5-1972

Administration of Utah's Governmental Immunity Act by Utah's School Districts

Steven Howard Peterson
Utah State University

ADMINISTRATION OF UTAH'S GOVERNMENTAL IMMUNITY ACT BY UTAH'S SCHOOL DISTRICTS

by

Steven Howard Peterson

A dissertation submitted in partial fulfillment
of the requirements for the degree

of

DOCTOR OF EDUCATION

in

Educational Administration

Approved:

UTAH STATE UNIVERSITY
Logan, Utah

1972

ACKNOWLEDGMENTS

My sincere thanks and appreciation are expressed to Dr. Terrance E. Hatch, Chairman of my doctoral committee, for his continuous encouragement, suggestions, constructive criticism and support, from the inception of my doctoral program and this dissertation to the completion of both.

Appreciation is also expressed to Dr. Oral L. Ballam, Dr. Robert A. Wininger, Dr. Basil C. Hansen, and Dr. Ross R. Allen for their timely suggestions and assistance in bringing about the completion of this dissertation.

To the Utah School Boards Association, Utah State Department of Education, and the Utah Educators Mutual Insurance Association, I wish to express my thanks for the financial assistance and the cooperation which I had in obtaining the materials necessary for this study. I am also indebted to the superintendents and other administrators of Utah's school districts for their support in allowing me to obtain the information necessary for this study. I would like to express my appreciation to the boards of education and administrations of the Sevier and Piute School Districts for their support in my doctoral program and this study.

Finally, I wish to express my sincere love and appreciation to my devoted wife, Sylvia, for her unceasing support and continuous encouragement, and to my children, Shelly Sue, Stefenee Ann, Shauri Dee, Staci Donn and Shauna Lee for their love and understanding while their father was away from home so much during the time spent on his doctoral

program and the completion of this dissertation. It is to my wife and family that this work is dedicated.

Steven Howard Peterson

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Administration of Utah's Governmental Immunity Act

by Utah's School Districts

by

Steven Howard Peterson, Doctor of Education

Utah State University, 1972

Major Professor: Dr. Terrance E. Hatch
Department: Educational Administration

Purpose

Since the Utah Governmental Immunity Act went into effect on July 1, 1966, the experience of Utah's school districts under the law was not known. For the purpose of determining the experience of Utah's districts in administering the law and to determine the adequacy of the law, this study was undertaken.

Procedures

To accomplish the purpose of this study, a questionnaire was sent to each of Utah's 40 school districts. Instructions were sent with the questionnaire indicating that the writer would be making contact either by telephone or a personal interview to assist in filling out the questionnaire. A personal interview was conducted with 15 districts, and telephone contact was made with the remaining 25 districts. Additional information which could not be obtained from Utah's school systems was obtained from insurance agents, legal advisors, and various other related sources.

Findings and Conclusions

Experience of school district administrators in administering the law

The study revealed that Utah's tort liability law had not significantly affected school district operation. Some districts developed claims procedures, accident reporting methods, safety programs, and kept records of accidents as a result of the law. Larger school districts were more satisfied with the law than smaller districts. Insurance costs had not risen over the five year period sufficiently to become an excessive burden to school districts. No evidence was found which would suggest a need for a state financed insurance program for tort liability. It was determined that school districts would probably be held responsible for the negligent acts covered by the law, of any person performing services for the district. Student accident insurance programs were considered to be beneficial in preventing claims against school districts. When a serious accident occurred involving suit against the school system and employee, the insurance agencies worked out a settlement with each insurer paying part of the settlement, rather than go to court.

Adequacy of the present Utah Governmental Immunity Act

It was concluded that the law has been satisfactory, since the majority of the school districts were of the opinion that the law should remain as originally written; however, it was determined that a general fear of the law exists, as a result of a lack of knowledge about it. As a result of this study, the writer determined that there had not been enough cases to clearly define the extent of coverage for the school districts, and the extent to which school districts would be held

responsible for negligent acts of employees under the law. However, from the evidence received, employees have been covered when acting under the provisions of the law and were acting within the scope of their employment.

Recommendations

The study concluded with the following recommendations:

1. Even though claims have not been brought against school districts and their employees extensively since the passage of the law; it is recommended that school districts conduct in-service activities. The purposes of these activities would be to familiarize employees with the tort liability law, to improve safety practices, and accident reporting methods, in order to alleviate possible claims against the employees and school districts.
2. It is recommended that a uniform claims procedure be developed in Utah which would include a means for the state to disseminate information, enabling school districts to benefit from the experience of each other.
3. In order to eliminate confusion as to the coverage of auxiliary personnel under the law, it is recommended that the law be rewritten to specifically state that school districts are responsible for the acts of any person performing an authorized service for the school system.
4. Inasmuch as school districts don't know the extent to which their insurance provides protection for the employees of school districts, it is recommended that a study be conducted to determine the extent of insurance coverage for employee protection in each school district of the state.

5. Since the majority of Utah's districts have not received lower insurance bids by agencies other than their original insurer as a result of the bid requirement in the law, it is recommended that the law be rewritten to allow state agencies to renegotiate their insurance contract without bidding. However, if an agency wants to submit a bid or the school district feels a better contract can be obtained by bidding, bids should be open.
6. It is recommended that an insurance specialist (familiar with school law) be made available by the State Department of Education to assist school districts with their insurance programs upon request. The need for such a person is more prevalent in the small school districts of the state.
7. Because of the evident lack of general understanding about the law on the part of Utah's school districts, it is recommended that the State Department of Education hold regional conferences to acquaint districts with, and provide general information about the tort liability law.
8. It is recommended that a study be made to determine the relationship of school district liability insurance and the liability coverage carried by district employees in Utah, i.e., duplication of insurance coverage, omission of coverage.
9. It is recommended that a study be conducted to determine the relationship of school district liability insurance and pupil accident insurance in Utah.

(109 pages)

CHAPTER I

NATURE OF THE STUDY

Need for the Study

Utah's "Governmental Immunity Act" (tort liability law) holding school districts legally liable in designated areas of school operation for negligence went into effect on July 1, 1966. Since that time a study has not been made to determine how the implementation of the laws has affected school operation.

Statement of the Problem

The problem was that the effect of the implementation of the Utah Governmental Immunity Act (tort liability law) on school operation in Utah was not known.

Purpose of the Study

The purpose of this study was to determine school district experience in administering the law, and to make recommendations based on the findings. Specifically, some of the questions this study dealt with were:

1. What has been the experience of Utah school district administrators in administering the law, and in their opinions, are there changes needed in the law--and if so, in what specific areas?
2. Is the law as presently constituted adequate for school districts, or are there some aspects of the law that need

to be amended, based on the experience of Utah school districts in administering the law?

Parameters of the Study

The dates used in determining the experience of Utah's school districts were from July 1, 1966 (when the law was enacted) to March 22, 1971, unless specifically stated otherwise in the study questionnaire.

