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Legal Liability of School Principals for Their Torts in Washington State

David Jerome Harbeck
Central Washington University

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LEGAL LIABILITY OF SCHOOL PRINCIPALS FOR THEIR TORTS
IN WASHINGTON STATE

A Thesis
Presented to
the Graduate Faculty
Central Washington State College

In Partial Fulfillment
of the Requirements for the Degree
Master of Education

by
David Jerome Harbeck

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APPROVED FOR THE GRADUATE FACULTY

Roy F. Ruebel, COMMITTEE CHAIRMAN

Dan A. Unruh

William G. Gaskell

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CHAPTER I

THE PROBLEM AND DEFINITIONS OF TERMS USED

The schools and school personnel in the state of Washington hold a unique position in regard to liability for torts. School districts in a majority of states in the United States practice the theory of sovereignty of the state, according to which the state is immune from tort liability because of its sovereign character. Furthermore, all public agencies, institutions, and political subdivisions of the state partake of this sovereign immunity since in performing governmental functions they merely act for the benefit of the state and of the public generally in the process of government.

School districts in Washington State do not enjoy the theory of sovereignty of the state. By virtue of legislative enactment in 1869 (RCW 4.08.120), school districts, their officers, and employees are liable for their torts. Obviously this places teachers and administrators in a vulnerable position.

I. THE PROBLEM

Statement of the Problem

According to the laws of the State of Washington, school districts, administrators, and teachers are liable for all of their torts. Since

principals are not immune from tort suits, the purposes of this study were (1) to suggest measures to minimize exposure of principals to tort suits, and (2) to suggest measures of protection against such suits.

Importance of the Study

Negligence begets liability for adults in private life as well as in occupational endeavors. In Washington State, the negligence of school districts, their officers, and employees carries with it an obligation to compensate for this wrong.

By law, American children must be provided an education if they are capable of learning. In the course of imposing standards upon an individual or group, the imposer must accept the responsibility for the safety and well-being of that person or group. Because of his position as the leader of a school building, a principal must assume tremendous responsibilities for the welfare of students within that building.

A study of this nature is necessary, for although courts have been called upon to decide on the matter of school district and teacher tort liability, only rarely have courts rendered decisions on principal tort liability. One should not conclude that principals are immune from tort liability because of this lack of court cases.

II. DEFINITIONS OF TERMS USED

Tort

Tort was interpreted as meaning any wrongful act, except for breach of contract, for which a civil suit can be brought for the recovery of damages.

Negligence

For the purposes of this study, negligence was viewed as the failure of a person to use care and caution as another reasonable and prudent person would have exercised under similar circumstances.

Liability

As used in this study, liability is an obligation imposed by law allowing for the recovery of personal damages.

Liability Insurance

The term "liability insurance" shall be translated as meaning insurance which covers the insured against losses arising from personal damages to another person.

Principal

Principal was interpreted as meaning the administrative leader of a school building.

RCW

"RCW" is a commonly used term in legal writing indicating the Revised Code of Washington.

III. LIMITATIONS OF THE STUDY

This investigation was based on a study of the existing statutes in Washington State related to the topic of tort liability of school principals. Major sources of information were Washington State legislative statutes, Supreme Court decisions, Attorney General's opinions, the opinions of the Superintendent of Public Instruction, and the codes and regulations of the State Board of Education. Little information was found in the professional literature.

Since school principals can be held liable for their torts, this study was limited to the relationship of school principals to exposure to and protection against tort suits in Washington State.

IV. PROCEDURE

To begin this research, a review of the legislative statutes, decisions of the State Supreme Court, opinions of the State Attorney General, opinions of the State Superintendent of Public Instruction, and the codes and regulations of the State Board of Education were pursued. These sources as well as periodicals and books pertinent to the topic of principal tort

liability comprised the basis for a review of the literature.

