

A STUDY OF TORT LIABILITY IN
MICHIGAN SCHOOL DISTRICTS

Thesis for the Degree of Ed. D.
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Lewis Chapman Wood
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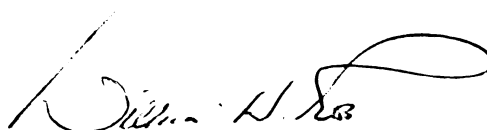
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ABSTRACT

A STUDY OF TORT LIABILITY IN MICHIGAN SCHOOL DISTRICTS

by Lewis Chapman Wood

Generally, research in the area of school connected liability for torts has been approached from a study of statutes, judicial opinion, and court cases. In this study, appointed school administrative staff members were interviewed using essentially a case study approach.

The Michigan Supreme Court has held that, except in instances involving the use of motor vehicles, the doctrine of governmental immunity from torts applies to school districts but that teachers and other school employees may be held liable for their negligence. Strong dissenting minority court opinions against upholding school non-liability, and recent decisions declaring liability of municipalities and charitable organizations, have made the status of school district liability somewhat uncertain.

Purpose of the study.--The purpose of the study is:
(1) to identify and examine problems of school operation relating to liability of school districts and/or school personnel;(2) to determine the effect present liability laws have on school policies, practices, and programs in Michigan school districts; and (3) to make recommendations to school

officials, boards of education, and others, relating to problems due to liability of school districts and/or school personnel.

Methodology.--An interview schedule was designed around three fictitious situations to allow interviewees free expression to realistic problems and to insure uniform consistent deliberation of certain aspects of the liability of school districts and school personnel. School officials interviewed, included superintendents of schools, business managers, and district assistant superintendents in Michigan school districts. The data were stratified by school size and the school official's perception of school liability.

Conclusions.--The statements listed below are the major findings of the study. (1) Michigan public school administrators take an apprehensive view toward possible and potential school liability hazards but are confused as to the nature and extent of liability hazards under existing law. (2) General liability insurance is purchased by approximately three-fourths of Michigan school districts. School officials appear to lean heavily on the advice of insurance agents and the expectation that insurance affords sufficient protection. (3) Programs and services in Michigan public schools appear to be reinforced along conventional lines by possible liability hazards. (4) Prescribed standards of care, implied under present liability laws, have

apparently not been translated into plainly set forth specifics relating to the operation of public school educational programs. (5) Insurance appears to be over-rated by school officials as a means of protecting the injured and as a device for protecting teachers and other employees from possible personal liability. (6) Liability has not generally been the basis for school policies, rules, regulations, and operating procedures in Michigan school districts.

Recommendations.--The major recommendations of the study include: (1) That clarification of the confusing status of school liability in Michigan be considered a legislative responsibility. (2) That legislation abrogating governmental immunity be passed which would impose strict liability without fault as a condition. (3) That laws be enacted giving protection to teachers from financial loss due to negligence. (4) That school liability be considered a premise supporting well defined administrative policies and operating procedures. (5) That school officials acquire a sound knowledge of their particular state's school tort liability laws. (6) That professional education associations promote improved legislation relating to liability.

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TABLE OF CONTENTS

	Page
ACKNOWLEDGMENT.	11
LIST OF TABLES.	vi
 Chapter	
I. INTRODUCTION	1
Importance of Study	1
Need for the Study	2
Statement of the Problem	5
Questions Studied by This Investigation	6
Methodology.	7
Limitations of the Study	14
Definition of Terms	15
Organization of Following Chapters	19
II. REVIEW OF RELATED STUDIES AND GENERAL BASIS OF LIABILITY	22
Survey of Related Literature	23
Education and Our Court System	35
Tort Liability.	38
Governmental Immunity	43
Duties Not Spelled Out in Law.	45
Liability Hazards.	46
Summary	50
III. STATUS OF LIABILITY IN MICHIGAN AND OTHER SELECTED STATES	53
Liability Status of Michigan Public Schools.	53
School District Immunity Upheld in Court	55
Liability of School Board Members	68
Liability of School Employees.	69
Indemnity for Damages Recovered	76
School District Liability in Selected States	76
Summary	85

Chapter		Page
IV.	MICHIGAN SCHOOL OFFICIALS PERCEPTION OF SCHOOL LIABILITY AND SCHOOL LIABILITY RISKS	88
	Introduction	88
	School Liability of General Concern	89
	General Knowledge of School Officials.	90
	Perception of School Liability Hazards in Transportation	95
	Perception of General School District Liability Hazards	100
	Liability of Individuals	104
	Liability Hazards	111
	Summary.	126
V.	GENERAL LIABILITY INSURANCE	129
	The Purchase of General Liability Insurance.	130
	Reasons for Carrying Liability Insurance.	131
	Benefits Provided by Liability Insurance.	136
	Characteristics of Liability Insurance	137
	Scheduled Hazards Type of Insurance Policy.	139
	General Comprehensive Liability Form	140
	Types of Liability Policies Purchases by Schools	141
	Groups of Exposures.	142
	Insurance Purchasing Practices	150
	Summary.	157
VI.	SCHOOL PRACTICES AND PRECAUTIONS RELATING TO LIABILITY	160
	Liability Laws Uphold Standards of Care	160
	School Policies, Operating Procedures, and Regulations Pertaining to Liability and Standards of Conduct.	162
	Precautions and Limitations in School Practice	167
	Perception of Liability and School Practice and Policy	174
	Size of School District and School Practice and Policy	176
	Summary.	182
VII.	SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS	186
	Summary.	186
	Conclusions	190

Chapter	Page
Recommendations.	193
Suggestions for Further Study	195
APPENDIX A	196
BIBLIOGRAPHY.	207

LIST OF TABLES

Table	Page
1. Knowledge of School Officials in Selected Areas of Inquiry	92
2. School District Liability Hazards in Transportation as Viewed by Michigan School Officials	97
3. Opinion of School Officials Regarding School District General Liability Hazards	102
4. Responses Indicating the Possible Liability of Individuals.	106
5. Hazards Cited by School Officials According to Number Cited Per School Official. . . .	113
6. Comparison of Yes and No Responses in Various Areas of Possible Liability	115
7. Areas of School Operation Considered Liability Hazards by School Officials	122
8. Number of Officials Viewing Liability Insurance As Desirable or Necessary Compared to the Number of Schools That Carry Liability Insurance	130
9. Reasons Given for Carrying Liability Insurance by Frequency of Response	131
10. Opinion As to the Degree of Protection Provided Employees and the Injured by School Liability Insurance.	132
11. Number of Responses Indicating General Liability Exposures by Type of Policy	138
12. Comparison of Liability Coverage by Type of Exposure.	143
13. Number of Responses Showing Automobile Liability Insurance by Policy Form	146

Table		Page
14.	Limits of Liability and Coverage by Frequency.	151
15.	Number of School Districts Using Legal and Insurance Counsel Regarding the Purchase of Liability Insurance.	152
16.	Number of School Districts Who Purchase Liability Insurance on Bids or Proposals and Number Who Waive Governmental Immunity in Insurance	155
17.	Number of Responding Officials Indicating Liability As a Basis for School Policies and Procedures	163
18.	Distribution of Responses Indicating Policies Not Designed Due to Liability but Viewed As Diminishing Liability Hazards	166
19.	Responses Indicating Precautions in School Operations.	168
20.	Distribution of Responses Showing Precautions Due to Liability by School Program Areas. .	170
21.	Distribution of Responses Showing Effect of Liability on School Service by Area . . .	173
22.	Relationship Between School Officials' Perception of Liability and School Policies, Practices, Regulations, and Precautions Relating to School Liability.	177
23.	Board of Education and Staff Differences by Class	179
24.	Relationship Between Size of School District and School Policies, Practices, Regulations, and Precautions Relating to School Liability	183

CHAPTER I

INTRODUCTION

Importance of Study

Education today is a vast gigantic public enterprise, swelled with growing numbers of pupils, attempting to meet broad, extended goals of education resulting in school programs which include many and varied activities unknown to the traditional school.

As a general rule school districts have been immune from legal suits arising from the tortious acts of their officers, agents, or employees, unless state statutes state otherwise. On the other hand, school employees, who serve the public at salaries which do not allow them to accumulate wealth to protect themselves against tort liability suits, are liable for their own negligence unless protected by state statute.

Today experts in the field of law¹ and insurance²

¹Harry N. Rosenfield, "Liability for School Accidents," An address delivered at the Annual Meeting of the Michigan High School Athletic Association, December 1, 1955 (Lansing, Michigan: The Association, 1955).

²W. O. Hildebrand (ed.), Agency Bulletin, Reprint of condensed version of address by Laurence D. Smith, Michigan Association of Insurance Agents, Lansing, Michigan, to the Annual Convention of Michigan Association of Insurance Agents, September 16, 1955.

point out possible loopholes in the application of the doctrine of governmental immunity in Michigan, direct school officials' attention to successful steps toward partial or complete abrogation of the immunity doctrine in other states, and cite a growing trend toward a more liberal attitude in favor of the injured party by our courts.

The conflict and cross currents of operating a modern educational program under confusing, uncertain, and possibly antiquated tort liability laws is the genesis of this study.

Need for the Study

The effect of liability, both corporate and personal, on school practices, policies, and programs is of concern to the teaching profession, school board members, school officials, and to the public at large. The extent of the problem and relative urgency have engaged the attention of numerous professional writers in the field of school law and the subject has occasionally been the topic of research by educators.

At first glance liability may appear unrelated and unimportant as far as school program is concerned. Careful reflection of one facet only: the possible liability of the teacher in event of injury to a child in or out of the classroom appears as not merely incidental to the teacher's environs but rather a factor which may modify and condition the pupil-teacher relationship.

Certainly teachers do not wish to become involved in liability suits nor would they choose to perform knowingly an act which might cause a suit to be brought against the school district. On the other hand, the school's curriculum and the program within any particular area or classroom may be limited by the deliberate cautiousness of teachers to keep out of harm's way.

Even though the possible effect of liability on the school's program be disregarded, study of the topic is justified by the increasing interest and attention being given to the uncertain perplexities of liability connected with school operations. A growing interest nationally is evidenced by the increasing number of publications and of articles in professional journals devoted to the subject. This greater concern has developed because of (1) a more liberal attitude in favor of the injured party by our courts; (2) an increased tendency by society in general to expect compensation for injury, accompanied by an apparently greater willingness to seek compensation for damages through the courts; and (3) the successful liability suits (though limited to certain states) in which the injured have been awarded damages, in spite of school immunity, through court-declared exceptions. The partial abrogation of the immunity doctrine by statute, statutes which appear to nullify school non-liability, and a general dissatisfaction of governmental immunity by the courts are also factors.

In Michigan, there can be little doubt that a primary component of current concern is rooted in recent decisions handed down by the Michigan Supreme Court which appear to have left the time-honored doctrine of governmental immunity from tort liability tottering and uncertain.

The question may be posed, "What do school officials do when faced with the possibility of greater vulnerability under liability laws?" Do school officials upon clashing with apparent liability risk circumscribe the activities of the pupils and teachers? When confronted by apparent liability risks, what measures are taken by school officials to protect the school district and its employees from possible hazards?

The question of whether liability or non-liability results in any differences in the standard of care provided children also needs to be investigated, for the interest of children is of primary importance. This factor should be of interest to those responsible for changes in the law.

The problem of liability is frequently approached from a study of statutes, judicial opinion, and court cases which tend to offer solutions in terms of legal causes and remedy. This approach has been effective in identifying dangers, pointing out relative importance, and establishing a general awareness of liability. This approach fails to make any evaluation of the effect of liability on the school and its program from the school's point of view nor does it

provide data peculiar to the school and education indicating possible desirable changes in law relating to liability.

The problem of liability is one of growing importance due to the general trends to be found in the area of liability, cited previously, and those concerning the probable future direction of the modern school program. Risk of liability could possibly impede progress in the future expansion of the school program for the very activities peculiar to the modern educational program are the very same activities most likely to be found outside the scope of immunity protection. The personnel, certificated and uncertificated, to operate these activities have the least defined legal roles regarding their legal position and responsibility. The activities engaged in are likely to be those most prone to divided responsibility, lack of close organization, distant supervision, and accident; all factors increasing the hazards of liability risk.

Statement of the Problem

The purpose of this study is: (1) to identify and examine problems of school operation relating to the liability of school districts and/or school personnel; (2) to determine the effect present liability laws have on school policies, practices, and programs in Michigan school districts; and (3) to make recommendations to school officials and boards of education relating to problems due to liability in

administration of schools as well as recommendations for changes in liability laws.

Questions Studied by This Investigation

This study is descriptive research primarily, but does employ inferential statistics. Appropriate statistical hypotheses (null or directional) are confined to the data analysis sections of the study.³ The ten problems for investigation which provide guidance for this study are:

1. To what degree are school officials acquainted with knowledge and documentary information pertaining to liability?
2. What is the perception of school connected liability risks and hazards held by school officials?
3. What are the prevailing insuring practices pertaining to general liability of schools in Michigan?
4. Is protection against school connected liability merely an insurance problem affecting the business-management aspects of school operation or is it viewed as a hazard which may circumscribe and limit the school program?
5. What measures and precautions are taken by school officials to meet possible liability hazards?

³Joseph L. Saupe, "A Plea for Order," Michigan State University, College of Education Quarterly, 7:3-9, Summer, 1961. Saupe feels that the statistical hypothesis should be reserved for the data-analysis section of the research report. He reasons that: "It [statistical hypothesis] is an integral part of the statistical tool and should not be separated from this tool. Elevating the 'null' hypothesis to the outset of the report tends to place undue attention

6. To what extent have the hazards of liability placed or imposed limitations and restrictions on school programs in Michigan School Districts?
7. What areas of school connected liability are of most concern to school officials?
8. To what extent has school connected liability formed a base for school policies and regulations insuring safety, providing for adequate supervision, and eliminating liability hazards?
9. Is there a relationship between how school officials perceive liability hazards and precautionary practices and policies of the school system pertaining to liability?
10. Do precautionary practices and policies due to liability vary by size of school district?

Methodology

Essential background for this study consisted of the collection, review, and interpretation of legal principles pertaining to tort liability and the examination of liability insuring procedures, forms, and coverages. A second preparatory step providing additional background for the study was the usual survey of prior research and related information.

on the statistical techniques of the study. These techniques are merely tools and should not be allowed to overshadow the substance of the research."

Upon completion of the preliminary review of the literature, a proposal for the study was submitted to the writer's doctoral committee. The means of obtaining data for the study, as presented in the accepted proposal, was to be by personal interview using a schedule to assist in obtaining uniform data.

Development of interview schedule.--The interview schedule was designed around three fictitious cases to allow the interviewee free expression to realistic situations.⁴ Questions relating to the cases followed each case to insure uniform, consistent deliberation of predetermined aspects of the case bearing on the liability of school districts and/or school personnel.

Data relating to the school district, information on school policies, practices, precautions, and particulars regarding the school district's liability insurance program were added to the schedule as direct questions. One page was devoted to insurance information which could be obtained from the school's liability policy at the time of the interview or could be completed at a later date by school officials and mailed to the writer. This procedure would allow the school official to secure accurate information regarding insurance even though the policy was not available at the time of the interview.

⁴Appendix A.

Upon completion of the above instrument, designated schedule one, it was found necessary to reorganize and rearrange the order of the questions in order to avoid suggesting answers to the interviewee. Questions were again reworked to clarify meaning and to provide continuity in an interview situation. This revision was designated schedule two.

The above, schedule two, was pretested by interviewing teachers. It was still apparent that some questions still suggested answers to subsequent questions. Again some items were placed in different order to overcome this handicap. In other cases the wording of the question was changed, usually toward questions of an open-ended nature, to avoid giving clues to answers and clarify the meaning of questions. This was designated schedule three.

This revision, schedule three, was pretested by interviewing a limited number of teachers, principals, and school superintendents. Again there was some evidence of conflict between providing the interviewee sufficient information to answer the questions intended and giving information which, at least in part, provided clues to answers or tended to influence interviewee's response. The schedule was still too long to be given in a length of time of one and one-half hours, thus the least essential items had to be eliminated. This was done after consultation with two of the members of the writer's doctoral committee.

Schedule four included the above revisions and was the schedule used for this study.⁵ The conflict between providing information sufficient to convey the intent of the question and providing clues to answers was resolved in the direction of a minimum of clues to answers. The schedule is thus designed to provide a guide to follow in the interview which has to be fitted to the knowledge of the interviewee and the general flow of discussion and line of thought in each interview situation.

Selection of interviewees.--Since the data was to be obtained by personal interview of public school officials, limitations imposed by time and finance dictated confinement of the study to a particular geographical area of the State. The area selected was south-western and south-central Michigan which included the Counties of Allegan, Barry, Berrien, Branch, Calhoun, Eaton, Ionia, Ingham, Jackson, Kalamazoo, Kent, Muskegon, Ottawa, St. Joseph, Van Buren, and Washtenaw.

All high school districts operating schools within the geographical area selected were then listed by school membership and stratified on the following basis:

Class 1. School districts with a membership of
4,000 or more pupils.

Class 2. School districts with a membership greater
than 1,000 but less than 4,000 pupils.

⁵Appendix A.

Class 3. School districts with a membership of less than 1,000 pupils.

The numerical limits chosen to determine the classes were selected as those in which it might be expected that there would be differences in:

1. Local availability to the school district of legal advice and opinion.
2. Use of consulting attorneys and insurance experts.
3. Size of school district administrative staff and resultant specialization in administrative duties.

Since there were only sixteen school districts listed in Class One, the school district with the least membership was eliminated, giving fifteen school officials to be interviewed in this class. Fifteen school districts from each of the other two classes were chosen by random sampling procedure employing a table of random numbers.

Time of study.--School officials in the selected schools were interviewed during the summer of 1961. At this time there was speculation as to the effectiveness of governmental immunity undoubtedly based on strong dissenting opinion expressed in recent school⁶ liability suits and recommendations by insurance interests urging that school districts

⁶Watson v. School District of Bay City, 324 Mich. 1;
Richards v. School District of the City of Birmingham,
348 Mich. 490.

in Michigan consider insuring against possible liability.⁷

The interviews were completed prior to the flurry of decisions in non-school cases handed down against institutions formerly immune in late 1961 and early 1962.⁸

Nature of interviews.--Each school was contacted and interview dates set requesting at least one and one-half hours of time for the interview. Officials interviewed included superintendents of schools, school business managers, and district assistant superintendents. No differentiation is possible in the study as to the title of the official interview^{ed} because of the frequency, especially in large school systems, of dealing with more than one official in a single interview. The interviewer was often referred to an official for particular information and on some occasions two or more officials were interviewed.

Time spent in each school system ranged from one hour to three hours depending on the time which the busy school official could spare in a tight schedule, time spent in discussing various items on the interview schedule, and availability of factual information relating to insurance. Where possible the school's general liability insurance policy was personally examined and data recorded directly from the policy.

⁷Hildebrand, op. cit., "Liability of School Districts," Michigan Agency Bulletin (Lansing: The Agency, 1958); Berthold Woodhams, Circular letter to Michigan Boards of Education (Howell, Michigan: By the author, n.d.).

⁸Cf. post., pp. 64-66; Parker v. Port Huron Hospital,

Recording of information.--Information was written and recorded on an interview schedule which provided space for answers during the interview. After the interview the schedule and recorded data was reexamined and added to for completeness. This was necessary for it was impossible to conduct a good interview and do more than jot down notes.

Treatment of data.--Based upon answers given in the interviews all completed questionnaires were classified as to the official's perception of school liability as follows:

- Class P-1: Concern only with the liability of the school district. Liability of personnel not a hazard.
- Class P-2: Concern is shown for both the liability of the school district and the liability of school personnel.
- Class P-3: Concern is shown for liability of personnel. School district is immune or only liable to the extent of loss of immunity at a future time.

Thus the data from each school was ^{used} stratified by school size and the school official's perception of liability at the time of the interview.

Tables were constructed with nine columns, one column for each possible classification based on size and perception

of liability; such a table being made for each question. From the data broken down in these tables, data was summarized, appropriate tables made, statistical work completed, and the report written.

Limitations of the Study

Since each state has different statutes and legal interpretations, it follows that the status of tort liability of school districts and their employees will vary from state to state. This study is confined to the state of Michigan and thus any inferential generalizations from this study are contingent upon the particular circumstances to be found in each state.

This study is limited to public school districts which operate high schools and does not include non-public schools, institutional schools, and institutions of higher learning.

Liability insurance, where dealt with in this study, includes only liability insurance carried by the board of education to provide protection for the school district or its employees from the hazards of tort liability. Such insurance implies a jury damage suit settlement and does not include casualty accident insurance which does not depend on liability as a factor for settlement of claim. Workmen's Compensation Insurance is excluded from this study as again liability is not a factor for claim settlement.

This study does not include liability under breach of contract.

A further limitation is the apparent and inevitable fact that the writer is not learned in the law nor in insurance, but is by professional training an educator and school administrator. Thus the study is confined and limited, as it deals with technical and professional information peculiar to law and insurance, to rather generally available knowledge and information within the scope of the writer's own specialized training in school administration.

Definition of Terms

Accident.--An event which takes place without one's foresight or expectation; an event that proceeds from an unknown cause and therefore not expected.⁹

Act.--A statute; a bill which has been enacted by the legislature into a law.¹⁰

Agent.--One who acts for the insurance company in negotiating or effecting a contract for insurance.

Appeal.--Any complaint to a superior court of an injustice done by an inferior one.¹¹

⁹James A. Ballentine, Law Dictionary with Pronunciations (Rochester, New York: The Lawyers Co-Operative Publishing Co., 1930), p. 13.

¹⁰Ibid., p. 19.

¹¹Ibid., p. 90.

Bodily injury liability.--The liability which may arise from injury or death of another person.¹²

Broker.--An insurance broker ordinarily is a solicitor of insurance who does not represent insurance companies in a capacity as agent but places orders for coverage with companies designated by the insured or with companies of his own choosing. The Michigan law has no provision for licensing brokers.¹³

Common law.--That body of unwritten law, founded upon general custom, usage, or common consent, and in natural justice, or reason; it is custom long acquiesced in or sanctioned by immemorial usage and by judicial decision.¹⁴ The retention of the common law in Michigan is expressly stated in the Michigan Constitution as follows: "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."¹⁵

Comprehensive policy. All-risk insurance with certain named exceptions.¹⁵

¹²Michigan Insurance Reference Manual (sixth edition; Lansing, Michigan: Michigan Association of Insurance Agents, 1958), p. 158.

¹³Ibid.

¹⁴Ballentine, op. cit., p. 243.

¹⁵Mich. Const. 1908, Schedule Sec. 1.

Contractual liability.--Liability assumed under any contract or agreement.¹⁷

Coverage.--The guarantee against specific losses provided under the terms of the insurance policy. The word is used synonymously with the word "insurance," or "protection."¹⁸

Damages.--Indemnity to the person who suffers loss or harm from an injury; a sum recoverable as amends for a wrong.¹⁹

Exposure.--This term refers chiefly to the state of being open or subject to loss from some hazard or contingency.²⁰

Insurance.--A contract whereby one undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event.²¹

Interview schedule.--Frame of reference used to structure the interview between individual respondent and interviewer.

Liability.--Broadly, any legally enforceable obligation. The term is most commonly used in a pecuniary sense.²²

¹⁷Ibid., p. 162.

¹⁸Ibid., p. 162.

¹⁹Ballentine, op. cit., p. 325.

²⁰Michigan Insurance Reference Manual, op. cit., p. 165.

²¹Ballentine, op. cit., p. 666.

²²Michigan Insurance Reference Manual, op. cit., p. 169.

Liability limits.--The sum or sums beyond which a liability insurance company does not protect the insured on a particular policy.²³

Named perils.--Named peril policies specify what hazards are insured against, contrary to so-called all risk policies.²⁴

Negligence.--The omission to do something which a reasonable man, guided by those considerations which ordinarily regulate human affairs, would do, or do something which a prudent and reasonable man would not do.²⁵

Products liability insurance.--Provides protection against claims arising out of the use, handling or consumption of a production.²⁶

Property damage insurance.--Protection against liability for damage to the property of another not in the care, custody, and control of the insured.²⁷

Proximate cause.--That cause of an injury which, in natural and continuous sequence, unbroken by any efficient

²³Ibid., p. 170.

²⁴Ibid., p. 174.

²⁵Ballentine, op. cit., p. 857.

²⁶Michigan Insurance Reference Manual, op. cit., p. 176.

²⁷Ibid., p. 177.

intervening cause, produces the injury, and without which the injury would not have occurred.²⁸

Stare decisis.--The doctrine that decisions of the court should stand as precedents for future guidance.²⁹

Tort.--An injury or wrong committed, either with or without force, to the person or property of another.³⁰

Perception.--Comparative apprehension and observable discernment. How one views, discerns, or observes.

Respondent superior.--Let the principal or master be answerable for the acts of his agent or servant.³¹

Statute.--An act of the legislature as an organized body; it is the written will of the legislature, expressed according to the form necessary to constitute it a law.³²

Organization of Following Chapters

Chapter II is a survey of related literature. Prior research in the area of school district liability is cited and the writings of experts in the field ^{are} reviewed. It includes a review of legal principles and essential information upon which liability of school districts and/or school employees is based.

²⁸Ballentine, op. cit., p. 1042.

²⁹Ibid., p. 1228.

³⁰Ibid., p. 1288.

³¹Ibid., p. 1131.

³²Ibid., p. 1231.

Chapter III reports the development and status of liability of school districts and their employees in Michigan and other selected states which have exceptional laws regarding liability or interpretations of laws not common to other states.

Since this research is not designed to answer legal questions or to be used as a legal reference, sources of information are used in Chapters II and III, where possible, which are most likely available to school officials. These sources are secondary in nature, the primary sources being the original cases, statutes, legal digests, and reports located in law libraries.

Chapter IV is a descriptive examination of Michigan school officials' perception of liability and liability hazards connected with the operation of the public schools. Included is an analysis of the general knowledge of tort liability held by school officials.

Chapter V concerns itself with general liability insurance and presents a minimum of basic information relating to liability insurance as an aid in understanding the general subject and the data presented. Data is presented concerning the extent that insurance is purchased by Michigan school districts, characteristics of policies purchased, and purchasing practices of schools.

Chapter VI deals with the effect liability has on school practices and program and investigates possible

relationship between the official's perception of liability and school practices and policies. Likewise, the possible relationship between size of school district and school policies, practices, and precautions is investigated.

Chapter VII contains the summaries of the study, conclusions, and recommendations.

CHAPTER II

REVIEW OF RELATED STUDIES AND GENERAL BASIS OF LIABILITY

It is the purpose of this chapter to present a brief review of related studies and current literature, and, in addition, minimum essentials of the legal aspects of school connected tort liability. Although generalizations pertaining to tort liability should be avoided, certain general principles, legal research, and literature in the field of school law must be examined as a basis for a knowing approach to the problems of school tort liability.

Laws, legal procedure, and judicial interpretations pertaining to the tort liability of school districts do vary from state to state although common-law immunity of school districts from tort liability is the general rule throughout the United States. Decisions in one state are not binding on the courts in other states; nevertheless, the precedent of decided cases in one state often influence the decision of courts in other states, especially where there is an absence of decided cases or lack of statutes within the state which apply to the facts of a particular case.

Legal principles, statutes, and court interpretations may change at any time and thus the picture of the current status of school liability must always take into account the date on which they were viewed. The application of broad concepts of liability to the mundane actions of boards of education, school officials, and teachers must also be modified by variations from state to state.

Survey of Related Literature

Early interest in the subject of tort liability arose as pioneers in school law made mention of the subject in their writings. In 1880, Finley Burke wrote A Treatise on the Law of Public Schools in which he pointed out that courts generally held that school districts may not be held to respond in damages to persons injured non-contractually in or by the public schools.¹ Lyndon A. Smith, in 1883, confirmed Burk's findings.² In a general school law text appearing in 1916, Harvey Voorhees listed cases to show that neither school districts nor boards of education are liable for the trespasses, negligence, and other torts committed by its officers unless made so by statute.³

¹Finley A. Burke, A Treatise on the Law of Public Schools (New York: A. S. Barnes and Co., 1880), 154 pp.

²Lyndon A. Smith, Recent School Law Decisions, U. S. Dept. of Interior, Bureau of Education, Circ. No. 4 (Washington, D. C.: U. S. Government Printing Office, 1883), 82 pp.

³Harvey C. Voorhees, The Law of the Public School System (Boston: Little, Brown, and Company, 1916), pp. 55-56.

Carmichael made the first specific study dealing with tort liability of school districts in 1926 which affirmed that neither school districts nor boards of education are liable for wrongful acts and negligence of their officers or agents under common law.⁴ In the same year J. B. Edmondson's The Legal and Constitutional Basis of a State School System appeared, which dealt specifically with Michigan law and judicial opinion.⁵ Edmondson concluded that school boards were governmental agents and, therefore, exempt from corporate liability for torts and, further, that school officers as individuals enjoyed a similar exemption from the torts of the school district.⁶ The next year, 1927, Trusler's text on school law concurred with the findings of the previous studies.⁷

A notable increase in the literature appears after the year 1930. In this year, J. F. Weltzin brought out his book, The Legal Authority of the American Public School, which discussed at some length and detail the statutes of California, Washington, and Oregon but pointed out that

⁴Hobert V. Carmichael, "Judicial Decisions Relating to Legal Liability of School Boards in the U.S." (unpublished Master's thesis, University of Chicago, Chicago, Illinois, 1926), 94 pp.

⁵James B. Edmondson, The Legal and Constitutional Basis of a State School System (Bloomington, Illinois: Public School Publishing Co., 1926), p. 72.

⁶Ibid., p. 72.

