

Opinion No. 35-922

March 1, 1935

BY: FRANK H. PATTON, Attorney General

TO: Mr. G. R. Spencer, School Superintendent, Carlsbad, New Mexico.

{*49} We are in receipt of your letter of February 28th with regard to the operation of school busses.

In answer to your first question as to whether or not it is lawful for a minor to act as driver of a school bus transporting school children, you are informed that we have no state law prohibiting this. Chapter 154, Section 19 of the Laws of 1933 provide that the State Corporation Commission is vested with the power and authority to supervise and regulate every contract motor carrier of property or passengers for the purpose of promoting safety upon the highways, etc., and Section 25 of the same chapter provides that motor vehicles used to convey children to and from school shall be subject to all of the safety provisions that may be prescribed by the commission. The State Corporation Commission, however, has not prescribed any rules applicable to the school busses but I am informed by the Commission that it is now formulating certain rules which will be put into effect before any other contracts are let to operate school busses.

Your second question asks whether or not the members of the County Board of Education can be held responsible if an accident should happen on the bus while a minor is driving same. Our answer to this is that the members of the board would not be responsible merely because the school bus was being driven by a minor but if it were shown that the contract to carry the school children had been let to a person who was known to be negligent and to have unsafe equipment for transporting the children, then under the general laws of negligence the members might be held responsible and also the school district or county. We find no cases directly in point on this proposition but the case of Phillips vs. Hardgrove, et al, 161 Wash. 121, 296 Pac. 559, lays down the rule that the driver of a school bus and the Board of Education employing such driver are under a duty to exercise the highest degree of care in operating the school busses and both may be held liable for negligence resulting in an accident. However, the case of Rankin vs. School District No. 9, 143 Ore. 449, 23 Pac. 2nd 132, held that the school district could not be held liable even where there was negligence in operating the school bus for the reason that it was a Governmental agency and was exercising a Governmental function in providing transportation for the school children. The case however did not decide the point as to whether or not the individual members of the board might be held liable.

In answering your third question as to whether or not the County Board may pay out county school funds for the transportation within a National Park, we see no reason why this may not be done in the event that it is necessary to transport children entitled to transportation through or from a National Park.

By: J. R. MODRALL,

Asst. Atty. General