In the original design of the study, a questionnaire was to have been sent to insurance companies to ascertain the coverage liability insurance would afford to school principals. However, in the review of the literature it was observed that school principals have had very few suits of a tortious nature brought against them. Rather than employ a questionnaire, a study of insurance practices and principles was conducted by personal interview as well as a review of the literature on personal liability insurance.

From the information gathered in chapters II and III, a summary, conclusions, and recommendations for possible further research were suggested.

CHAPTER II

REVIEW OF THE LITERATURE

The actions of a school district, its officers, and employees in Washington State are governed by a number of different authorities. Legislative statutes, judicial decisions, opinions of the State Attorney General, decisions of the State Superintendent of Public Instruction, and the codes and regulations of the State Board of Education are a few of the important agencies at the state level which govern the actions of local school districts.

In the area of tort liability, a number of civil law suits have been brought against school districts in this state, a few actions have been against teachers, and even fewer against principals. Because of the lack of suits brought against principals, one should not conclude that school principals are immune from their torts. Principals can be held liable for their torts.

I. TORT LIABILITY ON THE NATIONAL SCALE

In the absence of legislative statutes or judicial decisions, school districts are afforded immunity from tort suits because they are a governmental agency.

Governmental immunity is a court-created doctrine which traces itself back to the old English law theory that "the King can do no wrong" (10:35). By using this theory, the King could not be brought into his own courts without his permission. Our judicial department has reasoned likewise that without legislative consent, the state and its political subdivisions cannot be sued for their torts (10:35).

By legislative enactment, several states have had tort immunity removed or possess only partial immunity from tort suits. In Washington and California, school districts, by legislative action, are liable in damages for tort. School boards in New Jersey, New York, Massachusetts, and Connecticut are required to reimburse any teacher, supervisor, or administrator who has incurred a financial loss arising out of any suit or claim because of his alleged negligence through an accidental injury to any person during the course of his duties. Because of a statutory waiver, the Hawaii State Department of Education has been made liable for injuries sustained by pupils due to the negligence of its employees. Permissive provisions are also to be found in Wyoming and Oregon (20:47).

The year 1959 found a landmark decision rendered by a court of law in this realm of governmental immunity. In Molitor v. Kaneland Community School District No. 302 (15:163:89)¹, the Illinois State Supreme

¹Citations referring to volumes in a series should be interpreted as follows: first number refers to item number in Bibliography, second number refers to volume in series, third number refers to page in volume.

Court rendered a decision whereby school district immunity for that state was removed. Until the Illinois Supreme Court's trend-setting decision, courts had been reluctant to abolish this common-law immunity for schools on the grounds that such change was the legislature's responsibility. The Illinois decision rejected this line of reasoning (7:54).

Following the lead of Illinois, supreme courts in Wisconsin, Arizona, and Minnesota took similar action in removing school district tort immunity. The Minnesota legislature later restored immunity to school districts in 1963 (20:47).

State supreme courts in Colorado, Iowa, Kansas, Oregon, Pennsylvania, and Utah have encountered the issue of removal of immunity from school districts, but have not followed the lead of the Illinois court. "These courts reflect a hesitancy to break with their precedents, and they adhere to the view that the legislature should waive the rule" (20:47).

Presently, statutes and court decisions in about one-fourth of the states impose some form of liability upon individual school districts (20:47).

Even though districts may be immune from suits of tort in some states, employees of the district are not (6:64). School principals are therefore liable for all of their torts.

II. TORT LIABILITY IN WASHINGTON STATE

As early as 1869, the Washington Territorial Legislature abrogated the common-law rule of immunity of school districts. Legal actions can be brought against school districts for any act or omission of an act by an officer or employee of the district as legislated in RCW 4.08.120. School district immunity was partially restored in 1917 by the legislature when the child's injury was related "to a park, playground or field house, athletic apparatus or appliance, or manual training equipment, . . . , owned, operated, or maintained by the school" (RCW 28.58.030). Partial immunity on this basis lasted for fifty years when, in 1967, the legislature restored full liability to school districts for pupil injuries with the passage of Chapter 164, Section 1, Laws of 1967.