⁷Harry Trusler, Essentials of School Law (Milwaukee: Bruce Publishing Co., 1927), 478 pp.

schools have in relatively few cases been held liable.⁸ Hollenback, in 1931, studied the subject of tort liability of school districts and recommended greater allowance of legal liability although he concluded that generally school districts are not liable for torts.⁹ Clore made a similar study the following year.¹⁰ By 1932 Weltzin noted a change in the attitude of the courts toward limited recovery upon evidence of negligence and cited changes in California, New York, and Washington.¹¹ In 1933 Newton Edwards classic school law textbook, The Courts and the Public Schools, appeared. It devoted two chapters to tort liability and recommended that common-law immunity be abrogated.¹² A revised edition of this book appeared again in 1955.¹³

⁸Joachim Frederic Weltzin, The Legal Authority of the American Public School (Grand Forks, N. Dakota: The Midwest Book Concern, 1931), p. 145. Second edition appeared in 1932.

⁹Warren Hollenback, "Tort Liability of School Districts as Shown by Court Decisions" (unpublished Master's thesis, University of Pittsburg, Pittsburg, 1931), 105 pp.

¹⁰James Clore, Jr., "The Legal Liability of the School District for Damages" (unpublished Doctor's thesis, University of Southern California, Los Angeles, 1932), 224 pp.

¹¹Joachim Frederic Weltzin, "New Tendency in the Tort Liability of School Districts," American School Board Journal, 84:52-53, March, 1932; 84:37-38, April, 1932; 84:31-32, May, 1932; 84:39-40, June, 1932.

¹²Newton Edwards, The Courts and the Public Schools (Chicago: The University of Chicago Press, 1933), 591 pp.

¹³Ibid., 2nd. ed. 1955, pp. 550-563.

Actually the substance of Edwards' first book had appeared earlier in article form in professional journals.¹⁴

A new venture to insure continuous reporting of legal developments in school law appeared in 1933 as M. M. Chambers undertook editing and publishing the Yearbook of School Law which was published annually through the year of 1941.¹⁵ The Yearbook did not appear again until 1950 but has appeared annually since this date with Lee O. Garber as editor.¹⁶

Dice studied the tort liability of individual employees and officers of school districts in 1937 and recommended that school districts accept liability for all school accidents and that school districts be required to carry liability insurance.¹⁷ In 1940, Rosenfield brought out his text, Liability for School Accidents,¹⁸ in which he considered school non-liability of importance to school employees.

¹⁴Newton Edwards, "Tort Liability of School Districts," Elementary School Journal, 30:34, September, 1929.

¹⁵M. M. Chambers (ed.), Yearbook of School Law (Published by editor, annual, 1933-1941).

¹⁶Lee O. Garber, The Yearbook of School Law (Philadelphia: The Author, annual, 1950-56; Danville, Ill.: Interstate Printers and Publishers, Inc., annual, 1957--.)

¹⁷Clifford O. Dice, "Tort Liability of Individual Employees and Officers of School Districts" (unpublished Doctor's thesis, University of Southern California, Los Angeles, 1937), 305 pp.

¹⁸Harry N. Rosenfield, Liability for School Accidents (New York: Harper and Bros., 1940), p. 44.

This author felt that the increasing pressure to recover damages for injury accompanied by school non-liability will mean a larger number of suits against teachers, principals, and superintendents. A year later Poe studied school liability for injuries to pupils and recommended statutes similar to workmen's compensation granting relief for physical education and athletic injuries regardless of negligence or fault.¹⁹ In the same year, 1941, John Cavicchia studied some 300 tort cases throughout the United States and found that the courts almost always upheld the governmental immunity doctrine.²⁰ The Law and Public Education, a new textbook by Hamilton and Mort, also appeared in 1941 and discussed tort liability, giving various reasons for immunity of school districts; however, the authors did not believe that any of the reasons for school immunity were sound.²¹ Punke, in 1943, found that general principles concerning negligence in transportation were more hazy than in other fields.²²

¹⁹Arthur Clayton Poe, "School Liabilities for Injuries to Pupils" (unpublished Doctor's thesis, Teachers College, Columbia University, New York, 1941), 108 pp.

²⁰John Cavicchia, "The Law of Torts as Applied to Public Schools" (unpublished Doctor's thesis, Rutgers University, New Brunswick, New Jersey, 1941), 287 pp.

²¹Robert R. Hamilton and Paul R. Mort, The Law and Public Education (Chicago: The Foundation Press, Inc., 1941), p. 261.

²²Harold H. Punke, Law and Liability in Pupil Transportation (Chicago: The University of Chicago Press, 1942), 291 pp.

Previously Noble²³ and Reeder²⁴ had dealt with pupil transportation and liability insurance as it pertained to pupil transportation.

In 1946 M. M. Chambers recommended an insurance system be set up to provide indemnity to persons injured through accidents due to negligence of public agencies.²⁵

Ted J. Scatterfield studied supreme court decisions in the United States in 1949 and found that tort liability was imposed in New York as a matter of legal precedent, in California by express legislation, in Washington by law of a limited nature, in Oregon and Minnesota by statute but nullified by the courts, and in Connecticut, New Jersey, and New York by enactment of "save-harmless statutes." This investigation concluded with the recommendation that legislation be passed in each state giving complete abrogation of governmental non-liability.²⁶ In the same year, 1949, Myron A. Hessee investigated the personal liability of school employees and concluded that the various states should change their laws to protect teachers from liability

²³M. C. S. Noble, Jr., Pupil Transportation in the United States (Scranton, Pennsylvania: International Text-book Co., 1940), 541 pp.

²⁴Ward G. Reeder, The Administration of Pupil Transportation (Columbus, Ohio: The Educator's Press, 1939), 220 pp.

²⁵M. M. Chambers and D. B. Updike, The Colleges and the Courts, 1941-1945 (Boston: Merrymount Press, 1946), 156 pp.

²⁶Ted J. Scatterfield, "Legal Aspects of Tort

connected with their job or position.²⁷

In 1950 Leo Doherty studied school bus insurance in the United States and found a great variation in practices in bus insurance including public liability and property damage coverage.²⁸ Liability insurance has not often been the subject of comprehensive study. A comparison of insurance costs and insurance premiums was made in 1941 which showed that in the field of transportation insurance only one dollar is paid out by insurance companies for every eight dollars charged in premiums and that other liability insurance purchased by schools have only a 7.9 per cent loss ratio.²⁹

Madaline Remmlein's School Law made its appearance in 1950. It did much to explain application of principles of

Liability in School Districts as Indicated by Recent Court Decisions" (unpublished Doctor's thesis, Temple University, Philadelphia, 1949), p.89.

²⁷Myron A. Hessee, "Personal Liability of Selected School District Employees and a Plan for Their Protection" (unpublished Doctor's thesis, University of Southern California, Los Angeles, 1949), 233 pp.

²⁸Leo D. Doherty, "School Transportation Insurance, Cost and Coverage" (unpublished Doctor's thesis, Teachers College, Columbia University, New York, 1950), 113 pp.

²⁹An Investigation of Insurance Practices, Bulletin No. 9 (Washington, D. C.: The National Association of Public School Business Officials, 1941), 291 pp.

law and to bring legal procedure more clearly and fully within the school administrator's comprehension.³⁰

This year, 1950, also found Edgar Fuller, after analyzing court decisions involving school tort liability, concluding that the solution to the problem of tort liability was most difficult to achieve.³¹

The year 1951 found another publication in school law of a periodical nature entitled The Bi-weekly School Law Letter³² which continues to be published today under the title The National School Law Reporter.³³ The author, Robert R. Hamilton, has warned of the danger of safety patrol operation³⁴ and the use of private automobiles for school uses.³⁵ He feels that "cracks are appearing in the old, rock-ribbed doctrine of immunity."³⁶

³⁰Madaline Kinter Remmlein, School Law (New York: McGraw Hill Book Co., Inc., 1950), 376 pp.

³¹Edgar Fuller, "Tort Liability of School Districts in the United States" (unpublished Doctor's thesis, Harvard University, Cambridge, Mass., 1950), 331 pp.

³²Robert R. Hamilton, The Bi-Weekly School Law Letter (Larmie, Wyoming: The Author, 1951-1954).

³³Robert R. Hamilton, The National School Law Reporter (New London, Conn.: Arthur C. Croft Publications, Bi-Weekly, 1955--).

³⁴The Bi-Weekly School Law Letter, v. 3, no. 1, March 5, 1953.

³⁵The Bi-Weekly School Law Letter, v. 2, n. 25, January 31, 1953.

³⁶The Bi-Weekly School Law Letter, v. 1, no. 1, March 1, 1951.

It was at this time that the United States Office of Education and the National Education Association began to show an increasing interest in the field of school law as evidenced by various publications and "research bulletins."³⁷

In 1952 Marcel Guley studied the legal aspects of injuries in physical education and athletics and recommended that in view of increasing damage judgments it would be wise to take precautions and know the nature and extent of risks.³⁸

At this time, 1952, Linn and Joyner brought forth their textbook, Insurance Practices in School Administration, which analyzed various types of insurance problems and devoted one chapter each to general public liability insurance and automobile insurance.³⁹ It should be noted that technical information on liability insurance is included in many texts in the field of insurance.

In 1953 Johnson found that the records showed few liability suits filed against principals.⁴⁰ Pinckney studied the liability of shop teachers for injuries in school

³⁷Lee O. Garber, The Yearbook of School Law, 1959 (Danville, Ill.: The Interstate Printers and Publishers, 1959), pp. 168-169.

³⁸Marcel Guley, "The Legal Aspect of Injuries in Physical Education and Athletics" (unpublished Doctor's thesis, Syracuse University, Syracuse, 1953), 247 pp.

³⁹Henry H. Linn and Schuyler C. Joyner, Insurance Practices in School Administration (New York: The Ronald Press Company, 1952), pp. 152-275.

⁴⁰J. M. Johnson, "The Legal Status of the Public School Principal in the United States" (unpublished Doctor's thesis, University of North Carolina, Chapel Hill, 1953), 152 pp.

shops,⁴¹ and Remmlein authored her second textbook on school law entitled The Law of Local Public School Administration, in which she discusses the liability of school personnel.⁴²

In 1954 John Hindle investigated the financial responsibilities for injuries of pupils of elementary and secondary schools and found the average cost per injury to be twelve to sixteen dollars and which, in most cases, were borne by the parent; nevertheless, it is pointed out that this ultimately represents a public loss.⁴³

In 1955 Clark Spurlock reviewed decisions of the Federal Supreme Court and, although tort liability was not dealt with, concludes that court decisions imply possibly broad, federal regulatory powers and authority where acts of schools or school officials are brought into conflict with the rights of individuals.⁴⁴

In 1957 Law and The School Business Manager was published which devoted one chapter to pupil transportation

⁴¹Charles W. Pinckney, "Liability of Shop Teachers and School Districts for Pupil Injuries in School Shops Resulting in Court Cases in the United States" (unpublished Doctor's thesis, Pennsylvania State University, State College, 1953), 80 pp.

⁴²Madaline Kinter Remmlein, The Law and Public School Administration (New York: McGraw-Hill Book Co., Inc., 1953), p. 239.

⁴³John H. Hindle, "Financial Responsibilities for Injuries of Pupils of Public Elementary and Secondary Schools" (unpublished Doctor's thesis, Teachers College, Columbia University, New York, 1954), 211 pp.

⁴⁴Clark Spurlock, Education and the Supreme Court (Urbana, Illinois: University of Illinois Press, 1955), p.4.

and another to tort liability. It presents a clear and concise review of tort liability of school districts and school personnel in the United States from the middle of the nineteenth century to date.⁴⁵

In 1958 Dennis Burke analyzed corporal punishment cases in the United States and compared areas of the country and time periods from the viewpoint of number of cases and the nature of the verdicts but found no significant trends.⁴⁶ In this same year Constantine investigated liability for injuries sustained in the transportation of public school pupils.⁴⁷

In 1959 Dennis J. Kigin made a study of tort liability affecting shop teachers and made recommendations for avoiding accidents and litigation but concluded that a teacher who remains in his classroom, instructs his pupils in the proper use of tools, and maintains a constant safety program had little to fear in the way of liability.⁴⁸

⁴⁵Leo O. Garber (ed.), Law and the School Business Manager (Danville, Illinois: Interstate Printers and Publishers, Inc., 1957), pp. 171-217.

⁴⁶Dennis P. Burke, "A Study of Court Cases Resulting from Corporal Punishment in Public Schools" (unpublished Doctor's thesis, University of Pittsburgh, Pittsburgh, 1958).

⁴⁷Gus A. Constantine, "Legal Liability for Injuries Sustained in the Transportation of Public School Pupils" (unpublished Doctor's thesis, Duke University, Durham, N. C., 1958), 216 pp.

⁴⁸Dennis John Kigin, "Tort Liability Affecting Shop Teachers with Provisions for Avoiding Accidents and Litigation," Education Series, No. 74, v. 61, no. 1 (Columbia, Missouri: University of Missouri, 1960), 21 pp. (Based on Doctor's thesis of same title, 1959.)

In the same year Robert W. Schaerer investigated the tort liability status and liability insurance practices in the Indiana schools. He classified the states as: (1) ultra-liberal, where immunity has been waived; (2) ultra-conservative, where immunity is upheld and purchase of liability insurance is prohibited; and (3) a compromise position, where immunity is upheld but liability insurance is permitted. Likewise the study showed that schools in Indiana purchase various forms of liability insurance but that many of them do not safeguard the injured party.⁴⁹

The year 1959 brought forth another book on school law written by Robert Hamilton and Edmund Ruetter entitled Legal Aspects of School Board Operation. One chapter is devoted to liability of school districts and board members.⁵⁰ Gauerke, in 1959, presented a rather unique approach dealing with legal principles and common law as he relates the legal and ethical aspects of the work of school personnel.⁵¹ This author believes that in the past the "immunity rule" has lent "moral support" if not "legal protection" to teachers in

⁴⁹Robert W. Schaerer, "The Tort Liability Status of Indiana Public Schools and the Current Liability Insurance Practices of Indiana Public School Corporation" (unpublished Doctor's thesis, Indiana University, Bloomington, Indiana, 1959), p. 274.

⁵⁰Robert R. Hamilton and E. Edmund Reutter, Jr., Legal Aspects of School Board Operation (New York: Bureau of Publications, Teachers College, Columbia University, 1958), pp. 177-193.

⁵¹Warren E. Gauerke, Legal and Ethical Responsibilities of School Personnel (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1959), 302 pp.

their relationship to pupils.⁵² Volz, in this period, wrote concerning the liability of the superintendent of schools and declared that "any tort liability of the superintendent must be based on his own personal wrongdoing and not upon the wrongful acts of a subordinate."⁵³ In 1961 Garber and Boyer discussed the liability of the school principal and emphasized planning and supervision to avoid tort liability.⁵⁴

The survey of related studies would not be complete without mention of the many articles appearing in such professional journals as The American School Board Journal, Nation's Schools, School and Society, The Elementary School Journal, School Executive, and Safety Education.

Rather than attempt to cite all the conclusions of the various research studies, the writer has chosen to devote the balance of this chapter to legal principles and liability hazards as an explanatory foundation for the study.

Education and Our Court System

Education a state function.--Education is not directly mentioned in the Federal Constitution. The authority for making the public school system a matter of state care is

⁵²Ibid., p. 263.

⁵³Marlin M. Volz, "Personal Liability of the Superintendent," Law and the School Superintendent, edited by Robert L. Drury (Cincinnati: The W. H. Anderson Co., 1958), p. 260.

⁵⁴Lee O. Garber and Randall R. Boyer, "Planning and Supervisory Responsibilities to Avoid Tort Liability," Law and the School Principal, edited by Reynolds C. Seitz (Cincinnati: The W. H. Anderson Co., 1961), pp. 69-90.

derived from the Tenth Amendment to the Constitution of the United States which reserves to the States the powers not delegated to the Federal Government by the Constitution.⁵⁵ Conversely, the powers of the individual states are plenary except where denied by the Federal Constitution. It should be noted, however, that the Federal Government may possess broad potential authority over certain aspects of education for the limits of possible authority to control education growing out of the general welfare cause, civil rights, and freedom of speech and religion are far from clear.⁵⁶

The courts throughout the United States have consistently held that school districts and their governing bodies are creatures of the legislature and that the State's authority over education is complete.⁵⁷ The broad powers of the state have been described by the Michigan Supreme Court as follows:

The legislative power, under the Constitution of the State, is as broad, comprehensive, absolute, and unlimited as that of the parliament of England, subject only to the Constitution of the United States and the restraints and limitations imposed by the people upon such power by the Constitution of the State itself.⁵⁸

Federal law waives sovereign immunity at the Federal level of government. This was accomplished gradually from

⁵⁵United States Constitution.

⁵⁶Spurlock, op. cit., pp. 2-3.

⁵⁷Lee O. Garber, Handbook of School Law (New London, Connecticut: Arthur C. Croft Publications, 1954), p. 3.

⁵⁸Young v. City of Ann Arbor, 267 Mich. 241.

1792 to 1946 when Congress passed Public Law number 601 of the Seventy-Ninth Congress, known as the "Legislative Reorganization Act of 1946," of which Title IV is known as the "Federal Tort Claims Act."⁵⁹

The sovereign powers of the state and the complete authority of the state for the system of public schools making the school district an arm of state government gives school districts the same immunity from tort liability that the state government itself enjoys.

Educational policy made by courts.--The state exercises its authority over education through the constitution, its statutes, and its judicial law. The legislative branch of government is responsible for declaring public policy regarding education, however, the courts through their decisions and opinions contribute greatly towards the sum total of public policy pertaining to education.

Operation of the courts.--A court is an agency of government whose function is to decide cases or controversies between two parties; one of whom may be the government itself. In the United States this includes a Federal Court System superimposed over the system of State Courts, each with specific authority or jurisdiction.

In general the courts may be classified on the basis of original jurisdiction or function of decision which divides

⁵⁹Scatterfield, op. cit., p. 4.

our courts into those of trial and appellate functions. Pertinent to this study is the dual function of the appellate court which performs the function of hearing cases referred to it from lower courts and the function of providing authoritative public policy regarding questions of constitutional and statutory interpretation including declaration of policy where there is no written law to guide the court. In Michigan this court is known as the Supreme Court; in other states they may be known by other names and in some cases the courts at this level are divided so that the state may have an intermediate court and a court of last resort.

A judicial interpretation is the origin of a legal principle and until it is overruled it serves as a precedent for subsequent court decisions. The practice of basing decisions before the court upon past judicial decisions is known as the doctrine of "stare decisis" and is solidly implanted in judicial law. This principle is strongly adhered to within the same state or jurisdiction. Courts in other states are free to follow other courses of action; however, courts are often influenced by the weight of prevailing views.

Tort Liability

Liability is based on legal principles, the nature of which makes it impossible to predict in advance what is or what is not a cause of liability. Certainty is confirmed by facts which vary from one case to another; thus, the

base of liability must be legal principles from which is derived probability.

The law of torts deals with private and civil wrongs arising independent of contract, thus distinguishing this type of legal action ^{from} ~~for~~ that of a criminal nature or for breach of contract.⁶⁰ Today, fault is a condition of liability, and the presumption is present, in law, that every person performs his duty; the burden of proving otherwise rests on the injured.

Historically, the progress of the law of torts developed gradually from strict liability, i.e. responsibility regardless of fault, in England and the United States during the seventeenth and eighteenth centuries, toward the principle of limiting liability in tort to "fault as a condition of liability."⁶¹ This present philosophy of "fault as a basis for liability" has its basis within the framework of individual rights holding that no one should be liable in the absence of fault and has a social aim of defining the standard of conduct and punishing dangerous conduct.

Some authorities feel that this concept has now outlived its usefulness and that liability imposed without "fault," with the burden of liability placed on those best

⁶⁰By strict definition, the word "tort" indicates all forms of wrongs; however, the law of torts applies only to that class of wrongs which are not crimes nor arising out of contract. See Henry Campbell Black, Black's Law Dictionary (fourth edition; St. Paul, Minn.: West Publishing Co., 1951), p. 1660.

⁶¹William S. Holdsworth, History of English Law, vol. I (7th edition; London: Methuen and Co., Ltd., 1956), pp. 446-453.

able to bear them, namely, society at large, would be more fitted to modern social conditions.⁶² Evidence that the trend is toward this concept of liability is provided by today's workmen's compensation laws.

Legal principles.--Although liability may be imposed for reasons other than negligence, in most cases of tort liability, fault is predicated on negligence. For this reason an understanding of negligence demands a predominant place in any consideration of school connected liability.

Negligence, by popular usage, implies lack of due diligence or care. Court definitions of negligence vary but usually refer to the care which an ordinary prudent person would use under the circumstances in discharging the duties resting on him.⁶³ Under today's laws certain essential elements must be present to maintain a tort action, namely: (1) existence of legal duty from defendant to plaintiff, (2) breach of duty, and (3) damage as a proximate result. Foreseeability or knowledge of the peril which subsequently results in the injury is a prerequisite of negligence.⁶⁴ Negligence may be active by consisting of doing something one should not have done or passive through failure to do something which he should have done under the circumstances.

⁶²William Lloyd Prosser, Handbook of the Law of Torts (St. Paul, Minn.: West Publishing Co., 1951), p. 426.

⁶³38 Am. Jur. 2.

⁶⁴Prosser, op. cit., p. 175.

One's negligence must be the direct cause of an injury to maintain legal action and the plaintiff himself must be free from fault to sustain his action.⁶⁵ "The mere fact that an accident happened and that plaintiff was injured neither proves negligence nor raises a presumption thereof."⁶⁶

The yardstick for measuring the degree of care is the ordinary prudent person; it is applied by the jury or judge to the circumstances with consideration to the duty owed the injured. Thus, though the standard of conduct is ordinary prudence, a second essential of negligence (the duty owed the injured) must be accorded due consideration especially when considering the negligence of professional persons as teachers in their role in the school system in charge of young and immature students.

Poe pointed out the need for greater caution in protecting young children than for adults,⁶⁷ and Hamilton advises that teachers must take steps to safeguard pupils from injury because the teacher, "in loco parentis," acts the part of the lawful parent.⁶⁸

⁶⁵Brown v. Gilchrist, 80 Mich. 56.

⁶⁶Watrous v. Connoer, 266 Mich. 397.

⁶⁷Arthur Clayton Poe, School Liability for Injuries to Pupils, Contributions to Education No. 828 (New York: Bureau of Publications, Teachers College, Columbia University, 1941), p. 32.

⁶⁸Robert R. Hamilton, The Bi-Weekly School Law Letter (Laramie, Wyoming: The author, 1954), vol. 4, no. 14.

Some writers feel that contributory negligence on the part of the injured should not bar recovery of damages and suggest an alternative theory of "comparative negligence" whereby damages would be divided on a basis of comparative fault or apportioned in accordance with each actor's degree of negligence.⁶⁹

In cases where the defendant has exclusive control over the danger the doctrine of "res ipsa loquitur" is applicable. This doctrine places upon the defendant the burden of proving that he was not negligent. Under this category comes liability connected with the use of firearms, certain types of machinery, and the operation of steamboilers.⁷⁰

Nuisance.--There is much confusion in the use of the term "nuisance" especially where attempts have been made to distinguish between negligence and nuisance. Nevertheless, nuisance is a recognized cause of liability.

Nuisance is defined by Black as:

That which annoys and disturbs one in possession of property. Class of wrongs that arise from the unreasonable, unwarrantable, or unlawful use by a person of his own property, either real or personal, or from his own improper, indecent, or unlawful

⁶⁹Roscoe Pound, Jurisprudence (St. Paul, Minnesota: West Publishing Co., 1959), Vol. 5, Chapter 32.

⁷⁰Madaline Kinter Remmlein, "Tort Liability of School Districts," Law and the School Business Manager, edited by Lee O. Garber (Danville, Illinois: Interstate Printers and Publishers, Inc., 1957), p. 203.

personal conduct working an injury on the right of another.⁷¹

Hamilton finds it entirely impossible to determine abstractly what constitutes nuisance even though the courts have seized upon the term to allow recovery and finds use of the term a kind of substitute for an analysis of the problem.⁷² Hindle likewise found it generally impossible to determine in advance what circumstances of any particular case might or might not be declared a nuisance by any particular court.⁷³

Trespass.--This term is likewise sometimes recognized as a cause of liability. It is defined as:

Form of action, at the common law, which lies for redress in the shape of money damages for an unlawful injury done to the plaintiff, in respect either to his person, property, or rights by the immediate force and violence of the defendant.⁷⁴

Violence is actual or implied in trespass cases and involves injury of another's person or property.

Governmental Immunity

Historically, common law doctrine of governmental immunity can be traced from the theory of the Divine Right of Kings which held that the "King could do no wrong."

⁷¹Black, op. cit., p. 1214.

⁷²Robert R. Hamilton, The National School Law Reporter (New London, Conn.: Arthur C. Croft Co., 1956), Vol. 6, pp. 73-76.

⁷³Hindle, op. cit., p. 58 ⁷⁴Black, op. cit., p. 1674.

The concept, which holds that the government cannot be sued without consent, came down to today's society as part of common law which governs where there is lack of statutes covering matters brought before the courts. Today the time honored doctrine of immunity is predicated on the theory that the State is sovereign and cannot be sued without consent.⁷⁵ Reasons given for the support of this rule of non-liability include the non-presence of the relationship of master and servant, the lack of provision in the laws to pay claims, the prohibitive financial cost, and the fact that a public function is being performed without financial gain.⁷⁶

Since the doctrine of school district immunity is based on common law, it can be abrogated or modified by statute, judicial opinion, or both. In general the courts feel that any changes in the doctrine are a legislative responsibility as the courts in carrying out their functions generally recognize that they are one of the three departments of government and attempt not to take any action that might be considered interference with the legislative function or of a legislative nature.⁷⁷

⁷⁵Ruling Case Law, Vol. XXIV, p. 60.

⁷⁶E. E. Fuller, "Reasons Given by Courts for School District Immunity," American School Board Journal, 103: 23-25, November, 1941.

⁷⁷Jones v. Grand Ledge Public Schools, 84 N. W. (2d) 327 (Mich.).

Immunity of school districts from tort liability has its basis in the legal nature of the system of public schools in which education as a state function plays a vital and indispensable part.⁷⁸ The courts have at various times referred to school districts as agencies of the state, municipal corporations, and quasi-municipal corporations. The corporate character of Michigan school districts has been defined by the Michigan Supreme Court as follows:

Although invested with certain corporate characteristics to more efficiently serve the purpose for which they are created, school districts are not municipalities, nor public corporations in the full sense, but because of their very restricted powers are distinguished and recognized as quasi corporations.⁷⁹

Duties Not Spelled Out In Law

The standard of conduct of ordinary prudence and the duty owed the injured have been referred to;⁸⁰ the latter essential appearing to modify the standard of care expected depending on the relationship between the party injured and the party at fault. Reasons for logically expecting that the obligation and duty owed by administrators and teachers would be at a high level include:

1. A high standard of conduct is generally expected of professional employees.

⁷⁸Supra, pp. 35-37.

⁷⁹Daniels v Board of Education, 191 Mich. 339.

⁸⁰Supra, p. 40.

2. The professional employee occupies the position, "in loco parentis" (as a substitute parent), in handling others' children.
3. Schools, for the most part, deal with minors, recognized in court as having certain standards of behavior appropriate to their age.
4. Teachers and administrators as members of a profession are subject to codes of ethics setting forth principles of professional responsibility and rules of behavior.

Liability Hazards

Much of the literature in the area of tort liability discusses what is and what is not likely to be considered negligent behavior. It is the purpose of this section to merely point out the areas of hazards as seen by the various writers in the field.

Remmlein points out legal pitfalls that have been neglected in the current emphasis upon the participation of parents in school affairs and cites possible dangers in the use of resource persons, in the use of parents as chaperones on field trips, and the discussion of disciplinary problems in open discussion with parent groups.⁸¹ McCann emphasized certain procedures such as inspection of premises, well formulated rules and procedures, assignment of competent

⁸¹Madaline Kinter Remmlein, "A Lawyer Looks at Parent Participation," The National Elementary Principal, 37:37-44, September, 1957. (Bul. of Dept. of Elementary School Principals, National Education Association.)

teachers in view of hazards, and inspection of safety drills as protection against liability.⁸² Edwards pointed out that the teacher conforms to law by conforming to established patterns of behavior, but may unwittingly risk personal liability or jeopardize the position of the school.⁸³ Steege made recommendations based on the review of California decisions pointing out the need for safety regulations and precautions in shops, the need to exercise care in science classes, and the value of careful planning of rules and uniform enforcement.⁸⁴

Gausman,⁸⁵ Tischendorf,⁸⁶ Philo,⁸⁷ and Pickney⁸⁸ deal with liability for shop teachers and school shops.

⁸²Lloyd E. McCann, "Legal Aspects of School Supervision," The American School Board Journal, 132:45-46, June, 1956.

⁸³Walter L. Edwards, "Teacher and School Law," The Nation's Schools, 52:39-41, December, 1953.

⁸⁴Thomas W. Steege, "Negligence in Schools," The American School Board Journal, 132:47-48, May, 1956.

⁸⁵Chester A. Gausman, "Legal Aspects of Shop Accidents," Industrial Arts and Vocational Education, 44:207-211, September, 1955.

⁸⁶E. W. Tischendorf, "Accident Liability of Shop Teachers," Safety Education, 30:1-3, February, 1951.

⁸⁷H. E. Philo, "Are Shop Teachers Liable?," Safety Education, 30:13-14, May, 1951.

⁸⁸Charles W. Pinckney, "Liability of Shop Teachers and School Districts for Pupil Injuries in School Shops Resulting in Court Cases in the United States" (unpublished Doctor's thesis, Pennsylvania State University, University Park, 1953), 80 pp.

Leibee,⁸⁹ Garber,⁹⁰ Carlson,⁹¹ Doscher and Nelson⁹² have studied liability connected with physical education and athletic programs and alert school personnel to the circumstances which might lead to liability for negligence.