Procedures of the Study

To accomplish the purpose of this study, information was obtained through the use of a questionnaire being sent to the administrator responsible for the administration of the tort liability program in each of Utah's 40 school districts, with the instruction (Appendix A) that the writer would contact them to assist them in filling out the questionnaire (Appendix B). A personal interview was conducted with 15 of the districts, with the other 25 districts being contacted by telephone. Where supplemental information was needed, follow-up letters, telephone calls and/or additional personal contacts were made. Additional information which could not be received from Utah's school systems was obtained from: insurance agents, legal advisors, insurance supervisor for the Los Angeles School District, and representatives of Educator's Mutual Insurance Association.

In order to make the information obtained more relevant to the various sizes of school districts, where applicable the data were tabulated and presented according to size as determined by average daily attendance (see Table 1).

Table 1. Average daily attendance categorical breakdown for the 40 districts in Utah for the 1969-70 school year

Average Daily Attendance	Number of Districts
0- 999	11
1,000- 2,999	10
3,000- 4,999	6
5,000- 9,999	6
10,000-60,000	7

Definition of Terms

Contributory negligence--the want of ordinary care upon the part of the person injured by the actionable negligence of another, combining and concurring with that negligence and contributing to the injury as a proximate cause thereof.

Estoppel--a bar to alleging or denying a fact because of one's own previous action by which the contrary has been admitted, implied, or determined.

Nonfeasance--the omission to perform a required duty, some act which should have been performed.

Precipitating cause--a product, result, or outcome of some process or action.

Proximate cause--the legal cause of an injury.

Remanded--to send back (a case) to another court for further action.

Save Harmless Law--means by which employers are obligated to protect employees, such as by purchasing insurance to protect them against harm.

CHAPTER II

REVIEW OF LITERATURE

The Theory of and General Information about Tort Liability and Governmental Immunity

Theory of tort liability

The term "tort" is one which law scholars have had difficulty defining. So difficult is it to define that Prosser (1964) commented that it is doubtful whether any textbook has ever successfully introduced all the dimensions of the term. For the purpose of this study, the term tort will be defined as a group of civil wrongs, other than a breach of contract, for which a court will provide a remedy.

> An action in tort compensates private individuals for harm to them caused by unreasonable conduct of others. Social norms have provided the basis for legal precedent in the determination of that which is considered unacceptable or unreasonable conduct. (Alexander and Alexander, 1970, p. 2)

According to Prosser (1964) a tortious act is a wrongful act consisting of the commission or omission of an act by one, without right, whereby another receives some injury, directly or indirectly, in person, property, or reputation. A tort may arise out of the following acts: (a) an act which without lawful justification or excuse is intended by a person to cause harm and does cause the harm complained of; (b) an act in itself contrary to law or omission of specific legal duty, which causes harm not intended by the person so acting or omitting; (c) an act or omission causing harm which the person so acting or omitting did not intend to cause, but which might and should, with due diligence, have been foreseen and prevented.

For further clarification of tort, the following legal notations are cited: A tort is a private or civil wrong or injury, a wrong independent of contract. A violation of a duty imposed by general law or otherwise upon all persons occupying the relation to each other which is involved in a given transaction (Coleman, 1938). There must always be a violation of some duty owing to plaintiff, and generally such duty must arise by operation of law and not by mere agreement of the parties (Diver, 1951). The three elements of every tort action are: Existence of legal duty from defendant to plaintiff, breach of duty, and damage as proximate result (City of Mobile, 1951).

Background information about sovereign immunity from liability

A general rule of law is that government is immune from tort liability unless the government specifically abrogates (abolish by authoritative action) its immunity. In other words, common law theory maintains that government cannot be sued without its consent (Osborne, 1824). A school district is an arm of the state and as such has immunity. The doctrine of governmental immunity originated with the idea that "the King can do no wrong." The sovereign (one that exercises Supreme Authority) immunity of the King manifests itself today in the sovereign immunity of government in general.

The state of New York passed the Court of Claims Act of 1929, which waived the sovereign immunity of the state as follows:

> The state hereby waives its immunity from liability for the torts of its officers and employees and consents to have its liability for such torts determined in accordance with the same rules of law as apply to an action in the Supreme Court against an individual or corporation, and the state hereby assumes liability for such acts, and jurisdiction is hereby conferred on the Court of Claims to hear and determine all claims against the state to recover damages for injuries to property or for personal injury caused by

> the misfeasance [the performance of an act which might lawfully be done, but which was done in an improper manner] or negligence of the officers or employees of the state while acting as such officers or employees. (McKinney, 1929, p. 2560)

This law did not include school districts and other subdivisions of the government until 1945 (Knaak, 1969), which in the case of Bernadine versus City of New York (Bernadine, 1945), the appellate court granted the plaintiff recovery for damages sustained from a runaway police horse. It was ironic that after one hundred and fifty years of the various courts pondering and writing about Russell's and Mower's horses, that another equine case (a case relating to a horse or the horse family) should reverse the governmental immunity trend. The court went on to say:

> The legal irresponsibility heretofore enjoyed by these governmental units (counties, cities, towns and villages) was nothing more than an extension of the exemption from liability which the state possessed. On the waiver of the state of its own sovereign dispensation, that extension naturally was at an end thus we are brought all the way round to a point where the civil divisions of the state are answerable equally with individuals and private corporations for wrongs of officers and employees, even if no separate statute sanctions that enlarged liability in a given instance ... . (Bernadine, 1945, p. 604)

Alexander and Alexander (1970) agree with the Supreme Court of Florida that in preserving the sovereign immunity theory, courts have overlooked the fact that the Revolutionary War was fought to abolish that "divine right of Kings" on which the theory is based.

The other chief reason advanced in support of the immunity rule in more recent cases is the protection of public funds and public property. This corresponds to the "no fund" or "Trust Fund" theory upon which charitable immunity is based. This rationale was relied on in Thomas versus Broadlands Community Consolidated School District (1952) where the court stated that the reason for the immunity rule

is that it is the public policy to protect public funds and public property, to prevent the diversion of tax monies, in this case school funds, to the payment of damage claims. This reasoning seems to follow the line that it is better for the individual to suffer than for the public to be inconvenienced. From it proceeds the defendant's argument that school districts were called upon to compensate children tortiously injured by the negligence of those district's agents and employees. "We do not believe that in this present day and age, when public education constitutes one of the biggest businesses in the country, that school immunity can be justified on the protection-of-public funds theory." (Thomas, 1952, p. 636)

Abrogation of governmental immunity

Although some states such as California and New York had previously abrogated governmental immunity by legislative action, it wasn't until 1959 when the Illinois Supreme Court abrogated the immunity of a school district that the "Flood Gate" was opened. (Molitor, et al., 1959)

The case arose out of a suit against the school district, by a school child for personal injuries sustained by the child when the school bus in which he was riding left the road, allegedly as a result of the driver's negligence, hit a culvert, exploded and burned. When the district denied liability because of the immunity rule, a single narrow question was presented to the court. As to the question itself, the court said:

> Thus we are squarely faced with the highly important question--in the light of modern development, should a school district be immune from liability for tortiously inflicted personal injury to a pupil thereof arising out of the operation of a school bus owned and operated by said school district? (Molitor, et al., 1959, p. 89)

The court answered this question in the negative and expressly struck down the immunity of school districts. It pointed out that the General Assembly had frequently indicated its dissatisfaction with the doctrine of sovereign immunity and had made a number of statutory changes in it.

