

OPINION
54-103

November 17, 1954 (OPINION)

SCHOOL DISTRICTS

RE: Nonliability in Governmental Functions

Your letter of November 15, 1954, has been handed to me for consideration and reply.

You state in your letter that a student from a neighboring town, while attending a football game at Dickinson High School, at which he was a paid spectator, suffered injuries about his face by reason of a loose plank in the bleacher flipping upward when stepped on and striking him in the face. The boy was wearing glasses and they were broken causing cuts on the face. The boy's father has asked the Dickinson Board of Education to reimburse him in the sum of thirty-nine dollars and thirteen cents, which includes medicine, replacement of the glasses and loss of time.

You ask whether or not under the above facts the Dickinson Board of Education is legally liable for the injuries sustained by this boy.

School districts are not liable for negligence in the performance of governmental functions, in the absence of a statute making the district liable, and we believe the rule of nonliability extends to the maintenance of playgrounds and athletic fields. We have no statute in this state making a school district liable for injuries sustained, as described above, and we, therefore, hold that the school board is not liable. The fact that a small charge is made for attendance at athletic contests does not, in our opinion, make the function proprietary and thus invoke liability on the part of the district.

There have been no North Dakota decisions directly in point, but we might cite a few cases from other states.

In the case of Reed v. Rhea County, a Tennessee case reported in 225 S.W.2d. 49, the Court held that a board of education was engaged in a governmental function in holding a football game for which admission was charged, and was not liable for injuries sustained by spectators when a bleacher collapsed. In the case of Thompson v. Board of Education. 79 A. 2d., page 100, the Court had this to say, "Schools and school districts are immune for injuries to players and spectators at athletic contests, even though admission charge is made."

Because athletic contests are within the legitimate scope of educational activities, they are governmental in their nature, and as a result the school district in question is not liable for the injuries sustained by this boy, even though he had paid admission to the football game.

LESLIE R. BURGUM

Attorney General