permissive or mandatory legislation some responsibility for liability insurance and tort damages with the school district operation.

To answer your question specifically, I don't know of any tremendous loading of the courts of the states you mention although where the negligence or liability is clear, the courts are naturally called upon to adjudicate, and whether the proprietary aspect of the function of a quasi municipal corporation is involved or not, it would seemingly indicate that in those states particularly the liability would rest because of the statutes admitting liability. I think we have even in Ohio some inroads in this direction.
in our new bus liability law when and if certain accidents happen, they will be rested and adjudicated on the basis of an assumptive liability by statutes. A compulsory type of liability insurance covering buses will then be thought of as means of securing a remedy for whatever negligence or difficulties or tort responsibility they may find through court action."

5. Where enabling legislation has permitted boards to assume liability, from what source has been the impetus for such legislation?

Respondent A. "I don't know where it came from. I have no idea. I think in part it is the difference in the changing of the thinking of the courts. You remember Chief Justice Charles Evans Hughes, who said the law is what the courts say it is. The courts are made up of human beings, they are motivated by the same things that motivate you and me. They see other agencies, private agencies, responsible for tort. They see often that the child comes from a poor family, he needs their help. We think it is a change in general social philosophy. Although it may have come from individual groups. I don't know."

Respondent B. "The sources have been several. One is the changing philosophy of the courts. Another is the changed attitude of the public which has encouraged the awarding of large sums for damages."

Respondent C. No opinion.
Respondent D. "It is my opinion that it has arisen from several sources. One, for instance, on the part of teachers who have brought to suit for various kinds of liability and negligence. Teachers in many of these instances have been taking out so-called group liability insurance with insurance companies to have protection, and through teacher organizations they have bestirred the legislature to make it possible for perhaps the district to assume cost of such group policy for liability insurance. In one state that I know particularly this was a fact when teachers found that increasingly they were being sued and many places were taking on group liability policies through the efforts of the teachers association or the education association. They had enacted a law making it permissive for boards, not mandatory but permissive, for boards to assume the liability insurance. Now this does not extend beyond liability insurance. Some districts avowedly and probably illegally have assumed hospitalization, health and whole lot of other kinds of insurance even to life insurance. This is not permitted and is not thought of as something to be assumed by the public or by the district, but where the teacher's acts, in the due process of her professional function, lay her open to possible suit. This has been the basis which some of the efforts have been put forth at least to gain permissive possibilities for boards to assume the liability. Then in connection with the same kind of thing,
the number of suits which have been lodged against boards of education in the absence of any liability possibilities still having to face the court case and to adjudicate this and to defend themselves, boards have felt that this might be better if they could somehow buy protection in the sense of liability insurance with a recognized company that would defend them in the courts. This happens all around the horn from construction problems where liability is involved and they get sued because subcontractor does something or something else and are inter-pleaded to the common everyday operations of the schools' functions wherein the board may somehow by some means assume some liability for tort or negligence."

6. Are you aware of any state where boards of education are permitted to purchase group accident insurance for students and athletes and/or employee liability insurance?

   **Respondent A.** "Yes, they may in Pennsylvania, it is not required, but they may. Well, you take those states that have the save harmless law—Connecticut, New Jersey, New York and it is permissive in Wyoming, there, of course, they could do it. You see that save harmless law says that the injured party cannot sue the district, but he may. Remember there could be no liability if some individual was (wasn't) negligent."
Respondent B. "I do not have this information available. Write to Dr. Martha Ware, Legal Research Assistant, NEA, 1201 16th St., Washington, D.C. I would be glad to have a copy of her reply. Please say I suggested her name."

Respondent C. No opinion.

Respondent D. "Tom, there are states that do this only, if however, the statutes in the state permit of it. There are some states with statutes that have been construed to make this possible and permissible and in some instances even mandatory.

7. In states where a specified limit liability is prescribed by statute, do you believe that courts may hold that if there is liability such liability can be limited by fact only?

Respondent A. "My reply here would be 'Yes.'"

Respondent B. "My reply here is 'Yes.'"

Respondent C. "In reference to your seventh question, if there were in a particular state, for instance, a specific state law that established the maximum amount that any judgment could be recovered for, in the case of a tort liability, I would think that legislation is controlling even though in a law suit the proven facts might establish that there were damages exceeding the statutory maximum. On the other hand, in the case where the amount of liability is based on a policy of insurance, in which the state legislature establishes the maximum amount of the insurance
policy that may be lawfully procured, then, I believe, that
the legislature, as a matter of law, establishes the maximum.

Respondent D. "I can only speak about the practice
and perhaps you might call it precedence of court decisions.
In terms of all other kinds of liability, let's say auto-
mobile and other liability, where they have not held to
dollars and cents criteria, but held to fact as the basis
for the limit of liability. Let's say, for instance, that
a person had a $20,000 limit on a cash basis the courts may
decide that in this instance this is worth $30,000 in
damages and it pays little attention as to whether or not
insurer or insuree rather has a $20,000 limit policy or a
$30,000 limit policy. It would seem to me that this same
principle would operate if and when a situation comes before
the courts in terms of ceiling limits. Now the legality of
what the district may have to be liable for probably would
be stipulated by a dollar and cent sign since it is written
into the law. We have some other examples of this, for
instance, in mandatory limits on bus insurance $250,000
let's say in one state for a bus--this would be for any one
accident. Now this would seem to by statute govern the kind
of legal limitation at least per se that they would be in-
cumbered for if and when the case came up to such dimensions.
On the other hand if boards had deemed this was $275,000
worth the principle that I mentioned earlier would seem to
hold.
After having interviewed the experts in the field of school law and reading what other experts, not interviewed, have written, the writer will attempt to synthesize these points of view into a theoretical position that boards of education should observe in their practices of operation in light of national trends in consideration of board immunity to tort liability.

There is a definite trend by courts and legislatures to abrogate the historical immunity granted to boards of education. California, New Jersey, Connecticut, New York, Washington, Illinois and Michigan have all to a greater or lesser degree disregarded the immunity doctrine. Other states are being added to this list yearly. No longer can boards of education assume with confidence that immunity in their particular state will continue to be held by courts.

The doctrines of *rex non innuri* and *stare decisis* have been set aside with logical court reasoning in both Michigan and Illinois.¹ This was done, of course, without act of legislature. The trend here then is toward making it possible for an injured person to sue a school district. From the board of education's point of view of whether this is fortunate or not becomes almost irrelevant. The legal

¹Williams Case and the Molitor Case.
fiction which so long interposed itself between the district and the law was a healthy safe-guard against the pouring out of public funds for non-educational purposes, but it is on its way out. As the public conscience becomes everywhere more tender, states will tend more and more to pass enabling legislation similar to that already existing in some of the aforementioned states and courts will tend to liberalize interpretation involving the right to sue school districts.\(^2\) The abrogation of these long held principles of law then reflect changing social values and mores. A social security seems to be the tenor of current public thinking. This being the "status quo," boards of education should look closely at their practices and make every effort, certainly, to protect themselves from liability. In states where immunity has been granted, boards would be justified in designating a person in charge of safety as well as to insist that groups who by renting school facilities place a board in a proprietary role be properly insured and hold the board of education harmless in event of injury to the public.

Many boards of education are permitting insurance companies to insure student groups with parents paying the premiums. In those states where courts have granted immunity to boards this practice seems to be most common. It is

questionable that boards of education should permit this practice. School time and personnel are used to perform services which in most cases should be done by the company selling the insurance.

In some states license is required for selling insurance. The question arises as to what constitutes selling insurance. If the teachers pass out literature describing a policy and collect premiums for such policy, are they not, indeed, insurance salesmen? If so, are they licensed? Whose money would be stolen in the event someone steals the receipts from premiums before the teacher or principal has an opportunity to turn them over to the insurance company? Did the money belong to the child, the parent, the teacher, the principal or the insurance company? These and other questions have not as yet been answered by adjudication.

There seems to be, however, rather general agreement among experts that pupil accident insurance of this type has little place in the schools. Nevertheless the reason generally ascribed by boards of education for its inclusion are well understood and appreciated. It is generally agreed that boards permitting pupil group insurance to be sold in the schools may in so doing assuage their conscience by at least making protection available to students at the lowest possible cost. This felt moral liability in no way imputes legal liability.
Most employees of boards of education are protected from injuries sustained on the job under provisions of the Workmen's Compensation Law. Many states recognize the liability of a public corporation in this employer-employee relationship but fail to recognize liability for other torts. It is generally agreed that such incidence of this type legislation is the conceptual beginning of "weakening the wall" in the total liability immunity.

In Ohio, recent legislation provides for boards of education the legal right to procure liability insurance in reference to the operation of school buses, motor vehicles, motor vehicles with auxiliary equipment, or all self-propelling equipment or trailers owned or operated by the school district, insuring officers, employees and pupils against liability on account of damage or injury to persons or property. A board may also procure collision, medical payments, and comprehensive insurance on vehicles operated under a course in driver education certified by the State Department of Education. A board may procure accident insurance in respect to the operation of school buses, as expressly authorized by statute.3

In the absence of statute a board has no authority to procure and pay the premiums on any type of liability or accident insurance, to protect the board against any claim

3 R.C. 3313.20.1 - 3327.09.
for damages arising from the use or operation of school property or chattels, or the use of school premises, or for the protection of school employee (except drivers of buses or other vehicles), pupils, or other persons. The aforesaid provisions of statutes are the only ones that have been enacted by the Ohio Legislature to date.⁴

Some states are permitted to purchase group accident insurance, liability insurance and other types. In some states a part of or all of the premium may be paid from public funds. The following table points out types of legislation throughout the nation since 1949 that makes certain provisions for various types of insurance.

Fuller, after making a thorough analysis of court decisions basing a verdict on immunity of school districts, arrived at the following ten reasons upon which courts based their decisions.⁵

1. Sovereignty. The school district exercises sovereign powers as it acts through its board of education, and is as immune from suit as the sovereign itself. To permit actions for torts would be contrary to the theory of sovereignty of the states in the United States.


<table>
<thead>
<tr>
<th>Date</th>
<th>State</th>
<th>Text</th>
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<tbody>
<tr>
<td>1949</td>
<td>Arkansas</td>
<td>Act No. 316 authorizes local fiscal officers to withhold from school employees' salaries the premiums of group insurance, when requested by the school employee.</td>
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<tr>
<td>1951</td>
<td>Arkansas</td>
<td>Act No. 37 permits withholding of premiums for group insurance from teachers' salaries.</td>
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<tr>
<td>1953</td>
<td>California</td>
<td>Chapter 1281 authorized school districts to make payroll deductions without charge to teachers for prepaid health, accident, and hospitalization plans.</td>
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<tr>
<td>1949</td>
<td>Florida</td>
<td>AB 1447 amends the group insurance law applicable to Pasco County. HB 1301 authorizes Lake County Board of Public Instruction to enter into group insurance contracts and contribute to same out of available funds.</td>
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<tr>
<td>1950</td>
<td>Georgia</td>
<td>Act No. 719 Authorizes county boards of education in counties containing a city of 200,000 population to enter into contracts for group life, health, accident, or any other type of insurance covering their employees and permits the use of public funds to pay a portion of the premiums therefor.</td>
</tr>
<tr>
<td>1959</td>
<td>Idaho</td>
<td>Authority given to taxing units, including school districts, to contract for and pay part of health and accident insurance premiums for officers and employees (Ch. 216).</td>
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<tr>
<td>1961</td>
<td>Illinois</td>
<td>Permits school boards to provide insurance for employees, subject to consent of employees where they participate in provisions.</td>
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<tr>
<td>Date</td>
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<tr>
<td>1949</td>
<td>Iowa</td>
<td>Chapter 215 authorized group insurance coverage for teachers and pupils in elementary and secondary schools.</td>
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<tr>
<td>1950</td>
<td>Louisiana</td>
<td>Act No. 531 authorizes school boards and other governmental agencies to contract for health, accident, hospitalization, etc., insurance for employees and to deduct premiums from salaries or wages when so authorized in writing by the employees.</td>
</tr>
<tr>
<td>1952</td>
<td>Louisiana</td>
<td>Act No. 338 authorizes parish boards, the state board of education, and boards of control of publicly supported educational institutions to contract for group medical, surgical, and hospital benefits and services, and pay part or all of the premiums out of public funds or deduct from employees' salaries part of the premiums payable by the employee and authorized by him in writing.</td>
</tr>
<tr>
<td>1955</td>
<td>Maine</td>
<td>Group life insurance on a voluntary basis was authorized.</td>
</tr>
<tr>
<td>1959</td>
<td>Nebraska</td>
<td>School districts may establish, participate in, and manage insurance coverage plans for employees, and may pay costs of such insurance in whole or in part (LB 392).</td>
</tr>
<tr>
<td>1960</td>
<td>Nevada</td>
<td>50 per cent participation in health and group life insurance by local school districts.</td>
</tr>
<tr>
<td>1951</td>
<td>New Jersey</td>
<td>Chapter 145 permits school funds to be used for the payment of group insurance premiums for employees.</td>
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<tr>
<td>Date</td>
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<tr>
<td>1961</td>
<td>New York</td>
<td>Chapter 626 empowers school districts to provide and contribute to cost of group life, accident and health, and hospital and medical insurance benefits to teachers and other school employees.</td>
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<tr>
<td>1951</td>
<td>Pennsylvania</td>
<td>Act No. 231 requires school boards to deduct premiums on group insurance from the salaries of employees who have filed written authorization for the board to do so.</td>
</tr>
<tr>
<td>1949</td>
<td>South Dakota</td>
<td>Chapter 199 authorizes local boards to provide group insurance and pay half of the cost thereof.</td>
</tr>
<tr>
<td>1953</td>
<td>South Dakota</td>
<td>HB permitted school boards to contract for teachers and other school employees for group insurance and to pay all or a part of the premium, except that for dependents of the insured.</td>
</tr>
<tr>
<td>1961</td>
<td>Tennessee</td>
<td>Municipal corporations and special school districts authorized to provide group life, hospitalization disability, or medical insurance for all employees and officials, including teachers and other school system personnel. Employer may bear up to 50 per cent of the cost of the program (Ch. 328). Counties authorized to provide group life, disability, hospitalization, or medical insurance for all county employees and officials. County teachers are regarded as county employees for this program. County may contribute not more than 50 per cent of the cost of the insurance (Ch. 139).</td>
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Table 1 (CONTINUED)

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<tr>
<th>Date</th>
<th>State</th>
<th>Text</th>
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<tbody>
<tr>
<td>1959</td>
<td>Washington</td>
<td>School boards and state education institutions may provide group life, health and accident, liability, or other insurance for their members, employees, and dependents. Only the cost of liability insurance to be borne by the employer; costs of all other programs to be borne entirely by the member or employee (Ch. 187).</td>
</tr>
<tr>
<td>1951</td>
<td>West Virginia</td>
<td>SB 255 authorizes county boards to make deductions from salaries of employees for premiums on policies under group life insurance plans.</td>
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<tr>
<td>1955</td>
<td>West Virginia</td>
<td>Chapter 46 authorizes majority of full-time instructional and administrative employees, or a majority of full-time non-teaching employees, to request payroll deduction for group insurance, death benefit, to be paid to licensed agent or company.</td>
</tr>
<tr>
<td>1959</td>
<td>West Virginia</td>
<td>Payroll deductions for group insurance plans for participating employees of state board of education permitted (HB97).</td>
</tr>
<tr>
<td>1961</td>
<td>Wisconsin</td>
<td>Chapter 112 allows teachers and other municipal employees to be covered by group health insurance, with school boards paying part of cost.</td>
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2. **Stare decisis.** (The principle of looking back to previously judged cases for guidance in present cases.)

The principle of tort non-liability for school districts has been determined by the settled rule of the common law that quasi corporations are not liable for the torts of their officers, agents, and employees committed during acts performed solely for the benefit of the public except when such liability is provided by statute.

3. **Governmental function.** The school district is not liable for torts of its officers, agents, or employees analogous to the liability enforced against municipal corporations for proprietary activities because it exercises governmental functions for the benefit of the public and has no proprietary functions for its own corporate benefit.

4. **Legal inability to pay.** The school district cannot be liable for torts because it has no corporation fund from which it can legally satisfy tort judgments and no method whereby it can legally raise funds for this purpose.

5. **Involuntary agency.** The school district is not liable in a tort action because it is an involuntary statutory agency of limited powers and prescribed duties and without choice of whether it will function.

6. **Respondent superior.** (The owner, employer, or agent is liable for the acts of his servants or employees.) The school district is not liable for the torts of its
officers, agents, or employees because the principle of respondeat superior does not apply to school districts.

7. **Ultra vires.** (An act outside and beyond the power permitted.) The school district cannot be made subject to tort liability because any tortious act of its officers, agents, or employees is ultra vires the powers of the district.

8. **Immunity as charity.** School districts should enjoy the tort immunity traditionally accorded to charitable institutions.

9. **Impairment of school functions.** School district tort liability is undesirable on the grounds of public policy because it would result in a multiplicity of suits and serious impairment of the functions of some schools.

10. **Prohibitive cost.** Tort liability of school districts is undesirable because it would increase the financial burden of maintaining the schools.

In recent years as has been previously stated, there has been a growing dissatisfaction with the non-liability doctrine as it applies to school districts. Often courts have expressed regret that they must apply this antiquated common-law rule. Dissenting opinions in some instances have been caustic in denouncing this obsolete doctrine. One of the most bitter denunciations appears in a suit against a city.
The whole doctrine of governmental immunity from liability for torts rests upon a 'rotten' foundation. It is almost incredible that in this modern age of comparative sociological enlightenment and in a republic, the medieval absolutism supposed to be implicit in the maxim "the king can do no wrong," should exempt the various branches of government from liability for their torts, and that the entire burden of damage resulting from the wrongful acts of the government should be imposed upon the single individual who suffers the injury, rather than distributed among the entire community, constituting the government, where it could be borne without hardship upon the individual, and where it justly belongs.⁶

It is generally agreed that where liability exists, it is questionable that such liability could be limited by the legislature arbitrarily establishing a dollar limitation. Most experts and writers in the field agree that liability can be limited only by fact.

In states where the non-liability doctrine is applied, courts have held that schools have no authority to make voluntary payments for medical expenses, since school funds can only be expended in payment of claims for which the

district is liable. "If it is charity, the program is one for the welfare department, not the schools." 7

Some exceptions to the rule of non-liability are:
Maintenance of nuisance, safe place statutes, and proprietary functions. 8

A public nuisance is an act or omission which obstructs or causes inconvenience or damage to the public in the exercise of its common rights. A private individual may maintain an action for a public nuisance only if he suffers special damages, distinct from that common to the public.

Hindle, in his study, found that in seventeen jurisdictions: Connecticut, District of Columbia, Idaho, Illinois, Indiana, Iowa, Oregon, Tennessee, Texas, Massachusetts, Michigan, Montana, New Jersey, New York, North Dakota, Ohio and Wisconsin, municipal corporations may be held liable for a nuisance. 9 The principle of stare decisis rarely applies in these cases and action of courts cannot be anticipated with any degree of accuracy.

Recovery is often sought against a board of education under "safe place" statutes in effect in a number of states.


on the theory that these laws have cut into exemption previously enjoyed by public corporations in the performance of governmental functions. These statutes provide that every owner of a public building shall so construct, repair and maintain such public building as to render the same safe place to employees and frequenters thereto. Wisconsin and Colorado have "safe place" statutes. The Wisconsin Courts first ruled that the school district was not an "owner." Two years later it held that a pupil was not a frequenter within the act. However, subsequent to the very strict interpretations, the Wisconsin Legislature passed amendments to the original act which expressly provided that the term "owner" shall include school districts and that "frequenter" shall be anyone upon the premises under circumstances which render him other than a trespasser.10

Another criterion for determining whether a school district or other public corporations may be held liable is the nature of the function it was performing at the time of the injury. Such functions are termed either governmental or proprietary. The distinction between governmental and proprietary functions is not often attempted in school cases because it is almost impossible to determine into which category a given act will fall.