The school safety patrol has been a subject of disagreement with Hamilton⁹³ saying the patrol should be discontinued because of liability to personnel and Remmlein⁹⁴ and Gauerke⁹⁵ supporting the continued use of school patrols.

⁸⁹Howard C. Leibee, Liability for Accidents in Physical Education, Athletics, Recreation (Ann Arbor, Michigan: University of Michigan Press, 1952), 71 pp.

⁹⁰Lee O. Garber, "The Case of the Negligent Coach," The Nation's Schools, 59:77-79, May, 1957.

⁹¹Gordon T. Carlson, "I'll Be Suing You, Coach," The School Executive, 76:76-78, April, 1957.

⁹²Nathan Doscher and Nelson Walke, "The Status of Liability for School Accidents and Its Relationship to the Health Program," Research Quarterly, 23:280-294, October, 1952.

⁹³Bi-Weekly . . ., op. cit., vol. 3, no. 1, March, 1953.

⁹⁴Madaline Kinter Remmlein, "School Safety Patrols Defended," The American School Board Journal, 134:54, June, 1957.

⁹⁵Warren E. Gauerke, "School Safety Patrols and The Law," The School Executive, 77:68-72, December, 1957.

Hamilton,⁹⁶ Butsch,⁹⁷ Garber,⁹⁸ and Seitz⁹⁹ reviewed the law of libel and slander and the use of privileged communications by teachers as a liability hazard.

Punke discussed the possible liability of board members and teachers for the wrongful exclusion of pupils but pointed out that the courts usually held that there is no personal liability for damages in such cases.¹⁰⁰

Hamilton has repeatedly warned of the dangers to school personnel and school districts where school personnel use their private cars for school purposes.¹⁰¹ Sumption and Garber see dangers in sending pupils on errands and find a need for greater supervision and planning of field trips.¹⁰²

⁹⁶Bi-Weekly . . . , op.cit., vol. 1, no. 26, February, 1952.

⁹⁷Russell Butsch, "The Law of Libel and Slander as it Affects the Teacher," The Elementary School Journal, 31: 44-51, September, 1930.

⁹⁸Garber, Handbook of School Law, op. cit., p. 92.

⁹⁹Reynolds C. Seitz, "The Law of Privileged Communications as it Affects the Work and Responsibility of the Principal," Law and the School Principal (Cincinnati: The W. H. Anderson Co., 1961), pp. 151-165.

¹⁰⁰Harold H. Punke, "Exclusion of Pupils from Public Schools," The Bulletin of the National Association of Secondary-School Principals, 42:41-59, September, 1958.

¹⁰¹Bi-Weekly . . . , op. cit., vol. 4, no. 25, January, 1952.

¹⁰²Lee O. Garber, "Field Trips and Excursions," The Nation's Schools, 56:82-85, September, 1955; Merle R. Sumption, "Responsibility of Principal for Planning and Supervision in Connection with Field Trips and Errands," Law and the School Principal, edited by Reynolds C. Seitz (Cincinnati: The W. H. Anderson Co., 1961), pp. 137-147.

Garber and Boyer point out the problems of supervision peculiar to the modern high school with its expanded program, before and after school activities, extra-curricular activities, and supervision of common areas where no particular teacher is assigned direct responsibility for supervision.¹⁰³

The hazards warned of by the various writers mentioned above is not complete but do point out the areas of most concern in the literature, namely, those found in the shops, physical education and athletics, science classes, extra curricular activities and activities where the pupil is not under the direct supervision of a classroom teacher. Policies, rules, and regulations have been emphasized both in preventing accident and in proving non-negligence in court.

Summary

This chapter surveys prior research, related studies, and literature in the area of tort liability. Generally research in this field has approached the problem of liability from a study of statutes, judicial opinion, and court cases. This approach has been effective in identifying liability hazards, establishing general awareness of liability, and making available to educators summarizations and comparisons of laws and judicial opinion pertaining to liability in the various states in general.

¹⁰³Garber and Boyer, op. cit., pp. 69-90.

The law of torts, historically, progressed from strict liability during the seventeenth and eighteenth centuries to present principles of liability based on fault. Present law implies a social aim of defining and maintaining a standard of conduct; a concept which some authorities feel has outlived its usefulness.

The doctrine of governmental immunity is based on common law and can be abrogated or modified by statute, judicial opinion, or both. Immunity of school districts from tort liability has its basis in the legal nature of the system of public school in which education is viewed as a state function and school districts as agencies of the state.

Liability is based on legal principles, the nature of which makes it impossible to predict in advance what is or is not a cause of liability. Liability is generally based on negligence implying a lack of due diligence or care. The degree of care expected is defined in terms of the ordinary prudent person and the duty owed the injured.

The liability hazards warned of by the various writers in the field generally include those found in the shops, physical education classes, athletic programs, science classes, extra-curricular activities, and related school activities where the pupil is not under the direct, close supervision of a classroom teacher. Policies, rules, and regulations have been emphasized as a means of preventing

accident, showing good intentions, establishing that adequate standards are enforced, demonstrating that proper precautions are taken, and in proving non-negligence in court.

CHAPTER III

STATUS OF LIABILITY IN MICHIGAN AND
OTHER SELECTED STATES

It is the purpose of this chapter to review the status of tort liability and governmental immunity as it applies to Michigan School districts and school employees, and to briefly consider and take note of the diversity and contrast of statutes and judicial opinion in selected states, states which have uncommon modifications or dissimilarity of law in the area of tort liability.

Liability Status of Michigan Public Schools

For many years Michigan school districts have operated under the protection of the common law rule of governmental immunity which holds that municipal corporations are not liable for injuries to the public unless such liability is specifically created by statute. The Michigan statutes do not specifically abrogate the "immunity concept" nor do they denote the granting of immunity. Generally it is the absence of state statutes regarding school district liability that makes the common law principle of governmental immunity applicable to school districts. This has been the

case in Michigan; however, statutes have been passed and repealed leaving the intent of the Legislature regarding school non-liability in doubt.

Exceptions to immunity.--There are two exceptions to the general rule of school district immunity from tort liability in Michigan. In three instances, including one act repealed, the Michigan Legislature has enacted laws granting permission for liability suits to be brought against school districts.

In 1943 the State waived its right to immunity for the torts of its officers and employees and consented to have its liability determined without governmental immunity.¹ In 1945 the legislature withdrew such waiver and reasserted the right of the state to invoke the doctrine of governmental immunity.² The legislature at this time did forbid the use of governmental immunity in the defense of cases arising through the use of school buses and school owned vehicles and authorized payment of premiums on insurance to protect both the school district and its employees from such liability. The statute reads:

Section 1. In any civil action brought against a political subdivision of the state of Michigan, including all municipal corporations, to recover damages resulting from the negligent operation by any officer, agent or employee of such political subdivision, of a

¹Court of Claims Act, Act, 237, Public Acts 1943, p.390.

²Act 87, Public Acts of 1945, p. 84.

motor vehicle of which said political subdivision is owner as such term is defined by Act. No. 302 of the Public Acts of 1915, as amended, the fact that such political subdivision was in the ownership of such vehicle engaged in a governmental function shall not be a defense to such action.

Section 2. Premiums upon any insurance policy procured to protect any political subdivision of this state or any municipal corporation or any officer, agent or employee thereof against loss from liability resulting under the provisions of this act may be paid out of any moneys available to such subdivision or municipal corporation.³

In 1951 school districts and other municipal corporations came under the provisions of the Workmen's Compensation Act providing that employers are liable to suit on the part of employees while performing the duties of their employment.⁴

School district immunity upheld in court.--The first liability case against a school district to appear before the Michigan Supreme Court was the case of Ferris v. Board of Education in 1899.⁵ In this case the landlord of property adjoining the school had slipped on ice that had fallen from the school house roof. The trial court ruled that the school, being a municipal corporation, could not be held liable under the common law principle of immunity. Upon appeal the Supreme Court ordered the school district to pay damages

³State of Michigan, General School Laws (1959 rev.), p. 388; Act. 127, Public Acts of 1945, p. 132.

⁴Act 151, Public Acts of 1951.

⁵Ferris v. Detroit Board of Education, 122 Mich. 315.

and contended that, although a municipal corporation could not be held liable for negligence under the common law, where the injury was the result of trespass it was liable whether acting in a public or private capacity. This case is referred to in the literature of school law under nuisance exceptions since such exceptions to governmental immunity have been made by the courts in other states.⁶ The ruling in this case finds little use in the normal operation of schools for it neither defines clearly what constitutes nuisance or trespass nor lends itself to situations which might normally arise in the every day operation of schools.

In 1905 the Supreme Court declared a school district was a governmental agency and not liable for injury to an employee whose injury was caused by defective appliances furnished through the negligence of the agents of the Board of Education.⁷ This type of injury would now be covered under workmen's compensation.

Public policy on school immunity was not clearly set forth until 1916 when, in a precedent setting case, school districts were declared a governmental agency and in their quasi-corporate capacity were exempt from liability.⁸

⁶E. Edmund Reutter, Jr., "Tort Liability of the School District," The American School Board Journal, 136:28-30, March, 1958.

⁷Whitehead v. Detroit Board of Education, 139 Mich. 490.

⁸Daniels v. Board of Education of City of Grand Rapids, et al., 191 Mich. 339.

The court added that this ruling was made because the state had not granted in the statutes the right to sue for such negligence. The case, *Daniels v. Board of Education of the City of Grand Rapids, et al.*, also established that school board members were not liable, as the school district itself was not liable. The suit was for damages for severe injuries sustained by an eight-year-old boy who fell over a thirty-inch banister to the floor eighteen feet below.

It should be noted also that the court at this time refused to recognize a distinction between torts committed through the maintenance of a nuisance and other torts. Thus the principle was established to deny recovery against school districts in all tort cases.

The third case of school district liability did not make its appearance until 1942. In this case, *Daszkiewicz v. Detroit Board of Education*, the Court again thoroughly discussed the rules and principles of law governing the liability of school districts and declared:

The law has long been settled in this State that, in the absence of a statute creating liability, neither a school district nor the board of education representing the district can be held liable for injuries or damages caused by the negligence of its officers, agents, or employees while in the performance of their duties, because they, in furthering the purposes of education, are in the exercise of a public or government function.⁹

In this case the question was raised as to whether the school district might not be engaged in a proprietary

⁹Daszkiewicz v. Detroit Board of Education, 301 Mich. 222.

function rather than a governmental function since the injury complained of was sustained by a student paying tuition fees.¹⁰ The court ruled that agencies when performing a governmental function did not lose their immunity from liability merely because an income was derived therefrom, provided the income was incidental to the main purpose.¹¹

The year 1949 found the Michigan Supreme Court with a differing view of school district liability representing a departure from complete governmental immunity of school districts. The departure is expressed most strongly in dissenting opinion rather than in the verdict handed down.¹²

The *Watson v. School District of the City of Bay City* appeared before the Supreme Court in 1949.¹³ In this case the administrator of the estate of a fifteen-year-old girl sued the school district for damages alleging that the negligence of the district caused the child's death. The child, in company with other children, attended a high school night football game. The girl paid admission to see the game and left a few minutes before the end of the game.

¹⁰Proprietary function is a recognized exception to the application of the theory of governmental immunity in a few states.

¹¹Daszkiewicz v. Detroit Board of Education, op. cit.

¹²Watson v. School District of Bay City, 324 Mich. 1; Richards v. School District of the City of Birmingham, 348 Mich. 490.

¹³Watson v. School District of Bay City, op. cit.

A ramp protected by an 18 inch concrete wall extended from the basement of the high school warehouse building to ground level. The girl in returning to her car fell over the wall and into the ramp. She suffered paralysis from which she died eight months later.

In the trial court the jury awarded the administrator \$10,000 in damages, however, the circuit judge, on motion of the defendant, entered judgment for the defendant notwithstanding the jury verdict, holding that the school district was immune from liability as a matter of law.

Upon appeal to the Supreme Court the lower court's judgment was sustained by an evenly divided Court, four Justices being for reversal and four Justices for sustaining the judgment of the lower court. Since it requires a majority to reverse the action of a lower court, immunity was upheld by the court.

The last school liability case to appear before the Supreme Court (as of the date the interviews were conducted, summer of 1961) was the Richards v. School District of the City of Birmingham case.¹⁴ The incident out of which the suit arose occurred in 1948, a year before the Watson-Bay City case was settled, but did not make its appearance on the public scene until eight years later.

During pre-game warming-up exercises at a football game scheduled between Royal Oak and Birmingham high schools,

¹⁴Richards v. School District of the City of Birmingham, op. cit.

a part of the crowd in the stands near the players began to move rhythmically back and forth in unison with the players. The section of bleachers gave way and collapsed, folding sideways, causing the adjoining section of bleachers also to collapse. The plaintiff, seated in the bleacher section whose collapse was caused by the side-ways movement of the adjoining bleacher section, suffered injury and as a result sued the Birmingham school district and the manufacturer of the bleachers for damages. The plaintiff was a dentist and his injury was so severe that he could no longer practice dentistry.

The jury in the trial court was instructed to return a verdict based on negligence, proximate cause and contributory negligence. The jury found for the plaintiff and awarded damages in the amount of \$45,000. The defense attorneys then asked the court for a judgment of "no cause for action" notwithstanding the general verdict. The verdict was set aside on the theory that the school activity was a governmental function.

Upon appeal the plaintiff contended that the trial court erred in its ruling on "complete and absolute immunity" by failing to consider the distinction between governmental and proprietary function. The defendant contended that the facts relating to the distinction between proprietary and governmental functions were properly tried and that the theory of the law whereby governmental agencies

lose their immunity while engaged in a proprietary function did not apply to school districts.

In a lengthy explanation the Supreme Court by a five to two vote upheld the trial court. Garber's review of the case concluded that the court appeared to have reasoned that because a district has only limited authority everything it does is of a governmental nature and that the decision was in line with the majority of decisions in this field.¹⁵ Hamilton reported that the Court held that the "immunity rule" protected the district and that one new point was made; namely, "That all acts of school districts are governmental and that proprietary acts are really only one class of governmental acts."¹⁶

On the other hand, some people viewed this decision as a break in the application of the "immunity doctrine" and from the dissenting opinion found reasons why school districts should insure against liability.¹⁷ Laurence Smith, special counsel to the Michigan Association of Insurance Agents, implied that the controversy was resolved on the inconsistency of verdicts and that the question of immunity was not answered and, further, that the real significance of the decision was that there seemed to be general

¹⁵Lee O. Garber, "Abate That Fire Hazard," Nation's Schools, 63:57-58, February, 1959.

¹⁶Hamilton, The National School Law Reporter, op. cit., 7:93, February, 1958.

¹⁷Hildebrand, op. cit., July, 1957.

agreement by five Justices that immunity does not apply if a proprietary function is involved.¹⁸ To the author it appears equally significant that three of the five Justices cited did not think that a proprietary function was involved.

Nevertheless the dissenting opinion written by Justice Edwards citing the injustice of the immunity doctrine and quoting a bitterly worded attack on governmental immunity by Justice Wolfe of the Bingham case in Utah indicate the strong feeling of the courts against applying the theory whereby the state is permitted to shield itself behind governmental immunity.¹⁹

Extracts from the Birmingham case record best illustrate the bitter feeling against governmental immunity, e.g.,

History would tell us that the doctrine, "The king can do no wrong," died at Runnymede in 1215. Yet in the court which tried this case the legal ghost of that doctrine strode forth and struck down a jury award of damages to an Oakland county dentist seriously injured at a Thanksgiving Day football game. . . . We cannot concur with turning the clock back from such progress as has already been made toward allowing damages for governmental wrongs.

I admit that the legislature could and should abolish or modify the doctrine[of immunity]. . . we still have control of a rule or doctrine because it was judge made and developed, we may act . . . I do not think it conscionable for us not to lift our hand when to do so would bring the law up to date and furnish remedies long overdue.²⁰

¹⁸Ibid., citing opinion of Laurence D. Smith.

¹⁹Bingham v. Board of Education of Ogden City, 223 P. (2d) 432 (Utah).

²⁰Richards v. School District of the City of Birmingham, op. cit.

In 1958 Attorney General Paul Adams issued an opinion to the Department of Public Instruction stating that school districts are not liable for students injured in athletics. However, with the opinion was a warning to give consideration to the vigorous dissenting opinion in the Birmingham case as being indicative of the trend toward amelioration of the harshness of governmental immunity and that it was probable that in some future case the doctrine of governmental immunity will not be upheld.²¹

Immunity overruled in non-school cases.--The trend in Michigan toward greater liability is shown by recent Supreme Court decisions handed down against hospitals and local units of government. It should be noted that a fundamental difference exists between school districts as quasi-corporations and municipal corporations proper. Municipalities are not agents of the state except when utilized by the state for the performance of governmental functions. The dual function of municipalities has been spelled out in the court as two capacities, one governmental and the other quasi-private.²²

In 1958 the Supreme Court appeared to set a new precedent when it declared that a township was liable when

²¹Dept. of Public Instruction, News of the Week, XXVI, no. 10 (November 7, 1958).

²²Stevens v. City of Muskegon, 111 Mich. 72.

exercising a proprietary function and held a township liable for damages when it rented their township hall for a nominal fee.²³ This might be interpreted as a warning to school districts that renting their facilities could be considered of a proprietary nature.

In 1960 another step was taken toward limiting the application of the immunity doctrine when a decision was handed down abrogating the rule of law which allowed charitable non-profit hospitals the protection of immunity from damage suits by patients.²⁴

In decisions handed down in September of 1961 the high court appeared to have abrogated governmental immunity completely as it applied to municipalities. In one case, *Williams v. City of Detroit*, the court by a five to three vote declared: "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 the courts."²⁵ In the possible future application of this new doctrine four Justices said the decision should apply to all governments from the state on down, one Justice specified only municipalities, and three voted against removal of governmental immunity.²⁶

²³Dohm v. Township of Acme, 354 Mich. 447.

²⁴Parker v. Port Huron Hospital, 361 Mich. 1.

²⁵Williams v. City of Detroit, 364 Mich. 231.

²⁶Ibid.

On the same date, September 1961, the University of Michigan Hospital lost its immunity when the University of Michigan Regents took out liability insurance.²⁷

It should be noted that the Williams case was not decided in favor of the plaintiff because of past immunity, however, the court indicated that the judicial doctrine of governmental immunity from ordinary torts no longer existed in Michigan.²⁸

A second case was dismissed by the Supreme Court in September of 1961 against the City of Detroit since the injury complained of occurred prior to September 22, 1961--the date of the Williams case.²⁹

In December of 1961 the question of immunity again came before the Court.³⁰ In a split decision the Court again appeared to invoke the principle of governmental immunity. In this case, McDowell v. Michigan Highway Commissioner, claim for damages was filed in the Court of Claims and dismissed by them indicating immunity of State Commission from liability. The majority opinion held that the legislature had recognized its authority over the sovereign immunity rule by abolishing the rule as to actions

²⁷Christie v. University Regents, 36 Mich. 202.

²⁸Williams v. City of Detroit, 364 Mich. 231.

²⁹Wardlow v. City of Detroit, 364 Mich. 291.

³⁰McDowell vs. Michigan Highway Commissioner, 365 Mich. 268.

against the State in the Court of Claims;³¹ had repealed Sec. 24 of the Court of Claims Act,³² and thus the State again became immune from liability claims based on tort. In the words of the Court: "So far as the State itself is concerned, the doctrine of sovereign immunity as it presently exists in Michigan is a creature of the legislature, re-established by the legislature, and further modified by the legislature."³³ The last case against a school district (at date of writing) was handed down on March 19, 1962.³⁴ In this case a boy was injured as a result of stepping into a hole created by a school building construction company. Actions were brought against contractors constructing new buildings and against the school district. The school district used defense of governmental immunity. Plaintiffs admitted that the district was exercising a governmental function but contended that the district waived its immunity by purchasing a policy of general liability insurance. Again the court distinguished between the "King Can Do No Harm" edition of governmental immunity and the principle that immunity was established by the legislature; a principle established in the McDowell case. The majority opinion held that the doctrine of

³¹Act 237, Public Acts 1943, p. 390.

³²Act 87, Public Acts 1945, p. 84.

³³McDowell v. Mich. Highway Commissioner, 365 Mich.268.

³⁴Ollie Lee Sayers v. School District No. 1 fr., Argentine and Deerfield Townships, Genessee and Livingston Counties and Wolf Lumber Company, 366 Mich. 217.

governmental immunity was established by the Legislature in 1945 and could not be abrogated by the Court.

Dissenting opinion did not agree that the statutes passed in 1945 indicated legislative intent to reestablish the doctrine of immunity. However, dissenting opinion admitted that the McDowell and Sayers cases restored all of the former horrors of common law rule of governmental immunity to full bloom.³⁵

In answer to the charge that the purchase of liability insurance constitutes a waiver of the defense of governmental immunity the Court held that it did not and cited a prior case³⁶ which held that the Court is not justified in permitting a jury to know whether a school district carries insurance.

Status of immunity at present.--The prevailing situation, at the time of this study, was a trend definitely toward a more liberal attitude in favor of the injured party by the Court. Recent cases had given the courts trouble creating a general situation of unsettled confusion with no assurance that the next case tried would not establish a new rule of non-immunity of school districts from tort liability. The new rule of law abrogating governmental immunity for municipalities appearing at the completion of

³⁵Ibid.

³⁶Harper v. Bushhouse, 254 Mich. 18.

the study made the demise of governmental immunity in Michigan very probable. The last two cases, the McDowell and Sayer cases, appear to restore governmental immunity on a new principle, immunity created by legislative intent.

The question regarding the effect of liability insurance on court cases of liability long unanswered in Michigan, was answered indicating that such insurance would not waive school immunity.

Liability of School Board Members

It is the general rule that an officer of a school district is not personally liable for any loss or injury resulting from an act within the line of his duty or the scope of his authority, unless, in performing an act, he assumes to act in his individual capacity rather than as an official of the school district.³⁷ A few courts have distinguished between the presence or absence of evidence indicating performance of duties in good faith, however, generally the officer will not be held liable so long as the official act is within the jurisdiction of the officer performing it. In some states a distinction has been made between discretionary and ministerial acts of the school district. Ministerial type powers are those which neither permit nor require the exercise of subjective judgment by the board, while discretionary acts involve the considered

³⁷Corpus Juris, Vol. 56 (Brooklyn: American Law Book Company, 1932), pp. 342-344.

judgment of the board in determining the manner or degree in which one of its powers or responsibilities is to be exercised.³⁸ The major portion of a local board's authority is of a discretionary nature. Although liability connected with the non-performance of ministerial acts may be a possible hazard in some states, Michigan has not made this distinction and has considered school officers as officers of the state and having only such powers as the statutes expressly or impliedly granted.³⁹ There is complete acceptance of the doctrine of the non-liability of school officers for their acts of negligence.⁴⁰ It, of course, follows that the possible liability of the board of education as a corporate body and branch of state government is essentially the same as the possible liability of the school district previously discussed, supra, which concluded that the courts show a strong tendency in favor of the injured party.

Liability of School Employees

School employees may be held liable.--Though statutes and judicial interpretations pertaining to school district liability do vary from state to state, the courts are

³⁸Stephen F. Roach, "Abuse of School Boards' Discretionary Authority," The American School Board Journal, 138:67-71, August, 1959.

³⁹People ex. rel. Tibbals v. Board of Education of Port Huron, 39 Mich. 635; Foster v. Board of Education of School District No. 10 Delta Township, Eaton County, 326 Mich. 272.

⁴⁰Wall v. Eastman, 1 Mich. 268; Daniels v. Board of Education of City of Grand Rapids, et al., 191 Mich. 339.

universally agreed that the cloak of immunity protecting school districts from tort liability does not offer protection to the school employee against such hazards.⁴¹

In 1937 the Michigan Supreme Court ruled that teachers could be liable when they declared:

In the faithful discharge of . . . duties the teacher is bound to use reasonable care, tested in the light of the existing relationship. If, through negligence, the teacher is guilty of a breach of such duty and in consequence thereof a pupil suffers injury, liability results. It is not essential to such liability that the teacher's negligence should be so extreme as to be wanton and wilful.⁴²

Bolmeier expresses the opinion that governmental immunity to liability by school districts may actually impose upon school personnel a greater risk of being sued since it is logical to expect the injured to seek recovery from those who are liable.⁴³ Gauerke, on the other hand, feels that the "immunity rule" has lent "moral support" if not "legal protection" to teachers in their relationship to pupils.⁴⁴

In a legal sense, the school employee may, in fact, have less protection against the hazards of liability than an ordinary person in private employment, since many employees in our society have some protection under the legal doctrine

⁴¹Edward C. Bolmeier, "Tort Liability of School Personnel," The American School Board Journal, 136:30-32, March, 1958.

⁴²Gaincott v. Davis, 281 Mich. 515.

⁴³Bolmeier, loc. cit.

⁴⁴Warren E. Gauerke, Legal and Ethical Responsibilities of School Personnel (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1959), p. 263.

of "respondeat superior," viz., that an employer is responsible for the negligence of an employee when the negligence arises in the course of his employment or in the furtherance of his employer's business. It has been held repeatedly that this principle of law does not apply to employees working for the public schools.⁴⁵ Scatterfield in his study of tort liability observed that although the courts generally held that teachers were employees of the local school district, that in most states, the courts treated the teacher as an independent contractor, liable for any injury which may result from his negligent acts.⁴⁶

It should be noted that liability of individuals deals with negligence based on legal principles of foreseeability of injury, duty owed the injured, conduct of the reasonably prudent man, and proximate cause. Negligence is not easily proven in court. "The mere fact that an accident happened and one that was unfortunate, does not render the defendant liable."⁴⁷

In the case of McDonell v. Brozo suit was brought against a teacher, a principal, and a gymnasium attendant for injuries to a pedestrian which occurred on a public

⁴⁵Newton Edwards, The Courts and the Public Schools (Chicago: The University of Chicago Press, 1955), p. 421.

⁴⁶Ted J. Scatterfield, "Legal Aspects of Tort Liability in School Districts as Indicated by Recent Court Decisions" (unpublished Doctor's thesis, Temple University, Philadelphia, 1949), p. 2.

⁴⁷Gaincott v. Davis, 281 Mich. 515.

sidewalk near a school building.⁴⁸ The teacher had sent boys out on the sidewalk for foot races which were part of the school's physical education program. The races were supervised by a gym attendant, and neither the teacher nor principal were present at the time of the accident. The injury occurred as a result of a boy's colliding with a passing pedestrian on the sidewalk. The boys had been warned against running when pedestrians were passing and the attendant had shouted a warning to the running boy prior to the accident.

school

The court, holding the school employees not liable, said:

Even if it be assumed (though the record does not so show) that defendants were negligent in allowing the trials to be run on the walk, still the proximate cause of the accident was the reckless negligence of Krupansky [student] who, knowing that Mrs. McDonell was on the walk, continued his pace until he ran into her. Such inexcusable and unusual conduct on the part of a boy 14 years old certainly could not be foreseen. Further, the instructions not to run when others were on the walk were explicit. The regrettable conduct of Steve Krupansky, not negligence on the part of defendants, caused the injury to Mrs. McDonell.⁴⁹

The case illustrates that though there may have been negligence on the part of the school employees, there was no liability because the negligence was not the direct cause of the accident. It also indicated that liability may result even though an accident occurs in the teacher's absence and off school property.

⁴⁸McDonell v. Brozo, 285 Mich. 38.

⁴⁹Ibid.

The want of care which an ordinary prudent and careful man would exercise under given circumstances is the yardstick which the jury uses in determining negligent behavior; it is applied by the jury or judge to the circumstances and the duty owed the injured. Even though negligence is shown, the individual still has available the defense of contributory negligence, intervening causes breaking the chain of events leading to injury, and assumption of risk by the plaintiff.

Though the standard of conduct is the ordinary prudence of the common man, this should not lead one to conclude that the teacher's responsibility to her students may be equivalent to the ordinary responsibility of citizens at large. There are several reasons, previously cited, why it might be expected that the responsibility owed by professional people to injured pupils would be at a high level.⁵⁰

Liability of school administrators. There are few cases in the United States where the courts have been called on to rule on the liability of school administrative officials. In general, there is no distinction made by the courts between teachers and administrative officials and generalizations regarding the liability of teachers are applicable to professional employees charged with administrative responsibilities. Schaerer cited cases where the superintendent of

⁵⁰ Supra, pp. 45-46.

schools had been declared a public officer rather than an employee and concluded that perhaps the superintendent might share the immunity protecting board members against liability.⁵¹ Evidence to support such a theory appears meager and rather inapplicable to the author.

Many writers in the field express the feeling that administrators may be liable for damages for tort to an extent far greater than the number of cases brought against them would lead one to believe.⁵² One author makes the suggestion that one reason administrators have not been involved in more instances of litigation is the possibility that the public may not be aware that school administrators, unlike school board members, may be held liable for negligence.⁵³

Although one's position within a school system offers no protection against liability in and of itself, it should be noted that the nature of an administrative position does appear to separate the person holding the position from close contact with pupils so that the possible negligent action of the administrator may not often be the direct cause of injury. The teacher through whom administrative actions are most likely to be carried out appears to stand

⁵¹Robert W. Schaerer, The Liability Status of Indiana Public Schools (Bloomington, Indiana: Indiana School Boards Association, June, 1959), p. 16.

⁵²Garber and Boyer, "Planning and Supervisory Responsibilities to Avoid Tort Liability," op. cit., p. 75; Rosenfield, op. cit., p. 44.

⁵³Bolmeier, op. cit., pp. 30-32.

in the most vulnerable position of being held negligent in liability suits.

Teacher negligence not imputed to administrator.--

It was indicated, supra, that the administrator may not often be the direct cause of negligence because of his indirect relationship with pupils, which leads to the question as to whether the administrator may or may not be liable for the negligent action of subordinate employees.