In reply to the contention of the school district that its immunity should be sustained on the concept of sovereign immunity the court said:

> We are of the opinion that school district immunity cannot be justified on their theory. As was stated by one court, "the whole doctrine of governmental immunity from liability for tort rests upon a rotten foundation." It is almost incredible that in this modern age of comparative sociological enlightenment, and in a republic, the medieval absolutism supposed to be implicit in the maxim, "the king can do no wrong," should exempt the various branches of the government from liability for their torts, and that the entire burden of damage resulting from the wrongful acts of a government should be imposed upon the single individual who suffers the injury, rather than distributing among the entire community constituting the government where it could be borne without hardship upon any individual, and where it justly belongs. (Molitor, et al., 1959, p. 89)

It was also mentioned in the Kaneland case by the district, that if the immunity rule were abandoned the district would be completely bankrupt. In reply to this argument the court pointed out that several states have not had to shut down their schools, even though these states had abandoned the immunity rule.

In several cases the courts have said that if a doctrine is to be abolished, it should be done by the legislature and not by the courts. In this case (Molitor) the courts rejected this idea completely. It said:

> Defendent (school district) strongly urges that if said immunity is to be abolished, it should be done by the legislature, not by this court. With this contention we must disagree. The doctrine of school district immunity was created by this court alone. Having found that doctrine to be unsound and unjust under present conditions, we

> consider that we have not only the power, but the duty, to abolish that immunity. We closed our courtroom doors without legislative help, and we can likewise open them. (Molitor, et al., 1959, p. 89)

In 1969, ten years later, it was reported that fifteen states could be classified as having abrogated immunity (Alexander and Alexander, 1970). These were Arizona, California, Connecticut, Hawaii, Illinois, Iowa, Massachusetts, Minnesota, Nevada, New Jersey, New York, Oregon, Utah, Washington and Wisconsin. Recently, Florida and Nebraska have been added to this list. The Florida statute was for only one year and if continued, the law must be re-enacted by the Florida legislature. "At the present time this gives a best estimate of seventeen states which have abrogated or have waived immunity in such broad areas that in effect they have abolished immunity." (Alexander and Alexander, 1970, p. 43)

Knaak (1969) has indicated that there is no such thing as complete abrogation of immunity. Of the states considered in his study:

> New York is probably the nearest to complete abrogation, and Utah probably the furtherest away. In fact, Utah does not claim to have abrogated immunity at all, but merely to have waived immunity in a long list of circumstances. (Knaak, 1969, p. 24)

The courts are placing less emphasis on the "old" argument that school districts do not have funds from which to pay liability claims. According to Knaak (1969), in none of the recent cases was any serious evidence presented that any governmental subdivision had been unable to function, or had its governmental activities seriously impaired because of being subject to tort liability.

A school district is not completely defenseless in the courts, even in circumstances where immunity has been abrogated and the negligence

is an admitted fact. The defenses of contributory negligence, proximate cause, intervening cause, and improper procedure in filing claims have been used effectively against negligence claims, and undoubtedly will continue to be used in the future (Knaak, 1969). While it is admittedly preferrable to be more concerned about preventing accidents than about avoiding liability; in the interest of safeguarding school funds under the law, however, school district personnel should be aware of these defenses and their appropriate applications (Garber, 1957).

In conclusion of this section about abrogation, it would be safe to say that as government has grown larger and more affluent and involved in activities affecting the lives of people, there is a growing realization that individuals need protection from erring governments as well as from erring private citizens (Knaak, 1969).

Negligence

According to Knaak's (1969) study, case law in states that have abrogated immunity is beginning to provide some clues as to what does or does not constitute negligence.

One test often applied in determining whether a school district or its employees were negligent is the test of foreseeability. The California Appellate Court attempted to describe the school district obligation for foreseeability as follows:

> It is not necessary to prove that every injury which occurred might have been foreseeable by school authorities in order to establish that their failure to provide necessary safeguards constituted negligence, and their negligence is established if a reasonable prudent person would foresee that injury of the same general type, would be likely to happen in absence of such safeguards ... . (Woodsmal, 1961, p. 262)

An analysis of school district negligent court cases indicates that most accidents which result in claims are caused by:

(1) Failure to provide proper supervision.

(2) Hazardous conditions in buildings, doors, corridors, classrooms, gymnasiums and shops.

(3) Hazardous conditions on school grounds, improperly maintained playground equipment.

(4) Hazardous conditions involving walking to and from school, transportation of pupils in buses, other school vehicles and private automobiles. (Knaak, 1969)

There has been considerable controversy over whether or not a school district can be held liable for negligence if it is involved in a proprietary function at the time of an accident.

In following the general rule that school districts are immune from liability for accidents arising during functions in which fees are charged, a Tennessee court said:

> The mere fact that an admission fee was charged by the high school does not make the transaction an enterprise for profit. The duties of a County Board of Education are limited to the operation of the schools. This is a governmental function. Therefore, in legal contemplation, there is no such thing as a Board acting in a proprietary capacity for private gain. (Reed, 1949, p. 49)

A Kansas court (Koehn, 1964) said that if a school district can and does perform proprietary activities, then it must answer in damages when guilty in tort for injuries resulting from such functions.

> It probably would be safe to conclude that as long as the purpose of the activity is educational and for the common good and the profit accrued is only incidental, then the activity is governmental in nature. (Alexander and Alexander, 1970, p. 45)

Tort Liability and Governmental Immunity in Utah

Information about tort liability and governmental immunity in Utah--History and development of new law

"The history of tort cases against governmental agencies in Utah usually follows the pattern of case dismissal on the basic grounds of sovereign immunity." (Scholes, 1965, p. 26)

A brief review of some of the cases before the enactment of the Government Immunity Law follows. In an Ogden City case (Bingham, 1950), action was brought by Mr. Bingham as guardian of his minor daughter against the Board of Education of Ogden City, to recover damages resulting from an accident which injured his daughter while she was playing on the school grounds of a high school in Ogden. The Supreme Court held that where the burning of rubbish and debris by a school in an outside incinerator caused harm to a small child, the Board of Education was immune from liability, since acts complained of were committed in the performance of a governmental function, even though the firing of the incinerator was performed in such a negligent manner as could be characterized as maintaining a nuisance.

At Provo, action was brought by a father for damages sustained by his son when his son was injured while coasting on university property which was controlled by the city. The lower court entered judgment for the university and the city, and the father appealed the case. The Supreme Court held that although the city controlled the roadway and designed it as a coasting area, the city was not liable for injury to the child who coasted into the path of an automobile, since the city, in providing recreational facilities, was fulfilling a governmental function (Davis, 1953).