Courts are unpredictable in these cases. In 1929 the Supreme Court of Oregon tried to distinguish between a

10 Hamilton and Mort, op. cit., p. 286.
governmental and proprietary function in a case where a flag pole painter was injured. The court maintained that adopting a plan and deciding whether to purchase and maintain the pole was exercising a governmental function, but when they engaged in the prosecution of the work, their acts became proprietary, or ministerial, and rendered the district liable.

Minnesota school districts are liable by statute when acting in proprietary consignments.11

Some courts have also held that school districts can perform nothing but governmental acts. There seems, however, to be a "weakening of the wall" due largely to the conceptual change of court attitude brought about by a changing social value.

Finally, the synthesis of expert opinion as well as the opinion of writers in the field seems to point away rigid immunity. Courts are generally attempting to discover ways to give redress to an injured public at the same time safeguarding the financial integrity of school boards and public funds. Permissive legislation for protection of boards from financial loss by authorizing various kinds and amounts of liability insurance seem to be the mode.

A Synthesis of Expert Opinion on Tort Liability

While many of the experts interviewed had somewhat similar reaction to the questions asked, there were also divergent opinions on some basic issues.

Ohio has been one of the states in the nation that historically has granted immunity through its courts to boards of education in all cases involving tort liability. The legal principle has been taken basically from the common law position of "rex non innuria." However, even in Ohio courts are beginning to look at the function in which the boards are participating to determine whether or not they are participating in an educational function or in a proprietary function. It is interesting to note here that this has always been the first step in "weakening the wall" where courts feel that immunity is too severe. School districts, as state agencies, are created to perform governmental functions in the management of the school systems. As long as they confine their activities to the management of the schools, the doctrine of immunity from suit for torts is applicable to them; however, courts have held that there is an important exception to the doctrine of immunity which is as well established as the doctrine itself. It is that if districts are engaged in proprietary functions as distinguished from governmental ones, the districts lose their immunity and may be held for certain damages which may
result from the proprietary activities of the districts. To point out this principle there are occasional judicial statements to the effect that the distinction between governmental and proprietary functions is adopted for the purpose of decreasing the severity of the immunity rule. For example, Mr. Justice Erickson of the Supreme Court of Montana said in his dissenting opinion in Rhodes v. School District No. 9, 115 Montana 352, 142 p. 2nd 890 (1943):

Most of the states in attempting to decrease the severity of the rule, that is, the rule of immunity (have adopted the governmental proprietary test). The test is an arbitrary one, but the general trend of the decision is to declare more and more functions proprietary rather than governmental so as to allow recovery. It is now generally agreed that neither logic nor justice supports the general rule which in this case denies recovery to a person injured as in this case where she goes for entertainment to a basketball game sponsored by the school district, while on the other hand for exactly the same injury under the same conditions she could recover if she had gone to a theater and had been there injured.

Justice Erickson appears to take the view that "most of the states" are convinced that the immunity rule is too severe; that the courts have "invented" the governmental proprietary distinction to permit recovery in a greater number of cases. It is clear that a court that wishes to permit wider recovery from school districts in tort cases has readily at hand an effective legal "device" with which to accomplish that end. It may recognize the governmental/proprietary distinction and place the activity in question in the proprietary category. On the other hand, a court desiring to
preserve the full force of immunity doctrine may refuse to recognize the distinction or may severely limit its application. On September 29, 1953, the Supreme Court of Pennsylvania rendered the decision on the proprietary function problem which may prove to be an important landmark case. It is Morris v. School District of Township of Mt. Lebanon, 144 A. 2nd. 737. This case involved a school district which carried on a summer recreation program where a little was drowned. The district set up the usual objection and defense to the suit that the district was a governmental agency and thus enjoyed the usual immunity from tort liability. Like Ohio, at this time, the rule of immunity of school districts in court cases was the law of Pennsylvania. In this case, however, the court declined to enter upon a full discussion of the doctrine of immunity and its application to local government. Its opinion of the doctrine is expressed as follows:

The era of history, logic, and policy which were responsible for the development of this concept have been clearly exposed, and thoroughly criticized. Nevertheless the solution of the problem of governmental responsibility in tort is too complex an undertaking to permit a partial piecemeal judicial reform which the plaintiff seeks. Establishment of a comprehensive program while legislation applicable to the commonwealth and to all its subdivisions is sorely needed to deal effectively with tort claims arising out of the conduct of governmental activities.

What the court was saying, in effect, was the entire doctrine of sovereign immunity, as it applies to all agencies
of local government, is badly in need of a comprehensive and thorough revision of the law if it is to deal effectively with tort claims arising out of the conduct of governmental activities. In this particular case, the court indicated that the legal nature of the summer recreation program has not been actually established. On this point it said,

In the instant case, although the nature of the summer recreation program has not before then been judicially determined, the activity satisfies the requirement of a proprietary function. Thus, the school district in this case was not required by statute to undertake the recreation program, nor was the program even a part of the regular school curriculum. On the contrary, it was open to members of the general public residing both within and without the school district. Furthermore, the summer activity was the type regularly conducted by private enterprises and a charge was made for participation therein.

These factors were sufficient in the opinion of the court to render the district as subject to liability for the negligence of its employees as alleged by the parents of the child who was drowned. This point of view is corroborated in the responses listed earlier in this chapter by Messrs. Drury, Gauerke, Garber and Jensen.

There was general agreement by the experts in the field that structure follows concept and that society being dynamic it follows that as the general concept of the role of education is modified, it is logical to assume that legislatures will enact specific legislation which will either limit or disallow the immunity normally enjoyed by
boards of education. The states of New York, California, and Washington together with a recent statute in Illinois immediately fall into this category. It is reason to believe that other states will tend to follow this approach. Therefore, it can be concluded that a position of a board of education, even in a state where immunity has normally been enjoyed, must look carefully at the function it is undertaking to determine whether or not it is, in its opinion, proprietary or educational. Students of law and experts in the field of school law generally agree that boards of education should not enjoy immunity under the principle of "rex non innuria." They further tend to disapprove of the point of view that courts have taken to the extent that boards of education operate with public monies. As such, there are no funds available to pay liability claims since these monies are designated specifically for the carrying on of the educational function. All of the experts interviewed took this position with the exception of Mr. Drury.

In Ohio, however, it is not considered a legal board expenditure to pay for liability insurance except under provisions of the Revised General Code, Section 3313.20.1—Purchase of liability insurance.

The board of education of any school district may procure a policy or policies if insurance insuring officers, employees and pupils of the school district against liability on account of damage or injury to persons and property, including collision,
medical payments and comprehensive insurance on vehicles operated under a course in drivers education certified by the state department of education and including liability on account of death or accident by wrongful act, occasioned by the operation of a motor vehicle, motor vehicles with auxiliary equipment, or all self-propelling equipment or trailers owned or operated by the school district. Whenever the board deems it necessary to procure such insurance, it shall adopt a resolution setting forth the amount of insurance to be purchased, the necessity thereof, together with a statement of estimated premium cost thereon, and upon adoption of said resolution the board may purchase said insurance. The premiums for such insurance shall be paid out of the general fund.

All employees of a public school in Ohio are covered for injury sustained under provisions of the Workmen's Compensation Act. In some situations even though the law required the board to carry insurance for certain employees (bus driver, etc.), it has been held that carrying liability insurance does not change the applicability of the immunity doctrine.

It was believed to be a very poorly reasoned case, the Supreme Court of New Mexico in Livingston v. Regents of New Mexico College of Agriculture and Mechanical Arts, 328 p. 2d 78 (1958), held that even though the college carried a policy fully protecting it against liability, this did not permit an injured student to sue the college and recover up to the amount of insurance carried. A student at the college was injured in the college cafeteria as a result of the alleged negligence of an employee of the college. It developed that the Board of Regents carried a comprehensive general liability insurance policy which included indemnity limits of $50,000 for each person and $250,000 for each accident. It was admitted that the general rule of immunity of state agencies from suit prevails in New Mexico. However, the plaintiff urged that a suit demanding judgment only to the extent that the state agency is protected by liability
insurance does not violate the rule of immunity. The plaintiff insisted that the suit should be permitted to proceed to judgment against the college, and judgment entered against it, merely for the purpose of fixing the amount of damages which the plaintiff would be entitled to collect from the insurance company under the terms of its policy with the college. This question had not been before the Supreme Court of New Mexico previously.

The court referred to cases on each side of this proposition, and it was apparent that the courts are not in accord on it. Under New Mexico law, state agencies were required to carry insurance protecting the public against injury caused by the negligent operation of automotive equipment by state employees. The court referred to no statute authorizing the college to carry liability insurance covering activities other than the operation of automotive equipment.\(^\text{12}\)

This case has been pointed out to show the possibility of courts being inconsistent and capable of poor reasoning. It further tends to show that even though a law exists unless it is very clear, courts may interpret it a way other than the spirit in which it was drawn.

The experts are in general agreement that pupil accident insurance, premiums paid by parents, is an extraneous matter and probably has no place in the public school. Such questions have not yet been answered as to whether or not a teacher becomes an insurance salesman without license; if the money collected were stolen, whose money was it; and whether or not a school ethically can promote a particular insurance company.

There is little or no evidence, however, to indicate that when premiums are paid privately that the mere acquiescence or permission of a board of education for such insurance to be sold imputes any liability to the board either morally or legally.

The writer discovered in his discussion with authorities, certain broad principles of reasoning that seemed to have influenced courts to take a new look at the liability immunity for boards of education and other public corporations.

Perhaps foremost is the questioning of the "king can do no wrong" concept. The English common-law derivation of this principle is to be considered more and more not applicable to present day society. Some would question whether or not it was ever applicable (Williams Case, Michigan; Molitor Case, Illinois).

There is a growing concern over who should change the law of immunity. One common point of view is that the legislature makes laws and only the legislature can change them. Yet, another point of view is that the legislature only made into law common-law point of view predominately held by former courts; therefore, the court could and should change it.

Some would argue that when the principle of immunity was first applied to boards of education that insurance was not available, but today with available insurance and a
security minded public, the board should be forced to acquire appropriate protection for the benefit and welfare of the general public.

Perhaps the most commonly used point of view used by courts which feel immunity is too severe is to assume the attitude that immunity applies only to boards of education carrying on strictly an educational function. This permits the courts wide range of decision as to what is an educational function and what is a proprietary function. Courts then proceed to hold boards not immuned to tort liability if it is carrying on a proprietary function.

In the use of the aforementioned principles of reasoning, one tends to conclude that courts tend to reflect the values of a changing society. This reasoning was affirmed unanimously by Messrs. Drury, Gauerke, Garber and Jensen and reported earlier in this chapter. Following this reasoning, it seems that more and more courts will be seeking for ways to permit legitimate claims of injured parties especially as long as education tends to broaden its scope of influence and activity. Already some states by legislation permit boards of education to purchase pupil accident insurance as well as protective insurance plans for athletes. Recently, Illinois courts have been testing whether or not a
legislature can limit the liability by a dollar amount or if any liability is admitted can the dollar extent be limited by fact only? The general opinion of the experts whom the writer interviewed was that liability could be limited only by fact.
CHAPTER IV

PRACTICES AMONG CERTAIN SELECTED
OHIO DISTRICTS

To secure data relative to the practices among certain selected Ohio school districts, the writer was first confronted with the problem of selecting districts that would be more or less representative of the size and types of districts in Ohio.

Basically there are three types of school districts in Ohio: (1) The local district, headed by a local executive, responsible to a local board of education and part of a system of local county schools under the direction of a county board of education and a county superintendent of schools; (2) the exempted village district, headed by a superintendent responsible to the exempted village board of education (an exempted village district can no longer be created in Ohio, such right was abrogated June 30, 1954); (3) the city school district headed by a city superintendent responsible to the city board of education.

The size of districts in Ohio varies from approximately two hundred students in grades one through twelve in local districts to one hundred twenty three thousands in
grades one through twelve in the Cleveland City School District.¹

Sixteen districts were selected partially in relation to type, district, and partially according to size. The technique of categorizing districts by size for purposes of survey commonly used by the National Education Association was also used in this phase of the study.

Sixteen schools were selected for interview. The guide used was an interview-questionnaire type document that can be found in the appendix of this report.

The interview-questionnaire dealt with six areas of school practices generally defined as proprietary or non-governmental as opposed to primary governmental function of the school. These areas were: athletic policy; board policy for use of school facilities; student accident insurance; employee liability insurance; school food service and general areas of practices.

In visiting the sixteen school districts and talking with the executive head or superintendent, the writer found each to be extremely cooperative and vitally interested in this study. Even where the writer was unable to get an appointment in advance, he was received quickly when he announced the purpose of his visit.

To properly present the data concerning the practices in the aforementioned areas, the writer has chosen to take each area separately and present the practices of each school. No attempt will be made to identify the districts in the main body of this report. However, the reader may identify if he chooses by referring to the appendix where he will find the districts named in relation to their number affixed for presentation in this chapter.

Various Athletic Practices and Policies Affecting Athletics

School District 1. Athletic insurance has always plagued administrators, boards and athletic associations. This is especially true with football coverage since the risk of injury is great and most premiums of total coverage are high.

The subject school faces this problem by holding a city-wide preview game prior to the opening of the regular football season and placing the net receipts from this game into an athletic injury fund. The controlling board then places a limitation on payments and recommends that each boy have additional coverage of his own. The central injury fund in affect becomes a catastrophe fund and through the years has grown to several thousand dollars. In effect then the subject school becomes self insured. This school district performs this service and function out of a felt moral liability to boys engaged in the game of football.
All other sports are included through group pupil accident insurance.

It is the policy of subject school district not to permit participating athletes or other participating students in inter-school contests to drive or transport other students to contest. The superintendent frankly admitted, however, that he suspected that it happened on occasion.

Coaches and teachers oftentimes drive to transport students to interscholastic contests where a small number is involved. The board of education does not insure such coaches or teachers because they are not driving school vehicles and do not feel it would be legal to do so otherwise. When school personnel do drive, they are cautioned about carrying adequate automobile insurance.

Sometimes parents drive their cars and take their own child as well as other members of the participating group. Generally notes from parents of pupils being transported are requested by the principal. Subject school superintendent realizes this does not immune liability but considers it a good practice anyway.

It is a policy of the subject school board of education that a medical doctor be present at all football games. A doctor is not required to attend practice sessions but one is always on call in the event of an emergency.
School District 2. Athletic insurance becomes an individual school matter in this city district. Various type policy and coverage are offered. For the most part it becomes a direct parental concern to see that any child participating in football is adequately covered.

In conformance with Ohio High School Athletic Association policy, parent-permission cards are signed prior to beginning practice.

While it is a deep concern to the superintendent of schools, students participating in minor sports are permitted to drive to contests. They drive their own automobiles and, therefore, are not covered through insurance by the board of education.

Sometimes coaches and teachers drive to athletic contests and transport pupils (i.e., cheer leaders and athletes). Each teacher or coach does this without reimbursement from the student or board of education thereby feeling a security from liability under the guest law of Ohio. The board of education does not cover the automobile with any type of insurance. All coaches and teachers have property damage and liability insurance on their automobiles as well as personal liability insurance (25,000) through the Ohio Education Association.

Sometimes parents drive to contests and transport participants. The school does not require parental permission slips, however, the superintendent of schools felt
that each adult who drove was fully aware of his responsibility and liability.

It was interesting to note that in the subject school system that a medical doctor or doctor of osteopathy was in attendance at every football game. While either did not attend practice sessions, they were available and on call. The writer did not pursue the statement "either an M.D. or D.O." but concluded that this possibly reflected a value of perhaps the superintendent or perhaps a member of the board of education.

School District 3. In relation to athletic insurance, as it applies to football, subject school district has a very interesting procedure. Early in the fall a city-wide preview game is held. It is advertised as a game which establishes a central medical fund for athletes participating in football. The provision of this fund is that the fund takes care of any injury over $100. The local school agrees then pay the first $100. The system as a whole then is self-insured. At the end of each year the residue amount in the central fund is divided among the several high schools. So far the self-insurance program has worked out very well. The school officials exhibited a concern, however, in the event of a real catastrophe. There is some thought about securing a catastrophe policy that would take case of injuries over $500. Such policy would be paid for out of the central medical fund.
A concern was also exhibited over the fact that participating students in minor sports were allowed to drive to games. There was an attempt made to hold this to a minimum, however, because of scheduling difficulties it sometimes becomes necessary for students to drive.

In this particular school system coaches and teachers never drive transporting students to athletic contests or school contests of any type. The feeling here is that teachers and coaches accompany the team to supervise the safety of the transportation and, therefore, should not be involved in driving.

There are times, however, when parents and other adults are permitted to transport students to athletic and other school activities. This, too, is a concern to the school district officials and there is a real desire to hold this to a minimum. Subject school makes provisions by policy for the athletic association to secure a medical doctor to attend all games. They do not require a doctor to be present at practices; however, there is always a doctor on call in the event of an emergency. The coaches and other athletic personnel are instructed in first aid and this is required throughout the school system.

School District 4. Athletic insurance in the subject school is taken care of by the individual athletic associations of the respective high schools. They are in effect self-insured; however, they recommend highly that
students carry additional coverage. Many policies do not cover negative x-rays. In other words, before the policy covers the x-ray, the x-ray must show a fracture. The insurance program of this school district does cover all x-rays regardless of whether or not they are negative or positive. In the event a student has additional coverage, for x-rays where a fracture is involved, then the student's insurance company is requested to take care of this cost. So far the self-insurance program of subject school district has proved to be satisfactory with no major injuries having occurred. The subject district at one time permitted participating students to drive to athletic events; however, several minor accidents and threats of suit were involved. The current policy is that no students will be permitted to drive to athletic contests or other school contests.

Coaches, however, are permitted to drive as well as teachers to transport students to these activities. The only time that this occurs would be in the springtime with minor sports and other school activities such as debate which occur during the winter months.

While students are not permitted to drive automobiles to the contests, private cars driven by adults are permitted to transport students under certain circumstances. Where this is done each student is requested to furnish the driver of the automobile a note from the parent relieving the driver of liability. The administration is well aware that
this does not actually relieve liability but he feels it is a good practice.

It is the policy of subject school board of education that a medical doctor be in attendance at all athletic contests. Practice sessions in football are not always attended by doctors; however, two particular schools in the city have a medical doctor present at practice sessions as well as the regular games. Doctors are even required in attendance at basketball games, however, in no situation are they in attendance at basketball practices.

**School District 5.** The board of education of subject school permits group pupil accident insurance to be sold in the school. At the same time this policy carries with it a rider which covers football. All students covered by this policy are covered in other athletic contests without the rider. It is interesting to note that the athletic department pays for the football coverage. This amounts to $12 per student. There is also an arrangement made whereby the number of boys that come out in August for practice in the event do not remain out, there coverage only costs $4. In the event they remain out, however, the athletic association adds $8 to the net number on the squad or team.

In subject school under no circumstances are students permitted to drive to athletic events. The administration and the board of education fear the possible liabilities
involved. This stems from experiences in minor accidents and threats of suits.

Coaches and teachers are permitted to drive for minor sports. The board of education, however, does not pay for any liability insurance on the automobiles driven by coaches and teachers. They do not drive school vehicles, however, each teacher and coach drives his own vehicle and the coaches and teachers are expected to carry adequate liability insurance.

In only one activity are parents permitted to drive and to take youngsters who are participating and this is in the case of swimming. The administration pointed out that many of these minor sports actually cost the school money and do not bring in any receipts since admission is not charged. Because of that the board has permitted students to be transported for swimming by parents. This admittedly was not a sound practice yet under the circumstances it was felt that it was the only way possible.

At all football games a medical doctor must be present. However, at practices they are permitted to be on call only. Each coach and director is responsible for having had training in first aid. Stretchers and all paraphernalia are available in case of emergency at practice.

District 6. This city board of education permits group pupil accident insurance to be sold in the school which also provides a coverage for athletes. The athletic
association does not pay the premium on this insurance but makes it available for students who are playing football. As is the case in most of these insurance policies, the basic policy covers youngsters who participate in athletics except football. The rider is then attached for football purposes. This school district permits students to drive to athletic events especially spring sports. It is a rare situation when, indeed, they are permitted to drive to either basketball or football games.

Coaches and teachers are also asked to drive groups of students to spring sport activities. The board of education does not cover the automobiles belonging to the coaches or teachers, but conscientiously tries to determine whether or not they have adequate insurance.