With the advent of the 1967 legislation, unrest swept among many educators in Washington State (16:1). More liability on the part of employees was one of the commonly voiced concerns; but the legislation did not increase principal or teacher liability, it increased only the liability of school districts (16:3). School employees have always been liable for their torts for the cloak of immunity has never covered them (6:64).

Since school district employees have always been liable, "no case involving a claim by a pupil against a principal or teacher has reached our State Supreme Court" (17:2). There are a couple of notable reasons why no

claims have been tendered against principals and teachers. First, since school districts can be sued, claims have been brought against the district with a principal or teacher being named in the claim. Second, many claims are settled out of court because "in practice if someone is injured seriously, courts will go to great lengths to pay" (12).

A suit may be brought against an educator by a parent or guardian until a student has reached the age of twenty-one. The student may then bring a suit against an educator of this state at any time within the next two or three years on his own behalf. In rare cases liability may exist even longer (3:35).

III. SCOPE OF PRINCIPAL LIABILITY

Two types of conduct are capable of rendering a principal liable for his wrongful acts--intentional torts and negligent torts.

Intentional torts on the part of school personnel are generally grounded in disciplinary actions toward students (16:4). Because the laws of this state allow school personnel to use corporal punishment as a method for disciplining students and the State Board of Education requires that corporal punishment be administered by a certificated person (21:2), principals are often called upon to witness or to apply the punishment to the errant pupil. Corporal punishment applied in violation of existing legislative statutes can be grounds for tort liability suits being brought

against a principal. Therefore, corporal punishment will be dealt with later in this chapter as a potential source for principal tort liability.

A second type of tort for which a principal can be held liable involves negligence. For the most part, cases taken to a civil court of law are based on negligent torts rather than on intentional torts. Intentional torts are generally recognized by the party who has committed the tort; therefore, settlement generally is handled out of a court of law. However, negligent torts involve a question of whether a wrong was committed or not; therefore, a court of law has the right to render a decision on a charge of tort liability.

In establishing a case for negligence against a person, the judicial system employs three criteria to satisfy the charge of negligence (4:99).

1. Did the school employee owe a duty of care towards the plaintiff?
2. Was there a failure on the part of the employee to observe such duty?
3. Was such failure the direct and proximate cause of any resulting injury?

If all three questions can be answered in the affirmative, a case for personal liability based on negligence has been established and it then becomes the duty of the defendant to make financial amends.

There are circumstances which serve as defenses for persons charged with negligence. Intervention by a third party disallows a negligence charge to be brought against a principal (1:101). A second circumstance which dissolves negligence is contributory negligence by the injured party. In the process of becoming injured, a person contributing to his own injury cannot sustain a tort case against a principal (1:101). A principal charged with negligence can invoke the principle of "assumption of risk" (1:101). If, for example, a student engages in a bodily contact activity such as basketball, he assumes a risk of possible injury upon entering the game. Acts of God are not considered to be negligent. Where a tree falls in a windstorm and injures a youngster, negligence cannot be charged to another (15:252).

School principals can be held liable only for their own torts. Since the relationship of a principal to a teacher is not a master-servant relationship, a principal cannot be held liable for the negligent torts of a teacher "unless he (the principal) has directed the teacher to do something in an unusual line of duty. If a direction is unusual or out of the ordinary, the principal shares the liability" (2).

IV. SOURCES OF PRINCIPAL TORT LIABILITY

The office of school principal carries with it responsibilities commensurate with the position. To the staff and students, the principal

is obligated to supervise, to instruct, and to use good judgment in administering the duties of the school. A failure to exercise good judgment in supervising and instructing the students can carry a liability for a tort in a civil court of law.