In an Ogden case (Ramirez, 1955), action was brought for personal injuries sustained when the plaintiff's dress cam in contact with an unprotected gas heater and caught fire in the ladies restroom of the city's community center. The lower court entered judgment for the city. The plaintiff appealed and the Supreme Court held that the city was engaged in a governmental function, and was consequently not subject to tort liability.

Another case in which the courts turned their backs on injured individuals, even in the case of death, was a Salt Lake City case (Brinkerhoff, 1962). In this case action was brought against the city for the death of a child who drowned in a canal used by the city. The lower court rendered a judgment for the plaintiff and the defendant appealed. The Supreme Court held that the city was not negligent and could not be held liable for the death of the two year old child.

In a case against the Granite School District (Campbell, 1964), an injury was sustained by a pupil in class which impaired his vision. It was caused when a metal particle was thrown by a machine during an industrial arts class. The trial court ruled in favor of the district because of the doctrine of sovereign immunity. The plaintiff appealed, but later conceded that the dismissal was supported by prior court decisions that school districts are acting as a state agent and therefore can claim governmental immunity.

In connection with the possibility of changing the Utah law, in the Campbell (1964) case the Supreme Court stated:

> It has always been the law of this state and the activities, operations, and contracts of state government and other public entities protected by it are based upon that understanding of the law. For the reasons set forth in the cases heretofore decided by this court, we believe that if there is to be a change which would have

> such an important effect upon public institutions and their operations, it should be left entirely to the legislature to determine whether the immunity should be removed; and as to what agencies; when effective and to what extent, if any, limitations should be prescribed. (Campbell, 1964, p. 161)

On July 1, 1966, Utah's governmental agencies lost immunity in designated areas. The Utah Governmental Immunity Act, which was passed by the legislative efforts of a committee consisting of legislators, city representatives, counties, school districts and the legal profession. The legislative bill (Senate Bill Number Four) was patterned similar to California's law (Scholes, 1965).

The Utah Governmental Immunity Act deals with what will or will not be waived and the methods that state agencies are to use in administering or officiating the law. The effect and implications of the waivers of immunity does not put the governmental agencies on the same level as the private citizen for claims or suits against them. (Hatch, 1964) This was further supported by Knaak (1969), who said:

> The "Utah Governmental Immunity Act" which became effective June 1, 1966, takes great pains to say that it is not abrogating immunity. Section 63-30-3 states, "Except as may be otherwise provided in this act, all governmental entities shall be immune from suit for any injury which may result from the activities of said entities wherein said entity is engaged in the exercise and discharge of a public function." Section 63-30-4 continues, "Nothing contained in this act, unless specifically provided, is to be construed as an admission or denial of liability or responsibility ... . Wherein immunity from suit is waived by this act, consent to be sued is granted and liability of the entity shall be determined as if the entity were a private person." Sections 63-30-5 through 63-30-9 provide for waiver of immunity for actions on contracts, property, motor vehicles, highways, bridges, etc., defective buildings or other public improvements. Then 63-30-10 calls for "waiver of immunity for injury caused by negligent act or omission of employee committed within the scope of his employment." Eleven exceptions are listed to this waiver of immunity for negligent acts, but they are not unlike the exceptions listed by states that have passed laws abrogating immunity. It is, in fact, more generous because

> no dollar recovery limits are established. Therefore, it seemed reasonable to include Utah with the states that have, in one form or another, effectively abrogated immunity. (Knaak, 1969, p. 36)

An analysis of the Utah Governmental Immunity Act--with reference to education

It was the intent of the Utah Legislature to make the school systems of Utah liable for certain aspects of school operation, as a result of the passage of the Utah Governmental Immunity Act--which in reality makes them liable for the acts of teachers and other employees.

There are widespread implications for education as a result of the enactment of the Utah Governmental Immunity Law. It has increased the availability of redress from wrongs committed by Utah's School Districts and their employees. The Utah statute has created a broad spectrum of governmental liability, but its breadth leaves some areas for clarification and refinement by the legal system of the state (Creer, 1967).

At the time the Utah Governmental Immunity Law was enacted, the legislatures of several states had made specific statutory exceptions to immunity, but of the states which had abrogated immunity, only Utah and Connecticut had initiated major revision through the legislative process (Creer, 1967).

As the Utah act is structured, it retains immunity for certain functions except in certain broad areas of liability, some of which are:

Utah Code, Section 63-40-5, 1965, Waiver of immunity as to contractual obligation.

Utah Code, Section 63-30-6, 1965, Waiver of immunity as to actions involving property.

Utah Code, Section 63-30-7, 1965, Waiver of immunity for injury from negligent operation of motor vehicles (does not apply to the operation of emergency vehicles).

Utah Code, Section 63-30-8, 1965, Waiver of immunity for injury

caused by defective, unsafe, or dangerous conditions of highways, bridges, or other structures.

Utah Code, Section 63-30-9, 1965, Waiver of immunity for injury from dangerous or defective public buildings, structures, or other public improvements (immunity is not waived for latent defective conditions).

Utah Code, Section 63-30-10, 1965, Waiver of immunity for injury caused by the negligent act or omission of an act by an employee (with eleven exceptions--generally under the law the governmental agency, rather than the employee of that agency, would be held liable. The general intent of the law was to protect employees of governmental agencies, and to protect individuals who may be harmed by the negligent acts of governmental agencies.).

Both Utah and California preserve immunity to a certain degree, but vary widely in their approaches in dealing with the exceptions; Utah uses a general approach (Sections 8 and 9 of the Utah Governmental Immunity Act, 1965) whereas California is much more specific in covering the same general areas (California Government Code, Sections 830-840.6, 1965).

> The use of very broad exceptions in the Utah Act has the advantage of allowing judicial interpretations to temper immunity as experience is gained and the desired ends are better understood. California, on the other hand, has left less room for judicial interpolations by providing for many specific qualifications to the expected grounds of liability (Van Alstyne, 1964).

A review of some of the specific sections of the Utah Governmental Immunity Act are as follows:

> Section 3 of the Utah Immunity Act initially grants immunity to all governmental entities for injuries resulting from the discharge of a governmental function. Section 4 states that the effect of a waiver is to make the governmental

> entity liable as if it were a private person, although nothing in the act is to be construed as an admission or denial of liability unless specifically provided.
>
> Sections 11 through 14 outline the procedure for filing a claim against a public entity for its approval or denial. Should the claim be denied, Sections 15, 16, 17 and 19 set forth the procedural, jurisdictional, and venue requirements for filing suit in a district court.
>
> Section 18 would seem to give the governmental entity broad latitude in settling claims upon the advice of counsel. Section 20 bars actions against employees when the complainant has acquired a judgment against an entity, and Section 21 forbids the bringing of claims by the United States or any other state, territory, nation, or governmental entity. Exemplary damages are prohibited by Section 22, which further forbids execution, attachment or garnishment proceedings against the entity. The procedure for payment of claims or judgments is articulated in Sections 23 through 27. The final portion of the act sets forth the requirements for the purchase of liability insurance by governmental entities, allowing all entities to purchase such insurance for risks created by the act and setting minimum amounts of coverage. (Creer, 1967, p. 124-125)

Some specific implications for educational entities in connection with some of the specific sections of the Utah Governmental Immunity Act as previously mentioned are: (1) School districts shall be immune from suit for injuries resulting from an activity in which the entity is engaged in a governmental function (Utah Code, Section 63-30-3, 1965); (2) Proprietary functions are not intended to be covered by the act (Van Alstyne, 1967); (3) Section 10 of the Immunity Act, after waiving immunity for negligent acts by employees, makes the waiver inoperative in several significant areas (Utah Code, Section 63-30-10 (1), 1965); (4) Section 10 does not waive immunity for most intentional torts committed by employees while performing a governmental function. However, the employee himself could be held liable (Utah Code, Section 63-30-10 (2), 1965).