Private cars driven by adults and parents are permitted to transport students to athletic and other school activities. This happens quite frequently in the case of minor sports, debate, etc.

The subject school has a policy that there will be a medical doctor present at all interscholastic football games. They attempt to have a doctor present at any athletic contest, however, in cases where the doctor is not present in athletic contests other than football, he is on call. He is also on call at all practices, but does not attend any practice including football.
School District 7. The athletic association of this city school district makes arrangements for a separate athletic coverage. It is provided by the Investment Life Insurance Company of America located in Cleveland, Ohio. The premium costs $6.50 per athlete. The superintendent seemed to feel that this was one of the most outstanding policies that he had seen. It has broad coverage and provides for x-rays, negative as well as positive. Each participant required to be insured and has access to this policy, however, if he prefers to be insured by another company he may do so. However, he may not participate in interscholastic athletics unless he is covered by insurance from some company. Each student, of course, pays his own premium.

Subject school district does not permit at the present time students to drive to athletic contests. Apparently in the past they had been permitted, but because of accident or threat of suit, this has been discontinued.

Coaches and teachers do drive to athletic contests but the board of education does not cover them with insurance, however, they are admonished regarding their liability and requested to carry adequate coverage themselves.

Private cars driven by adults are sometimes used to transport students in the minor sports. When this is done, they must travel in convoy and the coach or teacher in charge of the group leads such a convoy.
It is the policy of this board of education that a medical doctor shall attend all football games and it is desirable that he attend all other athletic contests. At all practices and especially football, a medical doctor is on call in the event of an emergency. All personnel involved in athletics have been trained to take care of emergency first aid matters.

School District 8. The board of education and athletic association of this school district makes provisions for all students participating in football to carry the Ohio High School Athletic Association Mutual Policy. It does not provide insurance beyond that point. Each student is required to pay his own premium. This district does, however, have a student group accident policy which provides for athletic coverage including football through the ninth grade. It, of course, covers all other athletic participation in other sports excepting football beyond the ninth grade.

Students are permitted to drive for spring sports especially in baseball, however, when they do drive they travel in convoy under the close supervision of the coach involved.

Coaches and teachers also drive on occasion. When they do drive, the board of education does not cover them with insurance but makes it a point to know that the coaches or teachers have adequate liability insurance.
It is interesting to observe that in this particular school district private cars driven by parents or other adults are not permitted to transport students to athletic or other school activities with the exception of spring sports and baseball where students drive under the coaches supervision. All other groups are taken by school bus even if a full bus load is not required, but in no event are private cars driven other adults involved.

Subject school district has an agreement with a group of doctors in the community to the extent that one doctor will always be in attendance at every athletic contest played at home. They also agreed to be on call and to attend any injury that may take place in practice.

School District 9. Subject school district permits a student group accident insurance policy to be sold in the schools. Such policy has a rider that takes care of football. Students pay entirely for this premium. It was one of the higher premiums for football and amounts to $13.50 per athlete coverage. This excludes the base premium under the group policy which amounts to $1.50.

Under no consideration are students permitted to drive to athletic events. The superintendent voiced the fear of liability. Apparently at one time students were permitted to drive but because of accidents and threats of suits the board of education deemed it not advisable to take this chance of liability in an extracurricular activity.
Coaches and teachers are permitted to drive, however, the board of education does not cover the automobiles by liability insurance. They do, however, ascertain that the coach or teacher is adequately covered.

As mentioned above this board of education or athletic association does not cover a separate athletic insurance coverage, but rather resorts to the rider attached to the group accident policy.

When there are activities that conflict with the regular day and transportation system, occasionally private cars, driven by adults are permitted to transport students to athletic and other school activities. These are generally spring sports or school activities involving few students.

In subject school a medical doctor does not always attend all games. Presumably, however, they are on call both for games and for practices. The reader will note here that this is somewhat unusual.

School District 10. This board of education or athletic association does not provide a separate coverage for athletes, but has a group accident policy that all students are permitted to take out with a rider attached that makes provision for athletic coverage. Here, again, the base rate is $1.50 plus $13.50 for coverage for football. Students are covered, however, to participate in football through the ninth grade under the base policy.
They are, of course, covered in all other athletic contests except football under the base policy.

Students are permitted to drive to athletic contests especially in spring sports, however, they are under close supervision of the coach who either rides in a car with the students or follows the students in convoy.

Sometimes coaches or teachers drive themselves. When they do the board of education does not cover them with liability insurance but tries to ascertain that any coach or teacher has adequate coverage of his own.

Private cars are sometimes driven by parents. Other adults who are not parents are not permitted to transport students to athletic or other school activities. When parents do drive, a parent is selected to be in charge and manages the convoy of transportation if more than one car is involved.

It is the policy of this board of education that a medical doctor attend all games, however, they cannot attend practice. They have a working agreement, however, that the doctor will be on call and will come to the athletic field in the event of an emergency. Coaches and other personnel involved in the athletic program are knowledgeable regarding first aid.

School District 11. This board of education or athletic association does not carry a separate coverage for athletics rather a rider is attached to the group student
accident policy which provides adequate coverage for football in the opinion of the administrator interviewed. The administrator here pointed out that the experience of this particular school district has been that after a company apparently gets a mailing list, premiums are raised and another company is solicited by the board of education to cover the pupils involved in football or a general group accident policy. So far as football coverage is concerned the student pays his own premiums.

This school district does not officially permit students to drive to athletic events. There are, however, some exception in case of conflict with bus schedules or buses not being available.

Coaches and teachers do drive to some spring sports or activities involving few students. While the board of education does not cover them by insurance, it does insist that they have $100,000/300,000 liability insurance.

The athletic association at one time provided a separate policy but because of the high premiums and inadequate coverage switched to the rider approach from the basic group accident policy.

Upon occasion private cars driven by adults are permitted to transport students to athletic and other school activities. In the event they are used they must also have $100,000/300,000 liability as required of teachers and coaches to drive.
It is the policy of this board of education and athletic association to require that a medical doctor attend all games. This includes not only football but other athletic events such as basketball and baseball and track. While they do not attend practices there is an understanding whereby they are on call and will attend any student injured in practice.

School District 12. This board of education or athletic association does not cover or provide a separate policy for athletics, but rather provides a group pupil-accident policy which has a rider that does cover football. Premiums are paid by the individual students.

Under no circumstances are students permitted to drive to athletic events. This stems also from an experience with threatened suit and minor accident.

Coaches and teachers, however, do drive on occasion. The board of education does not cover the autos driven by the coaches or teachers with liability insurance, but tries to determine that they have adequate coverage to protect them in the event of accident and/or injury.

Private cars driven by adults and/or parents are sometimes permitted to transport students to athletic and other school activities. This is especially true in spring sports or in school activities of contest nature involving few students.
This board of education and athletic association has a policy which provides for a medical doctor to be in attendance at all football games. The medical doctor does not attend practices but is on call at practices and has agreed to come to the field to attend any injuries. All people involved in the athletic program have been trained in regard to first aid in the case of injury at practice.

**School District 13.** This board of education provides group accident insurance for all pupils but the pupils pay the premiums. Now all pupils under the base policy are covered in all phases of athletics with the exception of football. However, this school district eliminated football this year so it requires no additional insurance other than the group accident policy.

This board of education does permit students to drive to athletic events. This would include all phases of athletics in which the school district participates.

The board of education also permits athletes and students to drive to athletic events.

Coaches and teachers are also permitted to drive to athletic contests and school events, however, the board of education does insist that anyone who drives is adequately covered with liability insurance.

Private cars driven by adults and parents are permitted to transport students to athletic and other school
activities. No requirement of convoy or supervision is required.

Since this school district no longer participates in football it does not require a medical doctor to attend any of the other athletic events nor are any specific arrangements made for the doctor to be on call in case of injury. When this district was involved in football, it did not require a medical doctor to be in attendance, however, outside the particular community a doctor was available and possibly would have come in case of injury.

School District 14. This board of education and athletic association provides a group pupil-accident insurance that also has a rider for athletics. It is strongly recommended by this athletic association that all students are participating in football have athletic insurance coverage. However, it is possible for a student to participate with parental consent even though he is not covered by any insurance. This district like other districts provides coverage under the base policy for all athletics excepting football.

The subject school system does permit students to drive to athletic events when a spare bus is not available. Students are required, however, to be under close supervision of the teacher or coach in charge.

Coads and teachers are permitted to athletic and other school contests and are required by the board of
education to carry insurance, however, the board of education does not pay the premium for such insurance.

Private cars driven by adults and parents are permitted to transport students to athletic and other school activities occasionally, however, the executive head pointed out that this was seldom the case. Wherever there are students going to contests involving any appreciable number, school buses are required by board of education policy.

For the first time this year a medical doctor has attended all football games. It is interesting to note that this particular doctor was also a candidate for the board of education and considered his attendance not only helpful to the students but also politically practical. There is no policy that requires this doctor to either attend games or practices. In the case of practices he does not attend, however, he is available on call in case of serious injury. The coaches have all been properly trained in first aid to handle emergency cases during practice sessions.

School District 15. Subject school district does provide a student group insurance policy but it does not extend this coverage by rider to athletics. Rather it has used the Ohio High School Athletic Association Mutual Policy. Each participant in football is required to pay his individual premium.
Participating students, especially in spring sports, are permitted to drive to athletic events. The executive pointed out, however, that this is under the close supervision of the coach.

Coaches and teachers are also permitted to drive to athletic contests and certain other contests involving students. The board of education does not provide any insurance coverage but assumes that each coach or teacher has adequate coverage for his automobile.

Private cars driven by adults and/or parents are permitted to transport students to athletic contests and other school activities. However, the general policy is no, but this does arise in a rural situation where buses are sometimes not available or must be back at a time to transport students home from school.

A medical doctor is required by the board of education to attend all football games. He is not required to attend any other athletic event. There is no definite policy by this board of education or athletic association regarding practices and the attendance of doctors thereto or policy to handle injuries at practice sessions. This is left entirely to the good judgment of the coach who is trained in first aid and practices necessary to take care of a youngster in case of emergency.

School District 16. While this board of education permits group pupil-accident insurance to be sold in the
schools, it does not permit the rider to cover athletes. This stems from a long line of experiences and injuries by subject school. As a result this particular school has worked out an arrangement with the Aetna Insurance Company at a premium rate of $22 per student and the parents do purchase this insurance for their boys participating in football. It is recommended that all students participating in football take this complete coverage, however, students would be permitted to participate in football even though they did not have this particular coverage but parents had other coverage which they felt was adequate.

Students under no circumstances are permitted to drive to athletic events or other activities of contest.

Coaches and teachers sometimes drive in spring sports such as golf and tennis. The board of education does not cover them by paying their premium for the insurance on their automobiles, however, the board of education does expect that the coach or teacher as the case might be carries adequate insurance.

There are occasions when private cars driven by adults or parents are permitted to transport students to athletic and other school activities. Even here the parents are admonished as to the possible liability and are requested to have adequate insurance coverage. In no situation during this interview was adequate insurance coverage defined.
The athletic association and the board of education requires that a medical doctor attend all games in football. This does not include basketball, baseball and other athletic contests. The doctor is on call but in this particular situation is a very handy one. He is located just across the street from the practice field so this provides a very desirable situation.

**Board Policy for Use of School Facilities by Outside Groups**

**School District 1.** Subject district does not require outside groups using school facilities to carry liability insurance. The use of school facilities is free to most groups including the city recreation department; however, the board of education of this district is becoming increasingly insurance minded and is currently studying whether or not the city recreation department should carry appropriate liability insurance. The arrangement is that all school playgrounds are under the supervision of city recreation during the summer and even some of the high school facilities are used by the city recreation during the winter. This involves a broad program and many activities.

On some occasions parochial schools use the public school facilities. They are charged a flat fee that is arrived at based strictly upon cost. There are no profit or amortization of capital equipment involved.
In a situation where parochial schools do use athletic fields or other school facilities, the board does not require parochial schools to carry liability insurance. The superintendent did voice concern about this since there is many an opportunity for liability and, in his opinion, the board is carrying on a proprietary function.

School District 2. When school facilities are used by outside groups, this board of education does not require them to carry liability insurance.

A municipal stadium is located in this city. While it is owned by the board of education, it is actually operated by the municipality as a city center. In this facility and only in this facility, are parochial schools permitted to hold athletic contests.

The board of education does not require parochial schools to carry liability insurance nor does the city in its management of the municipal stadium require liability insurance. In asking the superintendent why, since this is a proprietary function, he pointed out that apparently they have relied blindly upon the immunity granted to boards of education and to municipalities.

School District 3. While this district does not require outside groups, using school facilities, to carry liability insurance, it does require a contract which states that the group using the facility will be held responsible for all liability and damages.
Parochial schools sometimes use subject schools' facilities but only upon rare occasions because in this particular city the Catholic schools have facilities as good if not better than the public school.

Subject board of education does not require parochial schools to carry liability insurance when public school facilities are used.

**School District 4.** Liability insurance is not required to be carried by outside groups using school facilities; however, a contract releasing the board of education from liability is signed.

Parochial schools are permitted to use public school facilities.

When parochial schools do use public school facilities, they are not required to carry liability insurance. The superintendent stated, however, that the board of education is currently studying the policy relating to the use of facilities by outside groups primarily because last year when the Northeastern Ohio Basketball Tournament was held at one of the public schools of this district, there was a suit of liability. The suit has not been settled at the time of the writing of this report.

**School District 5.** Subject school district does not require outside groups to carry liability insurance, however, the language used in the contract for use of outside
facilities does state the board will be held faultless or harmless in the event of liability.

This board of education does permit parochial schools to use athletic or other school facilities.

In the event such facilities are used by parochial schools they are not required to carry liability insurance, however, they sign the same contract holding the board harmless as in the case of other groups using public school facilities.

School District 6. This board of education permits most requests from outside groups for use of school facilities, however, there are certain exceptions. The major exception is the request by outside groups to use either athletic fields or gymnasium for any shows involving animals. This has been disallowed by the board of education on the basis of a possible disease problem. To most groups using school facilities the board of education does not require them to carry liability insurance, however, there is an exception to this. In this particular community there are Fourth of July celebrations sponsored by different local organizations. Wherever local organizations sponsor such celebrations, they are required to carry liability insurance.

This board of education does not permit parochial schools to use athletic or other public school facilities. Since it does not allow the use by parochial schools, they, of course, do not require liability insurance to be carried.
School District 7. Subject board of education does not require outside groups to carry liability insurance, however, outside groups are required to sign a contract which holds the board of education harmless in case of liability.

Parochial schools do use the public school facilities in this particular city. The rental is a nominal fee arrived at strictly on a cost basis.

Subject does not require parochial schools to carry liability insurance nor to become involved in signing a contract holding the board of education harmless.

School District 8. This board of education does require outside groups to carry liability insurance. There experience is based upon PTA festivals where rides for students and adults are concerned as well as certain booster club equipment that presents a possible liability.

Subject school does permit parochial schools to use public school facilities. One Catholic group uses the auditorium for religious services. They also hold an annual fish fry and use the cooking equipment of the cafeteria. This presented a concern to the superintendent because of a possibility liability or of someone being injured while using the cafeteria cooking equipment with which few people would be familiar.

However, this board of education does not require parochial schools to carry liability insurance. The
administrator indicated, however, that the board was looking into this and quite possibly in the future insurance would be required.

School District 9. The board of education does not require outside groups who use school facilities to carry liability insurance.

Since this is relatively a new school community, parochial schools have not as yet requested to use public school facilities. It was the administrator's belief, however, that if they requested the use, it would be permitted on a cost basis.

At least at this time, parochial schools are not required to carry liability insurance, yet the administrator believed that if they do use public school facilities, depending upon the use that they gave them, it was possible that liability insurance would be required.

School District 10. This school district does not require outside groups to carry liability insurance nor does it have a contract which states that the board shall be held harmless in case of liability.

To date this school district has had no request from parochial schools to use school facilities except for the stadium. This has been used on occasion by parochial schools.

In this situation, also, the board of education does not require liability insurance to be carried.
School District 11. Subject school board does not require outside groups to carry liability insurance, however, it is a growing concern to this board of education as to whether or not it should request such insurance to be carried.

Parochial schools in this district request only one time a year for use of public school facilities. This is their football field for the annual football preview.

The board of education in this situation also does not require the parochial schools to carry liability insurance.

School District 12. The board of education of this school district does not require outside groups to carry liability insurance. Yet, in its contract it states the board of education shall be held harmless in case of liability.

The board of education does permit parochial schools to use athletic and other public school facilities. When these occasions arise, the price is figured on a basis of expenses, plus a slight amount which in effect represents the amortization of capital outlay.

It does not require parochial schools to carry liability insurance as such.

School District 13. The board of education of this school district, where outside groups use school facilities, do insist upon liability insurance being carried. The only outside groups that regularly uses school facilities would
be the little league and Babe Ruth baseball organizations. This group does carry adequate liability insurance.

Since this is a rural area, there are no parochial schools, and, therefore, no parochial schools use public schools facilities.

Since parochial school use of public school facilities is not involved here no provision for liability insurance is involved either.

School District 14. The board of education of this consolidated school district does not require liability insurance by groups who use the public school facility. Neither do they state in their contract for use of facilities any mention of liability or the assumption of liability.

This district does not have parochial schools and, therefore, parochial schools have not requested to use public school facilities.

In this case also liability insurance in relation to parochial schools is not an issue.

School District 15. The board of education of this school district does not require outside groups who use public school facilities to carry liability insurance.

The board of education has not had any requests from parochial schools in the area to use athletic or other public school facilities. This probably is because no parochial schools exist in the rural area of this school district.
Since it does not have requests from parochial schools, liability insurance or the question of liability insurance has never become an issue for this board of education to discuss or decide.

School District 16. The board of education of this exempted school district does not require outside groups to carry liability insurance, but does have a contract with a statement in it holding the board of education harmless.

Parochial schools do not exist in this school district; therefore, there has never been a request for the use of the public school facility.

Since no parochial schools exist in this district, the issue of liability insurance has never come before the board of education.

Policy and Practices Relevant to Student-Group Accident Insurance

School District 1. For many years this school district did not participate in student-group accident insurance policies. However, two years ago the board of education permitted such insurance to be sold in the public schools. Originally, companies in the city were asked to bid on the insurance policy. Since the bid was received no further bids have been taken and the superintendent indicated that in his opinion they would not be as long as premiums were not raised.
In this particular situation, the premiums are collected by envelopes being handed out to the youngsters and then returned to the teacher who places them in a larger envelope. At the end of each day, such envelope is given to the school principal. The time for receiving premiums extends over a three-day period.

Of the total number of 88,000 boys and girls in this school system, approximately 20,000 are covered under this insurance plan. The total premium amounts to $2 for elementary youngsters, $3 for junior high school and high school youngsters. The total premium in this particular district amounts to $50,000 a year. Indemnity paid by the Nationwide Insurance Company last year amounted to about $27,000.

In the event of claims the principal must file a statement as well as the parent and doctor.

While suit has never been brought against the board of education for negligence of its employees, many suits have been threatened. The superintendent had no specific cases to mention.

The superintendent remarked that several factors caused the board of education to finally permit group student accident insurance to be sold in this city. One reason given was pressures from parents of injured children were perhaps a relative of the injured child in another school district had such insurance. There was also some
pressure brought to bear through the parent-teacher association. It is interesting to note here also that two board members believed in this type of coverage to quiet a moral responsibility or liability which these two members, at least, felt. They continued to bring this to the attention of the superintendent and finally the board as a whole agreed that this very reasonable coverage should be made available to the parents for their children.

School District 2. The subject school district does permit group-student accident insurance to be sold in the school. The superintendent pointed out, however, that the rates change almost annually; therefore, necessitating that bids be received from the different insurance companies offering this type of insurance annually.

In this particular school system, the teacher collects the premiums and makes a tabulation of them. It is carried over a oneweek period. After the teacher has collected the premiums and has accounted for them by report, she turns them in to the school principal. In this city of a school population of approximately 57,000, 25 per cent of the students are covered. The individual premium amounts to $1.75. The total premium in this district last year amounted to $30,000. Indemnity paid to this district last year was approximately $17,000.