In dealing with people, many variables must be recognized. Because of the nature of the work, school systems are dealing with the future of minors. Special care and consideration have been advanced which govern the conduct of school personnel. Though the school district in each case was the defendant, as the following decisions indicate, the negligence of a school employee in most cases was the cause for a suit being filed against the district.

Lack of Supervision

Student activities are so diversified that close supervision of these activities is necessary so as to protect the students from injurious situations. Garber and Boyer (19:76) have stated that "basically the responsibility of the principal is in the area of planning and supervising." A principal owes to himself, the school district, and the teachers under his direction a responsibility to plan and to provide for adequate supervision within the school.

Even though a school principal hasn't had a tort liability suit registered against him at the State Supreme Court because of inadequate

supervision, several decisions have been rendered against school districts on this issue.

Liability was established against a district in Briscoe v. School District No. 123 (23:32:316) in 1949, in which a boy was injured in a game of "keep away" football. Since a teacher had been assigned to supervise the playground activities and failed to appear, the district was made liable for the injury of the boy due to the negligence of the teacher.

Where a teacher likewise did not appear to supervise a recess period and a twelve-year-old girl was raped in a darkened room adjacent to the gymnasium, the district again was held liable for the assault on the girl in McLeod v. Grant County School District (24:42:316) in 1953.

In a 1918 decision, Bruen v. N. Yakima School District (23:101:374), a student sustained an injury when a teeterboard was placed across a swing seat. The court ruled that "If the teacher knew it, it was negligence not to have observed it" (23:101:377).

Supervision of student activities extends beyond common areas. A suit was maintained against a school district for an unsupervised extra-curricular club activity which was sanctioned by the district. In 1967 a case regarding a boy who was injured at a high school club initiation ceremony was dealt with in Chappel v. Franklin Pierce School District No. 402 (24:71:16). The school district was held liable for a boy's broken ankle because of the advisor's absence at the initiation.

As school districts take on added responsibilities in providing for extracurricular activities such as sanctioning clubs and providing for field trips, supervision is necessary at all times. A lapse in any one aspect of supervision, as the previous court cases have indicated, can constitute grounds for expensive litigation.

Violation of Statutes

Statutes established by the legislature are designed to protect both school personnel and students from tort. A violation of a statute can carry with it an obligation to compensate financially for a misdemeanor or it can also impose a criminal penalty on the tortious person.

RCW 28.58.280 requires that a principal conduct two fire drills a month. The failure of a principal to so abide by this statute can constitute a criminal offense in a court of law.

Criminal penalties can also be invoked against a principal for reporting a pupil present when the student is absent, according to RCW 28.87.020.

Failure of a principal to require weekly flag salutes and a pledge of allegiance to the flag as set forth in RCW 28.87.180 are grounds for establishing criminal offense in a court of law.

RCW 28.31.010 makes it unlawful for a teacher to attend school from any house where a contagious or infectious disease is present.

A teacher must impress on the minds of his pupils the principles of morality, truth, justice, temperance, humanity, and patriotism; that he teach the students to avoid idleness, profanity, and falsehood; and that he train them up to true compensation of the rights, duty, and dignity of American citizenship as set forth in RCW 28.67,110. A failure to do so can constitute a penalty of criminal sanction.

Corporal Punishment

Corporal punishment, used as a technique for disciplining students in this state, has been made lawful by the enactment of RCW 9.11.040(4) "Whenever used in a reasonable and moderate manner by a . . . teacher in the exercise of lawful authority, to restrain or correct his . . . scholar."

The Code of the State Board of Education has further elaborated on the issue of applying corporal punishment to pupils. To maintain good order and discipline, teachers may use corporal punishment provided the punishment is administered by "a certificated person in the presence of and witnessed by another certificated person" (21:2).

To protect a student from an unreasonable or unjust punishment administered by a certificated person, RCW 28.87.140 makes it a misdemeanor to inflict punishment on the head or face of a pupil.

