875.

BOARD OF EDUCATION—NOT LIABLE TO PUPIL OR OTHER PERSON FOR PERSONAL INJURY OR PROPERTY DAMAGE CAUSED BY NEGLIGENCE OF DRIVER OF SCHOOL BUS—NO AUTHORITY TO EXPEND MONEY FOR LIABILITY INSURANCE.

SYLLABUS:

In view of the recent decision of the Supreme Court of Ohio in the case of Board of Education v. McHenry, Jr., 106 *O. S.,* 367 *and in the case of Aldrich v. Youngstown,* 106 *O. S.,* 342, *a board of education would not be liable either to a pupil or other person for personal injury or property damage caused by the negligence of the driver of the school motor bus.*

Under a former opinion of this department, Opinions of the Attorney General for 1922, *p.* 31, *it was held that a board of education is without authority to expend money for a policy of liability insurance covering indemnity against damages caused by such negligence.*

COLUMBUS, OHIO, November 8, 1923.

HON. HAROLD E. KUHN, *Prosecuting Attorney, Millersburg, Ohio.*

DEAR SIR:—Your letter of recent date received, in which you submit the following statement of facts, requesting the opinion of this department on the questions raised:

"The board of education of Saltcreek Township, Holmes County, Ohio, has purchased a motor bus to provide transportation for school pupils to and from high school at Holmesville, Prairie Township, Holmes County, Ohio, and has employed a chauffeur to operate the motor bus.

These questions arise:

1. Would the board of education be liable in damages to any school child resulting from an accident caused from the negligence of the chauffeur of the motor bus?

2. Would the board of education be liable in damages to other persons or property resulting from the negligence of the chauffeur of the motor bus?

3. Has the board of education authority to take out a policy of liability insurance to protect the board against liability in damages to a school pupil riding in the motor bus or to other persons or property?

Considering your questions in their reserve order, your attention is directed to a former opinion found in Opinions of the Attorney General for 1922, page 31, the syllabus of which reads:

"Section 7620 G. C. does not authorize boards of education to provide accident insurance covering indemnity against personal accident or injury to the pupils of the schools under their jurisdiction."

The 85th General Assembly passed House Bill 279, which amended section 7620, authorizing boards of education to contract for insurance, insuring school pupils against loss resulting from accident while being transported to and from the schools. However, this bill was vetoed by the Governor and boards of education are still without authority to protect the children with liability insurance.

It is believed your first and second questions come within the rule recently laid down by our Supreme Court in the case of Board of Education v. McHenry, Jr., etc., 106 O. S., 357 (Ohio Law Bulletin and Reporter, July 30, 1923), and the case of Aldrich v. Youngstown, 106 O. S., 342 (Ohio Law Bulletin and Reporter, July 30, 1923). The decision in the McHenry case holds that a board of education is not liable for damages claimed to have been sustained by a pupil in the public schools of the city of Cincinnati from the extraction of a tooth by a dentist in the employment of the board of education of the city of Cincinnati, to whom the principal of one of the public schools of the city required the pupil to submit himself for examination and treatment, without the consent and knowledge of his parents. This holding is based upon the decision in Aldrich v. Youngstown, supra, where the case of Fowler v. Cleveland is overruled and the principle in the case of Wheeler v. Cincinnati, 19 O. S., 19, is adhered to. The following discussion from the opinion in the case of Aldrich v. Youngstown, supra, is here quoted:

> "In the discussion of municipal liability for the acts of its officers, all of the cases fall within two divisions, one holding non-liability, where the municipality has acted in the exercise of governmental or political functions, the other holding the municipality liable where the agencies employed by it are carrying out what are known as municipal, proprietary or private interests. Whenever it appears that the municipality is acting or has acted within its proprietary functions, the courts will hold it liable, and the only divergence found in the decisions of the various courts upon that aspect of the case is the determination whether a case falls within the exercise of a purely private or proprietary function wherein liability may be imposed."

In view of the above referred to opinion, and the decisions of our Supreme Court in the McHenry and Aldrich cases above referred to, I am of the opinion that your questions must be answered in the negative.

Respectfully,
C. C. CRABBE,
Attorney-General.

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APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND SARAH R. MARSHALL, FOR CONSTRUCTION OF REVETMENT WALL AT COTTON WOOD AT INDIAN LAKE, LOGAN COUNTY, OHIO, AT A COST OF $3940.00. SURETY BOND EXECUTED BY THE AMERICAN GUARANTY COMPANY.