While suit has been threatened on different occasions, to the knowledge of the superintendent no suit had ever been
initiated against the board of education relating to accidents or injuries received by students.

In the event of accidents, under the insurance plan, the principal is responsible for reporting the claims.

In asking this superintendent what factors caused you and/or your board of education to permit student insurance, he pointed out that perhaps the basic reason was that this type of coverage for students is becoming the vogue among school districts and, secondly, he said that both the board of education and himself felt that even though the courts had held no legal liability for boards of education in suits involving injuries to children, he did feel that there was a moral liability and providing insurance fulfilled this responsibility by the board of education.

School District 3. The board of education of this school district does permit student accident insurance to be sold in the school. Because of continuous pressure from insurance agents and because of changing premiums, the insurance is bid annually.

In this district the teachers are responsible for collecting the premiums. It is done over a five-day period.

After the teachers collect the premiums and account for each child, the report is handed to the principal. The principal then turns it over to the insurance company.
In this particular district 56,400 pupils represents the total pupil population: 20,600 pupils are covered by such insurance.

The individual premium amounts to $2 per child and the total annual premium amounts to $41,200.

Last year $12,689.65 was paid in indemnity. The person questioned in this school district pointed out that it has been his observation that the students covered by this insurance were students whose parents provided, not only this coverage, but other coverage, and in so many cases the youngsters who should have been covered were not.

While there have been no suits against the board of education for injuries to children, there have been several against the teachers and against the principal.

In discussing with the person interviewed in this school district regarding the factors causing the board of education to permit student accident insurance to be sold, it was his opinion that the first factor was pressure coming from local insurance agents, secondly, pressure from parents of injured children who perhaps had cousins or other relatives in other districts where such insurance was carried; and, thirdly, a desire for an inexpensive athletic coverage by way of rider. He did not feel that the board of education permitted this insurance out of any felt moral liability.
School District 4. It is interesting to here note that out of the total sixteen school districts interviewed, this particular school district was the only one where the board of education had not permitted student accident insurance to be sold in the public schools. It was pointed out that while the board of education was not opposed to insurance, it did not feel that this was the role of the school nor did it feel that the teachers' time and the principal's time should be taken up with such matters. The person interviewed, however, was new to this particular district and had a very strong feeling regarding the propriety of student accident coverage. He pointed out that the basic reason that he felt the board of education did not permit student accident insurance to be sold in the schools was because of the difficulty in selecting the company.

School District 5. The subject school board of education does permit the selling of group pupil-accident insurance in the schools primarily because of a felt moral responsibility.

The teachers in this school system are responsible for collecting premiums. This covers a three-day period. Each day as they collect the premiums they give them to the principal and at the end of the three-day period, they give an accounting of all students who have submitted a premium.
In this particular district there are 17,100 students: 7,211 are covered by insurance. This represents 42.1 percent of the total number.

The individual premium is $1.50 and $10 for twenty-four hour coverage. The total premium amounts to $16,126. Last year a total amount of $2,500 was paid in claims.

Suit has been threatened in this particular school district. The first incident was the result of a custodian mowing the lawn with a rotary mower. The mower threw a stone causing injury to a pupil. There were no witnesses. The courts held that the board or the employee of the board in this incident was not negligent. The second case is a very current one and is now under advisement. A student was sitting in an old auditorium being used as a study hall. A chandelier in the study hall fell striking the boy on the shoulder. It caused some thirty stitches to be taken in the boy's shoulder. The subject board of education has asked the state auditor if it could indemnify the boy on the basis of a felt moral obligation. No decision has been made yet since word from the auditor has not been received. In the case of claims, it is the responsibility of the parent to make the complete report. This is unusual since in most districts the principal must also be involved.

The major factors causing the board of education to permit insurance was first and foremost a felt moral responsibility or liability to the student. It is interesting to
note here that again the students that are covered by this policy are students generally whose parents have not only this policy but other insurance on them. In the case of both incidents causing suit or threat of suit, neither child was covered by this group accident insurance.

The superintendent of schools also felt that the athletic coverage rider might have been somewhat of a factor in the board's permitting student group accident to be sold.

**School District 6.** The parent-teacher association sponsors the group student accident insurance in this particular school and, therefore, does not directly request permission from the board of education because the board of education per se is not involved.

In the case of premiums, however, the teacher is involved but in a very minor way. The PTA room mothers go into the rooms, collect the premiums and see to it that the premiums are handed in to the insurance company, not even involving the principal of the school.

Because of this manner of handling this insurance program, the person interviewed was not certain how many youngsters were covered. His belief was, however, that possibly 60 per cent.

The total premium for subject school district amounted to $8903. The individual premium amounts to $2 plus depending on the type of contract. The total number of students
insured amounted to 2679 inclusive of football. This would amount to appreciably less than 60 per cent of the total student body.

The amount of claims paid over the last year amounted to $4924. It certainly points out here that this venture is actuarially sound. Since the PTA sponsors this activity, it also follows that the PTA of each school appoints the person who handles the claim together with the parents. The principal is not involved.

In inquiry from those interviewed where the pressures came or what factors caused the board of education to acquiesce to this activity it was pointed out that the PTA sponsored the group insurance plan and went pretty much on its own without authorization of the board of education. However, there was some pressure from the athletic association for this insurance since it would provide extended coverage to athletes.

**School District 7.** Subject board of education does permit student group accident insurance to be sold in the schools. Even though the board of education has not had a legal liability in the case of student accidents the board feels that this is a service to the public and a felt moral liability.

The teacher receives or collects the premium and records the names. This is done over a five-day period.
The teachers then give the premium receipts to the principal. They do this daily, and the principal is responsible for seeing to it that the premiums are deposited in the school activity account.

In subject school district there are 7900 pupils, 4600 of them are covered by insurance.

The premium for elementary youngsters amounts to $1.50 and $2 for junior and senior high school. The premium is $10 if they desire twenty-four hour coverage twelve months out of the year. The total premium amounts to $11,000. Last year $8600 was paid out in the form of indemnity.

Suit has been threatened because of student accidents but it has never been initiated.

In the subject school district the principal is solely responsible for reporting the claims. May we point out here that in the case of athletic injury the checks are made out to the school and to the student requiring co-endorsement.

School District 8. The board of education of this school district does also permit group student accident insurance to be sold in the schools. The superintendent was quick to point out, however, that all accounting that there is is done by the insurance company. They actually send people into the classroom to do this accounting. The teachers, however, do collect the premiums but hand it directly then to the insurance company. This is carried on over a three-day period.
Out of the total number of 5713 students, 2600 are covered by insurance.

The total premium amounts to $5200. The individual premium amounts to $2 per student. During the 1960-61 school year, the total indemnity paid was $4200.

In the case of subject school district, there have been several suits threatened, but no suits have actually developed. The most recent case was a broken leg on a playground device. After the parents checked with school officials, they did not bring suit. Neither was the son covered by the group accident insurance. In this particular school district, the largest claim found among any of the districts was paid last year. The case involved a student riding a bicycle to summer school. Although he was not following the most direct route to school, the insurance company did pay a claim of $1500. The boy was struck by an automobile and killed.

In asking subject school what factors caused you or your board of education to permit student accident insurance to be sold in the schools, the first factor given was pressure from local insurance agents; and, secondly, a felt moral liability.

School District 9. Subject school district permits student accident insurance to be sold in the public schools. It has pointed out that the experience of the school
district has been rather frequent change in companies due to rising premium costs.

In this particular school district the teacher collects the premiums and makes an accounting of all the students who purchase insurance. The teacher then takes the money and deposits it with the principal. The principal is responsible for reporting all claims.

Out of a possible 7000 students, 3297 are covered by student accident insurance. The individual premium amounts to $1.50 per student plus $13.50 for boys participating in football. Last year there were 149 claims amounting to approximately $1000.

While there have been many threats of suit by parents whose children were involved in accidents, none of these suits have been initiated to date.

In asking the superintendent what factors caused him and his board of education to permit student accident insurance to be sold, he pointed out that the impetus first started by the PTA's in the elementary schools, and, also, there was pressure from local insurance agents. It was, however, the superintendent's point of view that providing this relatively inexpensive coverage, it relieved the board of a felt moral liability. It should be mentioned here that when the elementary PTA first brought pressure to bear on the board of education to adopt the insurance plan in the schools, it was after the PTA had had the experience of
sponsoring an insurance policy and having the company discontinue the policy. When this happened, the PTA requested the board of education to take it over. By that time the insurance was quite popular in the community and there was popular acclaim for its continuance.

School District 10. The board of education of this school district does permit student accident insurance to be sold in the public schools. All athletes are required to take the basic coverage and the football rider. It is interesting to note here that the superintendent pointed out the reason for taking the insurance was the result of two serious accidents and an alert insurance agent.

The teachers collect the premiums in the classrooms and make complete accountings to the principal. The principal in turn hands the money into the insurance company.

The total number of pupils in this school district approximate 3500. Sixty per cent of the total number of students are enrolled in the insurance program. The individual premium is $1.50 per pupil. The total premium amounts to $3150 with approximately $500 additional for athletic coverage. The indemnity in this school district last year was in excess of $4000. The superintendent voiced concern that possibly the rates would be raised this following year.

Suit has never been threatened or initiated because of an accident in this district. There may have been harsh
words but actually no threat of suit. The harsh words generally followed x-rays where fracture was not discovered. The insurance policy does not cover this contingency.

Upon being asked the factors causing the board of education to adopt the student accident insurance program, the superintendent pointed out, as mentioned before, some serious accidents and an alert agent, also pressure from parents of an injured child who relative in another district had such coverage, and, too, a felt moral liability on the part of the board of education.

School District II. A somewhat unusual situation exists in subject school district. The parents association, an equal to a PTA Council, is responsible for selecting the policy. After the selection of the policy, the board accepts the selection and writes a letter stating specifications and the immunity to liability of the board of education. It has been the experience of this school district that insurance companies continue for a short period of time, raise the premiums resulting in the PTA Council selecting another company, and this company continues for a year or two and repeats the process. It is the opinion of the person interviewed that after a company gets a contact list it deliberately raises the premium regardless of indemnity paid.

The collection of premiums is taken care of entirely by PTA room mothers. The PTA room mothers, after collecting
the money, gives it to the principal who deposits it immediately in the school account and writes a check to the insurance company.

Subject school district has approximately 10,000 pupils: 60 per cent of the pupils are covered. The person interviewed here stated that many of the pupils covered by insurance were pupils that already had another type of insurance at home, and many of the 40 per cent not covered were pupils, who indeed, needed the insurance and could not afford to be self-insured.

The individual premium amounts to $1.50 plus $13.50 for football coverage.

The subject school district did not have an exact accounting of indemnities paid primarily because this was carried on by the PTA Council.

Several suits have been threatened in the past, but none of these suits have been initiated in court because of an accident.

It is pointed out by this school district that the factors that caused the board of education to permit the student accident insurance was pressure from the PTA Council as well as local insurance agents. The board was not acting on the basis of a felt moral liability.

School District 12. Again, a somewhat unusual approach was used in pupil group insurance by subject school district. While the board does permit group accident
insurance to be sold in the schools, the administration of the program is taken care of entirely by the parents and the insurance company.

In the collection of premiums, the parents send envelopes directly to the insurance company. The insurance copy uses a franking privilege and the envelopes are addressed and stamped. The principal is the only person in the school involved in this insurance program and he is involved to the extent of a verification of injury on the claim report form.

Subject school district has a total enrollment of 4257 pupils. During the 1960-61 school year, 1785 students were covered by insurance representing 41.9 per cent of the total student body. There were 109 claims paid by the insurance company. The total premium amounted to $5117 and the total claims received amount to $3203.37.

The person interviewed stated that the principal factors causing the board of education to permit student accident insurance to be sold in the public schools were: pressure from local insurance agents, desire for inexpensive athletic coverage, and a felt moral liability to the students.

School District 13. This school district does permit student accident insurance to be sold in the schools. The teachers collect the premiums and give a complete accounting to the executive head. This is carried on over a one-week period. The executive head then gives the money to the insurance company and has a part in reporting all claims.
There are 312 students in this school district and
116 of them were covered by insurance.

The individual premium for elementary students amounts
to $1.75, to the junior high school students and high school
students, $2.50. For faculty and other employees, $3.00.
Three claims were reported last year amounting to $120.00.

No suit or threat of suit has ever been initiated
because of an accident to a student. In inquiring of the
executive head why student accident insurance was carried in
school, it was his opinion that it was permitted because of
a felt moral liability of the board of education toward the
student body, and, also, it made possible a service to the
public at a very low cost.

School District 14. Subject board of education does
permit student accident insurance to be sold in the school.

The teachers collect the premiums and envelopes and
give them to the principal. This is carried on over a week's
period. The principal deposits the money in the school's
general activities account and writes a check to the insur-
ance company. The principal's other responsibility is in
reporting claims.

Out of approximately 1700 children a total of 458 are
covered by insurance. While the executive head did not know
the exact number of claims, he indicated that the claims over
the past several years had been very negligible.
He further pointed out that a suit had been threatened and actually initiation had begun as a result of a child falling off parallel bars before the school day started. This happened in one of the elementary schools. When the parents took the case to the lawyers, the lawyers discouraged the parents from continuing the case and so it was dropped.

The executive head was not certain why the insurance program began in the school, however, he felt that possibly it was related to a desire for inexpensive athletic coverage.

School District 15. The board of education of this school district does permit school student accident insurance to be sold. The teachers collect the premiums and give a full accounting to the principal. The principal in turn deposits the money in the activities account and writes a check to the insurance company. The principal's further involvement results in making out statements regarding claims.

The executive head remarked that in a situation where students are covered by this group insurance policy they probably would be covered anyway, and unfortunately the students who needed this insurance, because they had no other coverage, invariably when accidents occurred he found that they were not covered.

There are approximately 1500 students in subject school district. Of this number only 248 students are
covered under the insurance program. The individual premium amounts to $2.50. It is $12.50 if the students desire twenty-four hour coverage. For football coverage there is a rider attached which costs the student $18.00 in addition to the base $2.50 premium.

The executive head pointed out that there had been very little indemnity paid over the last two years to his knowledge. He further pointed out that they had changed companies this year because the district had experienced difficulty collecting indemnity from the company formerly covering them.

There have been many threats of suit, but no suits have been initiated because of accidents involving children.

In discussing with the executive head what factors caused the board of education to permit student accident insurance to be sold in the public schools, he pointed out that perhaps the first factor was pressure from local insurance agents. Also a desire for inexpensive athletic coverage as well as a felt moral liability to the students.

School District 16. While this board of education permits student accident insurance to be sold in the public schools, it comes up for review each year. Several times in the past the board of education has adopted a policy sold by different companies.

The procedure used for collecting premiums is that the students over a three-day period bring their money in
envelopes provided by the insurance company to the teacher. The teacher in turn places these in the hands of the principal each day. The principal deposits these in the activities account daily and then writes a total check to the insurance company. The principal in this case is not involved in handling claims.

There are 1150 students in this district and 219 of them plus one teacher are covered by the insurance program. The individual premium amounts to $2 for elementary and $8 for twenty-four hour coverage of elementary, $3 for junior high school and senior high school and $10 for junior and senior high school for twenty-four hour coverage. The teachers' rate is the same as the senior high school.

Last year only eight claims were reported. All claims are reported by the superintendent's secretary.

In this particular school district suits have never been threatened or initiated.

In discussing the factors causing the board of education to permit student accident insurance to be sold, the superintendent pointed out that quite possibly it was the result of the vogue among other school districts, especially when a child was injured who had a relative in one of the neighboring school districts that had such insurance coverage. He also felt that the board considered this a moral liability and also a service that was quite inexpensive to
make available to the general public. He also pointed out that like in so many cases the students that were covered by this policy were students who parents also had other coverage on them. Unfortunately many students involved in accidents were not covered by this policy even though it was available.

Practices in Employee Liability

School District 1. Even though statutes in Ohio have recently been enacted which permits boards of education to insure employees involved in transportation, driver education, or driving any self-propelled vehicle. Many boards of education do so only partially. In the case of subject school district only bus drivers and teachers of driver training are insured. Other employees who drive school automobiles are not covered by the board of education with liability insurance, nor does this board of education insure employees who occasionally drive school vehicles.

School District 2. The superintendent of this school district indicated that his board of education was fully aware of the new legislation recently passed and had availed itself to the full extent of such legislation. In so doing all employees drive vehicles of any nature belonging to the board of education are covered with liability insurance. This includes also people who occasionally drive school vehicles. As he further pointed out each vehicle is insured
which means that any employee authorized to drive said vehicle is also insured for any acts of his negligence.

This superintendent further pointed out that, in his opinion, this was an excellent law because he felt that in this whole area of tort liability involving boards of education that "Some day we are going to be taken through a real wringer."

School District 3. This school district insures drivers of all school buses and trucks. This does not include tractors or other self-propelled vehicles. All administrative personnel have riders on their own policies which cover them when driving school vehicles, but such premium is not paid by the board of education. All other employees excepting administrative employees who regularly drive school vehicles are covered. However, those who occasionally drive school vehicles are covered to the extent that the vehicle itself is covered.

School District 4. Subject board of education insures all employees to the extent permitted by statute. In so doing it, of course, covers all employees who regularly drive school vehicles as well as any employee who occasionally drives a school vehicle and who is authorized to do so.

School District 5. This particular school district has no school buses and does not insure employees to the extent currently permitted by statute. However, a recent accident involving a custodian using a power self-propelled
riding lawn mower, injuring a child, caused the board of education to see to it that custodians using riding lawn mowers were adequately covered with liability insurance. Since this accident, all employees who regularly drive school vehicles, that is lawn mowers or trucks, are covered with liability insurance. It is interesting to note here, however, that an employee who occasionally drives a school vehicle or who occasionally, on a substitute basis perhaps, uses a lawn mower is not covered by liability insurance.

School District 6. While this school district is aware of the new law that was recently enacted, to date has not insured all employees to the extent permitted by statute. As a matter of fact employees who regularly drive school vehicles are not covered by liability insurance but must cover themselves. This is equally true of any employee who occasionally drives a school vehicle.

School District 7. Subject school district does not carry any type of employee liability insurance. The school buses are non-existent in this community and all of the employees working for the board of education are required to take care of their own matters of liability.

School District 8. This school district does insure all employees who drive school buses or the school truck. It does cover all employees who regularly drive these school vehicles on highways only. It does not cover them on school property. Since these vehicles are individually
insured, any person who occasionally drives one of them and is authorized to do so is automatically covered with the insurance that is on the vehicle.

**School District 9.** While this board of education does not insure all employees to the extent permitted by statute, it does insure bus drivers only. In insuring the bus drivers the vehicle is insured so that any one authorized to drive the vehicle is automatically insured. This takes care of the substitute bus driver as well as the regular driver.

**School District 10.** Subject school district does insure all employees to the extent permitted by statute. All regular employees who drive school vehicles are covered as well as all substitute or occasional drivers of school equipment are covered by the insurance policy.

**School District 11.** This board of education insures all employees to the extent permitted by statute as long as the vehicle involved is traveling on the highway. It, therefore, eliminates custodians and drivers of mowing equipment such as tractors on school grounds. However, anyone who regularly drives a school vehicle on the highway is covered as well as the person who occasionally drives such a vehicle.

**School District 12.** This board of education insures all employees to the extent permitted by statute. This includes bus drivers as well as drivers of other vehicles.
It insures all employees who regularly drive such vehicles as well as all casual employees. The vehicle itself is insured so whoever drives it is insured. It has been the attitude of this board of education that while you may think you are insured one must be very certain and it is advisable in the opinion of this board of education to carry all insurance that is permitted by statute. Public reaction warrants any insurance which is permissive.

**School District 13.** This board of education insures bus drivers only. However, this takes care of the regular bus driver as well as the casual driver. This is done in the usual way providing insurance for the vehicle which automatically covers the authorized driver.

**School District 14.** This board of education does not insure all employees to the extent permitted by statute, but it does insure all employees who drive school buses or other school vehicles. This is equally true of the casual employees from time to time who have occasion and are authorized to drive a school vehicle.