Although no civil or criminal cases involving teacher or principal assault upon a student have reached the State Supreme Court, Public Employees Mutual Casualty Company "has reported that the striking of a pupil by a teacher has been the greatest single source of damage claims filed under its liability insurance coverage" (17:9).

Prior to administering corporal punishment to a student, prudence should dictate that a knowledge of the corporal punishment statutes by a certificated person would precede any action. Reasonableness should dictate that a just punishment would be administered to an errant student.

Student Disability or Injury

An injury as the result of an accident is not considered negligent unless the accident could have been foreseen.

School accidents are prevalent as is evidenced by the state superintendent's accident reports for the 1959-60 school year (17:4) and again for the 1963-64 school year (22:1).

	<u>1959-60</u>	<u>1963-64</u>
School Grounds	4,191	4,366
Gymnasium	3,589	4,356
Athletic Field	2,601	3,336
Classrooms	1,168	1,852
Shops	514	569
Corridors	514	558
Steps and Stairways (inside)	264	232
Playrooms	261	215
Steps, Stairways and Walks (outside)	251	284
Showers and Dressing Rooms	145	191

Noting that more accidents occurred on school grounds than in any other single area, the need for supervision, particularly on school grounds, becomes much more acute. An unsupervised school ground increases the chances for litigation being brought against a school district and its negligent employee.

Athletic endeavors occupy the second and third most frequent positions of accident occurrence. Principals need to be especially careful in the selection of coaches and physical education instructors.

Corridors had as many accidents in 1959-60 as did shops.

Suits have been filed against school districts and teachers in this state for allowing dangerous conditions to exist with resulting injuries occurring from accidents.

In 1966, damages were awarded to the parents of a twelve-year-old boy who died of strangulation in a junior high woodshop when stored plywood fell upon him. Storing plywood by leaning it against a wall constituted a dangerous condition as the Supreme Court interpreted it in Swartley v. Seattle School District No. 1 (24:70:16).

A similar suit was brought during 1933 in Bowman v. Union High District No. 1 (23:173:299) for allowing a dangerous condition to exist. In operating an electric planer with the automatic guard removed, a student lost three fingers. The negligence of the industrial arts teacher was affirmed.

In Morris v. Union High School District A (23:160:121) in 1931, a coach and the school district were held liable when an already injured seventeen-year-old boy was persuaded to play in a football game. The player's back and spine were seriously injured after he was "coerced" into returning to the game.

In instances where an injury occurs as the result of an accident, judgment whether to treat the injury immediately or seek the services of a doctor, nurse, or medically trained person must be made (8:42). A failure to act as another reasonable and prudent person would do under similar circumstances can be grounds for a suit of negligence being brought against a principal.

Where a boy in this state tripped in a gymnasium and broke his wrist, settlement was made out-of-court by the principal's insurance company since it was alleged that the principal and teacher attempted to set the wrist (12).

School Safety Patrol

The operation of the school safety patrol with respect to principal tort liability is a very questionable operation. The fact that no case involving this question of patrol operation has ever been tried and therefore not been judicially answered leaves room for much doubt among school principals (19:115). With respect to the operation of the school safety

patrol, Hamilton (19:116) has stated that "I have the temerity to suggest that such action by school personnel is not 'reasonably prudent'" hasn't helped to dispell this concern.

RCW 46.48.160 makes it legal for school districts to operate a school safety patrol. The Washington State Legislature has also made it possible for school districts to provide life and accident policies covering school patrol members while on duty by adding an additional provision to RCW 46.48.160.

Legislation allowing school districts to purchase life and accident insurance for patrol members has not relieved the principal of his liability toward this phase of the school operation; rather it has allowed for financial recovery by patrol members in the event of injuries sustained while on patrol duty.