Contrary to the fears of many school teachers and educators in the State of Utah, the new act will probably reduce the number of suits brought against them as individuals. This possibility is based on the fact that the school district can be sued, rather than the teacher. Also, another factor involved is that plaintiffs will probably be more inclined to sue the more prosperous entity. However, the possibility of bringing suit against both parties still exists (Creer, 1967). The act retains immunity for public entities engaged in discretionary functions engaged in by employees (3 Davis, Adm. Law Section 26.01, 1965). In answer to the question of what are discretionary acts, a California court said:

> Discretionary Acts are those wherein there is no hard and fast rule as to the course of conduct that one must or must not take and, if there is a clearly defined rule, such would eliminate discretion. (Elder, 1962, p. 48)

Under the Utah act, no instances have been discovered in which the school district would be liable without the employee also being liable, but several circumstances could arise in which the employee may be liable while the district is not (Creer, 1967).

A school district can be held liable for the negligent operation of a motor vehicle if the vehicle is operated by an employee within the scope of his employment. However, it is not completely clear whether the district is liable for the negligent operation of its vehicles by nonemployee minors, such as a student who is allowed to drive a school vehicle. However, a suit could be brought for negligence against a district employee who allows a minor to drive a district vehicle (Creer, 1967).

At the time of this writing, there has only been one Utah Supreme Court case (Rice, 1969-70) involving education to test the Utah

Governmental Immunity Act since it went into effect. This case involved a person falling off a bleacher at a ballgame, who later sued a Utah school district for injuries as a result of failure to provide a hand rail to assist in walking down the bleachers. Specific information on the above mentioned case is as follows:

> Action for injuries sustained when plaintiff, while attending a high school football game, fell from a bleacher allegedly negligently maintained by defendant school district. The Third District Court, Salt Lake County, Steward M. Hanson Jr., entered summary judgment for defendant, and plaintiff appealed. The Supreme Court, Callister, J., held that plaintiff's affidavit raised issue of material fact as to whether conduct of adjuster employed by defendant school district's insurer was such as to induce plaintiff to delay filing of action and whether defendant school district was thereby estopped to assert statute of limitations as bar to recovery, thus precluding summary judgment.
>
> Implicit within Governmental Immunity Acts designation of insurance carrier to deal directly with claimant against government entity is acknowledment that insurance carrier's conduct may be such as to support an estoppel.
>
> The judge went on to say, "By refusing to allow this action to be maintained, I do not mean to say that the plaintiff would be precluded from getting redress against the insurance company and its agent in some other proceeding. That matter is not before us."
>
> I think the district court should be affirmed and that each party should bear its own costs. (Rice, 1969-70, p. 22)

In the writer's opinion, it is interesting to note that this case wasn't really tried on its own merits, because of the legal technicality of the 90 day statute of limitation being invoked. Had the action been filed prior to the 90 day deadline the school district may have been held liable in this case.

In a Utah case (Bramel and Brooks versus Utah State Road Commission, 1970) which has raised some questions as to the legality of the Utah law in connection with discretionary functions, it indicates that the real question is in Section 10 which applies to the defense and Section 8 which refers to the defendent.

> The big question seems to be, is Section 10 defensable or does it cover Sections 7, 8, and 9 also? Is Section 10 discretionary and is one of the sections a defense for each of the other sections? The Court may apply Sections 7, 8 and 9 under Section 10 and/or Section 10 may eliminate the need for Sections 7, 8 and 9. As of the present time, there is no evidence as to whether these sections in the law are holding up. (Van Alstyne, 1971)

Professor Van Alstyne (1971) mentioned that the most vulnerable thing in Utah is the public employee. He mentioned that very few public employees are presently being sued, and that "Utah isn't a very litigious state." He thinks that this is due to the general social climate of the state and the dominance of the Church of Jesus Christ of Latter Day Saints in which problems are expected to be worked out "peacefully" between individuals. He stated that California is a much more suit conscious state.

Some of the reasons why Professor Van Alstyne (1971) is of the opinion that Utah public employees are vulnerable under the present Utah Governmental Immunity Law stems from the general manner in which the law is stated, as compared to California's law. In California the law requires school districts to protect their employees (Save Harmless to Employees) by the same manner in which it protects itself. Whereas in Utah, school districts may protect their employees personally, but are not required to under the present law. The law as presently written is primarily for the protection of the school districts moreso than its employees, in his opinion.

Another problem according to Professor Van Alstyne (1971) which emerges from the context of the Utah law, is the general waiver of immunity for negligence which is declared to be subject to exceptions which are defined in terms of intentional torts, such as assault and battery. He thinks that this intimates that an attorney may successfully establish liability if his case is limited to negligence, while he may

lose if he pleads the same claim on an intentional tort theory.

> After all, the difference between a negligent and intentional infliction of personal injuries often is but a mere matter of degree; whether the police officer who tortiously shoots a citizen is merely negligent or is guilty of intentional assault and battery may depend upon the enthusiasm with which he brandished his gun and pulled the trigger. (Van Alstyne, 1971)

Professor Van Alstyne (1971) cited a case in California where a student was "bullying" some other students and the coach lost his temper and "bodily" threw the student out of school. The coach was later sued for $50,000 and the court awarded it to the student on the grounds that the coach didn't act prudently in this situation. However, the decision later was reversed in an appeal. So this is a case of where the district wasn't held liable and the individual employee was. So it behooves the employee to think through the consequences, if possible, before making a "rash" decision to act.

School District Liability Related to Functions

Liability related to teaching function

Accidents are common among individuals, but are more common among children. In most instances injuries are the fault of the injured person and not due to the negligence of others. However, there are many situations where harm can be attributed to the act or failure to act of other individuals. As "innocent" and conscientious as educators try to be toward the well-being of others, situations do arise in which students or their parents sue because of injuries sustained by pupils while under the jurisdiction of the school system. Every individual has a right to freedom from harm caused by others; this right is protected and enforced under the legal liability laws from which school systems

must function (Grimsley, 1969). The more a school district's immunity becomes abrogated, the more vulnerable it and its employees become for acts resulting in harm to others.