**School District 15.** Subject board of education does not insure all employees to the extent permitted by statute. The only group insured are those who drive the school buses and this is done in the usual way where the bus is insured meaning that anyone who is authorized to drive such vehicle becomes automatically insured.
School District 16. Subject board of education does not insure all employees to the extent permitted by statute. It does include the drivers of school buses but not on tractors or lawn mowers. Since the school buses are insured individually, they do cover anyone who is authorized to drive them—either regular or substitute bus drivers.

The Proprietary Practice of School Food Service

In interviewing the individuals of the sixteen school districts, the writer asked basically two questions: 1. Does your board of education carry on a school food program? 2. Has suit ever been threatened or brought against the board of education in connection with the food service program? To the first question all sixteen school districts answered yes that they did carry on a school food program. In answer to question number two, all answered no that suit had never been threatened or brought against the boards of education in connection with the food service program.

It is interesting to note here, however, that in calling this proprietary service to the attention of those interviewed each marvelled at the fact that no suit or threat of suit had been taken and each concerned this to be a real area of possible liability. No real thought had actually been given to this function in the school districts interviewed.
Questions Involving General Practices

In this area the writer interviewed the superintendents of sixteen different school systems and asked questions of general interest involving the area of tort liability. The questions were as follows:

1. Would you advise your board of education to carry liability insurance, even though no liability has ever been recognized for boards of education in Ohio, if your board were involved in some activity that would not normally be considered a regular school involvement?

2. In light of the president's emphasis on physical development, many new and enriched programs are being developed in the public schools. Many of these vigorous exercises could cause serious injury to children participating as required to participate by the board of education. Does your board of education require liability insurance for physical education teachers? Does the board of education pay the premium?

3. In consideration of the broadening field of involvement in education, do you feel that you and your board of education would favor legislation that would permit the board to purchase liability insurance?

School District 1. Before answering the first question regarding whether or not this superintendent would advise board of education to purchase liability insurance if it were engaged in an atypical activity, the writer
painted a hypothetical case that would be construed as a typical proprietary function. In answer to this query, the superintendent said that he would not recommend, even if the board were carrying on a proprietary activity, liability insurance at the present time. In the first place he knew that it was not permissible and would very probably bring about a finding by the auditor, but more importantly was the fact that in his opinion whenever a board of education begins to assure, this establishes a precedent and might well bring about numerous claims.

In answer to the question regarding a broadening physical education program, the superintendent of this district said at the present time the board of education does not require teachers of physical education to carry liability insurance. Yet the writer could discern that the thought of this particular involvement disturbed the superintendent. He pointed out that at the present time his board of education was quite concerned with liability insurance and he felt certain that an in-service program would first be developed to point out the possible dangers to physical education teachers and also recommend that each teacher be covered by liability insurance.

In answer to the third question regarding whether or not the superintendent and his board of education would favor legislation that would permit boards to assume liability, he pointed out that he would not be opposed, but he
would not be a militant leader for such legislation. He said, "I am a very conservative type and in my opinion it would encourage a mass of claims." He went on to say that the subject school district was going to attempt to take a positive approach toward this whole problem of injury and negligence liability, etc. by hiring a person as a director of safety. His full responsibility would be for the safe condition in one hundred forty buildings within this city school district.

School District 2. The superintendent of this large city school district, in answer to question one, said no he would not recommend under any circumstances for his board of education to carry liability insurance.

In answer to question number two, he pointed out that at the present time the board of education did not require physical education teachers to carry liability insurance nor did the board anticipate paying the premium. However, he did recognize that this was an area of real concern especially in light of the broadening program.

In answer to question number three, the superintendent stated that he thought that his board of education and himself would favor legislation that would permit boards to carry liability insurance. He did point out that there might be a factor in the rising costs of insurance but he did feel that the general public should be protected from the torts of the board of education and its servants.
School District 3. The administrator interviewed in subject school district pointed out that he would recommend that his board of education assume an attitude of non-liability. He would further recommend that the board of education not buy insurance, but defend the case in court if necessary. In this situation, too, the writer described a hypothetical proprietary example on which the administrator based his decision.

In answer to question number two, the administrator pointed out that at the present time the board of education did not require physical education teachers to carry liability insurance, but in his opinion they should be required. It was the opinion of the writer that this issue or question of general practice brought appreciable doubt to the administrator's mind regarding the status quo in this particular school district.

In answer to question number three, as to whether or not the administrator and his board of education would favor legislation permitting boards to carry liability insurance, he answered without qualification, "Yes, I would."

School District 4. Subject school district is one of the larger school systems in the State of Ohio. In answer to question number one regarding the hypothetical case presented by the writer of a proprietary example of board function, the superintendent without qualification said yes he would recommend at the risk of an auditor's finding that
the board of education carry liability insurance.

In answer to question number two, the superintendent stated that at the present time the board of education did not require liability insurance for physical education teachers. However, he felt that quite possibly the board of education should in light of the broadening programs that are being developed.

In answer to question number three, regarding whether or not the board of education and the administrator would favor legislation to permit boards of education to carry liability insurance, the administrator answered that in his opinion both his board of education and himself would favor such legislation.

School District 5. Subject school administrator felt that even though the board were carrying on a proprietary function if the law were specific that it could not carry liability insurance that he would recommend to his board that it not carry insurance.

In answer to question two regarding the broadening physical education program in light of the president's current emphasis on physical education, the subject administrator pointed out that at the present time teachers were not required to carry liability insurance. However, this brought the point to his mind and he said that possibly such board of education would adopt this policy in the near future.
In answer to question number three regarding whether or not the subject school administrator and board of education would favor legislation that would permit the board to carry liability insurance, he felt that generally he was inclined to say yes. There was a fear I am sure about a growth in the number of cases that would be brought to the courts in this event, but still he felt that with the general broadening of the involvement that liability insurance should be carried by boards of education.

_School District 6._ In answer to the question involving the proprietary function of a board of education in a hypothetical case, subject superintendent said that if the board were functioning in a proprietary role, say renting facilities over a long period of time and if there were an income factor involved that he would recommend to the board of education that it carry liability insurance even though such recommendation might be followed by a finding of the state auditor.

In answer to question number two regarding physical education and the requirement of teachers to carry liability insurance, he pointed out that at the present time the board of education did not require teachers to carry such insurance, but he did think it was sound idea and would probably recommend it.

In answer to question number three regarding whether or not subject school administrator and board of education
would favor legislation that would permit boards of education to purchase liability insurance, he quickly pointed out that he would be in favor of such legislation in view of the trend. He pointed out that an individual has responsibility why not the board of education. He was further prompted in his feeling by a recent incident which occurred in his own school district and while the board was held not to be liable, in this particular case, the board actually would like to have been held liable.

School District 7. In answer to question number one regarding the hypothetical position with the board of education carrying on a proprietary function, the superintendent quickly pointed out that he would recommend that the board of education purchase liability insurance even though it might involve an auditor's finding. This did not seem to concern the administrator, but he did point out that in the event of a claim that it certainly would result in good public relations for the board of education.

In answer to question number two regarding the broadening physical education program, subject school system has not at the present time expanded its program. Therefore, it has not seen it necessary to require teachers to carry liability insurance. However, he pointed out that in the event of expansion quite possibly he would make such a requirement even though the board of education could not pay the premium.
In answer to question number three as to whether or not subject superintendent and board of education would favor legislation permitting boards of education to carry liability insurance, the superintendent pointed out that he would favor and felt that his board would favor such legislation that would be permissive to carry a liability insurance policy that would be limited to dollar amount. For example, he would favor something in the neighborhood of $25,000.

School District 8. In answer to question number one, regarding the hypothetical case presented to the subject superintendent where a board of education was carrying on a proprietary function, the superintendent said that he would advise the board of education that there would be no liability and would not recommend taking out a policy even though the act was not a common government act but rather a proprietary act.

In answer to question number two, subject superintendent pointed out that even though he had expanded emphasis on physical development at the present time his board of education did not require physical education teachers to carry liability, but he hastened to add perhaps the board of education should require the teachers to carry this type of insurance.

In answer to question number three regarding whether or not subject superintendent and board of education would
favor legislation permitting boards of education to carry liability insurance, he pointed out that he felt that it should be a standardized liability like the Illinois plan, and if it were permitted on a voluntary basis he felt that both his board of education and himself would favor such legislation.

School District 9. Admitting that he was somewhat conservative, subject superintendent said he would not advise his board of education to carry liability insurance even though it found itself in a proprietary role primarily because the law in his opinion is specific on this matter.

In answer to question number two, he pointed out that while the physical development program in subject school system had been broadened at the present time the board of education nor the superintendent had not thought in terms of the liability of the teacher. He agreed that perhaps they should have and should adopt a policy requiring physical education teachers to carry liability insurance. He further pointed out that this could quite possibly be done by granting a stipend to physical education teachers and then requiring that they purchase a certain type of liability insurance.

In answer to the question as to whether or not subject superintendent and board of education would favor legislation permitting the board of education to carry
liability insurance, he felt that his board felt secure in its present immunity and probably would not want to see this changed. He pointed out that it might affect the board makeup if they were not immune from liability. In other words he felt that few people would want to be abused by the courts and the general public if immunity were not granted to them in their operation.

**School District 10.** In answer to question number one regarding the hypothetical position established by the writer of a board's position when carrying on a proprietary role, subject superintendent pointed out that he would simply have a statement in the contract saying that if you want to lease you must save harmless the board of education. In further amplifying the hypothetical activity of the board, the writer suggested that quite possibly the board of education would be leasing to the Federal government who would not accept such a condition. In that event the superintendent said that he would recommend that the board not lease the facility.

In answer to question number two, subject superintendent pointed out that his board of education did not require physical education teachers to carry liability insurance. When asked if they were encouraged to carry liability insurance, subject superintendent stated that they were not.
In answer to question number three, concerning whether or not the superintendent and board of education would favor legislation permitting the board of education to carry liability insurance, the superintendent pointed out that he would prefer immunity to exist as it now does. Not from the lack of concern for children, but rather from the point of view that he was dealing with masses of people, he went on to point out that if a board of education were held liable that it would be plagued by a whole medley of little things. Boards of education would become fearful of making decisions as well as the administrators and teachers of the school. They were be hesitant ever to use physical force. A position which the public would hold, if boards could be held liable, would affect the qualification of teachers in the classroom from the point of view of this administrator.

School District 11. After giving serious thought to question number one, regarding a hypothetical position created by the writer of a board of education involved in a proprietary function, the administrator replied that in his opinion he would in this event recommend to his board of education that it carry liability insurance. He was not concerned as to what the auditor would find.

In answer to question number two regarding the emphasis on physical education and whether or not the teachers were required to have liability insurance, he
pointed out that they were not. However, he did point out that the lesson plan should be checked, a sound in-service program should be conducted so that the teachers were well aware of the possible dangers involved.

In answer to question number three regarding whether or not subject administrator and board of education would favor legislation permitting them to carry liability insurance, he pointed out that he thought that his board of education would favor this. He further pointed out that people generally are becoming more insurance minded and more security minded.

School District 12. In answer to question number one regarding the proprietary function of boards of education, subject superintendent pointed out that in the event his board were involved in a proprietary relationship such as described by the writer that he would recommend that it carry liability insurance even if it meant a finding.

Subject school has broadened its physical education program appreciably in the past few years. While the board does not required physical education teachers to carry liability insurance, it strongly recommends that they do. The superintendent also pointed out that a strong in-service program is needed in this area of rapid development to point out the dangers that exist to all personnel involved in the operation.
In answer to question number three regarding whether or not superintendent and board of education would favor legislation permitting the board to carry liability insurance, the subject superintendent said no he felt the board of education would prefer the immunity. In being asked why he pointed out that the pressures involved if the board were not immune would be significant. It would also become easier for suit to be filed. He also pointed out that there would be constant pressures from insurance companies to insist on different types of liability insurance to be purchased by the board of education. However, he did point out that he felt there should be legislation that would permit boards to settle what it considered to be moral claims of liability.

School District 13. In answer to question number one regarding the proprietary function of boards of education in a setting described by the writer, subject school administrator pointed out that the examiners point of view was not too important. They make a lot of findings in terms of specific regulations which they have and must follow. He pointed out that he would be prone to get the insurance if his board of education were involved in such a proprietary function as described by the writer.

In answer to question number two regarding liability insurance for physical education teachers, the school administrator pointed out that the board of education did not
require these teachers to carry liability insurance nor did the board of education pay the premium either directly or by a stipend arrangement. He did feel, however, that an in-service program was necessary to apprise the teachers of the possible dangers involved.

In the opinion of this school administrator, both he and his board of education would favor legislation permitting boards to purchase liability insurance.

School District 14. In answer to question number one, regarding the hypothetical position of proprietary activity described by the writer, the subject administrator pointed out that he would assume that the auditor would make a finding. This in itself would not be a concern if in the opinion of the administrator the insurance would be in the best interests of the board of education and of the public as a whole.

In answer to question number two regarding liability insurance for physical education teachers, the superintendent pointed out that the board of education did not require liability insurance to be carried by the teachers. However, he did point out that an in-service program should be offered in such a way that the teachers would have a full understanding of the potential dangers involved.

Subject superintendent was somewhat hesitant about committing himself regarding whether or not he and/or his board of education would favor legislation permitting the
board to purchase liability insurance. In this particular situation there is quite a variance of opinion among the board members. The superintendent pointed out that granting liability against school districts might well open up a whole new realm of cases. Many of these in his opinion would be minor suits. Rather than to give a definite answer of yes or no he would want to think this through further. Therefore, he said that he had not at this time made up his mind or would he be willing to commit himself at this time.

School District 15. In answer to question number one regarding the position the board of education would take in securing liability insurance in the event it was carrying on strictly a proprietary function. The superintendent pointed out that he would recommend that a policy be taken out and let the finding be made by the state auditor if he so desired.

In answer to question number two regarding physical education teachers being required to carry liability insurance the superintendent pointed out that at the present time the board of education did not require this. However, he was interested in a way that the board could require it and could pay the premium. The issue of paying a stipend similar to the way boards of education formerly did to carry insurance on their driver education cars was discussed as a possible way of handling this problem. He did point out that boards of education and school systems should conduct
in-service programs that would fully acquaint the teachers with the potential of the dangers involved.

The superintendent felt that he would favor legislation permitting boards of education to purchase liability insurance, but he doubted that his board would. He felt that they would feel that minor suits would swamp them. He felt, too, that the board's opinion might well be that the board of education would be giving up something, its immunity, that was originally devised for its protection.

School District 16. After the writer had established a hypothetical proprietary activity of a board of education and asked subject superintendent whether or not he would recommend that liability insurance be taken out by the board of education. Without hesitation he replied, "Yes, I would."

In reference to the physical education program that is currently being expanded, the superintendent pointed out that at the present time physical education teachers were not required to carry liability insurance, but he felt that the board of education should make some provision for this.

In answer to question number three regarding whether or not this superintendent and board of education would favor legislation permitting the board to carry liability insurance, he pointed out that, yes, my board would, especially this board of education. He went on to say that he felt that he had observed that boards of education were being more conscious of this whole area and felt that his
board believed that boards of education should be permitted to insure themselves so that the public could be protected from acts of negligence on either the part of the board of education, or its employees.

An Analysis of Interpretation of Data

Policies and Practices Relating to Athletes

Table 2 lists the responses received from the sixteen school heads in answer to the questions posed during the interview.

Eight of the schools or 50 per cent covered their athletes by a rider attached to the pupil group accident policy carried in the school.

Three of the schools interviewed, approximately 19 per cent, were self insured. These schools were among the larger schools interviewed.

Five of the schools interviewed, approximately 31 per cent, carried separate coverage even though they had the group accident policy being sold in the schools. When asked why, the administrators pointed out that the separate coverage while more expensive provided much broader and more complete coverage.

Twelve schools or 75 per cent had a policy requiring a doctor to attend all football games as well as to be available on call for injuries which might occur in practice. Only one school required a doctor's presence at practice.
TABLE 2
POLICIES AND PRACTICES RELATING TO ATHLETICS

<table>
<thead>
<tr>
<th>Practice and/or Policy</th>
<th>Schools Having Policy or Practice</th>
<th>Schools Not Having Policy or Practice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pupil Group Accident Policy with Football Rider</td>
<td>6,9,10,11,12,13,14,15 (8)</td>
<td>1,2,3,4,5,7,8,16 (8)</td>
</tr>
<tr>
<td>Self Insured</td>
<td>1,3,4 (3)</td>
<td>2,5,6,7,8,9,10,11,12,13,14,15,16 (13)</td>
</tr>
<tr>
<td>Separate Athletic Insurance Policy</td>
<td>2,5,7,8,16 (5)</td>
<td>1,3,4,6,9,10,11,12,13,14,15 (11)</td>
</tr>
<tr>
<td>M.D. Present at all Football Games</td>
<td>1,2,3,4,5,6,7,8,11,12,15,16 (12)</td>
<td>9,10,13,14 (4)</td>
</tr>
<tr>
<td>M.D. on Call During Practices</td>
<td>1,2,3,5,6,7,8,9,10,11,12,13,14,15,16 (16)</td>
<td>4,13,14,15 (4)</td>
</tr>
<tr>
<td>M.D. Present at Practices</td>
<td>4 (1)</td>
<td>1,2,3,5,6,7,8,9,10,11,12,13,14,15,16 (15)</td>
</tr>
<tr>
<td>Permits participating Students to drive to Contents</td>
<td>2,3,6,8,10,13,14,15 (8)</td>
<td>1,4,5,7,9,11,12,16 (8)</td>
</tr>
<tr>
<td>Permits Coaches and/or Teachers to Transport Students</td>
<td>1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16 (16)</td>
<td></td>
</tr>
<tr>
<td>Practice and/or Policy</td>
<td>Schools Having Policy or Practice</td>
<td>Schools Not Having Policy or Practice</td>
</tr>
<tr>
<td>------------------------</td>
<td>-----------------------------------</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td>Permits Participation to Ride to Contests with Parents or other Adults</td>
<td>1, 2, 3, 4, 5, 6, 7, 8, 10, 12, (12)</td>
<td>8, 11, 14, 15 (4)</td>
</tr>
<tr>
<td>Liability Insurance Premiums Paid by Board of Education for Coaches and Teachers</td>
<td>1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 (16)</td>
<td></td>
</tr>
</tbody>
</table>
Eight schools or 50 per cent permit participating students to drive to contests. Each school permitting this practice gave the writer the answer almost apologetically.

All of the schools interviewed permitted coaches and/or teachers to transport students to contests and most schools required the teachers or coaches to carry adequate automobile liability insurance. None of the boards paid the premium for such insurance.

Seventy-five per cent or twelve school systems permitted participating students to ride with their parents or other adults to contests. Here, too, the answer was given almost apologetically.

The writer noticed general uneasiness about each of these policies on the part of the person interviewed. The fact that the board was immuned from liability was often given as a reason for a practice or existing policy.

**Board Policy for Use of School Facilities by Outside Groups**

Table 3 tabulates the responses received from the sixteen selected schools.

Having discussed the problem of the use of school facilities with the several school administrators, it became apparent that each had a deep concern for the possible liability involved.

Several pointed out their reliance on the immunity principle yet each included a statement to the effect of
### TABLE 3

**BOARD POLICY FOR USE OF SCHOOL FACILITIES BY OUTSIDE GROUPS**

<table>
<thead>
<tr>
<th>School</th>
<th>Requires Liability Insurance</th>
<th>Requires Contract Holding Board Harmless</th>
<th>Rents to Parochial Schools</th>
<th>Requires Insurance by Parochial Schools</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. 1</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>No. 2</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>No. 3</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>No. 4</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>No. 5</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>No. 6</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>No. 7</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>No. 8</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>No. 9</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>No. 10</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>No. 11</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>No. 12</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>No. 13</td>
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holding the board harmless in the application for use of
the facility.

**Student Group Accident Insurance Policies**

All schools but one interviewed permitted the sale of group accident insurance in the school.

In most situations the teacher was involved to a greater or lesser extent in collecting the premiums. Some schools were sensitive about this and attempted to do something about it by using PTA roommothers for these clerical duties. Whether or not disseminating literature and collecting premiums by teachers and mothers constituted selling insurance without a license in Ohio had not been thought about by the administrators interviewed.

