

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.

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.

COLUMBUS, OHIO, November 8, 1923.

HON. L. A. BOULAY, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted to me for approval a contract (three copies) between the State of Ohio, acting by the Department of Highways and Public Works, and Sarah R. Marshall. This contract is for the construction of a revetment wall at Cotton Wood at Indian Lake, Logan County, Ohio, for the Division of Public Works, the contract price being Thirty Nine Hundred and Forty, Dollars. (\$3940.00.)

Accompanying said contract is a bond to insure faithful performance, executed by the American Guaranty Company, together with a certificate showing an unencumbered appropriation sufficient to cover the obligations of this contract.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return the same to you herewith, together with all other data submitted to me in this connection.

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

877.

APPROVAL, FINAL RESOLUTIONS, ROAD IMPROVEMENTS IN THE FOLLOWING COUNTIES: WAYNE, FRANKLIN, WASHINGTON AND MONROE.

COLUMBUS, OHIO, November 8, 1923.

HON. L. A. BOULAY, *Director of Highways and Public Works, Columbus, Ohio.*

878.

APPROVAL, BONDS OF LIBERTY TOWNSHIP RURAL SCHOOL DISTRICT, DELAWARE COUNTY, \$3972.43, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, November 8, 1923.