Defamation Matters

The subject of defamation, libel in the case of written material and slander for spoken words, should be a concern of every educator. Because of the nature of their work, educators are in constant contact with parents, laymen, and other educators. In the process of meeting people, discussions of a controversial or confidential matter are likely to occur. These discussions can be injurious to a third person's reputation if care is not heeded. Injuring the reputation of another can be grounds for defamation suits being brought against the defaming party or parties.

It is not uncommon for a teacher or principal to have access to facts which are of a defamatory nature both to students and to teachers on the staff. These defamatory facts may be communicated to another person provided the facts are used for guidance purposes only in helping a third party (19:156). By so doing, the principal is protected from defamatory liability by conditional or qualified privilege.

Conditional or qualified privilege recognizes that true information can be given concerning a person for the protection of "one's own interests, the interests of third parties, or certain interests of the public" (19:155). It is recognized that if such protection were not afforded, the conveyance of true information to assist in the solution of a problem would likely be thwarted.

Qualified privilege in a court of law does not extend to the principal who has defamed another's reputation without an intent to help that person. Qualified privilege does not protect the principal who passes defamatory details on to others who are incapable of helping the third party. Passing on defamatory facts without malice and in good faith to others who are capable of assisting the third party would not constitute an action of defamation to be rendered against a principal in a court of law (19:156).

V. SUMMARY

Relatively little has been written on the subject of school principal tort liability, especially in Washington State.

The fact that school principals of Washington are liable for their torts by law and can be sued for their torts was established. However, a review of Washington State Supreme Court decisions found that no tort liability suits against a school principal have ever reached that court.

In the absence of suits against principals for torts, some general principles of tort liability based on suits against school districts were dealt with.

CHAPTER III

PERSONAL LIABILITY INSURANCE FOR SCHOOL PRINCIPALS

A person held legally liable for his negligent torts is required by a civil court of law to make financial compensation for injuries incurred to another person. In liability, no limit of compensation can be predetermined, only a civil court of law has the jurisdiction to establish the financial limit of liability.

A school principal has at his disposal two measures which serve to protect him from financial imposition because of tort liability suits; (1) his use of reasonable and prudent judgment to minimize his exposure to tort liability suits, and (2) his purchase of personal liability insurance for payment of tort liability decisions rendered against him.

I. PERSONAL LIABILITY INSURANCE

Many people operate on the theory that if they are careful they will not be held liable for negligence. Statistically the chances of being sued are small, but the one suit based on negligence could prove to be financially devastating. School principals should consider the need for purchasing personal liability insurance because of the possibility of sustaining tort liability suits.

The State Attorney General has issued an opinion regarding the purchase of insurance by school districts to protect themselves and their employees from tort liability claims. The Attorney General suggested school districts consider purchasing adequate liability insurance to "protect school administrators and instructors from the likelihood of being named as parties in such actions for damages" (5:3).

Purposes of Personal Liability Insurance

Personal liability insurance differs from other kinds of insurance in that it arranges to pay money to others on the insured's behalf. The insurance company agrees to pay for a claim settled out-of-court or a suit settled in court up to the limits of the insurance policy (13:135).

Personal liability insurance provides for certain services which go beyond settling financial claims. "Under the terms of all liability insurance" (13:135), the company agrees to pay the costs of preparing and defending any suits filed against a school principal. In preparing the defense, the company at its expense investigates the circumstances of the claim and interviews all witnesses, doctors, and other experts in an attempt to establish the facts. The insurance company pays all legal costs regardless of whether the principal was negligent or not. There is no way an insurance company can escape payment of a tort liability suit once a principal and insurance company have entered into a written contractual agreement.

Personal liability insurance tends to discourage claims of persons who know that the insurance company will investigate and fight such claims. An uninsured person, without the facilities or finances to fight such a claim in court, will make an out-of-court settlement to avoid such a suit in court (13:136).