Under the old legal principle of law that the master may be liable for the acts of his servant where he is carrying out the orders of his master, it might appear that administrators could be liable for the negligence of teachers. This, however, is not the case. The school administrator is neither the employer nor the master of subordinate employees. Bolmeier, in citing the inapplication of this legal principle, warned that this fact does not eliminate the liability risk involved in administration and supervision since it does not rule out liability where the administrator co-operates, directs, or encourages the action or lack of action which contributes to a wrong leading to injury.⁵⁴

⁵⁴Ibid.

Though the administrator may have a professional interest and an ethical responsibility in holding negligence of employees to a minimum, the official responsibility delegated to an administrative position does not mean assumption of liability for the negligent conduct of subordinate employees.

Indemnity for Damages Recovered

Both individuals and groups collectively may and have invested in liability insurance. The Michigan Education Association has adopted an insurance plan providing general liability insurance for its members as part of their membership service since 1954. The insurance is underwritten by the Auto-Owners Insurance Company and agrees to pay on behalf of the teacher all sums up to the amount of \$20,000, which the teacher might become obligated to pay by reason of liability imposed by law for damages because of bodily injury caused by the teacher's personal acts arising out of and in the course of the teacher's duties as an employee of a board of education. The insurance company also agrees to pay for the teacher's defense in suit for damages even if such suit is groundless, false, or fraudulent.

School District Liability in Selected States

Laws, legal procedure, and judicial interpretations pertaining to tort liability of school districts do have variations, dissimilarities, and modifications peculiar to each state. Pertinent to this study is the development of

tort liability of school districts in certain states which may form the pattern upon which the trend of school district liability is likely to follow in Michigan. Selection of states is based on (1) state statutes relating to tort liability of school districts and (2) judicial modifications of common law immunity.

Reutter reviewed the basis for governmental tort immunity and categorized the existing exceptions to the doctrine of non-liability in tort of school districts into seven broad classifications, three involving legislation and four involving court interpretations, as follows:⁵⁵

I. Legislation

1. Abrogate doctrine of immunity--California and Washington.
2. Abrogation in effect of that part dealing with negligence. Connecticut, New Jersey, New York, and local option in Wyoming.
3. Indirect exceptions to immunity. Safe place statutes, public liability statute, authority to purchase insurance or sue insurance company statutes.

II. Modifications by judicial opinion.

1. Deviation from long-standing precedent. New York and Illinois.⁵⁶
2. Purchase of liability insurance.
3. Nuisance exception.
4. Proprietary function.

California.--In 1923 three amendments were added to the California Political Code imposing liability for injuries caused by defective or dangerous conditions of school property,

⁵⁵Reutter, op. cit., pp. 28-30.

⁵⁶Illinois added by author.

for injuries or damages caused through the negligent operation of school owned motor vehicles, and for injuries to persons or property due to or arising from the negligence of the district, its officers, or employees.⁵⁷ These statutes are unique and not found in any other state. Over the years additional statutes have been added giving school districts authority to purchase liability insurance, providing for methods of filing claims, and setting up procedures for verification of claims.⁵⁸ Liability has been imposed on school districts in numerous numbers of cases under these statutes.⁵⁹

One writer, after reviewing cases in California opined that the courts appear to attach considerable importance to precautionary measures taken before and at the time of the accident as evidence of non-negligence.⁶⁰

Washington.--In 1907 a statute was placed on record making school districts liable for injuries they inflict

⁵⁷California Political Code (1923), p. 67, sec. 2; California School Laws (1937), Art. IV, sec. 2.801; Ibid., Art. 5619, sec. 2; Ibid. (Vehicle Code) sec. 400.

⁵⁸California Government Code, Annotated (1960), par. 1956; California Education Code, Annotated (1960), par. 1042, 1044.

⁵⁹Carlson, op. cit., pp. 76-78; Lee O. Garber, 1960 Yearbook of School Law (Danville, Illinois: Interstate Printers and Publishers, Inc., 1960), p. 62; Bellman v. San Francisco High School District, 73 P. (2d) 596 Calif.; Kerby v. Elk Grove High School District, 36 P. (2d) 431 Calif.

⁶⁰Carlson, op. cit.

upon individuals and under this law a number of school districts were held liable.⁶¹ In 1917 the Washington Legislature amended the statutes to limit action in cases relating to parks, playgrounds, fieldhouse, athletic apparatus, or manual training equipment, in or about any school house or elsewhere, owned or operated by school districts.⁶² This statute greatly limited liability of school districts, however, court cases show that Washington is one of the more liberal states in upholding the rights of the injured party. Liability insurance may be carried by school districts.

New York.--In 1906 the New York State Court handed down a precedent case which abrogated the immunity doctrine and held that although the board of education was a governmental agency of the state, it remained liable for its own negligence.⁶³

In 1937 statutes, often referred to as "save-harmless statutes," were passed which provided that the board shall "protect and save-harmless" its employees from any loss incurred by court judgments or damages for negligence.⁶⁴

⁶¹Revised Code of Washington, sec. 4.08.120.

⁶²Washington Compiled Statutes, 1922, sec. 4706, p.703.

⁶³Wahrman v. Board of Education, 111 App. Div. 345; 97 N. Y. S. 1066 (1906).

⁶⁴New York Education Law, secs. 2510 and 3023 (as re-numbered in 1949).

These statutes neither eliminate the liability of the employee nor exempt the employee for his negligence but rather provide for indemnification of the teacher if a loss should occur. Generally, this type of law does not directly affect the application of "governmental immunity" to school districts, however, the New York courts have interpreted their law as, in effect, imposing direct liability on the school board as direct right of action is allowed against the school district for the negligence of its employees.⁶⁵ Many cases have been decided against New York school districts, directly or indirectly, under statutes and court interpretations which are possibly the most generous to the injured in current use.

New Jersey.--This state, in 1937, imposed on boards of education the duty to furnish employees with legal counsel in actions based upon acts arising out of or in the course of their employment.⁶⁶ During the following year "save-harmless" statutes protecting school employees against tort claims were passed which were later, in 1955, expanded to include all employees of the board of education.⁶⁷ The courts have held that these statutes do not allow the school district to be sued directly.⁶⁸

⁶⁵Garber, Law and the School Business Manager, op. cit., p. 199.

⁶⁶New Jersey Rev. Stat. (1937), 18:5-20.2-3.

⁶⁷New Jersey Laws (1938) Chap. 311; Rev. Stat. New Jersey Title 18, 5-30, 5-50.2, 5.50.3.

⁶⁸Tripens et al. v. Peterson et al., 78 A.(2d) 149, 11 N. J. Sup. 282 (1950).

Connecticut.--Connecticut adopted a save-harmless statute similar to the New Jersey and New York statutes in 1945. The school district still maintains its governmental immunity but districts have been held liable for nuisance.⁶⁹

Minnesota.--Minnesota has the oldest statute pertaining to liability; a statute passed in 1851 and reaffirmed in 1877 which appeared to nullify the doctrine of governmental immunity by giving permission for action for injuries to the rights of the plaintiff arising from some act or omission of such officers, or of the district.⁷⁰ The law has been nullified by the court's ruling that the intent of the legislature was not clear.⁷¹

In 1941 the Minnesota legislature granted school districts the right to purchase liability insurance protecting board members, teachers, and school employees against personal and property liability, injuries arising from school bus accidents, and accidents arising from the operation of safety patrols, providing the insurance contract includes a waiver

⁶⁹General Statutes of Connecticut (rev. 1949), secs. 1494-1495, p. 553; Lee O. Garber, "Courts Placing More Emphasis on Save-Harmless Statutes," The Nation's Schools, 59:63-64, June, 1957.

⁷⁰Minnesota Laws (1851), Ch. 79, secs. 12-16; Mason's Minnesota Statutes (1927), vol. 1, sec. 3098, p. 720.

⁷¹Bank v. Brainerd School District, 51 N.W. 814, 49 Minn. 106; Garber, Law and the School Business Manager, op. cit., p. 199.

by insurer of governmental function as a defense.⁷² A 1959 law allows school districts to purchase insurance on school owned or leased vehicles and buses but specifically states that the payment of insurance premiums does not make the district liable.⁷³

Oregon.--This state has an early statute similar to that of Minnesota passed in 1862 and later amended in 1877 appearing to permit tort action against school districts.⁷⁴ The courts have ruled otherwise by applying the doctrine of "stare decisis" as did the Minnesota courts. Permission is granted for the purchase of liability insurance but failure to provide insurance is not viewed as negligence. Thus the courts consider all matters concerned with operating schools governmental in character and hence not actionable under the law.⁷⁵ One exception to governmental immunity was allowed because the school district was engaged in a ministerial duty rather than a governmental duty, a position later reversed by the court.⁷⁶

⁷²Minnesota Statutes (1941), sec. 471.43; Garber, Law and the School Business Manager, op. cit., p. 199.

⁷³Minnesota Extra Session Laws of 1959, Chp. 71, Art. IV, subd. 9.

⁷⁴Oregon Compiled Laws Annotated, sec. 8-702.

⁷⁵Spencer v. School District No. 1, 254 P. 357, 121 Or. 511.

⁷⁶Lupke v. School District No. 1, 275 P. 686; Antin v. Union High School District, 280 P. 664 (Oregon).

Wisconsin.--Cases have been brought before the Wisconsin courts under their "safe place" statutes dating from the year 1911 which makes an owner of a public building liable for injuries due to maintenance negligence of buildings. The courts have consistently dismissed complaints against school districts.⁷⁷ A state statute does allow the introduction into court that the defendant is insured and allows the insurance company to be named and joined as party defendant in a liability suit.⁷⁸

Illinois.--In 1952 the Illinois courts handed down a decision which held a school district liable for damages up to the amount of insurance coverage carried by the school district on the theory that governmental immunity was a public policy to protect public school funds but that since school funds were protected by insurance the reason for immunity no longer existed.⁷⁹ The following year the legislature adopted a statute authorizing boards to insure against liability providing the insurance firm agreed not to use immunity as a defense. The courts in Illinois allow to be admitted in evidence facts concerning the possible insurance carried.

⁷⁷Garber, Law and the School Business Manager, op. cit., pp. 184-201; Heiden v. City of Milwaukee, 226 Wis. 92.

⁷⁸Ibid.; Wisconsin Statutes (1931), secs. 85.93 and 260.11; Wisconsin Statutes (1933), ch. 101, sec. 101.06 and 101.01 (11).

⁷⁹Thomas v. Broadlands Community Consolidated School District, 348 Ill. App. 567; 109 N. E. (2d) 636 (1952).

In 1959 the Illinois Supreme Court made modern legal history when they handed down a decision which ruled that ". . . school districts are liable in tort for the negligence of their agents and employees and all prior decisions to the contrary are hereby overruled."⁸⁰ This action of complete overthrow of the immunity doctrine is viewed by authorities in the field of school law as the most sweeping, complete, and precipitate action taken by the highest court of any state up to the present time.⁸¹ This case is considered by Garber to be one of the seven most significant court decisions affecting education during the last decade.⁸²

Minor deviations from immunity in other states.--

Alabama and North Carolina have tort-claim acts which allow limited recovery for payment of injuries but do not abrogate the doctrine of governmental immunity.⁸³ Kentucky and Tennessee allow the school district to carry insurance on school owned vehicles and waive governmental immunity up

⁸⁰Molitor v. Kaneland Community Unit School District, 163 N. E. (2d) 89 (Illinois) 1959.

⁸¹Lee O. Garber, "Illinois Court Overthrows Immunity Doctrine," The Nation's Schools, 64:70-72, August, 1959; Stephen F. Roach, "School District Tort Immunity Overruled," The American School Board Journal, 139:53, October, 1959.

⁸²Lee O. Garber, "How the Courts are Changing the Education Scene," The Nation's Schools, 69:92-93, January, 1962.

⁸³Remmlein, "Tort Liability of School Districts," op. cit., pp. 195-200; General Statutes of North Carolina, secs. 115-115 through 197; Alabama Code of 1940, sec. 55-333-4.

to the amount of insurance the school district carries.⁸⁴
Failure to carry insurance imposes no liability.⁸⁵

Arizona, Pennsylvania, and New Hampshire maintain that governmental immunity covers the school district when it is engaged in the performance of a governmental activity but that the school district may be liable when engaged in the performance of a proprietary activity. Renting of school property, school sponsored recreation programs, and nuisance are liability hazards in these states, especially in Pennsylvania.⁸⁶ New Hampshire has hinted that school districts might be liable up to the limits of protection provided by insurance.⁸⁷

Summary

It has been the rule of law in Michigan that school districts and their boards of education are not liable for injuries to the public except where the statutes specifically state otherwise. Such liability exists under workmen's compensation laws and motor vehicle laws creating liability

⁸⁴Robert R. Hamilton, The National School Law Reporter (New London, Conn.: Arthur C. Croft Publications, August, 1958), 8:48; Schaerer, op. cit., p. 32.

⁸⁵Robert R. Hamilton, The National School Law Reporter, op. cit., November, 1956, 6:74; Schaerer, op. cit.

⁸⁶Lee O. Garber, "State Courts Define School Liability, The Nation's Schools, 63:104-106, March, 1959; Ruetter, op. cit., pp. 28-30.

⁸⁷Lee O. Garber, "Liability of Districts that Carry Insurance," The Nation's Schools, 60:90, October, 1957.

for injury arising from the use of school owned or leased vehicles.

Recent cases involving school athletic events where an admission fee was charged have been troublesome to the court, however, no situations or activities have been found to be non-governmental in nature as far as schools are concerned. Townships have been declared to have been carrying out proprietary functions in Michigan and courts in some states have placed some school activities in this category. In spite of vigorous dissenting opinion by the court and general dissatisfaction with the principle of governmental immunity, the court appears to broadly view the activities and functions of the school, supporting a general conclusion that perhaps everything the school does is of a governmental nature.

In suits against purely municipal corporations, the courts have ruled that "immunity" has been eliminated from the law; however, later cases held that the principle of law abrogating governmental immunity did not apply to the State itself or to school districts. The latest opinion of the court, at date of writing, is that the doctrine of governmental immunity has been established by the Legislature since 1945 and cannot be abrogated by the court.

School employees are liable for their torts in Michigan as school district immunity does not extend to offer protection to them. Generalizations regarding the

liability of teachers are applicable to school administrative personnel; teacher negligence is not imputed to the administrator.

Review of the literature shows that school districts throughout the country are generally protected from torts by the principle of governmental immunity although there are notable exceptions to this general rule. States having made noteworthy departures from the general rule of school non-liability include California, New York, Washington, and Illinois. Three states, Connecticut, New Jersey, and New York have "save-harmless" statutes which provide that the board of education shall protect and save-harmless its employees from any loss incurred by court judgments or damages for negligence; a fourth state, namely Wyoming, provides such protection on a local option basis.

CHAPTER IV

MICHIGAN SCHOOL OFFICIALS' PERCEPTION OF SCHOOL LIABILITY AND SCHOOL LIABILITY RISKS

Introduction

This chapter is a descriptive examination of the general knowledge of school officials relating to school liability in selected areas; of school officials' opinions concerning school liability; and school officials' perception of liability hazards and risks. Documented information, opinion of experts, and legal principles (presented in Chapters II and III) are put aside as this chapter deals only with the opinion of practicing school officials and as such, may or may not be substantiated by fact or be in agreement with the opinion expressed in the literature.

No judgment is made on the merits, correctness, or inaccuracy of opinion except in areas where there is rather definite conflict with fact. The base of liability is legal principles; however, cases are settled based on the facts of the case or situation thus making prediction of liability on the general circumstances of a situation a most speculative venture.

Much of the opinion expressed in this chapter is based on questioning regarding the fictitious cases presented in the interview schedule.¹ School officials were not asked to place themselves in the position of judge or jury to determine fault in the cases presented, but were asked to view the circumstances of the situation in general from the standpoint of a practicing school administrator.

School Liability of General Concern

Rather general replies were sought concerning the overall concern with which school officials viewed school district liability. The responses ranged from the view that general liability of school districts was no problem whatsoever to the judgment that school district liability presented a tremendous problem in administration of schools at this time. Of the forty-five replies, eleven per cent viewed school liability with much concern, forty-five per cent said liability was a problem, twenty-two per cent opined that liability was becoming a problem, and twenty-two per cent held the opinion that school liability presented no particular problem in school administration. Three of the ten officials who indicated that liability was not a problem qualified their points of view by explaining that school liability was merely a part of business management or routine administrative tasks and thus no more of a problem than any other routine task of school management.

¹Appendix A.

General Knowledge of School Officials

School officials interviewed generally conveyed to the interviewer early in the interview that they did not pretend to be well informed on the subject of tort liability. The interview schedule avoided direct questions which would have the appearance of directly testing the interviewee on his knowledge of the subject; however, opportunity was given to express himself on areas where rather factual information could be given. In a few instances officials were asked quite directly if they were generally well acquainted with certain broad general areas of information.

Areas selected for examination.--The following areas were the subject of inquiry for purposes of determining school officials' acquaintance with knowledge of school connected liability: (1) Acquaintance with one or more Michigan Supreme Court cases of school liability. (2) Acquaintance with status of liability in other states. (3) Knowledge of differences between Michigan and other states. (4) Acquaintance with the status of school district liability in Illinois. (5) Knowledge of the Ferris case, the first school district liability case to appear before the Michigan Supreme Court. (6) Understanding of the distinction (legal) between liability on school-owned vehicles and general school liability in Michigan. (7) Knowledge of facts which determine jurisdiction where buses cross state

lines. (8) Familiarity with the liability status of school employees. The data ^{are} ~~is~~ summarized in Table 1.

Acquaintance with Michigan cases.--Few school officials have more than a speaking acquaintance with Michigan court cases involving the liability of school districts. Of the forty-five school officials interviewed, approximately forty-two per cent were acquainted with no Michigan cases, twenty-nine per cent indicated that there were cases but could identify none, sixteen per cent mentioned cases which could be identified, and thirteen per cent were well enough acquainted with cases to point out details and findings of the courts.

In all, only two cases which have appeared before the courts were identified, plus one case settled out of court and one non-school case.

Acquaintance with school liability in other states.--Michigan school officials are not generally acquainted with school district liability in the various states. Those who are aware of differences between states most often cited California as being different. Fifty-three per cent of replies indicated no knowledge of liability in states outside Michigan, twenty-seven per cent of the answers indicated that there were differences, or that schools were liable in some states, et cetera, but could not identify states, nine per cent discussed school liability in one state to some

TABLE 1
KNOWLEDGE OF SCHOOL OFFICIALS IN SELECTED AREAS OF INQUIRY

Areas of Inquiry	No Knowledge or Don't Know	Minimum Information; No Specifics	Some Acquaintance with Subject	General Information on Subject	N = 45
1. Acquaintance with one or more Mich. Cases	(19) 42.2%	(13) 28.9%	(7) 15.6%	(6) 13.3%	100%
2. Status of school liability in other states	(24) 53.3%	(12) 26.7%	(4) 8.9%	(5) 11.1%	100%
3. Differences between Mich. and other states	(23) 51.1%	(11) 24.4%	(7) 15.6%	(4) 8.9%	100%
4. Status of school Dist.liability in Illinois	(44) 97.8%	(0)	(1) 2.2%	(0)	100%
5. Knowledge of Ferris Case.122 Mich.315	(45) 100.0%	(0)	(0)	(0)	100%
6. Distinction between trans. & general liability (Mich.)	(22) 48.9%	(3) 6.7%	(7) 15.5%	(13) 28.9%	100%
7. Jurisdiction where accident occurs across state line	(45) 100.0%	(0)	(0)	(0)	100%
8. Liability of school employees	(21) 46.7%	(1) 2.2%		-(23)- 51.1%	100%

extent, and eleven per cent had some knowledge of the status of liability in two or more states.

Differences between Michigan and other states.--Information on which to examine respondents as to basic differences between Michigan and other states is not independent of their knowledge of liability in other states and acquaintance with school liability in Michigan. The respondents were classified according to the answers they gave to questioning on the above two topics. The questioning was indirect, and thus answers given do not represent clear-cut "yes" or "no" answers as to whether they were fully aware of the significant differences between school liability in certain states as contrasted to Michigan. Fifty-one per cent of school officials reported that they did not know or were not aware of differences between Michigan and other states, twenty-four per cent believed there were some differences, sixteen per cent cited differences, and nine per cent could point out the differences as well as the basis for such differences.

Michigan liability for school owned vehicles.--School officials were questioned regarding the liability of school owned buses in connection with a fictitious case and later questioned directly concerning distinguishing differences between liability in transportation and general liability of the school district. The replies indicate that more than one-half of school officials are not fully aware that

Michigan forbids the use of governmental immunity in the defense of cases arising through the use of school owned vehicles.² Forty-nine per cent of the respondents did not distinguish between liability in the two areas of school operation, seven per cent said they were different but did not know what the difference was, fifteen per cent indicated differences such as carrying insurance and school acceptance of liability, and twenty-nine per cent pointed out the specific legal difference in the two areas of operation.

Liability of school employees.--Responses to the questions regarding the liability of employees were not qualified as to degree of liability and thus answers merely indicate whether those interviewed believed school employees such as teachers and janitors could or could not be held liable for torts. Approximately one-half of the school officials did not believe that school employees could or would be liable for negligence if they were carrying out their assigned work or occupied in performance of duty. Such responses are hardly in agreement with the law on the subject.³

Miscellaneous item reflecting knowledge.--School officials were questioned indirectly regarding situations which might elicit answers based on rather specific situations but ones which writers in the field have frequently

²Cf. ante., p. 55.

³Cf. ante., pp. 69-73.

referred to. The situations were: (1) The Ferris case, the first school liability case in Michigan, where a school district was held liable for trespass.⁴ (2) the status of liability of school districts in Illinois where the State Court overthrew the immunity doctrine, the case considered by Garber to be one of the seven most significant court decisions affecting education during the last decade.⁵ (3) District liability for bus accidents occurring in another state, the question of jurisdiction having been answered by the Federal Courts.⁶

The responses given by school officials, as shown in Table 1, were negative, except for one school official who was informed on the status of school district liability in Illinois.

Perception of School Liability Hazards in Transportation

A fictitious case involving the use of a school owned bus and a car owned by a faculty member which were used for a field trip outside the state was presented to each school official. The case read as follows:⁷

⁴Ferris v. Detroit Board of Education, 122 Mich. 315; Cf. ante., p. 55.

⁵Cf. ante., p. 83.

⁶Thurman et al. v. Consolidated School District No. 128, Turpin, Okla., 95 Fed. Supp. 616; Leo O. Garber, "District Liability for Bus Accidents," The Nation's Schools, 50:79-80, November, 1952.

⁷Appendix A.

A Michigan School District sponsored a field trip to Chicago and transported the pupils by a school owned bus and an automobile owned and driven by a faculty member. Each pupil paid fifty cents to help cover transportation costs and the school agreed to reimburse the teacher for her expense based on a per-mileage basis.

The school carried an insurance policy on the bus covering public liability, property damage, and comprehensive coverage. Each pupil was required before departure to file a form giving parental approval for the trip and waiving any liability for any injury or damage arising as a result of the trip.

While in Chicago both the bus and the teacher's car were involved in a three vehicle accident, the third automobile being an Illinois passenger car. A passenger in the Illinois car and a girl on the school bus were seriously injured and all vehicles were damaged in the accident.

School officials were asked to consider the hazards in this situation which would be of concern to them as school officials rather than attempt to view the situation from the standpoint of a jury who would be concerned with determining fault. The hazards in transportation as viewed by school officials are shown in Table 2.

In general, school officials believed the situation presented in the case, supra, did present liability hazards to the school district. Forty per cent of the officials interviewed indicated that there were definite liability hazards present in the case, forty-two per cent were less sure but believed there were some dangers, while eighteen per cent did not believe the case presented any liability hazards to the school district.

There was little agreement on the specific hazards present in the case. The obvious hazard of responsibility

TABLE 2

SCHOOL DISTRICT LIABILITY HAZARDS IN TRANSPORTATION AS
VIEWED BY MICHIGAN SCHOOL OFFICIALS

Situation	Degree of Liability Hazard to School District				N = 45
	Definite liability	Somewhat or Perhaps	No Liability	Don't Know	
1. Situation in Case I. Trans. in general*	(18) 40%	(19) 42.2%	(8) 17.8%	(0)	100%
2. Injury to pupil on school bus (Case I)	(25) 55.5%	(7) 15.6%	(12) 26.7%	(1) 2.2%	100%
3. Use of teacher's car for field trip	(20) 44.4%	(9) 20.0%	(16) 35.6%	(0)	100%
4. Accident out of state. State of jurisdiction	(2) 4.5%	(13) 28.9%	(24) 53.3%	(6) 13.3%	100%
5. Charge to pupils for transportation	(6) 13.3%	(26) 57.8%	(10) 22.2%	(3) 6.7%	100%

*Information given in reaction to case rather than answers to direct questions.

for damages to the public arising because of an automobile collision was not asked in the interview schedule because of Michigan's law of non-immunity of school districts in transportation. Although the data, exhibited in Tables 1 and 2, disclose that school officials may not be fully aware of the law or its implications, nevertheless all school officials in the study indicated that they did carry liability insurance on school owned vehicles. This would seem to indicate that school officials, though perhaps not well informed of the law, were, nevertheless, cognizant of liability hazard in this area.

Injury to pupils on school bus.--Twenty-five of the respondents or approximately fifty-five per cent of those interviewed said the school district could be liable for injuries to the pupil riding on the school bus. Sixteen per cent were not sure but thought there might be some possible liability, while twenty-seven per cent did not believe that the school could be liable for a pupil injured while on the school bus.

Use of the teacher's car on field trips.--Twenty replies or forty-four per cent of respondents indicated that the school district would be liable where the teacher's personal car was being used for school purposes. Twenty per cent believed such practice was a liability hazard to some degree and thirty-six per cent did not believe that this practice

presented a liability hazard to the school district itself.

Accident occurring across state boundary lines.--School officials in general were divided into two groups as to whether the liability hazard was increased when a school district vehicle was involved in an accident outside the state. Fifty-three per cent of the officials felt that the place of the accident had no bearing on liability and did not represent an increase in liability risk. Twenty-nine per cent of the officials thought that an accident out of state might increase the liability risk but were not sure what the hazards might be, while five per cent of the officials felt that this situation represented a real liability hazard. Thirteen per cent gave an answer of "don't know."

Charging pupils to ride the bus.--The hazard which school officials in this study were most occupied with in this case was the practice of the school in charging a nominal fee to help finance field trips. Nearly all replies indicated that this practice was a poor one; however, the interviewees were not sure what the penalty might be or whether this practice might increase the hazard of liability. Thirteen per cent of the officials indicated that they considered such a practice a liability hazard, fifty-eight per cent said that it might represent a liability hazard directly or indirectly since the school district, by virtue of charging, might become a common carrier or that perhaps their

liability insurance might not protect the district in such a situation. Twenty-two per cent of the school officials said they did not believe that the practice of charging pupils for trips had any connection with the liability of the school district, and seven per cent expressed no opinion or stated that they did not know answers to the questions.

The concern of administrators with the practice of charging pupils to provide transportation for field trips, athletic contests, and other school activities undoubtedly is based on the fact that Michigan has no provision in the state's statutes for boards of education to lease, rent, loan, or hire their buses for any purpose to any person, organization, or club. This fact is interpreted by the Michigan Department of Public Instruction to mean that boards of education may not charge passengers for transportation to educational or recreational activities or even accept "gifts" designated for payment of transportation.⁸

Perception of General School
District Liability Hazards

A second fictitious case presented to the school officials interviewed in this study involved the possible general liability of the school district and read as follows:⁹

⁸Michigan Pupil Transportation Handbook, Bul. No.431
(Lansing, Michigan: Lynn M. Bartlett, State Superintendent of Public Instruction, 1961), p. 31.

⁹Appendix A.

Case II. The school district is located in Michigan. A ten-year-old girl was seriously burned when she fell into an unguarded incinerator which actually was little more than a deep depression in the ground on a sloping hillside located in one corner of the school property in the adjacent vicinity of the school's football field.

The girl was attending a football game for which she had paid admission, and during the half-time was attracted to a fire burning in the incinerator and along with other pupils went to the site of the fire.

The fire was set by school custodians who were burning refuse from the school's fieldhouse and debris from a pre-game homecoming bonfire.

The fire on the school property in turn caused a second fire on adjoining property when the wind blew burning paper over on to the adjacent property. This in turn caused damage to a storage building located on the property.

It might be expected that this case, since it involved the general liability of the school district, would lead rather quickly to a discussion of school non-liability and governmental immunity. Such was not the case, generally. The subject of immunity when discussed usually came to the surface after considerable discussion of school liability and liability hazards. In all, only forty-nine per cent of the school officials mentioned governmental immunity or school non-liability in the interviews. At the time the study was made only one-third of the school officials believed that school immunity offered protection to the school district against liability to any degree.

School officials believe school districts liable.--

Generally, school officials believed school districts might be held liable. The data (exhibited in Table 3) show that two-thirds of the school officials interviewed believed the

TABLE 3

OPINION OF SCHOOL OFFICIALS REGARDING SCHOOL DISTRICT
GENERAL LIABILITY HAZARDS

Hazard	Total N =45	Responses			
		Yes	Perhaps Somewhat	No	Don't Know
1. General liability of school dist. a liability hazard*	100%	(30) 66.7%	(7) 15.5%	(8) 17.8%	(0)
2. Proprietary function a hazard	100%	(0)	(18) 40.0%	(26) 57.8%	(1) 2.2%
3. Nuisance a hazard	100%	(0)	(26) 57.8%	(16) 35.5%	(3) 6.7%
4. Trespass a hazard	100%	(0)	(26) 57.8%	(18) 40.0%	(1) 2.2%

*Case II. All reasons for liability were for negligence or for allowing situation to exist. Twenty-two respondents cited "immunity principle" but only fifteen believed immunity doctrine protected school districts.

school district would be liable in Case II. Fifteen per cent did not think that the situation would come under the protection of governmental immunity, leaving only eighteen per cent believing that the school could not be held liable in a situation or similar circumstances as presented in the case.