The courts are holding teachers responsible for the foreseeable consequences of their actions, even though harm to another individual was not intended or contemplated. For example, if a teacher should cause a child to be injured in the process of correcting or reprimanding him, that teacher could be held guilty of negligence. Negligence is considered to exist if harm befalls another, as a result of an action which could have been foreseen by a "reasonable and prudent" person, using ordinary care, in an effort to avoid an undesirable circumstance. Various court decisions have emphasized that the teacher must exercise reasonable caution, an average amount of foresight, and provide "adequate" supervision. (Chamberlin and Niday, 1969).

For the protection of teaching personnel, inservice courses in school law designed for school personnel should be provided (Mix, 1969). If the school district isn't currently providing the in-service programs, the teachers should request them in order to learn more about tort liability and the civil charges that can be brought against them. For example, "the teacher must" be charged in law with a knowledge of the unlawful character of his act. As a joint tort feasor with the school board he is liable, notwithstanding regulations and guidelines they have given him. There can be no innocent agency in the commission of an act upon its face unlawful and tortious. A teacher can be held liable for an injury or negligent act while transporting a student, or for the negligence of someone else who has borrowed his car. An exceptionally high degree of vulnerability for liability occurs in out-of-class activities such as field trips, bullying, and horseplay.

Nonfeasance (failure to act) in the performance of the duties of teaching, training, and controlling students under certain conditions can be just as actionable in a court of law as malfeasance (an illegal act). Thus, the classroom teacher needs to know what is legally required of him. In-service programs, conferences, and seminars are only a few ways of providing this knowledge to an entire school staff (Chamberlin, 1969).

In an analysis of legal decisions dealing with the liability of teachers for injury to pupils, it was found that, of the sixty-five cases reported in the National Reporter System suring a twenty year period, forty-three were held for the teacher and twenty-two were held for the pupil (Dwyer, 1966). The courts have been inclined to favor the teacher if he has acted in good faith and as any reasonable person would have acted. The mere fact that the teacher may have been negligent does not necessarily mean that judgment will be brought against him for damages unless the negligence was the proximate cause of the accident (Hatch, 1964).

According to a study completed in 1968, some of the trends in Utah with respect to teacher liability since the enactment of the Utah Governmental Immunity Act are: (1) Greater care is being taken in obtaining adequate insurance coverage for teachers; (2) Some school boards are offering safety courses for teachers; (3) Buses rather than privately owned vehicles are being encouraged in transporting students to school activities (Haws, 1968).

Also reported in this same study were some of the questionable legal practices used by some of Utah's school districts: (1) Teachers prescribe and administer medical services beyond first aid; (2) Liability waivers are being required of parents for transporting

students to off-campus activities; (3) Eye protection devices are not being provided in accordance to state law; (4) Teachers continue to transport students without adequate liability insurance coverage; and (4) Unwise procedures for providing teachers with liability protection insurance are being used, and some districts are not providing any insurance protection for their teachers. (Haws, 1968)

Teacher liability for supervision

In a California study in which an analysis of the claims filed against school districts from 1923-1964 was made, there were over one-half of the claims, 1,922 total claims, most of them citing lack of or improper supervision as their cause (Jacobs, 1964). In the majority of court cases involving supervision of students by teachers, the teacher is found not guilty (Phlegar, 1967).

In a recent court case in which a high school student, while engaged in a "friendly slap boxing contest" with a friend, fell backwards after being slapped by his opponent, suffered a fractured skull and died a few hours later. The deceased student's parents brought suit against two teachers on the grounds that they had failed to provide adequate supervision--the trial court reached a decision in favor of the teachers. On appeal, the state court of appeals affirmed the trial court's judgment. This judgment was then appealed to the state supreme court. The state supreme court reversed the previous two verdicts and the judgment was reversed and the verdict was in favor of the parents. The court made the following significant statements: (1) A total lack of supervision or ineffective supervision may constitute a lack of the required care on the part of those responsible for student supervision; (2) "The fact that Michael Daley's [student] injuries and

death were sustained as a result of boisterous behavior engaged in by him and a fellow student does not preclude a finding of negligence--recognizing that a principle task of supervisors is to anticipate and curb rash student behavior." (Dailey, 1970, p. 741); (3) From the evidence, the two teachers failed to exercise due care in the performance of their duty; (4) "The fact that another student's misconduct was the immediate precipitating cause of the injury does not compel a conclusion that negligent supervision was not the proximate cause of Michael's death." (Dailey, 1970, p. 741) This case has some good indications as to the direction the courts are presently taking in reference to supervision by teachers.

Sometimes a pupil suffers an injury while the teacher is absent from the classroom and the question then arises as to whether the absence of the teacher renders him liable for the injury. The courts seek a relationship between the teacher's absence and the injury; for a charge of negligence to lie, the teacher's absence must be the proximate cause of the injury (Christofides, 1962). A good example is the Butler case in which it was evidenced that the teacher was not present when a student's eye was struck by a sharp object as he entered a classroom. Negligence was not established on the part of the teacher, because the teacher was engaged in the duties as hall supervisor at the time of the accident, a duty which was assigned by the teacher's supervisor who, along with the district, was liable in this case (Butler, 1969).

Teacher liability for corporal punishment

The teacher increases the risk of legal action when he uses corporal punishment in supervising or disciplining students. In the majority of the states, however, the courts will support the teachers' actions provided the punishment was administered in the "proper manner." (Marshall, 1963)

In general, courts have held that if he is to be charged with assault and battery, a teacher must not only inflict on the pupil a moderate chastisement, he must do so with legal malice or wicked motives, or he must inflict some permanent injury. In a Utah case, a teacher was charged with assault and battery. The city court ruled in favor of the pupil, the case was appealed to the district court where the decision was reversed (State of Utah, 1962).

After the enactment of the Utah Governmental Immunity Law, the Utah attorney general stated:

> With regard to discipline in the classroom, there is no change resulting from the enactment of the Utah Governmental Immunity Act. The Act in no way extends the liability of individual government employees. It merely specifies under what circumstances the state will not be liable in Tort for the acts of its agents, and where it will. The teacher's liability, if any, would be the same before and after the act takes effect. (Utah Attorney General, 1965)

Liability for Dangerous and Hazardous Conditions

There are some conditions which are naturally dangerous and the danger is a continuing one. An inherent danger of this sort is called a "nuisance," the one responsible is liable for maintaining a nuisance. His liability may be predicated upon negligence in permitting the continuing danger to exist, but even without a showing of negligence the mere fact that a nuisance does exist is usually sufficient to justify a determination of liability. (Prosser, 1964)

As was discovered in Jacobs' (1964) study and presented in Table 2, the majority of claims filed against school districts resulted from accidents occurring on the school grounds rather than within the school buildings.

Table 2. Analysis of claims by school plant area

Area	Percent
Buildings	40
Grounds	57
Off School Grounds	3
Total	100

(Jacobs, 1964, p. 69)

A further breakdown of the school areas which resulted in claims as reported in Jacobs' (1964) study is reported in Table 3. The categories into which the claims were analyzed for this table were segregated are: "Failure to Maintain Properly," "Failure to Supervise Properly," and "Failure to Maintain and Supervise Properly."

