

2576.

APPROVAL, BONDS OF THE CITY OF RAVENNA, PORTAGE COUNTY—  
\$17,910.95.

COLUMBUS, OHIO, September 14, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

2577.

APPROVAL, BONDS OF CADMUS RURAL SCHOOL DISTRICT, GALLIA  
COUNTY—\$10,000.00.

COLUMBUS, OHIO, September 15, 1928.

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

2578.

BOARD OF EDUCATION—NOT LIABLE FOR NEGLIGENCE OF DRIVER  
OF SCHOOL BUS.

*SYLLABUS:*

*A board of education is not liable, either to a pupil or other persons, for personal injury or property damage caused by the negligence of the driver of one of its motor busses used in the transportation of pupils to school, whether the bus is owned by the board of education and the driver employed to drive the same or whether the driver or his employer owns the bus and transports the pupils by contract. In either event the driver and his bondsmen are liable for the driver's negligence.*

COLUMBUS, OHIO, September 17, 1928.

HON. EUGENE S. OWEN, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion in answer to the following questions:

“First: In the event the driver of a school bus has accident, resulting in the injury of one or more occupants of said bus, and the driver owns said bus and is employed by the Board of Education to transport the pupils to and from school, who is held liable for such injury, and is the Board of Education in any way liable?”

Second: In the event the Board of Education owns and maintains the school bus, and the said board employs a driver to operate said bus, who is held liable in case of injury to one or more of the pupils. Can the board be held liable?

In answer to your inquiries I would direct your attention to two former opinions of this department relating to the same subject, the first of these being Opinion No. 1632, rendered under date of January 30, 1928, and addressed to the Hon. J. R. Clifton, Director of Education, Columbus, Ohio, the syllabus of which opinion reads as follows:

"1. The driver of a school wagon or motor van used in the transportation to and from a public school is required to execute a bond conditioned upon the faithful discharge of his duties as such driver.

"2. A driver of a school wagon or motor van, used in the transportation of pupils to and from the public schools, is individually liable for injuries caused by the negligence of such driver in the operation of such wagon or motor van, even though such driver was at the time employed by a board of education and was engaged in the performance of a public duty required by law to be performed by such board of education. Such liability may be enforced in a civil action sounding in tort. In addition, under the holding of the Supreme Court of Ohio in the case of *United States Fidelity and Guaranty Company vs. Samuels*, 116 O. S. p. 586; 157 N. E. 325, a driver of a wagon or motor van, used in the transportation of pupils to and from the public schools, together with his sureties, are liable on the bond for the negligent operation of the school wagon or motor van by such driver, in the performance of the duties for which he was employed, and such liability may be enforced against the driver and his sureties in a proper action brought for that purpose."

Again on February 2, 1928, the same subject was considered in Opinion No. 1655, addressed to the Hon. C. Luther Swain, Prosecuting Attorney, Wilmington, Ohio, which held as stated in the syllabus:

"A driver of a school wagon or motor van, used in the transportation of pupils to and from the public schools, is individually liable for injuries caused by the negligence of such driver in the operation of such wagon or motor van, even though such driver was at the time employed by a board of education and was engaged in the performance of a public duty required by law to be performed by such board of education. Such liability may be enforced in a civil action sounding in tort. In addition, under the holding of the Supreme Court of Ohio in the case of *United States Fidelity and Guaranty Company vs. Samuels*, 116 O. S. p. 586; 157 N. E. 325, a driver of a wagon or motor van, used in the transportation of pupils to and from the public schools, together with his sureties, are liable on the bond of the driver, required to be given by Section 7731-3, General Code, for the negligent operation of the school wagon or motor van by such driver, in the performance of the duties for which he was employed, and such liability may be enforced against the driver and his sureties in a proper action brought for that purpose."

In these two opinions, copies of which are enclosed herewith, the authorities were quite exhaustively reviewed and for that reason I will not in this opinion enlarge on the subject.

In the light of the two former opinions and the authorities therein noted, I am of the opinion in answer to your specific questions:

1. That a board of education is not liable either to a pupil or other person for personal injury or property damage caused by the negligence of the driver of a motor bus used in the transportation of pupils, whether the said bus is owned by said driver or his employer and the pupils are transported by contract, or whether the bus is owned by the board of education and the driver employed to drive the same. In the event an accident occurs while said pupils are being transported, caused by the negligence of the driver of said bus and resulting in damage either to a pupil or a third person, the driver of said bus is personally responsible for said damages and the right to said damages may be enforced in an action against the said driver or his bondsmen.

2. The same observation may be made in answer to your second question as was made in answer to the first. The board of education is not liable for the negligence of the driver of a motor bus. The driver himself and his bondsman are liable if the board of education owns the bus and employs the driver to drive the same, and the same is true if the driver or his employer owns the bus and transports the pupils by contract.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2579.

CEMETERY—UNION—TRUSTEES ARE EITHER VILLAGE OR TOWNSHIP OFFICERS—SALES OF SUPPLIES BY TRUSTEES TO CEMETERY PROHIBITED.

*SYLLABUS:*

1. *Members of a board of union cemetery trustees are prohibited from being interested in the sale of personal services or supplies to the cemetery with which they are connected.*

2. *Members of the board of township trustees, members of the village council and other officers of such township and village cannot legally render services for compensation to a union cemetery formed by the joinder of such subdivisions, nor can they sell supplies thereto.*

COLUMBUS, OHIO, September 17, 1928.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Acknowledgment is made of your recent communication, as follows:

“Sections 3808, 12910 and 12912, G. C., prohibit an officer of a corporation from having any interest in the expenditure of money on the part of a corporation other than his fixed compensation.

Section 12911, G. C., prohibits anyone holding an office of trust or profit, or as agent, servant or employe of such person, from having any interest in a contract for the purchase of property, supplies or fire insurance for the use of the county, township, city, village, board of education, or a public institution with which he is not connected, when the amount thereof exceeds the sum of \$50.00, unless such contract is let at competitive bidding.

Sections 4183 to 4205, G. C., govern the selection, powers, duties, etc., of members of a board of trustees of a union cemetery. Provision is made