Reasons given for liability.--The leading cause given by school officials for school liability in Case II was negligence. Of the thirty respondents who believed the school district was liable, twenty-two indicated negligence as the reason. All other reasons were related to allowing the conditions found in the case to exist. Possible exceptions to governmental function such as proprietary function, nuisance, and trespass, although cited often in the literature as liability hazards, received little more than passing attention.

Proprietary function.--A theoretical exception to "governmental immunity" is the possible liability for injury resulting from the operation of a proprietary function as opposed to a governmental function. The courts in some states have made such distinctions.¹⁰ Both Indiana and Michigan have distinguished between governmental function

¹⁰Cf. ante. p. 85.

and proprietary function in the case of civil municipalities¹¹ but have so far refused to make such a distinction in school cases, although it has been an issue before the Michigan Supreme Court in recent cases.¹²

Only forty per cent of the school officials interviewed indicated that proprietary function might increase the liability hazard present in school operation.

Nuisance and trespass.--Another exception to the immunity principle seized upon by courts in some states is liability for nuisance and trespass. In the first liability case handed down by the Michigan Supreme Court in 1899, the school district was held liable for trespass.

School officials interviewed did not express any strong concern for nuisance and trespass as liability hazards but approximately fifty-eight per cent of the responses did indicate that acts which might be classified under nuisance and trespass might increase the hazard of school district liability.

Liability of Individuals

Individuals, unlike school districts, have no general immunity in common law from tort action. School employees are liable for their own negligence in school and may not

¹¹Schaerer, op. cit., p. 52; Dohm v. Township of Acme, 354 Mich. 447.

¹²Watson v. School District of Bay City, 324 Mich. 1; Richards v. School District of the City of Birmingham, 348 Mich. 490.

even enjoy the same protection provided to many employees in our society.¹³

Neither is it always apparent as to what circumstances determine whether liability may attach to the school district, the individual, or both. The rather humorous parallel of "herding fleas in a sieve" as comparable to teaching is employed by one writer as he points out that the herdsman of the fleas is not responsible for repair of the sieve.¹⁴ The analogy requires no elucidation, and though the author making the comparison concerns himself with liability under Canadian law, the principle represented that the school board is generally responsible for provision of a safe place seems apropos.

Data relating to the liability of individuals are presented in Table 4.

In this part of the study, the liability of the school board member, school employees, and school administrators is considered separately. Opinion concerning the liability of individuals was examined by questioning concerning the possible liability of individuals in Case I and Case II, supra.¹⁵

¹³Cf. ante. pp. 70-73.

¹⁴Robert L. Lamb, Legal Liability of School Boards and Teachers for School Accidents (Ottawa, Ontario: Canadian Teachers' Federation, 1959), p. 52, citing "Liability of Schoolmasters and Managers and the Provisions of the Public Authorities Protection Act," Irish Law Times, 81:121, May 24, 1947.

¹⁵Supra, pp. 96 and 101.

TABLE 4
RESPONSES INDICATING THE POSSIBLE LIABILITY OF INDIVIDUALS

Individual Liabile	N = 45	May be Held Liabile	No Liability	Don't Know
1. Board members Situation in Case II	100%	(23) 51.1%	(22) 48.9%	(0)
2. Employees--except admin. Situation in Case II	100%	(24) 53.3%	(21) 46.7%	(0)
3. School administrator Case I--transportation	100%	(33) 73.3%	(11) 24.5%	(1) 2.2%
4. School administrator Case II--general liability	100%	(28) 62.2%	(17) 37.8%	(0)

Liability of school board members.--A suit against the board of education is essentially the same as a suit against the school district for both are of corporate character and synonymical in legal use. The liability of individuals on the board of education is distinctly different from liability of the board of education for the board of education is an entity distinct from its members. It is the liability of individual members of the board of education which is here considered.

Approximately one-half (see Table 4) of the school officials interviewed believed that board members might be held individually liable. None of the responses included any mention of ministerial function, discretionary function or possibility of board members acting in an individual capacity except one response which included the qualification "if negligent."

Reasons given by those officials who believed school board members could be held liable included: (1) Failure of the board of education to act. (2) Exercise of poor judgment. (3) Superiority over employees. (4) Negligence. (5) Allowing situation to exist.

Liability of school employees.--The liability of school administrative officials is divorced from the liability of other school employees in this part of the study to better systematize the data and analysis, appropriate to the perception of liability of individuals held by school

officials. Although some writers have asserted that school superintendents may be considered legal school officials with status similar to school board members,¹⁶ this writer sees no explicit legal grounds on which to separate administrative officials from other school employees. One's position within a school system appears to offer no protection against liability in and of itself, although the nature of one's job or position may, to a large degree, determine the latitude of exposure to situations which may be considered liability risks.

The data in this study indicate that school officials' perception of liability of school employees may not be in agreement with legal precepts which hold that school employees may be sued and held liable if negligence is proved, unless there was contributory negligence on the part of the injured or the negligence was not the proximate cause of wrong.¹⁷ Responses in this study show that nearly half of the school officials interviewed did not view liability as a hazard to school employees acting within the scope of their employment, in the performance of duty, or carrying out assigned tasks. As shown in Table 4, twenty-four of forty-five school officials interviewed believed that school employees, administrative officials excepted, might be held

¹⁶Schaerer, op. cit., p. 16.

¹⁷Cf. ante. pp. 70-73.

liable in Case II or analogous situations. Reasons given for non-liability of school employees such as teachers and custodians included: (1) Immunity from liability. (2) Employees carrying out orders of superiors. (3) Liability attached only to those in authority. None of the explanations for non-liability are supported by legal principles of negligence and liability.

Liability of administrators.--Data concerning the possible liability of school administrative staff members were obtained in conjunction with questions concerning Case I and Case II, supra, and support the inference that an impressive number of school officials view the possible liability of school administrative officials with much concern. Data are shown in Table 4.

The data indicate that a majority of school officials believe that the school administrator might be held liable in the general situation presented in the interviews. In fact, school officials viewed liability as a greater hazard to themselves than to employees working under their direction. Seventy-three per cent of the officials viewed liability as attaching to the administrator in Case I and sixty-two per cent believed the school administrator might be held liable in Case II. Explanation of the differences is probably due to the replies which were apparently based on facts of the situation rather than on principle.

Of the eleven officials out of forty-five who did not believe school liability a hazard to the administrator in either case, eight indicated no liability whatsoever, and three thought the hazard a most remote one.

Seventy-three per cent of the respondents indicated some degree of liability hazard to administrators. Of this total of thirty-three school officials indicating probable liability of the administrator, four indicated that they did not consider liability a great hazard but believed one could be liable for gross negligence, seven officials cited "superior of employee" as a reason for liability, five cited "personal negligence" as reason for liability, and the remaining eighteen replies gave miscellaneous reasons centering on the extent of one's responsibility or failure to act. Four officials cited two reasons each, thus the above shows a greater number of reasons for liability than of school officials.

Liability and decision making.--No specific questions were asked inquiring directly whether school officials associated authority, position, and responsibility for decision making with liability. A number of officials indicated, as has already been inferred, that liability in some manner goes along with responsibility or is imputed to those in authority or to the person responsible for making major decisions or policy. Of the school officials interviewed, fifty-six per cent gave responses indicating

that liability accompanied the decision making function or the authority position. Two officials held the view that such responsibility was totally held by the board members, seven held the view that such liability ended and rested with appointed school officials or administrators, and fourteen believed this liability might be shared by both school board members and appointed school administrators.

Many of the reasons for liability and non-liability given by school officials in this study are not confirmed by legal principles of liability. Fault is the negligent act that leads directly to the injury and not something passed up the chain of command to those in final authority. The school official is only liable to the extent that his negligence is the cause of accident or injury.

A comparison of generalizations regarding the liability of school administrators, based on the review of literature and the perception of such liability by school officials indicates that school officials have over-estimated the scope of liability hazards to administrators generally although others appear not to discern the character of real, though limited, hazards existing in administration.

Liability Hazards

Liability hazards in this part of the study are approached from the practical viewpoint of the school official to determine liability hazards as perceived by the practicing school administrator. It may be argued that a more appropriate

approach to determining liability hazards would be through the extraction of facts relating to hazards from the collection and review of liability cases. It should be pointed out that there is no dearth of literature which approaches the problem from this viewpoint and that this method has its shortcomings also, namely, that cases set forth legal propositions of law as they apply to the facts of the case and since such facts are infinite and vary from case to case, unwarranted generalizations may be made.

Variation in scope of liability hazards.--Liability hazards which have been so far treated in the data include: liability in transportation in general, liability for pupils injured on school buses, liability for non-school owned automobiles, school liability attaching to crossing state lines, liability in connection with charging pupils to ride buses, general liability of the school district, liability attaching to a proprietary function, liability attaching to maintenance of a nuisance, liability attaching to trespass, liability of the individual school board member, liability of school employees, and possible liability of the school administrator in two instances. The frequency with which school officials cited one or more of the above hazards is shown in Table 5.

The data depict a range from two hazards cited per school official to ten such hazards cited; the median of seven such hazards out of thirteen possible situations shows

the average school official as viewing liability as attaching to approximately fifty per cent of the situations.

TABLE 5
HAZARDS CITED BY SCHOOL OFFICIALS ACCORDING
TO NUMBER CITED PER SCHOOL OFFICIAL

Number of Hazards Cited per Official	Frequency	Cumulative Frequency	
2	2	2	
3	1	3	
4	6	9	
5	4	13	Possible
6	9	22	Total = 13
7	13	35	
8	6	41	Mdn. = 7
9	2	43	
10	2	45	

Significant areas of hazards.--This section seeks to compare the responses indicating possible liability with responses which might be expected had the interviewees known nothing about the questions and simply guessed at the answers. To test this theory of knowledge vs guessing, the hypothesis of no difference between observed responses and values calculated on the theory of probability is proposed. The null hypothesis is: There is no difference between the observed responses indicating hazards of liability and the results which might be expected had the interviewees been simply guessing.

The hypothesis was tested by computing confidence limits based on a total of forty-five cases using the formula

$\sigma = \sqrt{Np(1-p)}$ multiplied by 1.96 standard deviations (.05 level) giving a value of ± 6.57 from the theoretical mean of 23.00 as the range within which answers may be attributed to mere speculation and pure guesses. The total sum of responses for each item to be significant then had to be less than 16.43, or greater than 29.57. The results are shown in Table 6.

The areas of liability hazards here considered have been treated previously in this study. It should be noted that school officials' responses previously classified as to degree of hazard, shown in Tables 2, 3, and 4, are here consolidated into three categories, namely, "yes," "no," and "do not know." The hypothesis being tested is a two-tailed test with both upper and lower limits of significance and allows for only yes and no answers. Since "do not know" answers would tend to reduce the size of the response on the lower end of the scale, the frequency of such responses was added to the "yes" or "no" responses showing the least numerical value before applying the confidence limits for significance.

The null hypothesis is retained in the following areas:

1. School district liability due to crossing state boundary lines.
2. Liability of school board members.
3. Liability of school employees.
4. Liability of the school administrator (general liability.)

TABLE 6

COMPARISON OF YES AND NO RESPONSES IN VARIOUS
AREAS OF POSSIBLE LIABILITY

Area	"Yes" Answers	"No" Answers	Don't Know	Significance
1. Liability in transportation	37*	8	0	Significant
2. Liability for pupil injured on bus	32*	12	1	Significant
3. School liability (crossing state line)	15	24*	6	Not significant
4. Liability of school board members	23	22*	0	Not significant
5. Liability of school employees	24*	21	0	Not significant
6. Liability of admin. (general)	28	27	0	Not significant
7. Liability of admin. (in transportation)	33	11*	1	Significant
8. Non-ownership (autos)	29	16	0	Significant
9. Charging pupils to ride bus	32	10	3	Significant
10. General liability of school district	37	8	0	Significant
11. Proprietary function (school district)	18	28	1	Not significant
12. Nuisance (school district)	26	16	3	Not significant
13. Trespass (school district)	26	18	1	Not significant

*Judged correct answers based on statutes, court cases, and legal principles. Other items are considered situations where such facts and principles are lacking or doubtful.

5. Liability for proprietary function.
6. Liability for maintenance of nuisance.
7. Liability for trespass.

The null hypothesis is rejected in the following areas:

1. Liability in transportation.
2. Liability for pupils injured on school buses.
3. Liability of the school administrator in connection with possible accidents in transportation.
4. School district liability for use of non-school owned automobiles.
5. Liability in connection with the practice of charging pupils a nominal fee to ride the bus.
6. General liability of the school district.

It will be noted that school officials' responses show significant liability hazards in only two general areas; namely, transportation and the general liability of the school district. In only one situation, relating to transportation, did school officials show significant responses indicating liability hazards to personnel, such liability being limited to the school administrator. If the effect of the factor of charging pupils for transportation could be measured and separated from the data relating to liability in the area of transportation, the results might show a somewhat different pattern. It may be conjectured that responses are significant only regarding the general liability of the school district and possible liability attached to

charging pupils for transportation; in the latter case such possible liability attaching to both the school district and the administrator who allowed or approved such a practice.

Ability to choose correct answers. Liability is based on legal principles, the nature of which makes it impossible to predict in advance what is or what is not a cause of liability. As has been pointed out, supra, unwarranted generalizations may be made from reviewing cases where liability has been determined. Determination of liability is complicated and is left up to a jury or judge to determine. In this study, however, school officials were not asked to determine liability based on facts of the cases or to place themselves in the role of a judge or jurymen. Specifically the interviewees were asked to view the general situations from the standpoint of school administration and to express their views on the liability hazards present in the situations.

The writer feels that this discussion would not be complete unless he too placed himself in the role of the school official and indicated possible correct views of liability hazards based on statutes, court cases, and legal principles.

Thus the writer divides the list of thirteen liability hazards here considered into two categories with answers as follows:

- A. Areas of liability based on statutes, court cases and legal principles.

1. Liability in transportation. (Yes)
2. Liability for pupil injured on the bus. (Yes)
3. School district liability due to crossing state boundary lines. (No)
4. Personal liability of school board members.(No)
5. Liability of school employees. (Yes)
6. Liability of administrator in transportation. (No)

B. Areas of liability considered situations where statutes, court cases, and legal opinion are lacking, doubtful, or not applicable without further and more detailed facts. (Includes areas where dissenting court opinion indicates dissatisfaction with present law.)

1. Liability of the school administrator (general liability).
2. Liability relating to non-ownership of autos.
3. Liability relating to charging pupils for transportation.
4. General liability of the school district.
5. Liability relating to proprietary function.
6. Liability relating to nuisance.
7. Liability relating to trespass.

Data on items and correct answers are shown in Table 6. Of the six areas where correct answers are indicated, category A, supra, school officials identified two areas according to

responses judged significant. A third area of responses was significant but judged incorrect. Of the seven areas where no answer is suggested by the writer, category B, supra, school officials identified three areas of hazards according to responses judged significant. Thus it appears that school officials are no more likely to identify areas of liability hazards in areas where there is factual information on which to make such judgments than they are to identify areas of possible liability in situations where facts and information may not be available or liability is in the doubtful category.

Areas of hazardous operations.--Inquiry was made in this study to determine areas of normal school operation which might be considered high potential hazards from the standpoint of liability, especially from the viewpoint of liability of individual employees. The previous section of this chapter dealt with liability hazards from the standpoint of locating general areas of liability in terms of personnel, school district, and transportation. This section seeks to identify areas of school activities and operations which may be considered high risk liability hazards or exposures.

Use was made of a fictitious situation designed to determine areas of hazards of concern to school officials. The situation is designated Case III, but it should be noted that this school situation is not a "case" in the sense that

the previous two cases were, i.e. following a pattern similar in nature to actual court cases. The situation reads as follows:¹⁸

Case III. This Michigan School District has a strong, well-organized, in-service education program and during the year, here considered, selected for their topic of study, "the legal rights and liabilities of school personnel." Although various sources of information were used, the primary source of information was a booklet authored by a well known writer in the field of school law, designed to acquaint school personnel with some of the legal rights and responsibilities of their positions.

As a result of the study a rather lengthy list of recommendations was made for the guidance of faculty members and a second list of recommendations was made to the school officials and board of education pertaining to possible changes in school policy to minimize hazards of liability.

Recommendations were made in the following areas:

1. Use of confidential materials.
2. Duties of non-certificated employees such as teacher-aides and student teachers.
3. Inadequate supervision due to class size.
4. Supervision of playgrounds.
5. Pupil supervised activities and unassigned pupils.
6. Civil defense and fire drill responsibilities.
7. School camp and summer recreation programs.
8. Safety patrols.
9. Field trips.
10. Supervision and care in classes considered high accident risks.

In general, only those persons who viewed employees as liable answered questions concerning Case III in detail; however, there were some who cited hazards even though they did not believe school personnel would be held liable. It should be noted that no separation is made here between school administrators and other school employees.

¹⁸Appendix A.

In general, there was no great concern shown for any of the areas investigated. No area was cited by fewer than one out of four officials interviewed and no area was cited by more than seven of ten officials interviewed. The extent of replies generally indicated liability hazards possible or conversely that officials could see no particular hazard present, thus making qualitative classification most difficult. As indicated in Table 7, a small number of officials expressed strong concern for hazards relating to the use of confidential materials, inadequate supervision due to class size, operation of school camps and recreation programs, use of safety patrols, field trips, shop classes, science classes, and physical education classes. Safety patrols and shop classes received the most attention from this group showing strong concern for areas of liability hazards.

The areas of hazards ranked from the area most frequently cited as a possible hazard to the area least often cited shows the areas of hazards in the following order:

1. Hazards associated with playground supervision.
2. Pupil supervision such as pupil supervised study halls and unassigned pupils in high school.
3. Hazards associated with shop and manual training classes.
4. Operation of school camps and summer recreation programs.
5. Hazards in the science laboratories and projects related to science teaching.

TABLE 7

AREAS OF SCHOOL OPERATION CONSIDERED LIABILITY HAZARDS BY SCHOOL OFFICIALS

Area	Degree of Hazard				N = 45
	Strong Concern	Likely	Perhaps	Not a Hazard	Don't Know
1. Confidential material	(3) 6.7%	(15) 33.3%	(0)	(27) 60.0%	(0) 100%
2. Class size supervision	(1) 2.2%	(11) 24.5%	(0)	(33) 73.3%	(0) 100%
3. Non-certificated employees	(0)	(20) 44.4%	(0)	(25) 55.6%	(0) 100%
4. Supervision of playgrounds	(0)	(32) 71.1%	(0)	(13) 28.9%	(0) 100%
5. Pupil supervision	(0)	(18) 40.0%	(8) 17.8%	(19) 42.2%	(0) 100%
6. Civil defense and fire oper.	(0)	(12) 26.7%	(0)	(33) 73.3%	(0) 100%
7. School camp and recreation	(1) 2.2%	(22) 48.9%	(0)	(22) 48.9%	(0) 100%
8. Safety patrols	(5) 11.1%	(13) 28.9%	(0)	(25) 55.6%	(2) 4.4%
9. Field trips	(1) 2.2%	(18) 40.0%	(0)	(26) 57.8%	(0) 100%
10. Shop classes	(5) 11.1%	(21) 46.7%	(0)	(19) 42.2%	(0) 100%
11. Science classes	(1) 2.2%	(21) 46.7%	(0)	(23) 51.1%	(0) 100%
12. Physical education	(1) 2.2%	(20) 44.4%	(0)	(24) 53.4%	(0) 100%

6. Physical education classes.
7. Operation of safety patrols.
8. Hazards relating to the use of non-certificated employees as teacher-aides and student teachers.
9. Hazards connected with field trips.
10. Possible liability due to misuse of confidential material such as reports and materials placed in the pupil's cumulative record.
11. Inadequate supervision due to assignment of large classes.
12. Possible liability hazards connected with civil defense and fire rescue operations.

The high ranking which school officials gave to unassigned pupils and pupil supervision such as pupil supervised study halls lends support to the inferential surmise that the hazards of liability, real or imagined, may tend to circumscribe school activities and programs which allow pupil participation without close teacher supervision and which are designed for development of pupil responsibility and self-discipline based on concepts of learning by doing.

There is no inference here that liability may be a limiting factor as regards democratic procedures of free discussion and decision making concerned with determining ends to be attained. Inferred is the possible limitation of a wide variety of pupil activities, programs stressing independent work, and citizenship training programs where

learning by doing and participating in activity of real significance to the pupil are viewed as essential. This should concern those who view character development and citizenship education as something caught rather than something taught.

Current learning theory emphasizes interest, motivation, experience, and activity in contrast to the traditional ideas of education by assignment, study, and recitation. Although the classroom teacher may be free to follow a program based on current learning theory, liability appears opposed to the over-all administrative organization of school programs based on present learning theories, supra, and designed with a view of scheduling and programing for pupils rather than teachers.

Since nearly one-half of the school officials interviewed did not believe teacher liability a hazard and nearly one-fourth did not view liability attaching to the administrator as a hazard, it might be expected that the areas of liability cited above and suggested in the interview schedule would be of little concern to at least twenty-five per cent of the officials interviewed.

The fact that forty-four per cent of school officials interviewed saw possible liability hazards in connection with the use of non-certificated employees and that fifty-seven per cent saw such hazards associated with pupil supervision may lead one to conclude that perhaps liability is viewed as attaching to situations in general which do not

conform to well established patterns of school organization and teacher assignment.

Approximately forty per cent of officials interviewed indicated possible liability hazards on the playgrounds, in the school shops, science classes, and physical education classes, and in activities associated with field trips and excursions. These are the activities where one might expect to find such hazards since they are areas of activities and instruction most prone to accident. The same activities have been viewed as liability hazards in the literature.¹⁹

The operation of safety patrols received less attention generally even though a few officials hold strong opinions against using such patrols and, as has been mentioned,²⁰ experts are not in agreement as to the degree of hazard involved.

The fact that more school officials viewed liability as attaching to the administrator than to other employees²¹ may account for the more frequent citing of areas of hazards associated with the close supervision of pupils for which the school official or administrator might be viewed as responsible for management and direction, while areas which may more properly be considered under the direction and jurisdiction of the classroom teacher are less often cited. This

¹⁹Cf. ante., pp. 46-50.

²⁰Cf. ante., p. 48.

²¹Supra, pp. 109-111.

suggests that the school officials view of "who may be liable" may be an important factor in deciding what operations may be considered high risk liability hazards in this study.

Summary

The majority of Michigan school officials interviewed in this study indicated some degree of concern relating to school connected liability. School officials appear to have little first hand acquaintance with school liability cases or factual information contained in the literature pertaining to liability of school districts and their employees.

School officials generally believed that school districts might be held liable for negligence and unsafe conditions; however, there neither was unanimous agreement concerning the general liability of the school district nor general consensus concerning the liability of the school district in transportation, the latter an area of liability not confused by the concept of "governmental immunity." Proprietary function, nuisance, and trespass are not viewed as of primary importance in establishing school district liability although they are recognized by approximately one-half of school officials as being potential danger areas.

School officials were almost evenly divided as to whether liability was a hazard to individual school board members and school employees. A greater number of officials, nearly three-fourths, believed liability a hazard to school

administrative officials in some degree. A rather prevalent misconception of liability related to the apparent association between authority or responsibility for making decisions and liability. Many of the reasons given by officials for and against the possible liability of individuals cannot be confirmed by legal principles of personal liability and negligence.

The data show that the numerical aggregate of liability hazards cited per individual school official ranges from few hazards to many, but in approximately one-half of the situations the pattern of answers is not significantly different than that which might be expected by pure chance and guessing. School officials appear no more likely to identify areas of liability where facts and principles indicate liability hazards than to identify liability hazards in situations where such facts and principles are lacking or doubtful.

Detailed areas of school operations considered as potential liability hazards were treated with varying degrees of indifference generally, with little agreement as to particular areas of operation which might provide potential areas of hazards. The school official's view of "who may be liable" appears as a factor affecting the school official's view of operations which may be considered high risk liability hazards in this study.

Areas of supervision for which administrative officials may likely be held answerable, under management and direction

of an administrator, were cited most often. Classes and activities prone to high accident rates were cited less often and activities and supervision more likely to be considered within the domain of the classroom teacher were least often cited. In a general way the evidence appears to support the view that school officials see possible liability attaching to situations which do not conform to well established patterns of school organization and conventional teacher assignment practices.

In summary, the school officials' perception of school liability is a portrait of mixed, incongruous opinions, not substantiated by first hand knowledge of legal principles, and muddled by a shifting viewpoint of "governmental immunity." This disarray into which the school official has been thrown emanates and accompanies an apprehensive view directed towards numerous possible or potential liability hazards.

CHAPTER V

GENERAL LIABILITY INSURANCE

Insurance is a contract whereby one party or parties agree to indemnify another against loss, damage, or liability arising from an unknown or contingent event. The purchase of liability insurance by school districts has never been sanctioned in law; in fact, legal opinion has held that since school districts are immune from liability in tort, they do not have authority to purchase liability insurance.¹

The authority to purchase insurance in general is an implied power from the general authority of boards to manage and maintain school property. Schools do have the express authority to purchase workmen's compensation insurance and liability insurance on school owned motor vehicles.² The exceptions in no way weaken the concept of governmental immunity since liability in both cases is in compliance with statutory law.

This chapter presents opinion of school officials regarding the purchase of insurance, describes briefly the

¹Opin. Atty. Gen., Mich. Bien. Rep. 1930-32, p. 313.

²Act 127 of 1945, p. 132; 8 Mich. Stat. Ann., sec. 9 1708 (1) (2).

forms, types, and characteristics of liability insurance purchased by school districts, and covers general purchasing practices of liability insurance. Included, in addition to the data, is information of a general nature concerning liability insurance to aid in a better understanding of insurance and better explain the data. No attempt is made to more than outline the salient features of liability insurance policies since there are many textbooks and other references available which give detailed analysis of the terms and features of liability insurance contracts.

The Purchase of General Liability Insurance

In general, school officials indicated in this study that it was considered wise policy to carry general liability insurance. Approximately eighty-seven per cent of school officials interviewed indicated that school districts should purchase some form or type of liability insurance, as indicated in Table 8.

TABLE 8

NUMBER OF OFFICIALS VIEWING LIABILITY INSURANCE
AS DESIRABLE OR NECESSARY COMPARED TO THE
NUMBER OF SCHOOL DISTRICTS THAT
CARRY LIABILITY INSURANCE

Item	Frequency of Response		
	Yes	No	Total
School district should carry liability insurance	(39) 86.7%	(6) 13.3%	100%
School districts which do carry liability insurance	(34) 75.6%	(11) 24.4%	100%

In actual practice, as shown in Table 8, three-fourths of the school districts do carry liability insurance, however, the number is somewhat less than the number of officials who indicated that school districts should purchase such insurance.

Reasons for Carrying Liability Insurance

Inquiry was made concerning the reasons why school officials believed it a wise policy to carry general liability insurance. Responses, although sometimes difficult to classify, present differing basic reasons for the purchase of insurance against liability hazards.

The reasons include, as shown in Table 9, the protection of school funds, the general trend toward greater liability, indemnity against costs of defending liability suits, and the moral and social responsibility to the injured as well as protection of teachers and employees against liability.

TABLE 9

REASONS GIVEN FOR CARRYING LIABILITY INSURANCE OF FREQUENCY BY RESPONSE

Reasons	Frequency
Moral and social responsibility:	
1. To the injured	6
2. To teachers	7
Protection of school funds	15
Trend toward greater liability	13
Indemnity against cost of suit	3
N =39 Total	44

General liability insurance as protection of employees.--

Seven school officials in this study indicated (shown in Table 9) that protection of employees against the hazards of liability was a primary reason for purchasing general liability insurance. Further inquiry, supported by data in Table 10, showed that approximately forty-two per cent of officials believed that general liability insurance carried by the school district provided full protection of employees against liability hazards and that another twenty-seven per cent believed that such insurance provided some degree of protection to employees. Only one-fourth of those interviewed indicated that insurance covering the school district did not provide protection to the employees of the school district.

TABLE 10

OPINION AS TO THE DEGREE OF PROTECTION PROVIDED
EMPLOYEES AND THE INJURED BY SCHOOL
LIABILITY INSURANCE

Item	Protection				N=45
	Full	Limited or Indirect	None	Don't Know	
Protection of employees	(19) 42.2%	(12) 26.7%	(11) 24.4%	(3) 6.7%	100%
Protection of the injured	(31) 68.9%	(8) 17.8%	(6) 13.3%	(0)	100%

It cannot be stated categorically that liability insurance purchased by school districts does not protect school employees both directly and indirectly. Liability policies

purchased by school districts may be endorsed to include teachers' liability at an additional premium, however, no endorsements of this nature were cited in this study. As information, it might be noted, that teachers' liability insurance may be purchased, depending on coverage and the particular teacher's duties, for amounts in the range of two to six dollars per teacher.³

It should also be noted here that all teachers and school employees belonging to the Michigan Education Association have Teacher's Liability Insurance up to the amount of \$20,000.⁴ No questions were asked (in the interviews) relating to this insurance. Two officials in the study did point out, in discussing the liability of teachers, that individual teachers were protected by the above insurance.

It may be argued with some logic that where the school district carries liability insurance more suits will be directed against the school district than the teacher. Likewise there may be less chance of suit where there is a possibility of settlement with the insurance company out of court. The practice in law of naming all persons in any manner responsible for injury, both individually and as trustees of the board, accompanied by the fact that the

³This type of insurance may be considered "in aid of a private person" and thus not a legal expenditure of school funds.

⁴Cf. ante. p. 76.

insurance company has no actual legal obligation to pay without a court judgment against the school district appear as serious limitations to such conjecture.