Personal liability insurance is not an accident insurance policy. Under ordinary liability insurance, payments to injured persons is dependent upon the negligence of the insured. Injuries incurred in school accidents do not obligate the insurance company to make settlements unless the accident was a direct result of the negligence of the insured. Liability insurance does not cover pure accidents unless an accident provision is included in the liability policy (11:161).

The name insured on a personal liability insurance policy is not the claimant. In other insurance, the insured and the claimant are the same person since the insured makes claims against the insurance company and receives payment from the company. With personal liability insurance, the claimant presses damages against the insured and is reimbursed for damages by the insurance company (13:136).

An insurance company is not legally obligated to pay a claim or suit until damages have been awarded by a civil court of law. This practice, as well as the practice of paying claims out-of-court even though negligence has been charged, has frequently confused school personnel.

Where negligence does exist on the part of the insured, the insurance company will "pay and keep out-of-court where the principal appeared to be negligent" (12) to save delay and added expense of taking a case to court. Where a reasonable claim cannot be settled out-of-court, the seemingly negligent principal will have his case defended in a civil court of law by the insurance company (12).

Acquisition of Special Personal Liability Insurance

Personal liability insurance "usually does not apply to the business or professional activities of the person so insured" (11:169). To protect themselves from personal liability in their professional endeavors, "school principals and administrators in a number of districts have negotiated and purchased special personal liability policies which give them broad on- and off-the-job protection" (11:169).

In this state the most widely used special personal liability policy for educators is issued as part of membership in the Washington Education Association. The Washington Educator's Personal Liability Policy, which is underwritten by Public Employees Mutual Casualty Company, pays up to \$100,000 personal liability for each claim or suit (18:1).

Besides utilizing the coverage provided by membership in a professional education association, school principals can obtain special

personal liability insurance from commercial insurance companies as a portion of a comprehensive personal liability policy. However, caution has to be noted with respect to principals purchasing special personal liability insurance from a commercial insurance company. "No professional liability coverage is included in a comprehensive liability policy. It has to be added by endorsement" (9) by the insuring agent.

II. SUMMARY

School principals can minimize their exposure to tort liability by using reasonable and prudent judgment. Principals can further protect themselves from financial losses due to tort liability litigation by purchasing personal liability insurance.

CHAPTER IV

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

School employees have always been liable for their torts, only school districts have enjoyed tort immunity because of their sovereign character. Only recently has the trend to abrogate school district immunity been on the move. School districts of Washington State have had tort immunity removed so that now both school districts and employees are liable for all of their torts.

School districts in this state have been authorized by law not only to provide and pay for liability insurance for themselves but also for their employees. Whether to insure district employees is a decision each school district has to make.

I. CONCLUSIONS

Laws of Washington State compel children to attend school and to obey the school regulations as set forth by school authorities. State laws also compel school personnel to exercise duty and care with respect to the safety of students under their care. A failure of school personnel to exercise this due care afforded to students can result in tort liability suits against them and their employing district.

An individual or his agent, injured through the alleged negligence of a school employee while acting in the course of his employment, can sue either the individual or the school district of the employee or both for damages resulting from the injury.

A tort is a civil wrong which can be settled only in a civil court of law. Only after a decision has been rendered by a civil court can an injured person receive compensation from the person responsible for the injury. Insurance companies often settle claims out-of-court even though negligence might be established against a principal; court costs cannot be added if a settlement is made prior to the court hearing.

The principal-teacher relationship is not a master-servant relationship where the master is liable for the torts of his servants. A principal is liable only for his own torts. A principal can be held liable in a civil court of law, however, for his failure to adopt rules and regulations governing the conduct of his staff or for directing his staff to perform some act which jeopardizes pupil safety and injury results. The failure of a principal to act as another prudent person would act can be the basis for a tort liability suit in which an injury was sustained by a student.

II. RECOMMENDATIONS

Liability hazards of an individual are a great unknown since every tort liability claim is unique. Rules cannot be established since

each claim is unique, however, recommendations can be suggested to minimize school principals from exposure to and protection from tort liability suits.

