If the manner by which the child suffered the injury was such that the board would be liable in damages for the said injury were it not for the fact that because the board, in the performance of its functions, acts in a governmental capacity and is therefore not liable for misfeasance or malfeasance in accordance with the doctrine of *McHenry* vs. *Board of Education,* supra, a claim for the services of the physician and the hospital in treating the child for the injury may lawfully be paid as a moral obligation in the nature of damages; otherwise not.

I am not informed as to just how the injury occurred. Clearly, a private institution, maintaining a gymnasium and not protected by the rule of non-liability applicable to governmental agencies, would owe certain duties to its patrons, the violation of which would cause it to be liable in damages for injuries suffered on account thereof. Among such duties would be the duty to provide a safe place to operate, and safe appliances and equipment for its patrons to use; and especially if children were among its patrons. If instruction and supervision were a part of the service afforded, such instruction and supervision must necessarily be competent and careful. An injury suffered by a patron as a direct and proximate result of a failure to perform these duties would clearly create a right of action in the injured person or his administrator, if death ensued therefrom, in which a recovery in damages might be had.

It would be beyond the scope of this opinion to discuss the question of negligence generally. Suffice it to say that a claim of the physician and hospital for services rendered to the injured child cannot lawfully be paid by the board of education of Greenfield schools as a moral obligation of the school district unless the circumstances surrounding the injury were such that the child would have had a legal claim for damages on account of said injury, save for the fact that no recovery may be had against a board of education in tort for injuries suffered by school children in the course of their attendance at school.

Respectfully,
GILBERT BETTMAN,
Attorney General.

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DISAPPROVAL, BONDS OF MONROE COUNTY—$4,500.00.

COLUMBUS, OHIO, July 5, 1929.

In re: Bonds of Monroe County, Ohio, $4,500.00.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN:—The transcript submitted relative to the above issue of bonds contains no evidence of any proceedings had prior to the passage of the resolution authorizing the bonds, as required under the provisions of sections of the General Code relating to necessary procedure to be taken by county commissioners, and particularly the Uniform Bond Act.

On November 21, 1928, this office returned the transcript for completion, but has received no word relative thereto. I accordingly advise you not to purchase the above bonds.

Respectfully,
GILBERT BETTMAN,
Attorney General.