It is concluded that school officials are prone to highly overrate general liability insurance carried by the school district as a means of providing protection to teachers against liability; that school liability insurance as carried by the school districts does not give the degree of protection which it is credited by many school administrators.

Liability insurance protection for the injured.--

Respondents in this study were questioned regarding the value of general liability insurance carried by the school district to protect the injured against financial losses due to injury. The basis of the question is not to cast doubt on the integrity and probity of commercial insurance companies but to seek opinion as to the extent commercial insurance meets the social obligation of paying for injuries to the public in view of the possible immunity of the school district and probable difficulty of obtaining a court judgment against the school district. Liability insurance covers the legal liability of the school district which implies a court judgment and is not accident insurance which pays claims without liability as a condition. Although school immunity appears to have lost much prestige it still appears as a formidable and obstreperous impediment, if not an

assured barrier, to obtaining a court judgment against a school district. Thus, there is the possibility that liability insurance contributes little towards meeting the social obligation of paying for injuries to the public and pupils generally.

Most officials, as shown in Table 10, indicated that insurance companies would pay claims. Sixty-nine per cent of officials had little or no doubt but that commercial insurance would settle all reasonable claims. Approximately eighteen per cent felt that such insurance, as an aid to the injured, had some limitations but believed that it had real value in settling small out of court claims. Thirteen per cent saw little value in liability insurance as a means of protecting the injured since the chances of a court judgment awarding damages to the injured were rather remote.

Defense of suits against school district.--One of the benefits of liability insurance is the protection it offers the district against the cost of defense in the courts, should a suit arise. This reason may be appealing to the busy school official but fails to meet a primary purpose of insurance, namely, to protect the district from risks so hazardous it dare not assume such risk of loss individually.

Protection of school funds.--The major reason, as shown in Table 9, for carrying liability insurance is the protection it provides against possibly enormous losses to the school

district due to liability. Such a possibility may be rather remote, but recent trends toward greater liability and legal dissatisfaction with governmental immunity appear to place such a possibility in the realm of reality..

Summary.--The majority of reasons supporting the purchase of liability insurance revolve around the factor of possible financial loss to the school district because of possible liability. Some officials view the purchase of liability insurance as meeting a social or moral obligation to the public. School officials appear to overrate liability insurance as protection of teachers against the hazards of personal liability.

Benefits Provided by Liability Insurance

Liability insurance covers the legal liability of the insured and defends or pays the costs incurred in defense of liability suits against the insured.

Interviewees in this study were asked to describe in brief and give particulars of any suits, claims, or settlements made involving their school districts due to injuries arising out of situations of possible liability within the past ten years. Only seven of the forty-five school officials interviewed reported any such claims. Three of the seven incidents involved accidents arising out of bus accidents leaving only four claims against the school district in areas of possible general liability. One of the four claims was

paid by the board of education from school funds; a second case was paid for by student-accident insurance, and two cases were settled by liability insurance carriers out of court.

A school district not included in this study but within the geographical area of the study as conducted, had a case where the company insuring the school district paid a sizable claim out of court. This was a case of injury and death due to explosion of a light fixture and falling reflector.

Because of the few cases available, no conclusion would be justified regarding out of court claim settlements by insurance companies. In the few cases examined, insurance companies did pay out of court claims for injuries.

Characteristics of Liability Insurance

Historically public liability policies were developed to afford protection against a specific hazard; later more comprehensive contracts were devised to cover many hazards or groups of exposures. Liability insurance is generally classified as to the area of liability coverage, although all policies may include or exclude a number of areas of exposures by endorsement. The areas of protection or exposures insured against by schools in this study are shown in Table 11, and include primarily bodily injury liability, property damage liability, product liability, and motor vehicle liability. Other exposures sometimes covered include

elevator liability, contractual liability, contractors liability, non-ownership liability, and others to fit special circumstances.

TABLE 11

NUMBER OF RESPONSES INDICATING GENERAL LIABILITY
EXPOSURES BY TYPE OF POLICY

Exposure Area	Form or Type of Insurance		
	Compre- hensive	Scheduled Hazards	N=34 Total
Premises-operations			
O. L. & T. coverage	(19)	(15)	
1. Bodily injury	55.9%	44.1%	100%
2. Property damage	(18) 52.9%	(12) 35.3%	88.2%
3. Products	(10) 29.4%	(2) 5.9%	35.3%
Additional liability hazards			
4. Contractual	(2)		5.9%
5. Protective	(3)		8.8%
6. Contractors	(4)		11.8%
7. Non-ownership	(8)		23.5%
8. Autos and buses	(4)		11.8%
9. Additional coverage*	(4)		11.8%

*Includes elevator, malpractice, construction, teams, boiler and machinery, et cetera.

There are basically two main types or forms of liability insurance policies purchased by school districts, namely, the

general comprehensive form and the scheduled hazards types or form.

Scheduled hazards type of insurance policy.--This form of policy, in general, protects the insured against legal liability in operations specified in the policy. The coverage may be for a particular exposure and narrow in scope or may be extended in scope by including numerous exposures by endorsement to the policy. The basic policies and standard endorsements each cover definite and limited groups of liability exposures. A single policy may be endorsed to cover a wide range of exposures, or the purchaser may elect to cover each group of exposures with a different policy designed for the particular coverage. Generally standard specified exclusions include circumstances which are not covered in the policy, losses for which the company would be justified in charging a higher rate for protection, and those circumstances where hazards are more properly covered under other forms of insurance policies.

In brief the basic difference between this form of policy and the comprehensive type policy, infra, is that in the scheduled form of policies it covers only exposures specified in the policy, while comprehensive forms cover all known and unknown exposures.

The most used type of scheduled hazards type of policy is the Owners', Landlords', and Tenants' liability, referred to in insurance circles as O. L. & T. This policy is

designed to protect the insured against legal consequences flowing from his relationship to the premises in question. The coverage is not limited to accidents occurring on the premises, as might be assumed, but applies elsewhere by virtue of a comprehensive clause covering all operations necessary and incidental to the use of the premises.

The O. L. & T. policy covers bodily injury and will pay legal claims for bodily injury for accidents arising out of ownership, maintenance, and use of premises or insured's operations as described in the policy. Property damage liability, protection against liability for damage to property belonging to others, may or may not be included in the policy. Other exposures such as product liability, elevator liability, and structural alterations liability may be added by endorsement. There are standard exclusions which apply unless the contract specifically provides to the contrary. They generally deal with injury to property owned or used by the insured, liability assumed by contract, limitations on product liability, and hazards considered more appropriate to other insurance policies.

General comprehensive liability form.--This form of policy is a single contract providing for all exposures, regardless of their nature. The scope of this policy is limited by endorsement and exclusions where the scope of the O. L. & T. form is broadened by endorsement. The conditions found in the O. L. & T. policy pertaining to

designated premises or in connection with particular operations is absent in the comprehensive policy, thereby giving automatic coverage. Specific exclusion of liability assumed by contract, liability of employees, and destruction of property owned or used by the insured is part of the insurance contract and can be removed only by endorsement. Motor vehicles may or may not be included. The advantage of this type of insurance contract is cited by Spell as follows:⁵

The absence of a requirement in the insuring clause, or elsewhere in the policy, that the accidents to be covered must occur on designated premises or in connection with particular operations results in the giving of automatic coverage for any hazards that arise during the policy period. . . . New or different activities, additional locations, unexpected or newly created hazards are covered without the necessity of giving notice of any change to the Insurer. Thus the policy makes it unnecessary to secure one or two basic policies and attach thereto appropriate endorsements. Such procedure often gives rise to the possibility of a necessary coverage being overlooked or of placing one or more hazards in the category of doubtful coverage. The latter possibility is particularly true of policies issued by different insurers, each one of which may contend the other's policy is applicable to the claim in question.

Types of liability policies purchased by schools.--

Fifty-six per cent of (refer to Table 11) school districts included in this study who purchase general liability insurance procure the "comprehensive form" of policy as against forty-four per cent who purchase the scheduled hazards type

⁵Reginald V. Spell, Public Liability Hazards (Indianapolis: The Rough Notes Co., Inc., 1956), p. 20.

O. L. & T. policies. Two school districts in the latter group insured their bleachers and stadiums only. The percentages used in reference to types of insurance here and in Table 11 are based on the total number of school districts who carried insurance rather than calculated from the numerical total of all school districts included in the study.

Groups of exposures.--Although school districts may purchase either a comprehensive or scheduled hazards form of policy the resulting coverage or final effects may be much the same. The effectiveness and extent of coverage provided by the policy, regardless of type, is determined by the exposures or groups of hazards which are covered by the policy.

The majority of school districts purchase a basic policy protecting them against the group of hazards covered under the standard Owners', Landlords', and Tenants' Public Liability Policy in connection with the use and operation of the school premises. Two districts (as indicated previously) insured their bleachers or stadium only, thus leaving seventy-one per cent of all school districts in the study as being protected against bodily injury liability for premises and operation in general, as shown in Table 12. Likewise, the majority of those who insure (ninety-four per cent) also carry property damage liability as part of their over-all liability insurance program. One-third of those

TABLE 12
COMPARISON OF LIABILITY COVERAGE BY TYPE
OF EXPOSURE

Type of Exposure	Number Having Coverage	Percentage of those Who Insure	Percentage of Total
Bodily injury	32	100	71.1
Property damage	30	93.7	66.7
Products	12	37.5	26.7
Non-ownership*	12	37.5	26.7
Coverage specified for exposures in addition to those listed above	5	15.6	11.1

*Includes six school districts having such coverage on fleet policies. This coverage may be considered automobile liability rather than a general liability risk.

who insure, or one-fourth of the total number of school districts, also carry in addition to the above coverage, products liability insurance. In general, Product Liability Insurance provides coverage for accidents resulting from the possession, consumption, or use away from the premises of products manufactured, handled, or distributed by the insured. The primary interest of school districts in this type of insurance is to cover food consumption in connection with the operation of cafeterias, concession stands, et cetera. All such insurance was written as part of other liability policies, either by endorsement to an Owners', Landlords', and Tenants'

form of policy, or part of a combined comprehensive liability policy.

Additional liability coverage was specified in some cases where school districts purchased the comprehensive form of liability insurance. These exposures, shown in Table 11, included: (1) Contractual Public Liability and Property Damage covering situations whereby the school has assumed liability by contract, such as "hold-harmless" agreements in leases and obligations which, except for the contract, would not exist. (2) Owners' Protective Liability used in connection with work performed by independent contractors for the school district where the school district's liability is secondary, the independent contractors' liability being primary. (3) Manufacturers' and Contractors' Public Liability and Property Damage issued to protect the insured where the school acts as a contractor. (4) Elevator liability where schools have and operate elevators. (5) Non-ownership liability covering any liability of the insured in the operation of motor vehicles owned by others, the primary interest here being in teachers' automobiles used for school business or carrying out school functions. (6) Malpractice liability where the school district employs nurses, doctors, et cetera. (7) Miscellaneous exposures listed as construction operations, teams liability, and boiler and machinery liability.

It should be noted that the writer did not inspect the liability policies of all schools included in the study with

the result that the school official's description of insurance coverage had to be accepted in some cases. In these cases, as well as others, the school officials generally believed their insurance covered all school liability but actually could seldom identify any specific exposures insured against. In a majority of cases the policies were inspected. In some cases the official checked the policy and mailed the information to the writer, or the information was forwarded to the writer by an insurance agent. Regardless of the method, every means were taken to get accurate information. Nevertheless, there remains some chance of small error in reporting. Five school districts specified coverage on their policies in addition to bodily injury, property damage, and products liability. The number reported here is the number verified by viewing the policy; other possibilities may exist.

It should also be noted that the school districts specifying numerous and assorted additional coverage did not necessarily have such exposures nor did they always pay extra for the coverage since they were only charged for the exposures which they actually had. Likewise school districts would be covered for these risks under the comprehensive form, under new risks, in some circumstances.

Special mention should be made of the fact that four school districts included the liability of all their school owned buses and other vehicles on their general comprehensive

liability policy. Those who made this a practice believed that this one policy for all liability was the most economical means of purchasing liability insurance. The advantage here is that minimum charges for two or more policies are avoided and the school may take advantage of any discount on size of the total premium. Data are shown in Table 13.

TABLE 13

NUMBER OF RESPONSES SHOWING AUTOMOBILE LIABILITY
INSURANCE BY POLICY FORM

Exposure	Comprehensive General	Comprehensive Auto	Insurance Form		Total
			Scheduled Hazards (Autos)	Do Not Insure	
School owned vehicles	(4) 9.0%	(2) 4.4%	(38) 84.4%	(1) 2.2%	100%
Non-ownership liability	(8) 17.8%	(2) 4.4%	(4) 9.0%	(31) 68.8%	100%

The general practice of schools was to carry liability insurance on school vehicles on a separate fleet policy. All school districts who owned vehicles did carry liability insurance of one form or another; one school district had no vehicles. Whereas the purchase of comprehensive forms of liability insurance was fairly common practice in the area of general liability, it was a rather rare practice to purchase this type of policy in the case of fleet policies on school owned vehicles. In four cases the vehicles were covered on comprehensive general liability policies and in

only two cases did school districts purchase comprehensive type automobile liability policies.

The comprehensive type or form of policy should not be confused with comprehensive coverage which is included on many scheduled fleet policies. The latter merely indicates a package of hazards which the insurer may choose to purchase as one of scheduled benefits of policy.

Extension of coverage by endorsement.--Policies may be further extended in coverage by endorsement of liability policies with "occurrence basis" and "personal injuries" endorsements. An "occurrence basis" protects against liability on occurrence rather than limits protection to liability caused by accident. An example might be the failure to provide heat in a school building.

"Personal injuries" includes in addition to bodily injury such things as libel and slander, nervous prostration, et cetera.

No datum is available on the extent of use of such endorsements.

Name of the insured.--The usual practice of schools as found in this study was to list the legal name of the school district as the named insured. The definition of the insured, under a standard liability policy, includes the "director" which is interpreted to include any trustee or any member of the board of governors of the named assured.

Some insurance underwriters will list the names of the board members, superintendent of schools, and principals at no extra cost.⁶

In this study, only two school districts listed the names of the board members under the name assured and in one case only both the names of the board members and the name of the Superintendent of Schools were listed under the assured.

Cost, rates, and forms.--This study in no way provides research on rate-making organizations, rates or costs; however, some observations may be apropos. Forms of contracts and rates are determined primarily by rate-making organizations, mainly the National Bureau of Casualty Underwriters and American Mutual Alliance. However, a company could form their own rate-making organization and operate independently so long as they conformed to the insurance codes of the State.

With the exception of Detroit, uniform rates are used throughout the state. Rates do vary from state to state and from city to city. With the exception of large cities, rates are generally uniform throughout a particular state. For example, basic rates for bodily injury liability for public school classifications is three cents per pupil in Michigan and four cents per pupil in Detroit, as set by National Bureau of Casualty Underwriters. It may be of interest that

⁶From a quotation to the writer dated March 14, 1962. The Hartford Accident and Indemnity Company via South Haven Agency, Inc., South Haven, Michigan.

the rates in states having more liberal laws regarding the liability of school districts are considerably higher. Comparison of the rates for coverage, similar to above, show California with a rate of fifty cents per pupil, Washington with a rate of ten cents per pupil, and New York with varying rates of seventy cents to one dollar and sixteen cents per pupil.⁷ This situation does not prevail for liability rates on automobiles for such rates vary from one region to another and from rural areas to large cities.

The fact that uniform rates are used in determining the cost of coverage should not be interpreted to mean that all commercial companies will charge the same premium for like coverage. In fact, it appears from discussion with school officials who used bids and from limited comparison of costs from one school to another that some astounding results may be expected from various companies bidding on the same insurance. The basis for such differences is the practice of insurance companies to use experience rating plans, discounts on premiums above a certain amount, or both combined, known as a credibility factor. In addition some companies may use what is known as schedule rating whereby various judgment factors such as housekeeping, attitude toward safety, et cetera, are utilized in determining the final premium.

⁷Letter dated February 5, 1960 with attached exhibit setting forth basic limits for bodily injury liability rates. National Bureau of Casualty Underwriters, 60 John St., New York 38, New York.

Financial limits of policies.--The question of liability limits becomes a question of judgment and economics, and each purchaser must draw the line determining the upper limits which will be set as the total financial obligation of the insuring underwriter. The rates charged, of course, are higher for higher limits, although it costs increasingly less percentagewise to carry the higher limits.

Table 14 provides information concerning the limits of policies carried by school districts included in this study. The greatest number of school districts purchased insurance with limits as follows: bodily injury per person, \$100,000; bodily injury per accident, \$300,000; property damage, \$25,000 to \$50,000 although nearly one-third of those who insured carried only \$5,000 limits on property damage.

The limits on bodily injury per person ranged from \$1,000 to \$300,000; limits on bodily injury per accident ranged from \$10,000 to \$1,000,000; and limits on property damage per accident ranged from \$1,000 to \$100,000 although four school districts did not carry property damage who carried liability insurance. Two of these four carried insurance on bleachers only.

Insurance Purchasing Practices

Insurance and legal counsel.--Each respondent in this study was questioned regarding counsel by persons outside the school system regarding liability in connection with the

TABLE 14

LIMITS OF LIABILITY AND COVERAGE BY FREQUENCY

Amount of Liability	Coverage					
	Bodily Injury per Person		Bodily Injury per Accident		Property Damage per Accident	
	f	%	f	%	f	%
None	1*	3*	1*	3*	4	12
\$1,000	0		0		1	3
\$5,000	1	3	0		9	26
\$10,000	2	6	1	3	0	
\$20,000	0		1	3	1	3
\$25,000	2	6	1	3	7	21
\$50,000	2	6	1	3	11	32
\$100,000	23	67	2	6	1	3
\$150,000	1	3	0		0	
\$200,000	0		1	3	0	
\$300,000	2	6	20	59	0	
\$500,000	0		5	14	0	
\$1,000,000	0		1	3	0	
Total**	34	100	34	100	34	100
Number who do not insure	11		11		11	
Grand Total	45		45		45	

*Carry insurance, limits not known.

**Total = number who carry insurance.

f = frequency

possible purchase of general liability insurance by the school district. The data as summarized are shown in Table 15. Four of the school districts included in the study indicated that the matter had not been considered, about one-fourth of the school districts depended on their own staff and board of education entirely for counsel, and approximately two-thirds of the school districts sought the counsel of attorneys and/or insurance agents or brokers regarding the purchase of liability insurance. Approximately one-half of all the schools interviewed were advised by insurance counsel with nearly one-third of the total school districts depending entirely on insurance counsel as a non-school source of information.

TABLE 15

NUMBER OF SCHOOL DISTRICTS USING LEGAL AND
INSURANCE COUNSEL REGARDING THE
PURCHASE OF LIABILITY INSURANCE

Item	Number	Per Cent
1. Use legal counsel only	6	13.3
2. Use insurance counsel only	14	31.1
3. Both legal and insurance counsel	9	20.0
4. Depend on staff and board of education	12	26.7
5. No consideration of matter	4	8.9
Total	45	100.0

Insurance is a field of specialization involving technical knowledge peculiar to insurance, using terms,

definitions, and meanings likely not to be understood by those who have not studied the subject or who have little experience in the field. In short, liability insurance is a complicated business. The purchase of liability insurance is a job demanding professional qualifications.

Efficient, competent, insurance programing versus patronage.--This study does not investigate the insurance competence of school officials or insurance agents. The need of competent knowledge of insurance, awareness of all property and equipment owned and used by the school district, knowledge of values of district property, ability to draw up specifications, capability to examine insurance contracts, and skill in seeing that claims are paid equitably and properly stand out as obviously desirable competencies of those administering the insurance program. The problem as to whether a school system should or should not carry liability insurance should not be confused with the problem of adequate purchasing and administration of the insurance program.

The fact that school districts appear to lean heavily on insurance people for advice and counsel regarding the purchase of insurance and competent information in this area implies that heavy responsibility rests on insurance agents serving the schools. It further implies that liability insurance and professional counsel are too important to make awarding of liability insurance a means or device of

enriching the insurance agencies within the school district. General indifference of school officials interviewed concerning the administration of their liability insurance program and frequent reference by officials of leaving the whole problem to their local insurance agent or agent of record suggest a need for further investigation of the means of choosing insurance counsel, extent of insurance purchased on a patronage basis, et cetera.

Bids and specifications.--The schools in this study did not generally place liability insurance out for open bidding. Forty-one per cent of the schools who purchased liability insurance indicated that they did use either specifications or insurance proposals; however, the writer viewed few such proposals. Thus no conclusion is warranted regarding the completeness of specifications furnished or data provided in the proposals. Three officials, in addition to those mentioned above, indicated that a proposal was used the first time insurance was purchased but the practice was not followed in renewal of their insurance. Data are shown in Table 16.

The picture of purchasing practices is further confused by many local customs in awarding insurance to certain agents in town, use of agent of record who writes all school insurance, and the use of local committees of insurance agents.

Insurance proposals inspected which were considered quite complete included:

TABLE 16

NUMBER OF SCHOOL DISTRICTS WHO PURCHASE LIABILITY
INSURANCE ON BIDS OR PROPOSALS AND NUMBER
WHO WAIVE GOVERNMENTAL IMMUNITY
IN INSURANCE

Item	Yes	No	N=34 Total
Use specification and bids	9		
Use insurance proposals	5		
Total:			
Use specification, bids, or proposals	(14) 41.2%	(20) 58.8%	100%
Use waiver of immunity	(6) 17.6%	(28) 82.4%	100%

1. A statement concerning the proposal or specifications and instructions for submitting the bids or proposals.
2. Information and rating of insuring companies acceptable to the Board of Education.
3. Name of the insured to be specified on insurance policy.
4. Insurance coverage required and limits of policy.
5. The policy period.
6. Request for and explanation and breakdown of premium, discounts, and estimated dividends.
7. Deductible features.
8. District statistical information on which to compute rates by liability exposure groups, i.e.,

motor vehicles, non-ownership risks, elevators, food serving areas, contracted exposures, number of students by schools, gate receipts at stadiums, et cetera.

9. Loss experience of school district.
10. A bid proposal form for use of insurance agent or broker in whose behalf the proposal is made.

Actually, none of the specifications or bid forms included all of the above characteristics, but three such bid forms viewed by the writer included a majority of the above items of information.

Waiver of immunity.--Some school districts in this study, as shown in Table 16, had written into their liability insurance contracts a waiver of immunity which forbids the insurance company to use governmental immunity as a defense in case of suit except where the school district grants its consent. A sample of such a waiver cited on a school policy follows:

It is agreed that the Company will not assent as a defense against any claim which may be brought under this policy any legal immunity which the insured may possess by reason of its status as a municipality unless, as respect any claim, the company shall have received from the insured, the insured's written consent to the assertion of such defense in connection with such claim.

Whether such a waiver will or should mean a render of better service and better settlement of claims or make it any less difficult to get a judgment against a school

district is a question for the legal profession and not within the realm of the writer's competencies.

Summary

In spite of the fact that the purchase of general liability insurance by school districts has never been sanctioned by law, the majority of school officials in this study believed that school districts should purchase such insurance. As a matter of fact, such insurance is purchased by three-fourths of the school districts.

General liability insurance is purchased primarily to protect the school district from financial loss, but some school officials view this type of insurance as filling a social and moral obligation to pupils, teachers, and the public at large. School officials appear to overrate the coverage provided by the liability insurance purchased by school districts, especially in the area of teacher protection from personal liability and meeting the school district's possible moral obligation to pay for injuries to pupils and the public.

Commercial insurance companies did make claim settlements for injuries without a court judgment in the few cases reported by schools in this study. The few cases do not justify any over-all conclusion.

Generally, school districts who purchase insurance obtain coverage for bodily injury liability on premises and operations up to \$100,000 per person and \$300,000 per

accident; property damage liability ranging from \$5,000 to \$50,000; and to a lesser extent carry product liability. Both the comprehensive and scheduled hazards form of policies are purchased in almost equal proportion. Where school districts purchase the comprehensive form, additional coverage such as non-ownership liability, contractual liability, protective liability, et cetera may be included or specified in policy. Few school districts included their school owned buses and other vehicles on their general comprehensive policy, thus many districts may not be taking advantage of any discount available due to size of premium.

In general, school districts used the legal name of the school district as the named insured, however, additional protection to the school's administrative staff may be available at no extra cost to the district by adding the names of the officials to the policy.

Uniform rates are used throughout the state, except in Detroit; however, experience rating, creditability factors, schedule rating, and premium discount may be utilized to reduce or increase premiums. Some schools use rather comprehensive bid or proposal forms in the purchase of liability insurance, but there is no evidence that this is general practice.

Evidence indicates that school officials lean heavily on insurance agents or groups of insurance agents for counsel regarding protection against possible liability and the

purchase of liability insurance. If the varying range of insurance coverage, differing policy characteristics, misunderstanding by school officials of just what is covered by the insurance which is purchased, and indifference by school officials is indicative of the quality and extent of counseling by insurance agents, it may be inferred that insurance agents in the various school districts are not all giving schools uniform, competent, professional advice.

The whole problem of insurance in Michigan divides itself into separate parts or sub-problems; namely, (1) whether a school district should purchase insurance, and (2) the purchase of adequate protection. This study suggests that the first has been resolved in the affirmative and that the second has been largely ignored.

CHAPTER VI

SCHOOL PRACTICES AND PRECAUTIONS RELATING TO LIABILITY

This chapter deals with the effect school liability may have on school practices and programs and precautionary measures taken by school districts or school officials against the hazards of liability. Inquiry is made concerning possible relationships between size of school district and school practices and policies and relationships between the school officials' perception of liability and school practice and policy.

Liability Laws Uphold Standards of Care

Present law in the area of tort liability is designed to discourage accidents or conduct falling below a prescribed standard by giving relief to those injured and punishing those at fault. Throughout the literature relating to negligence and liability is a presumed standard of conduct, generally defined in terms of standards of the normal man or prudent person.

In this vein of thought but on the more humorous side is the following paragon of sarcasm regarding the "reasonable

man" by A. P. Herbert:¹

The common Law of England has been labouriously built about a mythical figure--the figure of the "Reasonable Man" . . . He is an ideal, a standard, the embodiment of all those qualities which we demand of the good citizen. . . . The Reasonable Man is always thinking of others; prudence is his guide and "Safety First" . . . is his rule of life. . . . He is one who invariably looks where he is going, and is careful to examine the immediate foreground before he executes a leap or bound; who neither star-gazes nor is lost in meditation when approaching trap-doors on the margin of a dock; . . . and will inform himself on the history and habits of a dog before administering a caress; . . . who never drives his ball till those in front of him have definitely vacated the putting green . . . who never from one year's end to another makes an excessive demand upon his wife, his neighbours, his servants, his ox, or his ass; . . . who never swears, gambles or loses his temper; who uses nothing except in moderation and even while he flogs his child is meditating only on the golden mean. Devoid in short of any human weakness, with not one single saving vice . . . this odious creature stands like a monument in our Courts of justice, vainly appealing to his own fellow citizens to order their lives after his own example.

The prudent person or reasonable man concept as a standard of care in education is further compounded by the application of the concept as it relates to minors and children, by the teachers' role under the principle of loco parentis, and the onerous probability that high standards of care are owed by professional persons.

Liability dependent on fault is based on the assumption that the wrongdoer must pay and implies punishment without which societal standards of care, conduct, and reasonableness could not be maintained. The teacher or

¹Alan P. Herbert, Misleading Cases in the Common Law (3rd ed.; London: Methuen and Co., Ltd., 1928), pp. 9-13.

administrator, nevertheless, may find adherence to such standards most difficult since they have not been spelled out in the law, lack definite form, and remain legal principles not translated into criteria with which to measure how closely the standards are approached.

School Policies, Operating Procedure, and
Regulations Pertaining to Liability
and Standards of Conduct

This research in no manner attempts to evaluate school policies, regulations, or rules of operation in general, but rather attempts to determine the extent to which liability has been the basis for school policies, operating procedures, and regulations and to identify standards of care in current use due to the liability of the school district or its employees.

School policy as used in this part of the study refers to the broad category of general policies, operating procedures, rules, and regulations governing the operation of the school and school program, irrespective of administrative level, and extending from broad guides of action to "one-shot" decisions to meet existing problems or situations.

School policies relating to school district liability.--
For many years Michigan school districts have operated under the protection of "common-law immunity" except in instances involving the use of school owned motor vehicles. At the time of this study, however, the demise of "governmental

immunity" appeared somewhat probable and many believed school non-liability had ended in principle, if not in fact.² Thus many school administrators were viewing school district liability with increasing interest and attention.

School district liability, nevertheless, has not been the basis for enactment of school policy, rules, and regulations in general. The only cases where school district liability was indicated as the basis of school policy was the inclusion in some, of information relating to the purchase of school district liability insurance and in one case the school official indicated that their policy included procedure for the the reporting of unsafe conditions. Data are shown in Table 17.

TABLE 17

NUMBER OF RESPONDING OFFICIALS INDICATING LIABILITY
AS A BASIS FOR SCHOOL POLICIES AND PROCEDURES

School Policy	Policy				N=45
	None	Relating to Insurance	Warn Personnel	Unsafe Condi- tions	
1. School district liability	(39) 86.7%	(5)* 11.1%	(0)	(1) 2.2%	100%
2. Liability of personnel	(33) 73.3%	(0)	(12)** 26.7%	(0)	100%
*Two in writing.		**Six in writing.			

²Supra, Chap. IV, p.98.

In total only twelve per cent of the school officials interviewed indicated that liability of the school district was a basis for any kind of school policy and in all cases this policy spelled out operating procedure for handling insurance or reporting of unsafe building conditions.

School policies relating to the liability of school personnel.--Unlike school district liability, individual school employees have no immunity from liability although review of cases show that over the past years liability suits against teachers have been rather rare with no decisions against teachers having been handed down by the Michigan Supreme Court.

