

## Opinion No. 47-5108

November 25, 1947

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. R. H. Grissom, Educational Budget Auditor, Santa Fe, New Mexico.

{\*114} This will acknowledge receipt of your letter of November 21, 1947 in which you request the opinion of this office on whether a municipal school board of education is liable in tort for injuries received by a pupil while on the school playgrounds.

The particular facts involved here appear to be that the pupil broke his arm when a chain on one of the swings on the school grounds broke, and this happened during a rest period while teachers were on duty.

Section 55-902, N.M. 1941 Compilation, provides that municipal schools shall be governed by a board of education which shall have **like powers** over schools within their jurisdiction **as those possessed by county boards of education** over their respective schools.

Section 55-806-a (Supplement to the 1941 Comp.) sets out the powers of the county boards of education, and then provides, among other matters, that said **board shall have the right to sue and be sued.**

The only question to be determined is whether or not Section 55-806-a, which provides that the school board may "be sued", includes an action in tort for personal injuries sustained by a pupil while on the school grounds.

It appears that authorities on this question hold to the view that the school board is not liable to such action.

The general rule is set out in 47 Am. Jur. p. 335, Sec. 57, as follows:

"Contrary to what appears to be the English rule, the general rule in this country, in the absence of a statute imposing liability, is that \* \* \* a school board is not liable for injuries to pupils of public schools suffered in connection with their attendance thereat." \* \* \*

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

**"And a statute providing that a school corporation may sue and be sued does not change the general rule of nonliability. \* \*"**

In the case of Perkins v. Trask, 95 Mont. 1, 23 P.2d 982, an action for damages was brought against the Board of Trustees of a school {\*115} district for death of a pupil who drown in a swimming pool maintained and operated by the school for the general use of the pupils.

The Supreme Court of Montana held that although there was a statute declaring the school district a body corporate which may be sued, yet this did not authorize a tort action against the school district.

For other cases holding to the same rule, see Daniels v. Bd. Education, 191 Mich. 339, 158 N.W. 23, L.R.A. 1916 F, 468; Antin v. Union High School Dist., 130 Or. 461, 280 P. 664, 66 A.L.R. 1271. See also the following annotations: 49 L.R.A. (NS) 1028; 3 Ann. Cas. 885; 10 Ann. Cas. 406; Ann Cas. 1917-D 797.

In view of the above, I am of the opinion that a municipal school board would not be liable in a tort action for injuries sustained by a pupil while on the school playgrounds.

I call to your attention the fact that a similar legal question will be before the Supreme Court of New Mexico in the very near future, and we will be bound by whatever result is reached in that case.

By WILLIAM R. FEDERICI,

Asst. Atty. General