Coverage in districts varied from about 20 per cent of the student body to about 50 per cent. In several instances during the interviews the administrator pointed out that the students whose parents purchased the policy oftentimes were parents who had additional coverage and too often youngsters who should have been covered because of parents inability to self insure were not covered.

In each situation where figures were readily available, the premium amounted to appreciably more than the claims paid.

When asked whether or not suit had ever been threatened or initiated because of injury to a child, most
administrators indicated that at least harsh words had been exchanged. In some instances there had been threats of suits and in several cases suits had actually been initiated. In no instance did the writer find a suit settled in court against the board of education.

Generally the reaction to the question that if the board is immuned to tort liability why does your board permit insurance to be sold in the schools, the administrators felt that the board felt a moral liability. Another common reaction was, "It is the vogue to offer this insurance." Still others responded by referring to the pressure of local insurance agents as well as a way to secure an inexpensive athletic coverage.

Employee Liability

Apparently most boards are not yet fully aware of the recent statute, Revised Code 3313.20.1, permitting boards to purchase liability insurance for employees concerned with operating school vehicles.

While most of those interviewed had provided for school bus drivers and teachers of driver education, few had gone further (custodians, administrators, etc.).

School Food Service

All administrators interviewed on the practices of school food service readily agreed that this was a peculiar
school function. They recognized that the activity could easily be classified as proprietary rather than governmental.

While each school head interviewed answered that his school did carry on a food service, none indicated that there had ever been a threat of law suit resulting from the school lunch program.

**General Questions of Practice**

The writer set up a hypothetical incident of practice which was as non-government as he could find. It was described as follows: Imagine that you have a school building that has been abandoned and for at least the next year has no foreseeable use to your school system. Suppose that a governmental industry is locating in your district and approaches you to lease this building for office space for one year. The government agrees to pay the board of education an appreciable rental figure. Knowing that the people working in these offices could fall or otherwise injure themselves and also realizing that the board would be functioning as a landlord with a tenant that cannot be sued (the United States Government) would you as a superintendent recommend to the board that it carry liability insurance even though it has historically been held immune to tort liability and quite possibly the auditor would make a finding against the board for an illegal expenditure of funds?
It is interesting to note here that a preponderance of administrators said they would recommend liability insurance and seemed unconcerned about an auditor's finding.

Another question concerning liability in physical education, in light of the broadening programs resulting from a national concern of this curricular area, brought varied responses. While most did not demand that teachers carry liability insurance, most heartily encouraged it. All seemed quite sure that in-service education programs should be initiated to acquaint the teachers with the dangers involved in the mass approach to physical fitness.

To close the interview, the writer asked: In consideration of the broadening field of involvement in education, do you and/or your board favor legislation that would permit the board to purchase liability insurance that would permit claims of tort liability to be brought against the board?

Ten of the sixteen administrators said they felt their board would favor such legislation. Some indicated that they felt there should be a specified limit by statute.

The six administrators who said they and their boards would be opposed to such legislation gave various reasons. The common ones were as follows:

1. We would probably be opposed but would not be militant. I am conservative. I would encourage a mass of claims. We prefer to approach this problem by hiring a director of safety who will have the full responsibility
of seeing to it that our one hundred forty buildings are safe.

2. The board feels security in its present immunity. Giving up this position might affect the make-up of the board.

3. We prefer immunity to exist. This is not from a lack of concern for safety of children but we would be plagued by little things. We would be afraid to make decisions. It might affect the quality of the teacher in the classroom.

4. We would prefer immunity. Why? The pressures would make it easier for suit. It would bring more pressures from insurance companies to sell us insurance. The board should have the right to settle moral claims.

5. We would want to think this through. It would open up a whole new realm of concern.

6. I doubt if this board would. Minor suits would swamp us. This would be giving up something that was devised for our protection.

Summary and Analysis of Responses

After having interviewed the sixteen school heads of representative size and type school districts in Ohio, the writer noted that each district carried on practices that were incongruent with the theoretical position presented in chapter three. Where practices seem untenable to the person
interviewed, his reason for permitting the practice was simply a reliance on the principle of "rex non inuria."

The greatest conflict between the present questioned practices in Ohio schools and the position of the experts was in the area of pupil accident insurance. The experts stated that the selling of such insurance had no place in the schools yet fifteen interviewed permitted such insurance to be sold.

A medley of practices existed relative to the purchase of employee liability insurance. Few school heads seemed to understand the full breadth of this statute.

Athletic insurance and related practices among Ohio schools appear to be constantly in a state of change. Quite possibly this is related to the changing athletic insurance rates as well as the rapid growth of school districts. Many of the related athletic practices seemed to have emerged from individual school circumstances. While most schools had some policy regarding not permitting participating students to drive to contests, almost all school heads admitted exceptions to this rule.

Many different types of policies involving the use of school facilities by outside groups are in effect throughout Ohio. Some boards of education are recognizing proprietary functions as opposed to governmental and in such cases are requiring the use of school facilities to carry liability insurance thus obviating the possibility of involving the
school board in suits of liability. While the incidence of this type of policy is not commonplace, it does indicate that a perceptual change is taking place in the minds of some boards of education.

The answers to the general questions reported in this chapter seem to indicate a growing awareness of the possibility of suit in cases of tort liability. It was interesting to note that while many of the practices herein reported were in conflict with expert opinion, when the school head was asked questions of general nature, his values seemed to be complimentary with those of the experts. A salient indication of this common point of view should be noted by the fact that ten of the sixteen administrators interviewed indicated that they or their boards of education would favor legislation that would permit boards to purchase insurance that would permit claims of tort liability.

Chapter IV presents a summary and analyses of the responses to the interview-questionnaire and compares these responses to the theoretical position of the experts described in Chapter III. As a result of this procedure, certain findings, conclusions and recommendations are presented in the final chapter of this report.
CHAPTER V

SUMMARY, FINDINGS AND CONCLUSIONS, AND RECOMMENDATIONS

A major purpose of this study, relating to school board immunity to tort liability, has been to first establish a sound theoretical position for boards of education to take regarding practices that possibly would involve tort liability in the light of national trends as well as social changes. To do this the writer selected four experts in the field of school law and by means of an interview guide conducted an interview with each of the experts discussing particular problem areas in the field of tort liability. The writer then corroborated the points of view gleaned from the writings of other experts in the field with the remarks of the experts interviewed.

A second purpose has been to discover and analyze the practices currently being carried on in selected school systems in Ohio that might lend themselves to litigation and to determine if and how such boards protect themselves from liability or justify their immunity. This has been accomplished by selecting sixteen schools varying in size and types representative of school systems in Ohio. Six
general areas of practice were discussed with administrators from each of the school systems involved. The six areas of concern included athletic insurance and related practices; board policy involving the use of school facilities by outside groups; practices involving student accident insurance policies; practices involving employee liability insurance; practices involving school food service; and general questions of policy and/or practice. These particular areas were selected because of the frequency which they have given rise to litigation involving liability of boards of education. The responses and analyses to the responses are found in chapter four of this report. A further facet of a second purpose was to determine if and how such boards protect themselves or justify their immunity to liability. This purpose was also realized in the responses given by administrators presented in chapter four.

A third purpose has been to make an analysis of these practices and to draw certain conclusions by comparing them with the theoretical position established by legal opinion manifested in court action and in counsel with legal experts. From this process the writer has developed certain guiding principles as recommendations to board members and administrators as they face the ever-widening circle of school involvement in the education of youth.
Summary

The data reported in this manuscript were secured from three major sources: Experts in the field of school law, interviews of selected school districts, as well as a review of current literature of the field and court decisions relating to tort liability as it applies to practices of boards of education.

Chapter I of the study presented a general background to the problem by discussing the ever-broadening role of public education. A statement of the problem as well as the need for the study were then presented. This chapter not only discussed the legal basis for education, but generally reviewed the literature in the field as it related to the problem. In so doing, the writer pointed out the structural as well as the conceptual design of legal evolution. He pointed out here that conceptual change precedes the actual structural change of law. Further pointing out the conceptual change that has prevailed and is prevailing throughout the nation regarding the immunity of boards of education to tort liability, the need of the present study was discussed. The writer further amplified the overview of the study by listing its limitations as well as the procedures used in securing data. A statement of the organization of the report concluded the first chapter.
In Chapter II the writer has given a historical presentation to show a trend of the evolvement of the abrogation of immunity in those states where boards of education are currently held liable for their torts. In so doing, a history of the abrogation of immunity to liability in New York, California, Washington, Oregon and Minnesota were discussed in some detail. The writer also briefly surveyed the other states where compromise in immunity has been maintained by the courts.

In Chapter III the writer has attempted to create a theoretical concept of tort liability as it relates to boards of education based upon the corroboration of expert opinion with the court decisions and the writing in the field. In so doing, he presented the format or interview guide as used with the experts and presented in detail the response of each. As a summary to Chapter III, the writer developed a synthesis of the respondents' answers to be used as a concise theoretical position in analyzing the actual practices discussed in selected schools throughout Ohio and presented in Chapter IV.

Chapter IV has been devoted entirely to practices among certain selected Ohio school districts. The interview-questionnaire guide was basically divided into six sections. In this report each section has been dealt with separately. After presenting and analyzing answers to each
question of each section by school, the writer attempted to again synthesize statements into a summary at the end of Chapter IV.

Findings and Conclusions

After having discussed current practices in sixteen selected schools representing the different sizes and types of districts in Ohio and comparing these practices with the dynamic concept of law expressed by the theorists in Chapter III, the distinction becomes apparent in the following statements:

1. Even though the experts felt that there was no place in the school for group pupil-accident insurance, all schools but one interviewed permitted it to be sold. The writer perceived a certain helpless attitude regarding pupil-accident insurance being sold in the schools at least on the part of the majority of administrators. One must conclude that the insurance companies have developed a clever plan that is attractive to parents and lay people at the same time placing boards of education in an almost indefensible position to deny the sale of it. The writer would point out here a most salient example of a change in conceptual pattern as discussed in Chapter I.

2. While on one hand school boards claim immunity to governmental functions, they are uncertain on the other hand about what is a governmental function and what is a
proprietary function. The very fact that this is being questioned not only by boards of education in Ohio, but also by the courts as related in prior chapters indicates that there may well be a quote "weakening of the wall" in the position normally held by courts for boards of education. The question of governmental function as opposed to proprietary function has been a basic consideration as courts attempt to adjust the structure of the law to the concept of public opinion in compromising the immunity normally granted to boards of education.

3. School boards tend to justify the making of pupil insurance available on the basis of a felt moral liability to protect students.

4. Boards of education feel uncertain about the full intent and meaning of recent legislation in Ohio permitting them to insure employees for liability under certain circumstances provided by this law. Most superintendents interviewed interpreted this law to apply only to school bus drivers and teachers of driver education as well as students riding in the driver training automobile.

5. Boards of education seem to reflect the conceptual change taking place generally regarding security. The writer found that there seems to be a tendency on the part of boards of education to be more insurance minded as time passes.
6. Few administrators and/or boards of education seem to be aware of the abrogation of immunity in other states.

7. Where boards of education are not conforming to theoretical position herein developed in terms of their existing practices, they either assume an apologetic attitude or quickly state the historical immunity granted to boards of education in Ohio from liability for their torts.

8. Boards of education and administrators interviewed seemed inconsistent in their confidence of immunity to liability. On one hand they claimed immunity but on the other hand insisted on being held harmless for injuries resulting from use of school facilities by outside groups.

9. The safety and welfare of pupils is of great concern to school administrators regardless of the board's position of immunity or non-immunity to liability.

10. When questioned about the teachers' involvement in the sale of insurance and the possible license requirement in Ohio, several interviewed seemed unaware that this possibility might exist and also seemed concerned about its possibility when so informed.

11. In each situation where insurance was permitted to be sold and records were available, the premium far exceeded the indemnity (see table of Licking County in the Appendix).

12. All school systems interviewed indicated that threats of suit or at least harsh words have been exchanged
between the schools and parents as a result of questioned liability.

13. Generally speaking schools where insurance is sold, premiums are paid by parents of children who either have additional insurance or could, better afford to be self insured, leaving those who need the insurance most not covered.

14. School food service among Ohio schools interviewed has been in operation, proprietary in nature, but has been free from suits or threats of suits of liability.

15. Administrators are generally not concerned with auditors' findings providing they conscientiously feel that they are acting in the best public interest.

16. Administrators and school boards would be generally inclined to insure for liability even though there is no statutory provision in Ohio if the activity engaged in is unusual and proprietary in nature.

17. As there are pronounced curricular changes, school boards and administrators become more apprehensive about possible liability involved.

18. A majority of school boards and administrators interviewed favored legislation that would impose tort liability on the school district either limited or unlimited.

19. If the national trend of the abrogation of school board immunity to tort liability continues and extends itself into Ohio, many practices now followed by Ohio
schools would provide bases for claims against the board of education.

20. The apologetic attitudes of interviewees could be interpreted as a conceptual change preceding ultimate structural change in the law granting immunity to tort liability to boards of education.

21. The opinions of the experts tended to corroborate the points of view gleaned from the writings of the experts in the field of school law.

22. Boards of Education and superintendents interviewed by the writer are generally not following practices that would be tenable if adjudicated according to trends of present court decisions or to the theoretical position of the experts.

23. The theoretical position determined by the study directly reflects a conceptual change in attitude toward the liability of school districts.

Recommendations

Earlier in this report the writer stated that it was his hope that after analyzing certain practices that currently exist in Ohio schools and relating these practices to the theoretical position of the experts that certain guidelines and recommendations would be concluded that would be helpful to boards of education and administrators as they face the ever-widening circle of school involvement in the education of youth.
General Recommendations to Administrators and Boards of Education

1. School districts as state agencies are created to perform governmental function in the management of school systems. Boards of education should conscientiously attempt to confine their activities to the management of the schools. They should resist attempts from the public to become engaged in proprietary functions unless some method of protecting the public from any type injury can be secured. School districts who do resist carrying on proprietary functions commonly resort to the practice of permitting outside groups to carry on such a function at the same time requiring outside groups to be properly insured and hold harmless the board of education.

2. In those areas where boards of education feel that they have an obligation to function even though such function may be proprietary in nature, it would be well to take every precaution of safety. Some school systems are appointing a director of safety.

3. Where courts have abrogated immunity for the first time, it has without exception, in the writer's research, been as a result of an injury to a pupil or person as a result of an unsafe condition of the school building or structure. Boards of education, therefore, should admonish their employees to keep the structures safe and in good repair.
4. Boards of education should be aware of the full scope of present legislation in Ohio Revised General Code 3313.201. Not only does this statute provide for the purchase of liability insurance to cover employees driving school buses and drivertraining automobiles but also any employee who casually operates a motor vehicle, a motor vehicle with auxiliary equipment, or all self-propelling equipment or trailers owned or operated by the school district. This would, of course, include self-propelled lawn mowers.

5. Since most administrators and/or boards of education interviewed favored some type of modification of liability which boards of education could assume, such feelings should be made known to the legislators without delay.

6. Boards of education should adopt policies that would assure any coach or teacher transporting students to be covered by adequate insurance.

7. Boards of education should not permit students or participating athletes to drive to any school contest. Boards of education should assure by policy that whenever a curricular modification brings about new hazards such as the modification of the present physical education program that instructors are properly informed about the dangers of such a program and carry proper insurance.
Recommendations to the State Board of Education

1. It is recommended that the State Board of Education make provisions through the State Department of Education for reporting and disseminating such information regarding court cases involving liability of school districts among the schools of the state.

2. It is recommended that the laws of the State of Ohio pertaining to schools be published by the State Department of Education and made available to all members of boards of education and school administrators.

3. It is recommended that the State Board of Education investigate the practices of selling group pupil accident insurance among the schools of the state. This could be done by a system of reporting such practices as a part of the annual statistical report now being used by the State Department of Education.

Recommendations to State Universities and Colleges

1. It is recommended that college school law courses include the national trends and concepts of school board liability in addition to the Ohio position relating to liability.

2. It is recommended that the major findings and conclusions of the present study be made available to school administrators, boards of education and universities
offering educational courses preparing people for school superintendency and other administrative positions.

3. It is recommended that further studies be made in the area of school insurance. These studies might well include the comprehensive study of pupil accident insurance as well as an evaluation of practices revealed by the present study.

Recommendations to the Ohio State Legislature

1. It is recommended that permissive legislation be adopted that would permit boards of education to assume at least a limited liability for accidents involving injuries to students resulting from hazards of property.

2. It is recommended that the Ohio State Legislature permit certain claims considered to be claims resulting from moral responsibility of boards of education to be submitted to the now existing court of sundry claims which hears claims of other state and public corporations.

3. It is recommended that the state legislature conduct further studies relating to liability of public corporations and school districts.

4. It is further recommended that a study be conducted by the state legislature to review the possible obsolescence of certain existing statutes relating to school district liability and where such are found to exist to revise them in terms of existing social values and current practices.
APPENDIX A

CORRESPONDENCE RELATING
TO THE STUDY
April 24, 1962

Dr. Martha Ware  
Legal Research Assistant  
National Education Association  
1201 Sixteenth Street  
Washington, D.C.

Dear Dr. Ware:

Dr. Warren Gauerke suggested your name as a source for information which I need in a study currently being made.

My question is: Are you aware of any state where boards of education are permitted to purchase group accident insurance for students and athletes, and/or employee liability insurance? The student accident insurance does not refer to the type carried by boards of education incident to school bus transportation.

I am enclosing a self-addressed envelope for your reply. Thank you very much for your kind assistance,

Sincerely yours,

Thomas B. Southard

TBS:tlh  
Enclosure
Mr. Thomas B. Southard  
Superintendent of Schools  
9-19 North Fifth Street  
Newark, Ohio  

Dear Mr. Southard:  

Enclosed are some materials which should prove useful in your study on accident insurance. You will note that there is a wide variation in practice among boards of education.

Legally, of course, there are fewer problems if boards are authorized by statute to purchase insurance for pupils or for employees. Where no such statute exists, the courts are split on whether boards have the authority to purchase liability insurance when the prevailing view is that, as a governmental entity, they are immune from tort liability. You will find this point discussed in the enclosed Teacher and the Law. Also in this publication is a discussion of Workmen's Compensation.

As you might imagine, a legal discussion of governmental immunity and the various court decisions could be quite lengthy and perhaps would not be of much interest to you. If you are doing a comprehensive study I could give you many citations to cases and to discussions of cases in the school law literature. However, if you are more interested in the practice--what is being done--I believe the enclosed information will suffice. If you do need more detailed legal information, please write to me again to let me know the purpose and extent of your study. At that time, I would be happy to go into more detail and give a bibliography.

I would suggest that you read some of the court cases contained in our annual Research Reports on the Pupil's Day in Court and the Teacher's Day in Court on the subject of teacher liability for pupil injury, if you are interested in this aspect of the subject. You have received these reports through your subscription to the Educational Research Service.
Please note that the enclosed study of tort liability and the surveys by the Cincinnati and Chicago schools are being sent on a loan basis. We shall be happy to have you keep them for three or four weeks.

Sincerely yours,

Martha L. Ware
Assistant Director,
Research Division
April 24, 1962

Dr. Ed Bolmeier  
Duke University  
Durham, North Carolina

Dear Dr. Bolmeier:

I am currently doing a research project in the general area of tort liability and liability immunity as it will apply to boards of education. In talking with Dr. Warren Gauerke, he mentioned that currently you have a student writing in this precise area. I would like very much to have the opportunity to correspond with this study so that perhaps our studies could complement each other.

If possible, I would like to have your student's name and address, and where I may get in touch with him.

Sincerely yours,

Thomas B. Southard

TBS:tlh
Mr. Thomas B. Southard  
Superintendent of Schools  
19 North Fifth Street  
Newark, Ohio  

Dear Mr. Southard:

In response to your inquiry of April 24, I can state that we have had a doctoral dissertation presented last week dealing with tort liability in school districts. The title of the dissertation is "Trends in Tort Liability of School Districts as Revealed by Court Decisions," by David V. Martin, whose address is as follows:

Office of Insititutional Studies  
2127 Myrtle Drive  
Durham, North Carolina

I might add that in my opinion this is a very excellent dissertation and was well defended at the examination. I cannot say at this time whether or not it is to be published but hope it can be.