The most practical course of action a principal can take to protect himself from tort liability is to buy personal liability insurance. There is virtually no safe upper limit where liability is involved because of the uncertainty of how a civil court of law will rule in tort liability.

Legislation should require all districts or school boards to purchase personal liability insurance for employees, including board members, and the district. The cost of defending a district and employee separately inflates personal liability insurance premiums. School insurance economics should dictate placing a district and its employees within one policy so as to deflate personal liability insurance premiums.

BIBLIOGRAPHY

1. Archer, Jr., Glynn R. "School Employees are Legally Vulnerable," School Management, 5:100, March, 1961.
2. Brock, Frank. Secretary to Seattle, Washington, School Board, in a personal interview, April 16, 1968. Permission to quote secured.
3. Commission on Professional Rights and Responsibilities. Legal Rights and Responsibilities of Washington Teachers. Seattle: Washington Education Association, 1967. 37 pp.
4. Drury, Robert L. Principles of School Law. New York: Appleton-Century-Crofts, 1965.
5. Eastvold, Don. "AGO 55-57, No. 232." Opinions of the Attorney General, March 26, 1956.
6. Garber, Lee O., and Randall R. Boyer. "Experiments Can Explode in Court," The Nation's Schools, 74:64, November, 1964.
7. _____. "Schools that Earn Money May Lose Their Immunity," The Nation's Schools, 72:54, September, 1963.
8. Gold, Sandra Y., and Gerald F. Gold. "First Aid and Legal Liability," Journal of Health, Physical Education, and Recreation, 34:42-43, January, 1963.
9. Hitchcock, Hugh. Hugh Hitchcock Insurance Agency in Ellensburg, Washington, in a personal interview, March 3, 1968. Permission to quote secured.
10. Humpal, W. M. "Courts Abrogate Doctrine of Immunity," American School Board Journal, 148:35-37, June, 1964.
11. Linn, Henry H., and Schuyler C. Joyner. Insurance Practices in School Administration. New York: The Ronald Press Company, 1952. 446 pp.

12. McGee, Craig. Chief claims adjustor for Public Employees Mutual Casualty Company, in a personal interview, December 27, 1967. Permission to quote secured.
13. Miller, Jerome S. Your Personal Insurance Guide. New York: Simon and Schuster, 1955. 332 pp.
14. Nolte, Mervin Chester, and John Phillip Linn. School Law for Teachers. Danville, Illinois: The Interstate Printers and Publishers, Inc., 1963.
15. North Eastern Reporter, Second Series. St. Paul: West Publishing Company.
16. O'Connell, John J. "School Law and Teacher Responsibility and Liability." Olympia, Washington: Washington State Attorney General's Office, 1967. (Mimeographed.)
17. Pruzan, Howard P. "Personal Liability of Principals and Teachers." Paper read at a principals and teachers conference in Seattle, Washington, 1963. (Mimeographed.)
18. Public Employees Mutual Casualty Company. Washington Educator's Personal Liability Policy. Seattle: Washington Education Association, 1967-68.
19. Seitz, Reynolds C. (ed.) Law and the School Principal. Volume 3 of Legal Problems of Education Series. Cincinnati: The W. H. Anderson Company, 1961. 266 pp.
20. Shapiro, Freida S. "Your Liability for Student Accidents," NEA Journal, 54:46-47, March, 1965.
21. State Board of Education Code of Rules and Regulations. Chapter 44, Teachers Index. Olympia, Washington.
22. Superintendent of Public Instruction. Student Accident Annual Summary Form B, Olympia, Washington. 1963-64.
23. Washington Reports. Seattle: Bancroft Whitney Company, Annual Volumes from 1892 to 1939.
24. Washington Reports, Second Series. Seattle: Bancroft Whitney Company, Semiannual Volumes from 1939 to present.