such motor vehicle, the owner thereof is required to insert in the bill of sale executed by him a statement of such installation or of other changes and alterations in the finish, design or appearance of such motor vehicle which have been made within his knowledge.

Respectfully,
GILBERT BETTMAN,
Attorney General.

56.

DRIVER—SCHOOL BUS—LIABILITY FOR NEGLIGENCE—RIGHT TO CARRY INSURANCE.

SYLLABUS:

The driver of a school wagon or motor van regularly employed for that purpose is liable in damages for the direct and proximate results of his negligence in the operation of said school wagon or motor van. The said driver may lawfully provide against such liability with liability insurance.

COLUMBUS, OHIO, February 4, 1929.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion as follows:

> "In a certain school district the school buses are owned by the board of education and the bus drivers are employed by the board. There is a desire to protect the children against accident by insurance. We understand that the board of education has no authority to purchase liability insurance. Can the drivers take out liability insurance to protect the children? In what respects are the drivers liable in case of accident?"

My predecessor had occasion to consider in several opinions the same question raised by your inquiry. On January 30, 1928, there was rendered Opinion No. 1632, the syllabus of which reads as follows:

> 1. The driver of a school wagon or motor van used in the transportation of pupils 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, a similar question was considered, and Opinion No. 1655 rendered thereon, holding in harmony with the earlier opinion. And again, on September 17, 1928, in Opinion No. 2578, it was held:

"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."

Since the decisions in the cases of *Aldrich* vs. *City of Youngstown,* 106 O. S. 342, and *Board of Education* vs. *McHenry,* 106 O. S. 367, it has been generally recognized that boards of education, when engaged in carrying out the provisions of law relating to the maintenance of public schools, act in a governmental capacity in contradistinction to a proprietary capacity, and therefore are not liable in tort for injuries to third persons in so doing. This rule would apply if injuries were received by third persons growing out of the transportation of pupils, Opinions of the Attorney General for 1923, page 696.

The question here raised is whether or not the driver of a school wagon or motor van, while in the performance of his duties in carrying out for his employer what is held to be a governmental function, is himself relieved, for that reason, from responsibility on account of his own negligence.

It has been definitely stated by our Supreme Court that such immunity from liability does not exist in favor of an officer or employee of a city when carrying out the governmental functions of the city, and in my opinion the same rule would apply to the driver of a school wagon or motor van who was carrying out, in the performance of his duties, a governmental function of the school district.

In the case of *United States Fidelity and Guaranty Company* vs. *Samuels,* 116 O. S., page 586, it was held:

"Where in the discharge of official duty a police officer fails to take that precaution or exercise that care which due regard for others requires, resulting in injury, his conduct constitutes misfeasance."

In the above case suit was brought against the surety on a police officer's bond, seeking to subject the surety to the payment of a judgment which had been recovered against the police officer on account of the negligence of the officer while in the performance of his duty as such police officer. In the course of the opinion the court said:

"It does not follow that, because an action cannot be maintained against the city for the act of an official representing the city in the discharge of a governmental duty, there can be no recovery by a third person against the surety on the bond of such official. If there be a violation of the guaranty that the official will faithfully discharge his duties, there can be a recovery upon his bond by one injured by such failure, although there could be no recovery from the city."

Inasmuch as there is no liability on the school district, whether injuries are received by third persons including pupils, on account of the negligence of the driver of a school wagon or motor van or because of some inherent defect in the school wagon or motor van itself, because of the fact that the board of education is in the performance of a governmental duty in providing transportation, the board could not lawfully expend public money to provide insurance for protection against liability to third persons growing out of the transportation of the pupils.

The driver of course would not be liable in damages on account of an accident which was not the direct and proximate result of his negligence. As to such damages for which he would himself be liable, he might lawfully safeguard himself by carrying liability insurance, this being a private matter in which the board itself would not be interested and as to which no statutory inhibition exists.

In specific answer to your question, therefore, I am of the opinion that drivers of school wagons or motor vans are liable to third persons, including pupils, in damages on account of any negligence of which they may be guilty in the operation of said school wagons or motor vans and may protect themselves against such liability by carrying liability insurance therefor.

Respectfully,
GILBERT BETTMAN,
Attorney General.

57.

APPROVAL, WITH CONDITIONS, LEASE TO PREMISES AT 961 SOUTH HIGH STREET, COLUMBUS, OHIO—ANNA E. SWINGLE.

COLUMBUS, OHIO, February 4, 1929.

HON. H. H. GRISWOLD, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Under date of January 28, 1929, this department addressed to you an opinion upon a certain lease in triplicate executed by one Anna E. Swingle, leasing to the State of Ohio certain premises situated at No. 961 South High Street, Columbus, Ohio, for a term of six months from the first day of January, 1929. In said opinion, you were advised that the renewal clause of said lease was effective to give you only one renewal of said lease, which renewal, if the option of the State was exercised, would be for an additional term of six months, commencing July 1, 1929 and ending December 31, 1929. Inasmuch as it was not entirely clear whether your department desired said lease to stand in this form with the interpretation thereof given by this department, said lease was returned to you without my formal approval indorsed thereon. Under date of February 2, 1929, you directed to me a further communication in regard to this lease in which you say that the same was executed for a term of six months for the reason that the General Assembly, in providing funds from which the rental of said lease is payable, made an appropriation to cover only the first six months of the biennium. In this communication, you further say "This procedure necessitated changing the term of renewal lease to six months as confined by this partial appropriation, and the renewal feature is to allow extending term of lease to December 31, 1930." As to this, it is to be observed that in the opinion of this department above referred to, you were distinctly advised that the renewal feature of the lease here in question is effective to extend the term of said lease only to December 31, 1929. With this distinct understanding as to the effect of the renewal clause in said lease,