Sincerely yours,

E. C. Bolmeier  
Director of Graduate Studies

ECB/b
April 24, 1962

National Education Association
1201 Sixteenth Street
Washington, D.C.

Gentlemen:

Please send to me the publication "Who is Liable for Pupil Injuries?" October, 1950.

If there is any charge, please send a bill to me.

Sincerely yours,

Thomas B. Southard

TBS:tlh
April 24, 1962

State Department of Education
Springfield, Illinois

Gentlemen:

Please send to me a copy of the school law for your state which refers to tort liability in school districts. I shall be happy to reimburse you for any cost involved including mailing.

Sincerely yours,

Thomas B. Southard

TBS:tlh
Mr. Thomas B. Southard
Superintendent of Schools
Newark, Ohio

Dear Mr. Southard:

Your letter of April 24th has been referred to the undersigned for attention.

I am glad to send you a copy of the 1961 School Code of Illinois and refer you to page 462 thereof where you will find the so-called "Tort Liability" Act as it applies to school districts. This legislation was enacted in 1959 following the decision of the Illinois Supreme Court in the Molitor case wherein the court abrogated the immunity formerly enjoyed by school districts for torts committed by their agents and employees.

For your information I am enclosing a copy of the ruling of the Court in the above case. I believe a reading of this decision will give you the background for the legislation attempting to limit the action and the amount recoverable in each separate cause.

Very truly yours,

Kenneth H. Lemmer
Legal Adviser

L;L
April 24, 1962

State Department of Education
Sacramento, California

Gentlemen:

Please send to me a copy of the school law for your state which refers to tort liability in school districts. I shall be happy to reimburse you for any cost involved including mailing.

Sincerely yours,

Thomas B. Southard

TBS:tlh
State of California
DEPARTMENT OF EDUCATION
May 1, 1962

Mr. Thomas B. Southard, Superintendent
Newark Public Schools
9-19 North Fifteenth Street
Newark, Ohio

Dear Mr. Southard:

Your letter of April 24, 1962, asks for a copy of "the school law" for California which refers to tort liability in school districts. There is no single law which covers this rather complex problem, there being numerous Education Code sections and some Government Code sections which are pertinent.

There is also a quantity of case law (decisions of our appellate courts) which interpret the statutes. Since our State Supreme Court, last January, abolished the doctrine of sovereign immunity in California, public school districts are in much the same position as private entities.

Very truly yours,

Laurence D. Kearney
Administrative Adviser

LDK;kg
State Department of Education
Olympia, Washington

Gentlemen:

Please send to me a copy of the school law for your state which refers to tort liability in school districts. I shall be happy to reimburse you for any cost involved including mailing.

Sincerely yours,

Thomas B. Southard

TBS:tlh
Mr. Thomas B. Southard  
Superintendent of Schools  
Newark Public Schools  
9-19 North Fifth Street  
Newark, Ohio

Dear Mr. Southard:

We have received your letter of the 24th in which you request a copy of the school law which refers to tort liability in school districts in the State of Washington.

The Following is an excerpt from the Revised Code of Washington:

28.58.030 Tort Liability. No action shall be brought or maintained against any school district or its officers for any noncontractual act or omission of the district, its agents, officers, or employees, relating to any park, playground, or field house, athletic apparatus or appliance, or manual training equipment, whether situated in or about any school house or elsewhere, owned, operated, or maintained by the school district.

The Section from the Revised Code of Washington quoted above is taken from Chapter 92 of the Laws of 1917.

Very truly yours,

Llewellyn O. Griffith  
Consultant  
Administrative Services
Mr. Thomas B. Southard, Superintendent
Newark Public School System
19 North Fifth Street
Newark, Ohio

Dear Mr. Southard:

I just received the answer to your question regarding the rate on Student Accident Insurance, if purchased on a five-year premium plan basis.

I'm sorry to report that the policy is issued only on an annual basis and the rate remains constant for one year only.

Mr. Jones, Continental's branch office manager, hastened to inform me that in Ohio, as well as throughout the country the Company has not raised a rate for thirteen years, since the plan was first initiated and sold. This, of course, indicates the plan and rate is actuarially sound.

If you have any further questions about this or any other plans of Student Accident Insurance, please feel free to call me.

I am enclosing another brochure regarding the type of plan and rates.

Sincerely yours,

Frank Kobe
APPENDIX B

COPY OF INTERVIEW GUIDE

AND

INTERVIEW-QUESTIONNAIRE USED

IN THE STUDY
INTERVIEW OUTLINE

1. Have you sensed a changing attitude by courts in respect to the common law and tort liability immunity historically granted to boards of education?

2. What should the position of boards of education be in respect to the assumption of liability for student accidents as well as employee accidents?

3. In states where liability immunity for boards has traditionally been held, would the policy of allowing a pupil group accident policy, premiums paid by parents, tend to be construed as an admission of moral liability and thus impute legal liability?

4. Could you give some broad principles of reasoning that have caused courts in some states to take a new look at board of education liability immunity?

5. Where enabling legislation has permitted boards to assume liability from what source has been the impetus for such legislation?

6. Are you aware of any state where boards of education are permitted to purchase group accident insurance for students and athletes and/or employee liability insurance?

7. In states where a specified limit of liability is prescribed by statute, do you believe that courts may hold that if there is liability such liability can be limited by fact only?
QUESTIONNAIRE-INTERVIEW GUIDE

ATHLETIC INSURANCE AND RELATED PRACTICES

1. Does the board of education permit pupil accident insurance to be sold in the schools which also provides coverage for athletes?

2. Do you permit participating students to drive to athletic events and other contests?

3. Do coaches or teachers drive? Does the board of education protect them with proper insurance?

4. Does the athletic association carry separate athletic insurance coverage? How much? What kind?

5. Are private cars, driven by parents and other adults, permitted to transport students to athletic and other school activities?

6. Does a medical doctor attend all games and practices?

BOARD POLICY INVOLVING USE OF SCHOOL FACILITIES BY OTHER GROUPS

1. Does your board require outside groups to carry liability insurance? How much?

2. Does your board permit parochial schools to use athletic or other public school facilities?

3. Does it require parochial schools to carry liability insurance?
PRACTICES INVOLVING STUDENT ACCIDENT INSURANCE POLICIES

1. Does your board permit student accident insurance to be sold in school? What company? Why?

2. Who collects premium?

3. Do the teachers give the premium receipts to principal?

4. How many pupils covered by insurance in your district? Total enrollment?

5. How much is the total and individual premium?

6. How much indemnity was paid last year?

7. Has suit ever been threatened or initiated because of accident?

8. Who reports claims?

9. What factors caused you and/or your board of education to permit student accident insurance?
   a. Pressure from parents of injured child
   b. Local insurance agents
   c. Desire for inexpensive athletic coverage
   d. A felt moral liability
   e. Other

PRACTICES INVOLVING EMPLOYEE LIABILITY INSURANCE

1. Does your board of education insure all employees to the extent permitted by statute? 3311.20.1

2. Does your board of education insure all employees who regularly drive school vehicles?

3. Does your board of education insure employees who occasionally drive school vehicles?
PRACTICES INVOLVING SCHOOL FOOD SERVICE

1. Does your board of education carry on a school food program?

2. Has suit ever been threatened or brought against the board of education in connection with the food service program?

GENERAL QUESTIONS OF POLICY OR PRACTICE

1. Would you advise your board of education to carry liability insurance even though no liability has ever been recognized by courts in Ohio if your board were involved in some activity that is not normally considered a school involvement? (Hypothetical case.)

2. In light of the President's emphasis on physical development, many new and enriched programs are being developed in the public schools. Many of these vigorous exercises could cause injury to children participating as required by the board of education. Does your board of education required liability insurance for physical education teachers? Do you feel the board of education should pay the premium by statute or stipend?

3. In consideration of the broadening field of involvement in education, do you favor legislation that would permit boards of education to purchase insurance that would permit claims of tort liability?
Mr. Thomas Southard  
19 North Fifth Street  
Newark, Ohio

Dear Mr. Southard:

At the request of Mr. Robert B. French, Superintendent of Schools, the following information is being furnished:

Student Accident Insurance--Claims Paid 1960/61  
$29,659.

Very truly yours,

Harold L. Howard  
Clerk-Treasurer

HLB/b
Mr. Thomas B. Southard  
Newark High School  
Newark, Ohio  

Dear Sir:  

There are 248 students under school insurance at Hebron School.

Sincerely,  

Twila Bole  
Secretary  

_tb
May 9, 1962

Mr. Thomas B. Southard, Superintendent
19 North Fifth Street
Newark, Ohio

Dear Mr. Southard:

We enjoyed your short visit very much.

The insurance agent writing student accident "Pioneer" has answered your questions as follows:

1. Q. What was the total premium?
   A. $8903.00

2. Q. What is the individual premium?
   A. $2.00 plus, depending on type of contract.

3. Q. Number insured
   A. 2679 enrolled including football.

4. Q. Amount of claims
   A. Paid to date $4924.00 plus approximately $2000.00 unpaid claims.

Sincerely,

Jno. H. Eisaman
Clerk - Treasurer

JHE:cr
OPINION
SUPREME COURT
OF ILLINOIS
United States of America

State of Illinois)ss.
Supreme Court )ss.

At a term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of November in the year of our Lord, one thousand nine hundred and fifty-nine, within and for the State of Illinois.

Present: Byron O. House
Chief Justice
Justice Joseph Daily Justice Walter V. Schaefer
Justice George W. Bristow Justice Harry B. Hersey
Justice Ray I. Klingbiel Justice Charles H. Davis

Grenville Beardsley, Attorney General
Robert G. Miley, Marshal

Attest: Mrs. Earle Benjamin Searcy, Clerk

Be it Remembered, that afterwards, to-wit on the 16th day of December, 1959, the same being one of the days in vacation after the term of court aforesaid, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

Norma Molitor, a minor, et al., etc.,

Thomas Molitor, a minor, etc.,
No. 35249 vs. Appellant
Appeal from
Kaneland Community Unit District
No. 302, Appellee
Circuit Court
Kane County
Docket No. 32549—Agenda 59—September, 1959
Thomas Molitor, Appellant, v. Kaneland Community
Unit District No. 302, Appellee.

MR. JUSTICE KLINGBIEL delivered the opinion of the
court:

Plaintiff, Thomas Molitor, a minor, by Peter his
father and next friend, brought this action against Kane-
land Community Unit School District for personal injuries
sustained by plaintiff when the school bus in which he was
riding left the road, allegedly as a result of the driver's
negligence, hit a culvert, exploded and burned.

The complaint alleged, in substance, the negligence
of the school district, through its agent and servant, the
driver of the school bus; that plaintiff was in the exercise
of such ordinary care for his own safety as could be reason-
ablely expected of a boy of his age, intelligence, mental
capacity and experience; that plaintiff sustained permanent
and severe burns and injuries as a proximate result of
defendant's negligence, and prayed for judgment in the
amount of $56,000. Plaintiff further alleged that defend-
ant is a voluntary unit school district organized and
existing under the provisions of sections 8-9 to 8-13 of
the School Code and operates school buses within the dist-
122, pars. 8-9 to 8-13 and par. 29-5.

The complaint contained no allegation of the existence
of insurance or other nonpublic funds out of which a Judgment
against defendant could be satisfied. Although plaintiff's
abstract of the record shows that defendant school district
did carry public liability insurance with limits of $20,000
for each person injured and $100,000 for each occurrence,
plaintiff states that he purposely omitted such an allega-
tion from his complaint.

Defendant's motion to dismiss the complaint on the
ground that a school district is immune from liability for
tort was sustained by the trial court, and a judgment was
entered in favor of defendant. Plaintiff elected to stand
on his complaint and sought a direct appeal to this court
on the ground that the dismissal of his action would violate
his constitutional rights. At that time we held that no
fairly debatable constitutional question was presented so as
to give this court jurisdiction on direct appeal, and accord-
ingly the cause was transferred to the Appellate Court for
the Second District. The Appellate Court affirmed the deci-
sion of the trial court and the case is now before us again
on a certificate of importance.
In his brief, plaintiff recognizes the rule, established by this court in 1898, that a school district is immune from tort liability, and frankly asks this court either to abolish the rule in toto, or to find it inapplicable to a school district such as Kaneland which was organized through the voluntary acts of petition and election by the voters of the district, as contrasted with a school district created nolens volens by the State.

With regard to plaintiff's alternative contention, we do not believe that a logical distinction can be drawn between a community unit school district organized by petition and election of the voters of the district pursuant to article 8 of the School Code (Ill. Rev. Stat. 1957, chap. 122, pars. 8-9 to 8-13), and any other type of school district, insofar as the question of tort liability is concerned. All are "quasi-municipal corporations" created for the purpose of performing certain duties necessary for the maintenance of a system of free schools. The reasons for allowing or denying immunity apply equally to all school districts without regard to the manner of their creation. We are unwilling to further complicate the law relating to governmental torts by now drawing highly technical distinctions between the various types of Illinois school districts and making tort liability depend thereon.

Thus we are squarely faced with the highly important question— in the light of modern developments, should a school district be immune from liability for tortiously inflicted personal injury to a pupil thereof arising out of the operation of a school bus owned and operated by said district?

It appears that this court has not reconsidered the question of the tort immunity of school districts for over fifty years. During these years, however, this subject has received exhaustive consideration by legal writers and scholars in articles and texts, almost unanimously condemning the immunity doctrine. See, Borchard, Governmental Liability in Tort, 34 Yale L. J. 1; Green, Freedom of Litigation, 38 Ill. L. Rev. 355; Harno, Tort Immunity of Municipal Corporation, 4 Ill. L. Q. 28; Prosser on Torts, chap. 21, sec. 108; Pugh, Historical Approach to the Doctrine of Sovereign Immunity, 13 La. L. Rev. 476; Repko, American Legal Commentary on the Doctrines of Municipal Tort Liability, 9 Law and Contemporary Problems 214; Rosenfield, Governmental Immunity from Liability for Tort in School Accidents, 5 Legal Notes on Local Government 380; Approaches to Governmental Liability in Tort 9 Law and Contemporary Problems 182; Note: Limitations on the Doctrine of Governmental Immunity from Suit, 41 Col. L. Rev. 1236; Note: The
Sovereign Immunity of the States, The Doctrine and Some of its Recent Developments, 40 Minn. L. Rev. 234; Tort Claims Against the State of Illinois and Its Subdivisions, 47 N.W.L. Rev. 914.

Historically we find that the doctrine of the sovereign immunity of the state, the theory that "the King can do no wrong," was first extended to a subdivision of the state in 1788 in Russell v. Men of Devon, 2 Term Rep. 671, 100 Eng. Rep. 359. As pointed out by Dean Prosser (Prosser on Torts, p. 1066), the idea of the municipal corporate entity was still in a nebulous state at that time. The action was brought against the entire population of the county and the decision that the county was immune was based chiefly on the fact that there was no corporate funds in Devonshire out of which satisfaction could be obtained, plus a fear of multiplicity of suits and resulting inconvenience to the public.

It should be noted that the Russell Case was later overruled by the English courts, and that in 1890 it was definitely established that in England a school board or school district is subject to suit in tort for personal injuries on the same basis as a private individual or corporation (Crisp v. Thomas, 63 L. T. N. S. 756 (1890).) Non-immunity has continued to be the law of England to the present day. See: Annotation, 160 A. L. R. 7, 84.

The immunity doctrine of Russell v. Men of Devon was adopted in Illinois with reference to towns and counties in 1870 in Town of Walthan v. Kemper, 55 Ill. 346. The, in 1898, eight years after the English courts had refused to apply the Russell doctrine to schools, the Illinois court extended the immunity rule to school districts in the leading case of Kinnare v. City of Chicago, 171 Ill. 332, where it was held that the Chicago Board of Education was immune from liability for the death of a laborer resulting from a fall from the roof of a school building, allegedly due to the negligence of the Board in failing to provide scaffolding and safeguards. That opinion reasoned that since the State is not subject to suit nor liable for the torts or negligence of its agents, likewise a school district, as a governmental agency of the State, is also "exempted from the obligation to respond in damages, as a master, for negligent acts of its servants to the same extent as is the State itself." Later decisions following the Kinnare doctrine has sought to advance additional explanations such as the protection of public funds and public property, and to prevent the diversion of tax moneys to the payment of damage claims. Leviton v. Board of Education, 374 Ill. 594; Thomas v. Broadlands Community Consolidated School District 348 Ill. App. 567.
Surveying the whole picture of governmental tort law as it stands in Illinois today, the following broad outlines may be observed. The General Assembly has frequently indicated its dissatisfaction with the doctrine of sovereign immunity upon which the Kinnare Case was based. Governmental units, including school districts, are now subject to liability under the Workmen's Compensation and Occupational Disease Acts. (Ill. Rev. Stat. 1957, chap. 48, pars. 138.1, 172.36; McLaughlin v. Industrial Board 281 Ill. 100; Board of Education v. Industrial Com. 301 Ill. 611.) The State itself is liable, under the 1945 Court of Claims Act, for damages in tort up to $7,500 for the negligence of its officers, agents, or employees, (Ill. Rev. Stat. 1957, chap. 37, pars. 439.1-439.24.) Cities and villages have been made directly liable for injuries caused by the negligent operation of fire department vehicles, and for actionable wrong in the removal or destruction of unsafe or unsanitary buildings. (Ill. Rev. Stat. 1957, chap. 24, pars. 1-13, 1-16.) Cities and villages, and the Chicago Park District, have also been made responsible by way of indemnification, for the nonwilful misconduct of policemen. (Ill. Rev. Stat. 1957, chap. 24, par. 1-15.1, chap. 105, par. 33.23K.) In addition to the tort liability thus legislatively imposed upon governmental units, the courts have classified local units of government as "quasi-municipal corporations" and "municipal corporations." And the activities of the latter class have been categorized as "governmental" and proprietary," with full liability in tort imposed if the function is classified as "proprietary." The incongruities that have resulted from attempts to fit particular conduct into one or the other of these categories have been the subject of frequent comment. Rhynne, Municipal Law, p. 732; Phillips, "Active Wrongdoing" and the Sovereign Immunity Principle in Municipal Tort Liability, 38 Ore. L. Rev. 122, 124; Davis, Tort Liability of Governmental Units, 40 Minn. L. Rev. 751, 774; Note, Tort Claims Against the State of Illinois and Its Subdivisions, 47 N.W.L. Rev. 914, 921; Green, Freedom of Litigation (Ill.): Municipal Liability for torts, 38 Ill. L. Rev. 355. See also Roumbos v. City of Chicago, 332 Ill. 70.

Of all of the anomalies that have resulted from legislative and judicial efforts to alleviate the injustice of the results that have flowed from the doctrine of sovereign immunity the one most immediately pertinent to this case is the following provision of the Illinois School Code. "Any school district, including any non-high school district, which provides transportation for pupils may insure against any loss or liability of such district, its agents or employees, resulting from or incident to the ownership, maintenance or use of any school bus. Such insurance shall be carried
only in companies duly licensed and authorized to write such coverage in this state. Every policy for such insurance coverage issued to a school district shall provide, or be endorsed to provide, that the company issuing such policy waives any right to refuse payment or to deny liability thereunder within the limits of said policy, by reason of the non-liability of the insured school district for the wrongful or negligent acts of its agents and employees, and, its immunity from suit, as an agency of the state performing governmental function.

Thus, under this statute, a person injured by an insured school district bus may recover to the extent of such insurance, whereas, under the Kinnare doctrine, a person injured by an uninsured school district bus can recover nothing at all.

Defendant contends that the quoted provision of the School Code constitutes a legislative determination that the public policy of this State requires that school districts be immune from tort liability. We can read no such legislative intent into the statute. Rather, we interpret that section as expressing dissatisfaction with the court-created doctrine of governmental immunity and an attempt to cut down that immunity where insurance is involved. The difficulty with this legislative effort to curtail the judicial doctrine is that it allows each school district to determine for itself whether, and to what extent, it will be financially responsible for the wrongs inflicted by it.