Even though school personnel may have been liable for torts for many years, not all school administrators would agree that possible liability of individual teachers is a hazard. Neither has the liability of school personnel been the basis for enactment of school policy in general. (See Table 17.) In this study, nearly three-fourths of the schools indicated that they had no policy or policies based on the possible liability of individuals. The remaining one-fourth do warn their employees of liability; one-half of such warnings are in writing and the other one-half are issued at teachers' meetings, pre-school conferences, et cetera. Except in two cases, the warnings admonished employees of their own responsibility for negligence and liability. In two cases the school administrator indicated that it was

their policy to point out quite specifically the hazards of liability and to indicate both areas of hazards and proper precautions.

Policy not designed due to liability but viewed as diminishing liability hazards.--School officials were not only questioned regarding liability as a basis for school policy but were also asked to consider present policy and indicate those in use, which, although not adopted because of liability, but nevertheless, might be viewed as providing protection against liability or as diminishing the hazards of negligence. It should be emphasized again that the data included in this part of the study do not indicate whether the school did or did not have policies but whether the school had policies which the school officials viewed as tending to diminish liability hazards.

The responses to such inquiry, shown in Table 18, show policies scattered over a number of areas of school operation. Thirty-eight per cent of officials cited no policies providing protection against liability while sixty-two per cent cited one or more such policies, averaging approximately three policy areas each. Only forty-two per cent of those interviewed had such policies in writing.

Implications.--These data show that school liability has not been the basis for school policy in general and that what limited policy that has been identified deals only with

TABLE 18

DISTRIBUTION OF RESPONSES INDICATING POLICIES NOT
DESIGNED DUE TO LIABILITY BUT VIEWED
AS DIMINISHING LIABILITY HAZARDS

Item	Frequency		
	Unwritten	Written	Total
Number citing one or more policies	(9) 20.0%	(19) 42.2%	(28) 62.2%
Number citing no policies			(17) 37.8%
Total			100.0%

Areas of Policies and Frequency

Areas	Frequency
Extra-curricular activities	16
Use of teacher's cars	3
Use of school buses	15
Supervision and discipline	22
Accident reporting	2
First aid	6
Design and condition of buildings	5
Use of buildings	2
Operation of equipment	7
Safety program	7
Orientation and job outline	10
Total	93

93/28 = 3.32 policies cited per official who cited policies

the business aspects of liability insurance and possible warning made to employees regarding their responsibility for negligence. The data are based on the school officials' judgment for the most part. The writer did inspect some

school policies, handbooks, and operating procedure and found no reason to doubt the judgment of school officials interviewed.

Many school officials did cite policies, regulations, and operating procedure which they believed might diminish the hazards of liability, however, the basis for these policies were reasons other than liability.

Present nowhere in the data nor suggested in the interviews is any reference to standards of conduct or care except as may be implied from customary rules and regulations designed for the orderly operation of school and school programs generally.

It must be concluded that the theory of "liability based on fault" has missed its mark as a basis for setting and maintaining a prescribed standard of care in operation of public schools in Michigan, and that standards of care, such as they may be, are based on other factors than liability of either the school district or its employees.

Precautions and Limitations in School Practice

This part of the research attempts to identify the present and possible future precautions and limitations which may govern the extent of school programs and services due to liability of the school district or its employees as viewed by school officials. This is not a speculative venture or projection based on legal principles and legal cases but rather an appraisal of precautions and limitations which

school officials have imposed or may resort to with application of greater school liability.

Present precautions in school operation due to liability.--Table 19 shows the distribution of various precautions by area which school officials employ to minimize present liability hazards. Approximately one-half (forty-four per cent) of school officials indicated that they had no precautions, restrictions, or limitations imposed because of liability. Approximately nine per cent of officials believed that increased awareness of liability or increased liability would be accompanied by greater precautions and limitations, and forty-seven per cent indicated some precautions in effect in their school system due to liability.

TABLE 19

RESPONSES INDICATING PRECAUTIONS IN SCHOOL OPERATIONS

Responses	Frequency	Percentage
Number of schools indicating precautions in school operations	21	46.7
Number indicating no precautions but believing limitations would accompany greater liability	4	8.9
Schools indicating no precautions due to liability	20	44.4
Total	45	100.0

The restrictions and precautions, however, were scattered, rather isolated instances, as shown in Table 20. There were no specific areas of common concern to the various school districts although field trips, physical education classes, sports, activities, use of facilities, and safety patrols were areas most often cited.

School officials were questioned particularly concerning the use of a waiver of liability signed by parents in connection with participation in field trips and other school activities. Only one official indicated that such a "waiver" was of legal value in preventing suit. Six officials (thirteen per cent of the officials interviewed) believed such a form might have value in showing good intentions; that it might be good as a public relations device.

A composite of all precautions, restrictions, and limitations found in the study would reveal the humorous situation of a hypothetical school as follows:

The school personnel would be regulated, directed, and restricted by many rules, regulations, and operating procedure in all areas of their work. School money raising activities would be limited; hay rides, car washes, and senior trips would be abolished. No pupils would be allowed to ride in private cars to school events and activities except when they were riding with their parents.

Only authorized personnel would be allowed to use the students' cumulative records; facilities would not be

TABLE 20

DISTRIBUTION OF RESPONSES SHOWING PRECAUTIONS DUE
TO LIABILITY BY SCHOOL PROGRAM AREAS

Area	Precautions							Regulations for Adequate Supervision	Percentage Total/N=45
	Total	Cauton, Rules and Procedure	Limitations and Restrictions	Abolish or Eliminate	Insurance Required				
1. Field trips	7	4	2	0	1	0	0	15.6%	
2. Use of private cars	3	1	0	2	0	0	0	6.7%	
3. Playgrounds	2	1	0	0	0	1	0	4.4%	
4. Safety patrols	6	3	1	2	0	0	0	13.3%	
5. Use of facilities	6	3	2	0	1	0	0	13.3%	
6. Physical education and sports Equipment	1	1	0	0	0	0	0		
Competitive sports	2	0	0	0	2	2	0		
Scubba diving	1	0	0	1	0	0	0		
Trampoline	3	0	1	2	0	0	0		
Physical education classes	1	0	0	1	0	0	0		
Total	8	1	1	4	2	0	0	17.8%	
7. Activities									
Money raising	2	0	1	0	0	1	1		
Car washes	1	0	0	1	0	0	0		
Senior trips	1	0	0	1	0	0	0		
Total	4	0	1	2	0	1	1	8.9%	
8. Waiver of liability for trips and activities	7							15.6%	
Total	41	13	7	10	4	2			

available to any groups or organizations except school groups and then only if supervised by authorized school personnel. An outside chance exists that non-school groups might be allowed the use of school facilities if the sponsors provided their own liability insurance.

Safety patrols would be abolished. Field trips would be limited to the extent which the board of education approved and for which they would be willing to underwrite the entire cost; with such excursions limited to trips within the state. Only pupils who presented written parental consent and who showed evidence that they had accident and hospitalization insurance would be allowed to go.

Physical education classes would not be scheduled during the last two hours of the school day because the instructor might be called away on some days to coach interscholastic athletics. Physical education equipment would be inspected and certified to be in first class condition before using. The trampoline would be outlawed and scubba diving would not be allowed in the school pool.

The student council would be approved, perhaps encouraged, but student government where students might infringe on the duties and responsibilities of teachers for discipline and order would be frowned upon.

An adequate number (undefined) of teachers for supervision would be assigned to supervise all activities. All teachers would be assigned to supervise their pupils on the

playground and/or during free periods such as lunch hours.

The above illustration is not given to imply that the practices cited are general, but rather to demonstrate the range of precautions and limitations found in the study. Actually only twenty-one schools out of forty-five indicated that they employed one or more of the above precautions as a means of minimizing liability hazards.

Opinion concerning the effect of liability on school service.--Respondents in this study were questioned concerning the possible effect liability might have on the schools' service and program. It should be noted again that not all officials believed individual liability to be a hazard nor was there general agreement as to the degree and extent school district liability was a hazard. Summary of the data are presented in Table 21.

The data reflect again the apparent concern of school officials with the twice-confounded anomalous amalgam of the adequate financing of transportation for trips and excursions and possible liability hazards associated with the use of motor vehicles.³

About all that can be safely inferred from the answers given concerning the charging of pupils for transportation is that the concomitant circumstances surrounding liability and availability of funds to underwrite trips and excursions

³Supra, p. 96.

TABLE 21

DISTRIBUTION OF RESPONSES SHOWING EFFECT OF LIABILITY ON
SCHOOL SERVICE BY AREA

Area	Effect			Total
	No Effect	Could Limit Services in Some Circumstances	May Impose Limitations	
Activities involving transportation	(24) 53.3%	(12)* 26.7%	(9) 20.0%	100%
Community use of school facilities	(30) 66.7%	(5) 11.1%	(10) 22.2%	100%
Extended public services to community	(31) 68.9%	(3) 6.7%	(11) 24.4%	100%
School program (employees and school district inclusive)	(29) 64.4%	(1) 15.6%	(9) 20.0%	100%
School program (employees only)	(38) 84.5%	(5) 11.1%	(2) 4.4%	100%
Average of Responses	(30.4) 67.6%	(6.4) 14.2%	(8.2) 18.2%	100%

*To extent school cannot underwrite costs.

might indeed limit and circumscribe school activities where transportation is a factor.

Approximately one-third of the school officials, as shown in Table 21, indicated that liability might, at least in some circumstances, restrict the use of school buildings and facilities, as well as influence boards of education not to offer extended public services to the community.

Only twenty per cent of school officials viewed liability as imposing limitations or restrictions on the school program, however, an additional sixteen per cent thought there might be some circumstances where liability might impose some restrictions. Possible restrictions or limitations appear to be due primarily to the potential likelihood of school district liability for only two officials out of forty-five indicated definite association of limitations and restrictions in school program with liability of teachers.

Perception of Liability and School Practice and Policy

This section of the investigation examines the possible relationship between school practice and policy and the perception of liability held by school officials. All respondents were stratified according to the perception they held of liability. Three classes were established as defined in Chapter I of this study.⁴

⁴Supra, Chap. I, p. 13.

The possible relationship between the perception of liability by school officials and policies and practices of school districts is investigated by calculation of chi-square from contingency tables designed to test independence of the variables.

Hypothesis.--The hypothesis to be tested is the null hypothesis, namely, that school officials' perception of liability is essentially unrelated or independent of school policies, regulations, practice, and precautions relating to the liability of school districts and/or their employees.

Data.--The following areas are investigated for relationship to perception of liability:

1. School policies relating to school district liability.
2. Policies relating to the liability of personnel.
3. Rules and regulations viewed by officials as minimizing liability hazards although not designed because of liability.
4. Precautions in practice and operation as protection against liability hazards.
5. Purchase of liability insurance.
6. The use of consulting insurance agents in the purchase of liability insurance.
7. Type of liability insurance purchased.
8. Extent of insurance coverage.

9. Use of bidding in the purchase of insurance.

10. Use of a waiver of immunity in insurance contract.

The data are shown in Table 22. The factors included, supra, have been treated in previous sections of this study. Chi-square was computed for each of the above factors.

Conclusion.--Chi-square is clearly not significant in any of the areas of school policies and practices as is shown in Table 22, thus the null hypothesis must be retained.

The conclusion is thus advanced that the school officials' perception of liability is independent of school policies, regulations, rules, and precautions relating to the liability of school districts and/or their employees.

Size of School District and School Practice and Policy

In this section of the study the school districts are stratified on the basis of membership or size of school district as described in Chapter I.⁵

General differences between classes.--The intent of this part of the study is not to add to the knowledge already available concerning the generally recognized differences between school districts due to the size of the school district but to establish that the criteria used to select the classes did actually give classes differing in size of administrative staff, professional training possessed by members

⁵Supra, Chap. I., p. 10.

TABLE 22

RELATIONSHIP BETWEEN SCHOOL OFFICIALS' PERCEPTION OF LIABILITY AND
SCHOOL POLICIES, PRACTICES, REGULATIONS, AND PRECAUTIONS
RELATING TO SCHOOL LIABILITY

Policies, Practices, Regulations and Precautions	N	Number			Chi- square*	Significance (.05 level)
		P-1	P-2	P-3		
1. School policies relating to school district liability	45	1	3	1	1.79	No
2. School policies relating to liability of school personnel	45	4	6	0	10.90	No
3. Rules and regulations viewed as minimizing liability hazards	45	13	10	5	0.28	No
4. Schools indicating precautions aside from insurance, against liability	45	8	7	5	2.18	No
5. Schools which purchase liability insurance	45	15	11	8	0.31	No
6. Use consulting insurance agent or agents in purchase of insurance	45	12	8	4	0.88	No

*Not corrected.

TABLE 22.--Continued

Policies, Practices, Regulations and Precautions	N	Number			Chi- square*	Significance (.05 level)
		P-1	P-2	P-3		
7. Purchase comprehensive form of insurance policy as opposed to scheduled hazards type	34	6	5	7	5.07	No
8. Specify coverage in addition to liability relating to premises and products	34	1	3	3	3.30	No
9. Purchase liability insurance on bids or insurance proposals	34	6	6	5	1.18	No
10. Include waiver of immunity in school insurance contract	34	1	2	3	3.41	No

*Not corrected.

of the boards of education, and the use of outside school consultive services in connection with school liability.

Inquiry was made as to the occupations of the members of the board of education in each school visited. It was found that, as shown in Table 23, the average number of persons per board of education whose occupational title indicated membership in the recognized professions, including insurance was: 2.46 persons per board of education in Class 1, 1.53 persons per board of education for Class 2, and 0.46 persons per board of education in Class 3.

TABLE 23
BOARD OF EDUCATION AND STAFF DIFFERENCES BY
CLASS

Class	Average Number of Professional Persons on Bd. of Education	Average Number of Attorneys and Insurance Agents on Bd. of Educ.	Average Size of General Admin- istrative Staff
Class C-1	2.46	1.20	4.73
Class C-2	1.53	0.60	1.53
Class C-3	0.46	0.06	1.00
Average	1.49	0.62	2.42

The data do not show the large number of trained people in business and industry on larger school district boards of education who may or may not have a background of formal professional training.

The data are in agreement with previous research findings showing that the larger the school district the more likely it is to be expected that members of the board of education will be chosen from the fields of business and the professions.⁶

The representation on boards of education from the fields of law and insurance is especially pertinent to the study since these disciplines are the source of expertness on the subject of liability. The average number of insurance people and/or attorneys found on boards of education show the larger school districts with more representation from these two professional groups.

The size of the administrative staff quite naturally increases in proportion to the size of the school district. The source of the datum for each school district concerning the size of the administrative staff was the Michigan Education Directory.⁷ The data show school districts in Class C-1 with an average of nearly five staff members, school districts in Class C-2 with approximately one and one-half administrative staff members, and schools classified as Class C-3 have only one person responsible for the over-all administration of the school system.

⁶National Education Association, Research Division, "Status and Practice of Boards of Education," Research Bulletin of the National Education Association, 24:47-83, April, 1946.

⁷Michigan Education Directory and Buyer's Guide, 1960-1961 (Lansing, Michigan: Michigan Education Directory, 1960), pp. 124-221.

The possible relationship between the size of the school district and school policies and practices relating to liability was investigated by calculation of chi-square from contingency tables designed to test independence of the variables.

Hypothesis.--The hypothesis to be tested is the null hypothesis, namely, that size of school district is essentially unrelated or independent of school policies, regulations, practices, and precautions relating to the liability of school districts and/or their employees.

Data.--The following areas are investigated for relationship to size of the school district:

1. School policies relating to school district liability.
2. Policies relating to the liability of personnel.
3. Rules and regulations viewed by officials as minimizing liability hazards although not designed because of liability.
4. Precautions in practice and operation as protection against liability hazards.
5. Purchase of liability insurance.
6. The use of consulting insurance agents in the purchase of liability insurance.
7. Type of liability insurance purchased.
8. Extent of insurance coverage.

9. Use of bidding in the purchase of insurance.
10. Use of waiver of immunity in insurance contracts.

The data are shown in Table 24. The factors treated, supra, have been dealt with in previous sections of this study. Chi-square was computed for each individual factor.

Conclusion.--Chi-square is clearly not significant in any of the areas of school policies and practices included in this study, thus the null hypothesis must be retained. Data are presented in Table 24. It is thus concluded that the size of the school district is independent of school policies, regulations, rules, and precautions relating to the liability of school districts and/or their employees.

Summary

The "prudent person" or "reasonable man" concept of standard of care appears to exist only in principle under present liability law dependent on fault as a condition. This research fails to find any evidence that liability has been the basis for school policy, regulations, or operating procedure with regard to standards of care or conduct, in fact no evidence was available to support any association of liability and a presumed standard of care in terms of school operational procedure.

On the other hand, school officials do fear liability and view liability hazards with sufficient concern to induce them to take precautions. Approximately one-half of the

TABLE 24

RELATIONSHIP BETWEEN SIZE OF SCHOOL DISTRICT AND SCHOOL
POLICIES, PRACTICES, REGULATIONS, AND PRECAUTIONS
RELATING TO SCHOOL LIABILITY

Policies, Practices, Regulations and Precautions	N	Number			Chi- square*	Significance (.05 level)
		C-1	C-2	C-3		
1. School policies relating to school district liability	45	1	3	1	1.79	No
2. School policies relating to liability of school personnel	45	4	4	2	1.03	No
3. Rules and regulations viewed as minimizing liability hazards	45	10	7	11	2.20	No
4. Schools indicating precautions aside from insurance, against possible liability	45	8	4	8	2.87	No
5. Schools which purchase liability insurance	45	13	11	10	1.53	No
6. Use consulting insurance agent or agents in purchase of insurance	45	11	6	7	3.73	No

*Not corrected.

TABLE 24.--Continued

Policies, Practices, Regulations and Precautions	N	Number			Chi- square*	Significance (.05 level)
		C-1	C-2	C-3		
7. Purchase comprehensive form of insurance policy as opposed to scheduled hazards form	34	9	4	5	0.99	No
8. Specify coverage in addition to liability relating to premises and products	34	5	0	2	8.49	No
9. Purchase liability insurance on bids or insurance proposals	34	7	7	3	2.43	No
10. Include waiver of immunity in school insurance contract	34	5	0	1	6.62	No

*Not corrected.

officials included in this study say they take precautions, in some cases limitations and restrictions, in programs and services, which they believe will reduce or minimize liability hazards. Such precautions and limitations are not extensive and generally deal with areas of school operations not directly affecting the schools' regular, more or less conventional, academic program.

The majority of school officials did not view liability as associated with curtailment of school services in general, though approximately twenty-five per cent believed that liability has or might at a future date impose limitations upon the extent of school service offered the public. Liability, in this case, is apparently associated with the liability of the school district rather than liability of school personnel.

Both the school officials' perception of liability and the size of the school district are unrelated and independent of school policies, regulations, practices, and precautions relating to the liability of school districts and/or their employees.

CHAPTER VII

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Summary

Need for study.--The problem of liability is one of growing importance due to a general trend toward greater liability and the probable future direction of the modern school program toward a greater number of activities which may increase the exposure to possible liability risks.

Statement of problem.--The purpose of this study is: (1) to identify and examine problems of school operation relating to the liability of school districts and/or school personnel; (2) to determine the effect present liability laws have on school policies, practices, and programs in Michigan school districts; and (3) to make recommendations, to school officials, boards of education, and others, relating to problems due to liability of school districts and/or school personnel.

Methodology.--Generally research in this field has approached the problem of liability from a study of statutes, judicial opinion, and court cases. In this study, a total of forty-five school administrators were interviewed

using essentially a case study approach. School officials interviewed included superintendents of schools, school business managers, and district assistant superintendents.

School liability in general.--School districts are considered arms of the state and, therefore, the common-law rule of governmental immunity in tort, extends to school districts unless state statutes specify otherwise. In general, throughout the United States:

1. School districts are protected from tort liability by application of the principle of common-law rule of governmental immunity. There are noteworthy exceptions to this general rule; such exceptions being confined primarily to the states of California, New York, Washington, and Illinois.
2. Teachers and other school employees are liable for their own torts as the principle of governmental immunity does not extend to offer individuals protection from liability. Three states, namely, New York, Connecticut, and New Jersey, have enacted "save-harmless" statutes which protect school employees from loss due to liability. Wyoming provides such protection on a local option basis.
3. Legal principles and precepts regarding the liability of teachers and other school employees are applicable to school administrative personnel.

4. Teacher negligence is not imputed to the school administrator as the school administrator is neither the employer nor the master of subordinate employees.
5. Fault is a condition of liability under present laws which incorporate the social aim of defining and maintaining societal standards of conduct by punishing conduct falling below a prescribed standard.
6. The purchase of liability insurance does not permit abrogation of immunity even up to the amount of insurance carried. Exceptions to this general rule may be found in some states, notably Illinois, Kentucky, and Tennessee.
7. The purchase of liability insurance may be held to be an illegal expenditure of school funds if such purchase is not sanctioned by the states' statutes.
8. Most writers on school law feel that governmental immunity in tort is outmoded and indefensible. Court dissatisfaction of governmental immunity is evidenced in strong dissenting court opinions and supported by court exceptions allowing the injured to recover damages in spite of governmental immunity.
9. One's position within a school system offers no protection against liability in and of itself; the nature of an administrative position may be such that the administrator may not often be the direct cause of negligence.

School liability in Michigan.--Michigan follows the prevailing pattern of school liability found throughout the

United States. The Michigan court has held that:

1. School districts and their boards of education cannot be held liable for injuries or damages caused by the negligence of its officers, agents, or employees while in the performance of their duties. School non-liability is abrogated by statute where employees are injured and such injury falls within the application of workmen's compensation laws. State statutes also provides that governmental immunity shall not be a defense to civil action brought against municipal corporations to recover damages resulting from the operation by employees of motor vehicles owned or leased by municipal corporations.
2. The doctrine of governmental immunity from torts has been established by the legislature since 1945 and cannot be abrogated by the court.
3. The purchase of liability insurance by school districts did not constitute a waiver of the defense of governmental immunity.
4. Teachers and other school employees may be held liable for their negligence if such negligence results in injury to others.

Value of school policies.--School policies, rules, regulations, and operating procedures have been emphasized in the literature as a means of preventing accident, of showing that proper precautions have been employed, and of proving non-negligence.

Conclusions

In this study, the size of the school district appears unrelated to school policies, practices, regulations, rules and precautions relating to the liability of school districts and/or their employees. The ten questions studied by this investigation involved the following four broad categories: school officials, school program and services, school policies and regulations, and school liability insuring practices.

School officials.--It is concluded that Michigan school administrators and appointed officials:

1. Lack a clear and concise picture of liability as it affects the school district and individual employees of the school district.
2. Are confused as to the nature and extent of liability hazards under existing law.
3. Possess an awareness of a general trend toward greater liability.
4. Take an apprehensive view toward possible and potential school liability hazards.
5. Lean heavily on the advice of insurance agents and the expectation that insurance affords sufficient protection.
6. Have varying perceptions of school liability, however, the official's perception of liability appears unrelated to school policies, regulations, rules, and precautions,

due to liability of school districts and/or their employees.

7. Take precautions in school programs and services which they believe may reduce or minimize liability hazards.
8. Have difficulty in distinguishing and identifying areas of liability hazards, i.e., school officials appear unable to distinguish between areas of possible liability hazards where there is factual information on which to make judgments and areas where facts and information on which to make judgments are not available or where liability is uncertain.

School program and services.--The second category deals with conclusions advanced concerning Michigan school programs and services. Programs and services in Michigan schools:

1. Are limited and restricted to some degree because of liability. Restrictions were neither extensive nor general and related primarily to field trips, safety patrols, physical education and athletic programs, money raising activities, and the use of school facilities by the public.
2. Are circumscribed by hazards, real or imagined, associated with freedom of pupil participation, pupil self-supervision, and the use of non-certificated persons in supervisory roles.
3. Appear to be reinforced along conventional lines by possible liability hazards.

4. Appear to be free from restrictions and limitations where school officials are convinced of the rectitude and desirability of particular programs and services.

School policies and regulations.--The third category involves the policies, rules, regulations, and operating procedures of the school district. The study reveals that:

1. Liability has not generally been the basis for school policy, rules, regulations, and operating procedure in Michigan school districts.
2. Although liability under present law implies a prescribed standard of care, this principle has not apparently been translated or adapted into plainly set forth specifics relating to the operation of public school educational programs in Michigan.

Insuring practices.--The fourth category involves the insuring practices of Michigan school districts. General liability insurance:

1. Is purchased by approximately three-fourths of Michigan School Districts. Indifference regarding policy coverage, characteristics of insurance, and form of policy indicate a general lack of concern beyond mere purchase of a policy.
2. Does not actually safeguard the injured party.
3. Is over-rated by school officials as a means of meeting the moral obligation to pay for injuries.

4. Is over-rated by school officials as a means of protecting teachers and other school employees from possible liability.

Recommendations

1. That clarification of the confusing status of school liability as shown in this study be considered a legislative responsibility.
2. That legislation be passed in Michigan:
 - a. Abrogating governmental non-liability.
 - b. Giving protection to teachers from financial loss due to negligence. (Save-harmless statutes.)
 - c. Which impose strict liability as opposed to liability with "fault" as a condition insofar as liability relates to operation of public schools.
 - d. Granting school districts authority to purchase liability insurance. Such legislation should accompany and be appropriate to legislation clarifying and defining school liability.
3. That school officials, officers, agents, and employees acquire a sound knowledge of their particular state's school tort liability laws.
4. That school policies, operating procedures, and regulations recognize the state's school tort liability laws and possible accompanying liability hazards. In Michigan, the possibility of school district liability provides an additional premise, secondary to legally

defined and recognized liability, for well defined administrative policies and operating procedures minimizing the hazards of injury.

5. That teacher training institutions include in appropriate education courses a consistent concept of school district and personal liability.
6. That school board policy reflect the corporate nature of board membership as opposed to individual initiative.
7. That professional education associations promote improved legislation relating to liability. Attempts toward extending school district immunity should be regarded as retrograde.
8. That a periodic review of local school practice be made to eliminate activities and practices which are dangerous, either inherently or in the manner in which they are performed.
9. That a handbook be prepared for the use of school administrators and school personnel. Such a booklet should summarize and review legal principles, statutes, and court decisions bearing on tort liability of school districts and liability of school personnel. Special attention should be given to liability in Michigan.
10. That when general liability insurance is purchased, consideration be given to possible financial savings available by combining all liability coverage under one policy and possible economy in improved purchasing practices.

11. That the Michigan Department of Public Instruction collect statistical information relating to liability insurance simlilar in nature to information presently recorded concerning fire insurance coverage carried by local school districts.

Suggestions for Further Study

1. A comparative study to determine if non-liability of teachers causes less teacher interest in safety, lowering of standards of conduct, and indifference relating to standards of care for pupils.
2. A more intensive study of general liability insurance purchasing practices designed to investigate possible savings and economies, improve coverage and programming, and identify sound purchasing procedures.

APPENDIX A

SCHOOL LIABILITY SURVEY

Lewis C. Wood

Schedule 4

INTRODUCTION

One of the subjects for debate and discussion at the last winter meeting of the Michigan Association of School Administrators was "school liability." Would you like to know what other school officials are doing about school liability?

You can assist in making information regarding school liability available by responding to the investigation I am making on the subject.

My study is designed to provide information concerning practices and policies of school officials pertaining to liability. It is very important to have your help since your name was selected among those in a small random sample and thus your cooperation is essential to the success of this study.

The device used for obtaining information is an interview using questions and situations involving fictitious cases.

Your name will not be used and all answers are confidential. A copy of the summary of the study will be made available to you, if you so desire.

GENERAL INFORMATION

Name of School District _____

Address _____

Name of Person Interviewed _____

Title _____

Class _____
(Size of Sch. Dist.)Perception _____
(Classification)

OCCUPATION OF BOARD MEMBERS:

OCCUPATION OF MOST INFLUENTIAL BOARD MEMBERS:

PART I. SCHOOL POLICIES

The first section of this survey is an inquiry regarding your school policy, rules, standards of conduct, regulations, etc. which may be ineffect in your school district and designed because of liability or to avoid imposition of liability.

It is recognized that separation of school policies, rules, and regulations on the basis of a single primary purpose is most difficult, however, I wish to determine what policies, rules, or regulations you have which you feel offers protection against the hazards of liability or designed to provide standards of conduct with liability as a basis.

1. First of all, do you have school policies, rules, or regulations pertaining specifically to school district liability or written expressly due to the liability of the school district?

Written _____ Unwritten _____ No _____

Identify:

2. Secondly, do you have school policies, rules, or regulations with specific provisions or warnings regarding the liability of school personnel or designed because of the possible liability of personnel?

Written _____ Unwritten _____ No _____

Identify:

3. Thirdly, I wish to know if you have general school policies, rules, or regulations, rules of conduct, appropriate care, rules for operation, etc. which though not designed specifically because of liability, however, they may serve this purpose by so orienting programs that negligence will be minimized as a cause of liability.

Written _____ Unwritten _____ No _____

Identify:

For the next part of the interview please read with me the following fictitious case. (Case I given to interviewee on card.)

PART II: OPINION PERTAINING TO LIABILITY
AND LIABILITY INSURANCE

Case I:

A Michigan School District sponsored a field trip to Chicago and transported the pupils by a school owned bus and an automobile owned and driven by a faculty member. Each pupil paid fifty cents to help cover transportation costs and the school agreed to reimburse the teacher for her expense based on a per-mileage basis.

The school carried an insurance policy on the bus covering public liability, property damage, and comprehensive coverage. Each pupil was required before departure to file a form giving parental approval for the trip and waiving any liability for any injury or damage arising as a result of the trip.

While in Chicago both the bus and the teacher's car were involved in a three vehicle accident, the third automobile being an Illinois passenger car. A passenger in the Illinois car and a girl on the school bus were seriously injured and all vehicles were damaged in the accident.