Table 3. Analysis of claims by cause

Claims	Buildings	Grounds
Failure to maintain properly	42%	26%
Failure to supervise properly	39%	60%
Failure to supervise and maintain properly	19%	14%
Total	100%	100%

(Jacobs, 1964, p. 69)

It appears, then, from Jacobs'(1964) investigation that the claims resulting from accidents in buildings are fairly evenly divided between complaints for failure to maintain properly and for failure to supervise properly. As for school grounds, however, the grestest complaint of those filing liability claims was that the accident was caused by a failure to supervise the area properly.

School grounds--specific dangers

Possibly because of the increased awareness of the need for playground safety, and possibly because the New York and California courts have consistently held that the schools are not "the insurer of the safety of pupils at play or elsewhere " (Woodsmal, 1961), the number of appellate cases related to maintenance of school grounds and play equipment in the past ten years is relatively small. (Knaak, 1969)

According to Jacobs' (1964) study, the specific dangers on the school grounds are: windows adjacent to play areas; bicycle riding, plants or trees with spikes or poisen; jumping pits and excavations that may collect debris or become hazardous; loose rocks, dirt, and sand on embankments; animals on school grounds; use of defective equipment, i.e., worn ladders, rusty and loose parallel bars, worn climbing ropes, loose bleachers, sandy and worn slides, weathered wooden furniture producing slivers, loose framework for tackling dummies, swings; separate games played too close to each other; students of vastly different heights, weights, ages playing with each other in contact sports; wet grass and cement; improper grading of playground leaving dips, depressions and irregularities; hoses and sprinklers left on playgrounds; mowing of grass while students are present; playground furniture left in hazardous positions; i.e., on tracks, playfields and walks; grease and foreign material left on sidewalks; cracks in sidewalks; grates and fences improperly constructed; inadequate parking lot lighting; students taking dangerous routes to destinations; vehicular movement on school grounds; requiring students to perform stunts for which they are neither physically nor educationally prepared.

Buildings and classrooms--specific dangers

Some of the specific hazardous and dangerous conditions, according to Jacobs' (1964) study are: use of worn, cracked or otherwise defective equipment; storage of equipment in areas not meant for storage; inadequate lighting; floor coverings worn or defective; doors opening against traffic; defective boilers; use of special rooms by classes other than for which intended; students allowed to climb on roof; windows opening into walkways; improper labeling and storage of chemicals; allowing students to take chemicals from chemistry room; failure to use proper safety equipment in science laboratories; loose tile in restrooms; water too hot in restrooms and showers; failure to use guards and fences when using shop machinery.

Off school grounds--specific dangers

In general, school districts are not required to assume responsibility for the safety of pupils while they are walking to and from school. This was brought out in the Gilbert versus Sacramento Unified School District case, where the school district was not held liable for the death of a girl who was struck and killed on a railroad track on her way home from school (Gilbert, 1968).

Some of the areas off of the school grounds, which were found to be hazardous in Jacobs' (1964) study are: students allowed to pass behind buses after exiting; students allowed to lean out or extend arms out windows; allowing students to be transported home in vehicles which are noticeably defective or driven by an individual known to be reckless; allowing students to use school vehicles when not properly trained in their use; intersections close to schools which are heavily trafficked by both vehicles and students.

Transportation Liability

With more and more consolidation of schools and school districts taking place, and the increased mobility of our society, transporting of students is continually becoming more common place. Today there are over one-third of the pupils enrolled in the public schools that are being transported. With thousands of school buses on the road each day, accidents are inevitable. While most of the accidents are minor, there are occasions when very serious pupil injuries occur and result in tort liability actions being brought against the school district, bus driver, or other school employees (Johns and Morphet, 1969).

In the absence of statute to the contrary, a school district does not assume the liability for the torts of its bus drivers. This holds true whether the bus drivers are hired by the school district or are private contractors. As was stressed in a Kentucky case, bus drivers are personally liable for their own negligence just as are teachers, principals or any other school employee. School employees are not covered by the "cloak of immunity," even though they may be performing duties within the scope of their employment (Carr, 1968). Bus drivers are being held to a degree of care which is commensurate with the risk involved. The hazards involved in school bus transportation have tended to prompt some courts to require that bus drivers exercise the highest degree of extraordinary care for the safety of pupils (Mitchell, 1968).

There are a considerable number of injuries which occur to pupils each year because of improper supervision of loading and unloading buses. School authorities should require pupils to form a line for orderly entrance to buses. Where possible, the school district should furnish a loading supervisor (Alexander and Alexander, 1970).

One court has given some guidelines for bus drivers to follow in performing their responsibility to the pupils who are their passengers: (1) The dominant factor is the age of the child and his ability or lack of ability to look after his own safety; (2) There is a special obligation owed to the pupil by the driver which demands a special care proportionate to the age of the child; (3) The area of legal responsibility for care of immature school children extends beyond the mere landing of the child in a safe place, but includes the known pathway which the child must immediately pursue; and (4) There is a duty to ward the child of dangers, proportionate to the child's age and the conditions which are present (Carlwright, 1944).

The bus driver also has a responsibility for the safety of the students while they are riding the bus. This point was brought out in a case where a pupil lost the sight of one eye when he was struck by a rubber band, propelled by a fellow pupil. The court said that if a school undertakes the responsiblity of transporting children, the school authorities are obligated to take reasonable precautions for the pupil's safety during his ride to and from school (Jackson, 1968).

Transportation of pupils in private vehicles is a very common practice in schools today. Coaches transport players, teachers take children on fieldtrips, older pupils run errands and the list continues. All educational personnel should be aware of the fact that loaning a car or using it to transport pupils is a hazardous undertaking and should be avoided when possible. Whether a person is a guest is an important factor in legal determination in private vehicle cases. A guest is a person who takes a ride in a vehicle driven by another person, merely for his own pleasure or on his own business. The standard of care of the driver is lower where the passenger is a guest. If

passengers are guests then the driver of the vehicle generally must be guilty of "evil or wanton negligence" in order to be held liable. If passengers are not guests, mere negligence will generally make the driver liable in most states (Alexander and Alexander, 1970). Utah is one of the states which has the guest statute provision, wherein the rider who shares rides and no charge is made is considered to be a guest and to be in the vehicle at his own volution. (Haws, 1968)

The present practice of some school districts in Utah is that they require written parental consent before permitting a student to be transported to certain off-campus activities. In relieving the teacher or the district of its liability, the signed permission slips by parents have little or no legal value, since the parent cannot abrogate his responsibility for the safety of the child by signing it away. However, one value of the permission slip, in addition to public relations, lies in the fact that the parent knows of the activity, and has given permission for his child's participation (Haws, 1968).

