

From the foregoing, it will be noted that the question of whether or not a claim may be paid as a moral obligation when it falls short of being a legal obligation because of the intervention of technical rules of law, such as the rule that boards of education act in a governmental capacity as distinguished from a proprietary capacity in carrying out their functions and are therefore not liable in tort in any case, depends entirely on the circumstances of each particular case.

If an injury occurs to a pupil or to anyone else in such a way that the board of education would be liable in damages for said injury if it had been acting in a proprietary capacity as distinguished from a governmental capacity the damages directly and proximately growing out of such injury may lawfully be compensated for as a moral obligation, otherwise not.

To definitely determine this question involves consideration of questions relating to negligence and contributory negligence and proximate and remote cause and involves the judicious weighing of evidence pertaining to the facts of the case.

Ordinarily, a child pupil who would be using tools in the manual training shop of a school would not be held to the same degree of care as should be exercised by older persons. The care which it should exercise and which the law would require of it to absolve it from contributory negligence depends to a great extent on its age and probably its previous experience and training. Then, too, the circumstances under which the injury occurred must be considered, to determine whether or not negligence existed and whether or not the injury was the direct and proximate result of what would be actionable negligence if proprietary relations existed between the child and the board of education. This involves consideration of questions relating to the guarding of dangerous machinery, of proper supervision of the pupil, of proper warning to the pupil, of the promulgation and enforcement of proper rules and regulations, and many other considerations which might be peculiar to each individual case.

From this it will readily be seen that it is impossible to give a direct categorical answer to your question without considering all of the facts pertinent to the particular inquiry.

The best that may be said by way of categorical answer to your question is that if the injury to the child in question occurred in such a way and under such circumstances that recovery for damages could be had against the school authorities, if the school were a private school which was not protected by the rule of non-liability which exists in favor of governmental agencies, instead of a public school, the board of education about which you inquire may lawfully recognize the claim of the attending physician as a moral obligation and pay the same from school funds.

Respectfully,
GILBERT BETTMAN,
Attorney General.

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APPROVAL, CONTRACTS FOR GRADE SEPARATION IMPROVEMENTS
IN SPRINGFIELD, CLARK COUNTY, OHIO.

COLUMBUS, OHIO, August 3, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*