Now I would like to have you consider this case, not from the standpoint of a jury to determine fault but from the standpoint of a school official who may be concerned with possible liability hazards present in this kind of situation or similar situation.

4. In general, to what extent may the school district be liable in this case?
5. What is your view on the use of the waiver of liability in this case?
6. Might the school district be liable for the injury suffered by the girl riding the school bus?
7. If, in this case the teacher was negligent in operation of her car and was the legal cause of the accident, might the school district be liable for damages, as the teacher's car was being used for school purposes at the time of the accident?

8. Do you view the charge of 50¢ made to help pay transportation costs in this case as a liability hazard?

Why?

9. You will note that the accident occurred in Illinois. What effect might this have on a possible liability suit?
10. Are you acquainted with any basic differences in school district liability in Illinois as compared to Michigan?

Identify:

11. Do you as a school official make any distinction or differentiation between the possible liability of the school district in connection with the use of school vehicles and the possible general liability of the school district in other areas of school operation?

Identify:

12. In general, do you view possible liability of bus drivers as individuals a real problem in operation of school buses?

Why?

13. To what extent may the school administrator be personally liable in this case?

The next part of this interview considers a different type of case. Please read this along with me, as follows:
(Card with Case II given to interviewee.)

Case II. The school district is located in Michigan. A ten-year-old girl was seriously burned when she fell into an unguarded incinerator which actually was little more than a deep depression in the ground on a sloping hillside located in one corner of the school property in the adjacent vicinity of the school's football field.

The girl was attending a football game for which she had paid admission, and during the half-time was attracted to a fire burning in the incinerator and along with other pupils went to the site of the fire.

The fire was set by school custodians who were burning refuse from the school's fieldhouse and debris from a pre-game homecoming bonfire.

Again, I would like to have you consider this case from the standpoint of the school official regarding possible liability hazards present in this situation or similar situations rather than from a legal viewpoint of determining fault.

14. In general, to what extent do you believe the school district may be liable in this case or similar cases?
15. Do you feel that the paying of admission may affect the outcome of a liability suit against the school district?
16. If maintenance of a nuisance was charged in a liability suit, what effect might this have on school district liability?
17. What effect might a change of "trespass" by the owner of the storage building have on school district liability?
18. Are you acquainted with any cases in Michigan where school districts have been held liable for nuisance or trespass?
19. Do you view the general liability of school districts as a problem to school administrators at the present time?
20. To what extent might the school administrator be personally liable in this case or similar cases?
21. To what extent may the members of the board of education be personally liable in this case or similar cases?
22. To what extent may the school employees, such as janitors and teachers, be held liable in this case or similar cases?
23. What is your opinion regarding the value of liability insurance in covering injuries suffered by school pupils or to the public? In other words, do you feel that if this school district had carried liability

insurance that the parents of the injured girl would probably receive payments for damages suffered?

24. If the school district in this case were protected by a general liability insurance contract covering the premises, would this in your opinion, offer protection to school personnel against liability?

The next part of the interview considers a different type of situation using a third case. Please read with me as follows: (Card with third case given to interviewee.)

Case III. This Michigan School District has a strong, well-organized, in-service education program and during the year, here considered, selected for their topic of study, "the legal rights and liabilities of school personnel." Although various sources of information were used, the primary source of information was a booklet authored by a well known writer in the field of school law, designed to acquaint school personnel with some of the legal rights and responsibilities of their positions.

As a result of the study, a rather lengthy list of recommendations was made for the guidance of faculty members and a second list of recommendations was made to the school officials and board of education pertaining to possible changes in school policy to minimize the hazards of liability. Recommendations were made in the following areas:

1. Use of confidential material.
2. Duties of non-certificated employees such as teacher-aides and student-teachers.
3. Inadequate supervision due to class size.
4. Supervision of playgrounds.
5. Pupil supervised activities and unassigned pupils.
6. Civil defense and fire drill responsibilities.
7. School camp and summer recreation programs.
8. Safety patrols.
9. Field trips.
10. Supervision and care in classes considered high accident risks.

25. In general do you feel that liability is a hazard to school personnel such as teachers and custodians?
26. Do you view the use of confidential material such as material placed in the pupil's cumulative record a potential liability hazard to school personnel?
27. Do you view inadequate supervision due to class size as a potential liability hazard to personnel?

28. Do you view the improper use of non-certificated employees (such as teacher aids or student teacher aides or student teachers) a potential liability hazard?
29. Do you view inadequate supervision of playgrounds a potential liability hazard?
30. To what extent do you view pupil supervised activities such as pupil supervised study halls and unassigned pupils in the building as liability hazards to staff members?
31. Do you view responsibilities connected with possible civil defense and fire rescue operations as liability hazards to staff members?
32. Do you view school camps and school sponsored recreation programs as potential liability hazards?
33. To what extent do you view "safety patrols" a liability hazard to staff members?
34. Do you view field trips as a liability hazard to staff members?
35. To what extent do you view classes in shop and manual training as a liability hazard?
36. To what extent do you view classes in science as a liability hazard?
37. To what extent do you view classes in physical education a liability hazard?

This completes the portion of the interview dealing with the fictitious cases. Now I would like to ask you some general questions dealing with the possible effects of liability, both personal and corporate, on the school program.

38. Do you believe that liability attaching to the use of school owned vehicles or the hazards of charging for transportation on school trips may be a limiting factor in the use of vehicles and thus limit or restrict educational activities where a means of transportation is necessary for the trip?

Why?

39. Do you view liability a limiting factor in community use of school buildings and facilities?

40. Do you feel that liability may be a factor in limiting or restricting the school program in any way?
41. Do you feel that liability may be a factor in board decisions not to offer extended public services to the community?
42. To what extent do you view personal liability of staff members a factor in limiting or restricting the scope of the school program?

I would now like to ask you a few questions concerning present liability trends in Michigan and the United States.

43. Are you acquainted with the status of liability of school districts and their employees in other states?

(If yes) What are the significant differences in liability in those which are different than Michigan in interpretation or law?

44. What do you believe the trend to be in Michigan as to the liability of school districts?

More liability_____ Status Quo_____ Less Liability_____

45. What authority, knowledge, or court decisions do you consider as reason or source for your views concerning the liability of school districts in Michigan?

PART III: PRECAUTIONARY PRACTICES AND POLICIES

The last part of this interview seeks information as to what precautionary practices your school district has taken against the hazards of liability.

First I would like to have you consider whether any precautions have been taken in the administration or operation of school programs or activities. To provide a quick guide to the many functions carried out by school districts I have prepared a list which I will read. I would like to have you tell me whether for any of the activities or functions your school district operates whether you have applicable precautions, limitations, or restrictions due to liability, either personal, corporate, or both.

Field trips_____	Football fields _____
Charge Admission_____	Driver raining_____
Adult Education_____	Use of school facilities_____
Fire Drill & Civil Defense_____	Cafeterias_____
Teacher Aides, etc._____	Cumulative Records_____
Playground supervision_____	Pupil supervision_____
Athletic Program_____	Recreation program_____
School camp_____	Safety Patrols_____
Student Government_____	Physical Education classes_____
Science Classes_____	Shop classes_____
Others _____	

46. Summary of precautions and limitations, etc. in school program.

Next I would like to consider insurance as a precaution against liability hazards.

47. Do you believe it wise policy for the school district to carry some form of general liability insurance?
48. (If yes, in question 47) Why do you consider it wise policy to purchase general liability insurance?
49. What is your opinion regarding the purchase of general liability insurance protection for school employees from school funds?
50. Have any claims of negligence, liability suits, or claims for reimbursement for injuries been made against your district or its employees in the last ten years?

Describe.

51. What source of information is used for advice or counsel regarding the purchase of general liability insurance?

52. If you carry general liability insurance has the insuring company agreed it will not use school immunity as a defense in the event of claim or suit?

INSURANCE INFORMATION

53. Is insurance purchased on bids _____
54. Are specifications used _____
55. What is "name of insured" written in insurance contract?
56. What is the form of insurance written?

Comprehensive _____ Comprehensive including Autos _____

Scheduled hazards _____

57. What form of liability insurance is written on school vehicles?

Comprehensive _____ Comprehensive general liability _____

Scheduled hazards _____

58. Coverage and limits of liability insurance:

Coverage		Limits
A. Bodily Injury Liability	\$	each person
	\$	each accident
B. Property Damage	\$	

59. Areas of coverage or exposure.

Presmises _____ Products _____

Non-ownership _____ Malpractice _____ Elevator _____

Contractual _____ Owners protective _____

Boiler and Machinery _____

Teams _____ Automobile _____

60. Notes.

BIBLIOGRAPHY

Books

Allen, F. T., and S. I. Simon. Insurance. Ames: Adams & Co., 1953. 245 pp.

American Jurisprudence. "Negligence." Rochester, New York: The Lawyers Co-Operative Publishing Company, 1936----. 38:631-1099.

Angell, Frank Joseph. Insurance Principles and Practices. New York: The Ronald Press Company, 1959. 894 pp.

Black, Henry Campbell. Black's Law Dictionary. St. Paul, Minnesota: West Publishing Co., 1951 ed. 1882 pp.

Burke, Finley. A Treatise on the Law of Public Schools. New York: A. S. Barnes and Company, 1880. 154 pp.

Chambers, M. M., and D. B. Updike. The Colleges and the Courts 1941-45. Boston: Merrymount Press, 1946. 156 pp.

Corpus Juris. Brooklyn: American Law Book Co., 1932--. 56:342-352.

Corpus Juris Secundum. "Insurance." Brooklyn: American Law Book Co., 1945--. 44:471-1045.

Drury, Robert L. (ed.). Law and the School Superintendent. Cincinnati: The W. H. Anderson Company, 1958. 339 pp.

Edmondson, James Bartlett. The Legal and Constitutional Basis of a State School System. Bloomington, Illinois: Public School Publishing Co., 1926. 203 pp.

Edwards, Newton. The Courts and the Public Schools. Chicago: The University of Chicago Press, 1933. 591 pp.

_____. The Courts and the Public Schools. Rev. ed. Chicago: The University of Chicago Press, 1955. 622 pp.

- Garber, Lee O. Handbook of School Law. New London: Arthur C. Croft Publications, 1954. 165 pp.
- _____. (ed.). Law and the School Business Manager. Danville, Illinois: Interstate Printers and Publishers, Inc., 1957. 331 pp.
- Gauerke, Warren E. Legal and Ethical Responsibilities of School Personnel. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1959. 302 pp.
- Hamilton, Robert R., and Paul R. Mort. The Law and Public Education. Chicago: The Foundation Press, Inc., 1941. 579 pp.
- _____, and E. Edmund Reutter, Jr. Legal Aspects of School Board Operation. New York: Bureau of Publications, Teachers College, Columbia University, 1958. 199 pp.
- Herbert, Alan Patrick. Misleading Cases in the Common Law. 3rd. ed. London: Methuen and Co., Ltd., 1928. 176 pp.
- Holdsworth, William S. History of English Law. 7th rev., v. 1. London: Methuen and Co., Ltd., 1956. 706 pp.
- Leibee, Howard C. Liability for Accidents in Physical Education, Athletics, Recreation. Ann Arbor, Michigan: University of Michigan Press, 1952. 71 pp.
- Linn, Henry H., and Schuyler C. Joyner. Insurance Practices in School Administration. New York: The Ronald Press, 1946. 694 pp.
- Michigan Reports. Chicago: Callaghan and Co., 1887-1948; Rochester, New York: The Lawyers Co-operative Publishing Co., 1949--.
- Michigan Biennial Report. Lansing, Michigan: Franklin De-Kleine Co. Annual.
- Mowbray, Albert H., and Ralph H. Blanchard. Insurance. 4th ed. New York: McGraw-Hill Book Co., 1955. 569 pp.
- National Reporter System. St. Paul: West Publishing Co., 1879--; Atlantic Reporter, Northwestern Reporter, Northeastern Reporter, Pacific Reporter, Southeastern Reporter, Southern Reporter, Southwestern Reporter.
- Noble, M. C. S., Jr. Pupil Transportation in the United States. Scranton, Pa.: International Textbook Co., 1940. 541 pp.

- Poe, Arthur Clayton. School Liability for Injuries to Pupils. Contributions to Education No. 828. New York: Bureau of Publications, Teachers College, Columbia University, 1941. 108 pp.
- Pound, Roscoe. Jurisprudence. St. Paul: West Publishing Co., 1959. v. V, ch. 32.
- Prosser, William Lloyd. Handbook of the Law of Torts. St. Paul: West Publishing Co., 1941. 1309 pp.
- _____. Handbook of the Law of Torts. 2nd. ed. St. Paul: West Publishing Co., 1955. 952 pp.
- Public and Local Acts of the Legislature of the State of Michigan. Lansing, Michigan: Franklin DeKleine Co., Annual.
- Punke, Harold H. The Courts and Public-School Property. Chicago: The University of Chicago Press, 1936. 313 pp.
- _____. Law and Liability in Pupil Transportation. Chicago: The University of Chicago Press, 1943. 291 pp.
- Reeder, Ward G. The Administration of Pupil Transportation. Columbus, Ohio: The Educators Press, 1939. 200 pp.
- Remmlein, Madaline Kinter. School Law. New York: McGraw-Hill Book Co., Inc., 1950. 376 pp.
- _____. The Law and Public School Administration. New York: McGraw-Hill Book Co., Inc., 1953. 271 pp.
- Rosenfield, Harry N. Liability for School Accidents. New York: Harper and Bros., 1940. 220 pp.
- Ruling Case Law. San Francisco: Bancroft-Whitney Co., 1929. 24:604.
- Seitz, Reynolds C. (ed.). Law and the School Principal. Cincinnati: The W. H. Anderson Co., 1961. 266 pp.
- Spell, Reginald V. Public Liability Hazards. Indianapolis: The Rough Notes Co., 1956. 453 pp.
- Spurlock, Clark. Education and the Supreme Court. Urbana, Illinois: University of Illinois Press, 1955. 252 pp.
- State of Michigan, General School Laws. 1959 rev. Lansing, Michigan: Speaker-Hines and Thomas, Inc., 1960. 462 pp.

- Trusler, Harry Raymond. Essentials of School Law. Milwaukee: Bruce Publishing Co., 1927. 478 pp.
- Vance, William R. Handbook on the Law of Insurance. Rev. by Buist M. Anderson, 3rd ed. St. Paul: West Publishing Co., 1951. 1014 pp.
- Voorhees, Harvey Cortlandt. The Law and the Public School System of the United States. Boston: Little, Brown & Co., 1916. 429 pp.
- Weltzin, Joachim Frederic. The Legal Authority of the American Public School. Grand Forks, North Dakota: The Midwest Book Concern, 1931. 286 pp.
- Ballentine, James A. Law Dictionary with Pronunciations. Rochester, New York: The Lawyers Co-Operative Publishing Co., 1930. 1494 pp.

Periodical Articles

- Bagley, William C. "The Principals Personal Liability in Case of Accidents to Pupils," School and Society, 50:858-59, December, 1939.
- Bress, David G. "Comparative Negligence: Let Us Harken to the Call of Progress," American Bar Association Journal, 43:127-130, February, 1957.
- Bolmeier, Edward C. "Trends in Pupil Transportation Litigation," The American School Board Journal, 140:38-40, February, 1960.
- _____. "Tort Liability of School Personnel," The American School Board Journal, 136:30-32, March, 1958.
- Butsch, Russell L. C. "The Law of Libel and Slander as it Affects the Teacher," Elementary School Journal, 31:44-51, September, 1930.
- Carlson, Gordon T. "I'll Be Suing You, Coach," The School Executive, 76:76-78, April, 1957.
- Chambers, M. M. (ed.) Yearbook of School Law. Published by editor, annual, 1933-1941.
- _____. "Legal Responsibility for Accidental Injuries to School Pupils," The Nation's Schools, 13:43, May, 1934.
- Davis, Kenneth C. "Tort Liability of Governmental Units," Minnesota Law Review, 40:751, June, 1956.

- Doscher, Nathan, and Nelson Walke. "The Status of Liability for School Accidents and Its Relationship to the Health Program," Research Quarterly, 23:280-294, October, 1952.
- Edwards, Newton. "Tort Liability of School Districts," Elementary School Journal, 30:34, September, 1929.
- Edwards, Walter L. "Teacher and School Law," The Nation's Schools, 52:39-41, December, 1953.
- Fuller, Ernest E. "Reasons Given by Courts for School District Immunity," The American School Board Journal, 103:23-25, November, 1951.
- Galfo, Armand J. "Buses and the Law," Overview, 1:40-41, August, 1960.
- Garber, Lee O. (ed.). The Yearbook of School Law. Philadelphia: Editor, 1950-56; Danville, Illinois: Interstate Printers and Publishers, Inc., 1957--.
- _____. "How the Courts are Changing the Education Scene," The Nation's Schools, 69:92-93, January, 1962.
- _____. "District Liability for Bus Accidents," The Nation's Schools, 50:79-80, November, 1952.
- _____. "Courts Placing More Emphasis on Save-Harmless Statutes," The Nation's Schools, 59:63-64, June, 1957.
- _____. "State Courts Define School Liability," The Nation's Schools, 63:104-110, March, 1959.
- _____. "Illinois Court Overthrows Immunity Doctrine," The Nation's Schools, 64:70-72, August, 1959.
- _____. "The Case of the Negligent Coach," The Nation's Schools, 59:77-78, May, 1957.
- _____. "Abate That Fire Hazard," The Nation's Schools, 63:57-58, February, 1959.
- _____. "Personal Liability of Professional Employees," The Nation's Schools, 53:70-71, January, 1954.
- _____. "Field Trips and Excursions," The Nation's Schools, 56:82-85, September, 1955.
- _____. "Liability of Districts that Carry Insurance," The Nation's Schools, 60:89-90, October, 1957.

- Gauerke, Warren E. "School Safety Patrols and the Law," The School Executive, 77:68-72, December, 1957.
- Gausman, Chester A. "Legal Aspects of Shop Accidents," Industrial Arts and Vocational Education, 44:207-211, September, 1955.
- Hamilton, Robert R. "School Liability," Safety Education, 32:2-6, December, 1952.
- _____. The Bi-Weekly School Law Letter. Laramie, Wyoming: The author, 1951-1954.
- _____. The National School Law Reporter. New London, Conn.: Arthur C. Croft Publications, 1955--.
- Henkel, H. "Liability Insurance," Michigan Education Journal, 35:571-573, October, 1932.
- Lomers, W. M. "Civil Defense Provides Immunities," The American School Board Journal, 136:54, March, 1958.
- McCann, Lloyd E. "Legal Aspects of School Supervision," The American School Board Journal, 132:45-46, June, 1956.
- News of the Week. Lansing, Michigan: Department of Public Instruction, November 7, 1958. v. XXVI, no. 10.
- Piilo, H. E. "Are Shop Teachers Liable?" Safety Education, 30:13-14, May, 1951.
- Punke, Harold H. "Exclusion of Pupils from Public Schools," National Association of Secondary School Principals Bulletin, 42:41-59, September, 1958.
- Remmlein, Madaline Kinter. "School Safety Patrols Defended," The American School Board Journal, 134:54, June, 1957.
- _____. "A Lawyer Looks at Parent Participation," The National Elementary Principal, 37:37-44, September, 1957.
- Reutter, E. Edmund, Jr. "Tort Liability of the School District," The American School Board Journal, 136:28-30, March, 1958.
- Roach, Stephen F. "Abuse of School Board's Discretionary Authority," The American School Board Journal, 138:67-71, August, 1959.
- _____. "Supervision of Pupil Disciplinary Action," The American School Board Journal, 137:43, December, 1958.

Roach, Stephen F. "School District Tort Immunity Overruled," The American School Board Journal, 139:53, October, 1959.

Roe, William H., and Harold C. Wells. "On Selecting and Using the School Attorney," The American School Board Journal, 138:26, June, 1956.

Steege, Thomas W. "Negligence in Schools," The American School Board Journal, 132:47-48, May, 1956.

Tischendorf, E. W. "Accident Liability of Shop Teachers," Safety Education, 30:1-3, February, 1951.

Ware, M. L. "Is the Teacher Liable," National Education Association Journal, 47:603-604, December, 1958.

Weltzin, Joachim Frederic. "New Tendency in the Tort Liability of School Districts," The American School Board Journal, 84:52-53, March, 1932; 84:37-38, April, 1932; 84:31-32, May, 1932; 84:39-40, June, 1932.

Bulletins and Reports

American Association of School Administrators. School District Liability. Washington, D. C.: The Association, 1953. 23 pp.

American Association of School Administrators, and National Education Association, Research Division. "Insurance and Health Protection for Teachers," Educational Research Service, circ. no. 5. Washington, D. C.: The National Education Association, May, 1956. 26 pp.

Featherston, Glen. Liability and Property Damage Insurance on School Buses, circ. no. 486, U. S. Office of Education. Washington, D. C.: Government Printing Office, September, 1956. 4 pp.

Kigin, Denis J. "Tort Liability Affecting Shop Teachers with Provisions for A voiding Accidents and Litigation." Columbia, Missouri: University of Missouri, v. 61, no. 1, Education Series, no. 74, 1960. 21 pp.

Michigan Education Directory and Buyer's Guide, 1960-61. Lansing, Michigan: Michigan Education Directory, 1960. 322 pp.

Michigan Insurance Reference Manual. 6th ed. Lansing, Michigan: Michigan Association of Insurance Agents, 1958. 184 pp.

National Association of Public School Business Officials.
An Investigation of Insurance Practices, Bul. 9.
 Washington, D. C.: The Association, 1941. 293 pp.

National Education Association, Research Division. The
 Legal Status of the Public School Teacher. Washington,
 D. C.: The Association, 1947. 70 pp.

_____. "The Pupil's Day in Court." Washington, D. C.:
 The Association, annual. Mimeographed.

_____. "The Schoolteacher's Day in Court." Washington,
 D. C.: The Association, annual. Mimeographed.

_____. "Plaintiffs and Defendants--School Teachers in
 Court," Research Bulletin of the National Education
 Association, 36:58-60, April, 1958.

_____. "The Courts Decide--Rights and Responsibilities
 of Pupils," Research Bulletin of the National Educa-
 tion Association, 36:61-62, April, 1958.

_____. "Status and Practice of Boards of Education,"
Research Bulletin of the National Education
 Association, 24:47-83, April, 1946.

National Education Association, and National Commission on
 Safety Education. Who is Liable for Pupil Injuries?
 Washington, D. C.: The Commission, 1950. 32 pp.

National Safety Council. Accident Facts. Chicago: The
 Council, annually.

Michigan Pupil Transportation Handbook. Bul. 431. Lansing,
 Michigan: Michigan Department of Public Instruction,
 1961. 58 pp.

Remmlein, Madaline Kinter. Liability of Teacher and School.
 Personal Growth Leaflet no. 108. Washington, D. C.:
 National Education Association, Research Division, n.d.
 16 pp.

Schaerer, Robert W. The Liability Status of Indiana Public
 Schools. Bloomington, Indiana: Indiana School Boards
 Association, Indiana University, 1959. 86 pp.

Lamb, Robert L. "Legal Liability of School Boards and
 Teachers for School Accidents." Ottawa, Ontario:
 Canadian Teachers' Federation, Research Division,
 Research Study No. 3, 1959. 76 pp.

- Smith, Lyndon A. Recent School Law Decisions, circ. no. 4. Bureau of Education. Washington, D. C.: U. S. Government Printing Office, 1883. 82 pp.
- U. S. Office of Education. School Transportation Insurance. Pamphlet no. 101. Washington, D. C.: Superintendent of Documents, 1948. 34 pp.

Unpublished Materials

- Barrett, V. F. "Liability in Athletics in Oregon." Unpublished Master's dissertation, The University of Washington, Seattle, 1938. 74 pp.
- Bowman, Mary B. "Placing of Responsibility for the Injury of Children at School." Unpublished Master's dissertation, University of Cincinnati, Cincinnati, 1930. 73 pp.
- Burke, Dennis P. "A Study of Court Cases Resulting from Corporal Punishment in Public Schools." Unpublished Doctor's dissertation, University of Pittsburgh, Pittsburgh, 1958.
- Carmichael, Hobert Verner. "Judicial Decisions Relating to Legal Liability of School Boards in the United States." Unpublished Master's dissertation, University of Chicago, Chicago, 1926. 94 pp.
- Cavicchia, John. "The Law of Tort As Applied to Public Schools." Unpublished Doctor's dissertation, Rutgers University, New Brunswick, New Jersey, 1941. 287 pp.
- Cleetwood, Cleet C. "Legal Liability for Injuries Sustained in a Public School Program of Interscholastic Athletics." Unpublished Doctor's dissertation, Duke University, Durham, North Carolina, 1959. 185 pp.
- Clore, James, Jr. "The Legal Liability of the School District for Damages." Unpublished Doctor's dissertation, University of Southern California, Los Angeles, 1932.
- Constantine, Gus A. "Legal Liability for Injuries Sustained in the Transportation of Public School Pupils." Unpublished Doctor's dissertation, Duke University, Durham, North Carolina, 1958. 216 pp.
- Dice, Clifford O. "Tort Liability of Individual Employees and Officers of School Districts." Unpublished Doctor's dissertation, University of Southern California, Los Angeles, 1937. 305 pp.

- Doherty, Leo D. "School Transportation Insurance: Cost and Coverage." Unpublished Doctor's dissertation, Teachers College, Columbia University, New York, 1950. 113 pp.
- Fuller, Edgar. "Tort Liability of School Districts in the United States." Unpublished Doctor's dissertation, Harvard University, Cambridge, 1950. 331 pp.
- Guley, Marcel. "The Legal Aspects of Injuries in Physical Education and Athletics." Unpublished Doctor's dissertation, Syracuse University, Syracuse, 1953. 247 pp.
- Hessee, Myron A. "Personal Liability of Selected School District Employees and a Plan for Their Protection." Unpublished Doctor's dissertation, University of Southern California, Los Angeles, 1949. 233 pp.
- Hildebrand, W. O. (ed.). "Michigan Agency Bulletin." Lansing, Michigan: Michigan Association of Insurance Agents, July, 1957; February, 1958.
- Hindle, John H., Jr. "Financial Responsibilities for Injuries of Pupils of Public Elementary and Secondary Schools." Unpublished Doctor's dissertation, Teachers College, Columbia University, New York, 1954. 211 pp.
- Hollenback, Warren. "Tort Liability of School Districts as Shown by Court Decisions." Unpublished Master's dissertation, University of Pittsburgh, Pittsburgh, 1931. 105 pp.
- Johnston, J. M. "The Legal Status of the Public School Principal in the United States." Unpublished Doctor's dissertation, University of North Carolina, Chapel Hill, 1953. 152 pp.
- Kigin, Dennis John. "Tort Liability Affecting Shop Teachers with Provisions for Avoiding Accidents and Litigation." Unpublished Doctor's dissertation, University of Missouri, Columbia, 1959. 209 pp.
- Lange, Wayne. "Insurance Quotation" via Hartford Accident and Indemnity Co. South Haven, Michigan: South Haven Agency, March 14, 1962.
- Mantell, Herm P. "The Liability of Teachers and Other School Officers in New York State and Proposed New Legislation to Further Their Protection." Unpublished Doctor's dissertation, New York University, New York, 1942. 178 pp.

- National Bureau of Casualty Underwriters. Data on cost of liability insurance in various states. Ltr. to W. O. Hildebrand, Michigan Association of Insurance Agents, Lansing, Michigan. Ltr. dated February 5, 1960.
- Pinckney, Charles W. "Liability of Shop Teachers and School Districts for Pupil Injuries in School Shops Resulting in Court Cases in the United States." Unpublished Doctor's dissertation, Pennsylvania State University, State College, 1953. 80 pp.
- Poe, Arthur Clayton. "School Liabilities for Injuries to Pupils." Unpublished Doctor's dissertation, Teachers College, Columbia University, New York, 1941. 108 pp.
- Rosenfield, Harry N. "Liability for School Accidents." An address delivered at the Annual Meeting of the Michigan High School Athletic Association, December 1, 1955. Printing by Representative Council of the Michigan High School Athletic Association, Lansing, Michigan.
- Scatterfield, Ted J. "Legal Aspects of Tort Liability in School Districts as Indicated by Recent Court Decisions." Unpublished Doctor's dissertation, Temple University, Philadelphia, 1949. 400 pp.
- Schaerer, Robert Warren. "The Tort Liability Status of Indiana Public Schools and the Current Liability Insurance Practices of Indiana Public School Corporations." Unpublished Doctor's dissertation, Indiana University, Bloomington, 1959. 293 pp.
- Smith, Laurence D. "The Legal Liability of School Districts." Address to Annual Convention of Michigan Association of Insurance Agents, September 16, 1955. Condensed version printed by Michigan Association of Insurance Agents, W. O. Hildebrand, Mgr., Lansing, Michigan, 1955.
- Spurlock, Clark Paul. "Education and the United States Supreme Court." Unpublished Doctor's dissertation, Oregon State College, Corvallis, 1954. 383 pp.
- Stapp, Sterling. "Insurance Panel at Convention in Spokane." Washington Association of School Business Officials, November, 1959. Mimeographed. 15 pp.
- Washington State School Director's Association. "School Liability Protection." Olympia, Washington: The Association, 1951. 27 pp.

- Waterman, Albert D. "Pupil Transportation in Wyoming."
Unpublished Doctor's dissertation, University of
Wyoming, Laramie, 1949. 173 pp.
- Weltzin, Joachim Frederic. "The Legal Authority of the
American Public School as Developed by a Study of
Liability to Damages." Doctor's dissertation,
University of North Dakota, Grand Forks, School of
Education Bulletin no. 7, 1930. 239 pp.
- Woodhams, Berthold. Circ. ltr. to presidents of Michigan
boards of education, Howell, Michigan. n. d.

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