Coming down to the precise issue at hand, it is clear that if the above rules and precedents are strictly applied to the instant case, plaintiff's complaint, containing no allegation as to the existence of insurance, was properly dismissed. On the other hand, the complaint may be held to state a good cause of action on either one of two theories, (1) application of the doctrine of Moore v. Moyle, 405 Ill. 555, or (2) abolition of the rule that a school district is immune from tort liability.

As to the doctrine of Moore v. Moyle, that case involved an action for personal injuries against Bradley University, a charitable educational institution. Traditionally, charitable and educational institutions have enjoyed the same immunity from tort liability as have governmental agencies in Illinois. (Parks v. Northwestern University, 218 Ill. 381.) The trial court dismissed the complaint on the ground that Bradley was immune to tort liability. The Supreme Court reversed, holding that the complaint should not have been dismissed since it alleged that Bradley was fully insured. Unfortunately, we must
admit that the opinion in that case does not make the basis of the result entirely clear. (See Note, 45 Ill. L. Rev. 776.) However, the court there said, p. 564 * * *, that the question of insurance in no way affects the liability of the institution, but would only go to the question of the manner of collecting any judgment which might be obtained, without interfering with, or subjecting the trust funds or trust held property to, the judgment. The question as to whether or not the institution is insured in no way affects its liability any more than whether a charitable institution holding private non-trust property or funds would affect its liability. These questions would only be of importance at the proper time when the question arose as to the collection of any judgment out of non-trust property or assets. * * * Judgments may be obtained, but the question of collection of the judgment is a different matter." If we were to literally apply this reasoning to the present school district case, we would conclude that it was unnecessary that the complaint contain an allegation of the existence of insurance or other nonpublic funds. Plaintiff's complaint was sufficient as it stood without any reference to insurance, and plaintiff would be entitled to prosecute his action to judgment. Only at that time, in case of a judgment for plaintiff, would the question of insurance arise, the possession of nonpublic funds being an execution rather than a liability question. It cannot be overlooked, however, that some doubt is cast on this approach by the last paragraph of the Moore opinion, where the court said, "It appears that the trust funds of Bradley will not be impaired or depleted by the prosecution of the complaint, and therefore it was error to dismiss it." These words imply that if from the complaint it did not appear that the trust funds would not be impaired, the complaint should have been dismissed. If that is the true holding in the case, then liability itself, not merely the collectability of the judgment, depends on the presence of nontrust assets, as was pointed out by Justice Crampton of his dissenting opinion. The doctrine of Moore v. Moyle does not, in our opinion, offer a satisfactory solution. Like the provision of the School Code above quoted, it would allow the wrong doer to determine its own liability.

It is a basic concept underlying the whole law of torts today that liability follows negligence, and that individuals and corporations are responsible for the negligence of their agents and employees acting in the course of their employment. The doctrine of governmental immunity runs directly counter to that basic concept. What reasons, then, are so impelling as to allow a school district, as a quasi-municipal corporation, to commit wrongdoing without any responsibility to its victims, while any individual of private corporation would be called to task in court for such tortious conduct?
The original basis of the immunity rule has been called a "survival of the medieval idea that the sovereign can do no wrong," or that "the King can do no wrong." (38 Am. Jr., Mun. Corps., sec. 573, p. 266.) In Kinnare v. City of Chicago, 171 Ill. 332, the first Illinois case announcing the tort immunity of school districts, the court said "The State acts in its sovereign capacity, and does not submit its action to the judgment of courts and is not liable for the torts or negligence of its agents, and a corporation created by the State as a mere agency for the more efficient exercise of governmental functions is likewise exempted from the obligation to respond in damages, as master, for negligent acts of its servants to the same extent as is the State itself, unless such liability is expressly provided by the statute creating such agency." This was nothing more nor less than an extension of the theory of sovereign immunity. Professor Borchard has said that how immunity ever came to be applied in the United States of America is one of the mysteries of legal evolution. (Borchard, Governmental Liability in Tort, 34 Yale L.J.1,6.) And how it was then infiltrated into the law controlling the liability of local governmental units has been described as one of the amazing chapters of American commonlaw jurisprudence. (Green, Freedom of Litigation, 38 Ill. L. Rev. 355, 356.). It seems, however, a prostitution of the concept of sovereign immunity. Professor Borchard has said that how immunity ever came to be applied in the United States of America is one of the mysteries of legal evolution. (Borchard, Governmental Liability in Tort, 34 Yale L.J.1,6.) And how it was then infiltrated into the law controlling the liability of local governmental units has been described as one of the amazing chapters of American commonlaw jurisprudence. (Green, Freedom of Litigation, 38 Ill. L. Rev. 355, 356.). It seems, however, a prostitution of the concept of sovereign immunity to extend its scope in this way, for no one could seriously contend that local governmental units possess sovereign powers themselves." 54 Harv. L. Rev. 438,439.

We are of the opinion that school district immunity cannot be justified on this theory. As was stated by one court, "The whole doctrine of governmental immunity from liability for tort rests upon a rotten foundation. It is almost incredible that in this modern age of comparative sociological enlightenment, and in a republic, the medieval absolutism supposed to be implicit in the maxim, 'the King can do no wrong,' should exempt the various branches of the government from liability for their torts, and that the entire burden of damage resulting from the wrongful acts of the government should be imposed upon the single individual who suffers the injury, rather than distributed among the entire community constituting the government, where it could be borne without hardship upon any individual, and where it justly belongs." (Barker v. City of Sante Fe, 47 N.M. 85, 136 P. 2d 480,482.) Likewise, we agree with the Supreme Court of Florida that in preserving the sovereign immunity theory, courts have overlooked the fact that the Revolutionary War was fought to abolish that "divine right of kings" on which the theory is based.
The other chief reason advanced in support of the immunity rule in the more recent cases is the protection of public funds and public property. This corresponds to the "no fund" or trust fund" theory upon which charitable immunity is based. This rationale was relied on in Thomas v. Broadlands Community Consolidated School District 348 Ill. App. 567, where the court stated that the reason for the immunity rule is "that it is the public policy to protect public funds and public property to prevent the diversion of tax monies. In this case school funds to the payment of damage claims." This reasoning seems to follow the line that it is better for the individual to suffer than for the public to be inconvenienced. From it proceeds defendant's argument that school districts would be bankrupted and education impeded if said districts were called upon to compensate children tortiously injured by the negligence of these districts' agents and employees.

We do not believe that in this present day and age, when public education constitutes one of the biggest businesses in the country, that school immunity can be justified on the protection of public funds theory.

In the first place, analysis of the theory shows that it is based on the idea that payment of damage claims is a diversion of educational funds to an improper purpose. As many writers have pointed out, the fallacy in this argument is that it assumes the very point which is sought to be proved, i.e., that payment of damage claims is not a proper purpose. "Logically, the 'no fund' or 'trust fund' theory is without merit because it is of value only after a determination of what is a proper school expenditure. To predicate immunity upon the theory of a trust fund is merely to argue in a circle, since it assumes an answer to the very question at issue, to wit, what is an educational purpose? Many disagree with the 'no fund' doctrine to the extent of ruling that the payment of funds for judgments resulting from accidents or injuries in schools is an educational purpose. Nor can it be properly argued that as a result of the abandonment of the commonlaw rule the district would be completely bankrupt. California, Tennessee, New York, Washington and other states have not been compelled to shut down their schools. (Rosenfield, Governmental Immunity from Liability for Tort in School Accidents, 5 Legal Notes on Local Government, 376-377.): Moreover, this argument is even more fallacious when viewed in the light of the Illinois School Code, which authorizes appropriations for "transportation purposes" (Ill. Rev. Stat. 1957, chap. 122, par. 17-6.1), authorizes issuance of bonds for the "payment of claims" (Ill. Rev. Stat. 1957, chap. 122, par 19-10), and authorizes expenditures of school tax funds for liability
insurance covering school bus operations. (Ill Rev. Stat. 1957, chap. 122, par. 29--11a.) It seems to us that the payment of damage claims incurred as an adjunct to transporta­tion is as much a "transportation purpose" and therefore a proper authorized purpose as are payments of other expenses involved in operating school buses. If tax funds can properly be spent to pay premiums on liability insur­ance, there seems to be no good reason why they cannot be spent to pay the liability itself in the absence of insurance.

Neither are we impressed with defendant's plea that the abolition of immunity would create grave and unpredictable problems of school finance and administration. We are in accord with Dean Green when he disposed of this problem as follows: "There is considerable talk in the opinions about the tremendous financial burdens tort liability would cast upon the taxpayer. In some opinions it is stated that this factor is sufficient to warrant the courts in protecting the taxpayer through the immunity which they have thrown around municipal corporations. While this factor may have had compulsion on some of the earlier courts, I seriously doubt that it has any great weight with the courts in recent years. In the first place, taxation is not the subject matter of judicial concern where justice to the individual citizen is involved. It is the business of other departments of government to provide the funds required to pay the damages assessed against them by the courts. Moreover, the same policy that would protect governmental corporations from the payment of damages for the injuries they bring upon others would be equally pertinent to a like immunity to protect private corporations, for conceivably many essential private concerns could also be put out of business by the damages they could incur under tort liability. But as a matter of fact, this argument has no practical basis. Private concerns have rarely been greatly embarrassed, and in no instance, even more immunity is not recognized, has a municipality been seriously handicapped by tort liability. This argument is like so many of the horribles paraded in the early tort cases when courts were fashioning the boundar­ies of tort law. It has been thrown in simply because there was nothing better at hand. The public's willingness to stand up and pay the cost of its enterprises carried out through municipal corporations is no less than its insistence that individuals and groups pay the cost of their enterprises. Tort liability is in fact a very small item in the budget of any well organized enterprise." Green, Freedom of Litiga­tion, 38 Ill. L. Rev. 355, 378.

We are of the opinion that none of the reasons advanced in support of school district immunity have any true validity today. Further we believe that abolition of such immunity may tend to decrease the frequency of school
bus accidents by coupling the power to transport pupils with the responsibility of exercising care in the selection and supervision of the drivers. As Dean Harno said: "A municipal corporation today is an active and virile creature capable of inflicting much harm. Its civil responsibility should be co-extensive. The municipal corporation looms up definitely and emphatically in our law, and what is more, it can and does commit wrongs. This being so, it must assume the responsibilities of the position it occupies in society." (Harno, Tort Immunity of Municipal Corporations, 4 Ill. L.Q. 28, 42.) School districts will be encouraged to exercise greater care in the matter of transporting pupils and also to carry adequate insurance covering that transportation, thus spreading the risk of accident, just as the other costs of education are spread over the entire district. At least some school authorities themselves have recognized the need for the vital change which we are making. See Editorial, 100 American School Board Journal 55, Issue No. 6, June, 1940.

"The nation's largest business is operating on a blue-print prepared a hundred, if not a thousand, years ago. The public school system in the United States, which constitutes the largest single business in the country, is still under the domination of a legal principle which in great measure continued unchanged since the Middle Ages, to the effect that a person has no financial recourse for injuries sustained as a result of the performance of the State's functions ** That such a gigantic system, involving so large an appropriation of public funds and so tremendous a proportion of the people of the United States, should operate under the principles of law so old and so outmoded would seem impossible were it not actually true." Rosenfield, Governmental Immunity from Liability for Tort in School Accidents, 9, Law and Contemporary Problems 358, 359.

We conclude that the rule of school district tort immunity is unjust, unsupported by any valid reason, and has no rightful place in modern day society.

Defendant strongly urges that if said immunity is to be abolished, it should be done by the legislature, not by this court. With this contention we must disagree. The doctrine of school district immunity was created by this court alone: Having found that doctrine to be unsound and unjust under present conditions, we consider that we have not only the power, but the duty, to abolish that immunity. "We closed our courtroom doors without legislative help, and we can likewise open them." Pierce v. Yakima Valley Memorial Hospital Association, 43 Wash. 2d 162, 260 P. 2d 765, 774.
We have repeatedly held that the doctrine of stare
decisis is not an inflexible rule requiring this court to
blindly follow precedents and adhere to prior decisions,
and that when it appears that public policy and social
needs require a departure from prior decisions, it is our
duty as a court of last resort to overrule those decisions
and establish a rule consonant with our present day concepts
of right and justice. (Bradley v. Fox, 7 Ill. 2d 106, 111;
Nudd v. Matsoukas, 7 Ill 2d 608, 615; Amann v. Faidy, 415
Ill. 422.) As was stated by the New Jersey Supreme Court
in overruling the doctrine of charitable immunity: "The
unmistakable fact remains that judges of an earlier generation
declared the immunity simply because they believed it to be
a sound instrument of judicial policy which would further
the moral, social and economic welfare of the people of the
State. When judges of a later generation firmly reach a
contrary conclusion they must be ready to discharge their
own judicial responsibilities in conformance with modern
concepts and needs. It should be borne in mind that we are
not dealing with property law or other fields of the law
where stability and predictability may be of the utmost
concern. We are dealing with the law of torts where there
can be little, if any, justifiable reliance and where the
rule of stare decisis is admittedly limited. See Pound,
supra, 13 N.A.C.C. A.L.J. at 22, Seavey, Cogitations on
Torts, 68 (1954), Cowan, 'Torts,' 10 Rutgers L. Rev. 115,
N.J. 29, 141 A. 2d 276.

In here departing from stare decisis because we believe
justice and policy require such departure, we are nonetheless
cognizant of the fact that retrospective application of our
decision may result in great hardship to school districts
which have relied on prior decisions upholding the doctrine
of tort immunity of school districts. For this reason we
feel justice will best be served by holding that, except
as to the plaintiff in the instant case, the rule herein
established shall apply only to cases arising out of future
occurrences. This result is in accord with a substantial
line of authority embodying the theory that an overruling
decision should be given only prospective operation whenever
injustice or hardship due to reliance on the overruled de-
cisions would thereby be averted. Gelpoke v. City of Dubuque,
68 U.S. 175, 17 L. ed. 519; Harmon v. Auditor of Public
Accounts, 123 Ill. 122 (where decision sustaining validity
of statute authorizing bond issue is, subsequent to the
issue, overruled, overruling decision operates prospectively);
Davies Warehouse Co. v. Bowles, 321 U.S. 144, 88 L. ed. 635;
People ex rel. Attorney General v. Salomon, 54 Ill. 39
(where public officers have relied on statutes subsequently
held unconstitutional, decision given only prospective
Likewise there is substantial authority in support of our position that the new rule shall apply to the instant case. (Dooling v. Overholzer, 243 F. 2d 825; Shioutakon v. District of Columbia, 236 F. 2d 666; Durham v. United States, 214 F. 3d 862; Barker v. St. Louis County, 340 Ill. 956, 104 S.W. 2d 371; Farrior v. Northeast Mortgage Security Co., 92 Ala. 176, 9 So. 532; Haskett v. Maxey, 134 Ind. 182, 33 N.E. 358; Dauchey v. Farney, 173 N.Y. Supp. 530.) At least two compelling reasons exist for applying the new rule to the instant case while otherwise limiting its application to cases arising in the future. First, if we were to merely announce the new rule without applying it here, such announcement would amount to mere dictum. Second, and more important, to refuse to apply the new rule here would deprive appellant of any benefit from his effort and expense in challenging the old rule which we now declare erroneous. Thus there would be no incentive to appeal the upholding of precedent since appellant could not in any event benefit from a reversal invalidating it.

It is within our inherent power as the highest court of this State to give a decision prospective or retrospective application without offending constitutional principals. Great Northern Railway Co. v. Sunburst Oil & Refining Co., 287 U.W. 358, 77 L. ed. 360.

Although ordinarily the cases which have invoked the doctrine of prospective operation have involved contract or property rights or criminal responsibility, the basis of the doctrine is reliance upon an overruled precedent. Despite the fact that the instant case is one sounding in tort, it appears that the "reliance test" has been met.
here. We do not suggest that the tort itself was committed in reliance on the substantive law of torts, i.e., the bus driver did not drive negligently in reliance on the doctrine of governmental immunity, but rather that school districts and other municipal corporations have relied upon immunity and that they will suffer undue hardship if abolition of the immunity doctrine is applied retroactively. In reliance on the immunity doctrine, school districts have failed to adequately insure themselves against liability. In reliance on the immunity doctrine, they have probably failed to investigate past accidents which they would have investigated had they known they might later be held responsible therefor. Our present decision will eliminate much of the hardship which might be incurred by school districts as a result of their reliance on the overruled doctrine, and at the same time reward appellant for having afforded us the opportunity of changing an outmoded and unjust rule of law.

For the reasons hereinexpressed, we accordingly hold that in this case the school district is liable in tort for the negligence of its employee, and all prior decisions to the contrary are hereby overruled.

The judgment of Appellate Court sustaining the dismissal of plaintiff's complaint is reversed and the cause is remanded to the circuit court of Kane County with instructions to set aside the order dismissing the complaint, and to proceed in conformity with the views expressed in this opinion.

Reversed and remanded, with directions.

DAVIS and HERSHEY, J.J., dissenting.
APPENDIX D

TABLES
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<thead>
<tr>
<th>Category</th>
<th>Classification</th>
<th>Name</th>
<th>Pupil Population</th>
</tr>
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*Football included in regular experience.

**No football coverage.
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<th>Number Students Participating</th>
<th>Per cent Participating</th>
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<th>Earned Premium</th>
<th>Losses Incurred To Date</th>
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</tbody>
</table>
GLOSSARY

Abrogation - The act or process of abrogating; authoritative repeal.

Anachronism - A chronological error.

Anomaly - A deviation from a rule, type or form.

Certiorare - A write issued by a superior to an inferior court of record requiring the latter to send in to the former some proceeding therein pending, or the record and proceedings in some case already terminated in cases where the procedure is not according to the course of the common law.

Dictum - An authoritative, dogmatic, or positive utterance, a pronouncement.

Ex rel - At the information of; by the relation.

Immunity - An exemption from serving in an office, or performing duties which the law generally requires other citizens to perform.

Liability - Responsibility; the state of one who is bound in law and justice to do something which may be enforced by action.

Negligence - The omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or the doing of something which a prudent and reasonable man would not do.

Nolens volens - Whether willing or unwilling.

Proprietary - In a strict sense, this word signifies one who is master of his actions, and who has the free disposition of his property.

Quasi-corporations - A term applied to those bodies or municipal societies, which, though not vested with the general powers of corporations, are yet recognized, by statutes or immemorial usage, as persons or aggregate corporations, with precise duties which may be enforced, and privileges which may be maintained by suits of law.

Remand - To continue to hold.
Res ipsa loquitur - The thing answers for itself. A phrase often used in actions for injuries by negligence where no proof of negligence is required beyond the accident itself.

Respondeat superior principle - The legal principle which holds the master responsible for the acts of his servants.

Rex non inuria - The king can do no wrong.

Safe Place Doctrine - The duty to make a place safe even in absence of statute.

Stare decisis - To abide by, or adhere to, decided cases.

Supre - Above; over

Tort - A private or civil wrong or injury. A wrong independent of contract.

Ultra vires - The modern technical designation, in the law of corporations, of acts beyond the scope of their powers, as defined by their charters or acts of incorporation.
Books


Weltzin, J. F. *The Legal Authority of the American Public School.* Grand Forks, N.D.: Mid-west Book Concern, 1931.
Public Documents


Monographs


Research Division of the National Education Association.

Research Division of the National Education Association.

Research Division of the National Education Association.


Reports


Unpublished Material


I, Thomas Berton Southard, was born near Granville, Ohio, July 22, 1920. I received my secondary education at Pataskala High School, Pataskala, Ohio. My undergraduate training was received both at Union College, Schenectady, New York, and Capital University, Columbus, Ohio. I received the Bachelor of Arts degree from Capital University in 1947. I received the degree Master of Arts from The Ohio State University in 1951. During 1956 and 1957, I was the recipient of the E. E. Lewis Fellowship Award. During this year in residency, I completed the preliminary and general examinations and was admitted to candidacy for the degree Doctor of Philosophy in the spring of 1957.

My professional experience began in 1942 when I became principal of the Jersey Elementary School in Licking County. During subsequent years, I have served as executive head of Hartford and Hebron Schools also in Licking County. In 1954 I became superintendent of the Whitehall Public Schools where I served until 1956. In 1956 I came to Newark as administrative assistant to the board of education. I served in this capacity for one year, until August of 1957, when I was appointed superintendent of the New Public Schools where I am currently serving in this capacity.