A good general rule to follow is not to use private transportation at all, if it can possibly be avoided. However, if it is absolutely necessary to use such transportation, the following guidelines should be followed: (1) Drivers should be selected with care, and avoid drivers who may be considered reckless or immature; (2) Be aware of the condition of the vehicle; (3) If it is a pupil, instruct as to route, speed and driving conditions; (4) Be sure that there is sufficient insurance coverage; (5) Try to establish (if possible) the passengers as guests; and (6) If the previously mentioned precautions cannot be taken, don't go. (Leibee, 1965)

Liability Insurance for Public School Systems

General information about insurance and legal aspects of insurance in education

> Every school district should have an insurance program that is designed to protect the financial structure of the district from being unduly weakened by forces over which the district has little, if any, control. Responsibility for planning, securing, and administering a program that meets all legal requirements and provides the protection needed rests with the governing board of the district. Responsibility for advising the governing board regarding legal provisions pertaining to insurance and other facts that should be taken into consideration in developing the insurance program rests with the administrative staff of the district. Administration of the district's insurance program is a sufficiently important phase of the district's fiscal management to merit the full and considered attention of both the governing board and administrative staff of the district. (Rafferty, 1969, p. iii)

Insurance can be defined as a pooling arrangement to transfer the burden of loss. Transferring a loss by insurance does not decrease the loss. In fact, insurance increases the cost of losses to society, since making the transfer of the burden of loss, which is the function of a working insurance organization, is expensive. The insurance industry has, in spite of the cost to society, persisted, developed and even grown. It has proved to play a major part in the affairs of today's society. Its magnitude and diversity apparently have satisfied consumer desires, for consumers have paid the premiums which have caused the tremendous growth in the industry. It can be inferred then, that insurance affects our lives personally, socially, and economically (Wherry and Newman, 1963).

The following statement was made before abrogation of immunity became prevalent in many states: "Theoretically ..., since a school district is immune from suit, the insurance company would also be entitled to assert this immunity as a defense to an action against it." (Hamilton and Mort, 1959, p. 322) This accounts for the common

practice of inserting in district liability policies a provision that the insurance company shall not assert the district's immunity if an action should be brought against the company on the policy. The fact that some school districts purchased insurance before immunity was removed indicated that they could see the need for protection (for them and patrons), and the courts didn't hide behind the immunity rule in awarding damages if they had insurance.

Upon the abrogation of "sovereign immunity" for the school districts of a state, all school boards should carefully examine their educational programs to determine risks and hazards that might lead to suits that could involve the districts, their officers, agents and employees, and procure adequate liability insurance to protect the district's funds and the district's boards, agents and employees when acting within the scope of their duties and responsibilities (McGrath, 1970).

Abrogation of immunity has had some effect on the insurance rates in the states affected. Although the median liability insurance rates in abrogated states are approximately double the liability insurance rates in non-abrogated states, they appear to be more "stable." While rates in the abrogated states increased twenty-two percent from 1960-68, rates in non-abrogated states increased seventy percent (Knaak, 1969).

In a national survey taken in connection with the attitudes of school administrators toward insurance they were asked the question, as a question of ethics (regardless of your present state statutes) do you believe that school districts should be liable for personal injuries (torts)? Forty-two percent answered yes and fifty-eight percent answered no. Another question asked was, should school districts be required to carry insurance covering such liabilities? Forty-nine percent answered yes, fifty percent answered no, and one percent had no opinion.

As a result of the previously cited survey, it is plain to see that administrators were pretty well divided on their opinions at that time (Nations Schools, 1961). This will be discussed by the writer in more detail relative to his study of Utah on page 67.

In the past, there has been some question as to the authority of local school boards in connection with insurance. Local school boards in most states are now permitted to appropriate funds for the payment of liability insurance premiums. Even in those states where the law is silent on the legality of such an appropriation, and where the common law principle of non-liability of school districts is the law, many boards of education are purchasing liability insurance for their employees, even though the appropriateness of the expenditure may be challenged (Nolte and Linn, 1964).

It has been judicially determined in Kentucky that since boards of education are required to arrange for insurance, that failure to do so is failure to perform a function for which members of the board may be held personally liable (Gilbert, 1958). Boards of education should also exercise extreme care to keep their insurance policies adequate and up-to-date (Campbell, 1956). In some states, the statutes permit an injured party to bring a suit directly against the insurance company without first obtaining judgment against the policyholder who caused the injury (Cotton States Mutual Insurance Company, 1959). There has been some question as to the constitutionality of a school board purchasing insurance from a mutual insurance company. In an Arizona case, it was ruled legal, as long as the policyholder is not a shareholder in the insurance company (Arizona State, 1959).

Effect of insurance on immunity and/or liability in states where immunity has not been abrogated in total or in part

If a state has abrogated governmental immunity, then insurance is the usual manner by which losses incurred by the governmental agencies of that state are covered. If a state has not abrogated governmental immunity, the writer tends to question if the governmental agencies of that state should even have insurance.

As was previously mentioned, virtually any school board now can purchase liability insurance to cover its losses in case it has to pay damages. However, the courts do not as yet agree on the technical question of whether a school district should, in effect, automatically be considered subject to liability because it happens to be protected by insurance. Most courts, in fact, still do not consider the purchase of liability insurance a waiver of the protection that school districts have traditionally enjoyed, even though the purchase of insurance may have the effect of permitting recovery (Ruetter and Hamilton, 1970).

General liability insurance for school districts is now being sold in every state, and in at least eight states abrogation of immunity up to the amount of the insurance is permitted. These states are in addition to those who have completely or partially abrogated immunity through statute or court decision. Even in some states where a school district's immunity is still maintained by law, it is circumvented by another statute which permits the injured party to collect directly from the insurance company, thus protecting the "public" funds (Knaak, 1969).

According to Nolte (1970), generally there are three concepts of what a board of education can expect from insurance: (1) purchase of insurance does not waive the school district's immunity; (2) the existence

of insurance coverage limits recovery to the amount of the liability coverage the school district purchases include, or (3) the purchase of liability insurance removes the immunity that districts have enjoyed. According to Nolte (1970), in order to overcome the ambiguity and to derive protection from insurance companies, boards of education should write a clause into their insurance policy to the effect that the claimant may take direct action against the insurance company, and that the defense of government immunity will not be asserted by the insurer.

> Better yet, of course, is simply for your state to pass a law that permits suits against school districts where there is evidence of negligence and where there is a liability insurance policy in effect at the time of the accident. (Nolte, 1970, pp. 30-31)

Some of the specific court cases and the decisions that were reached in connection with the effect of insurance on immunity and/or liability will be cited. In the Vendrell (1962) case, it was held that the educational insitution would be held liable for the amount of liability determined by the court if it had insurance. Under New Mexico statute where tort liability had not been abrogated, no judgment could be entered against a school board if there is no liability insurance to cover it (Chavez, 1969). In answer to the question of whether or not school boards have the authority to immunize themselves from suit, the Fabrizio court ruled no that they could not immunize themselves, and indicated that this authority rests with the legislature in most states. (Fabrizio and Martin, 1968)

Effect of student accident insurance on school district liability

There are a number of individuals who believe that student accident insurance has an effect on reducing the number and size of liability claims against school districts in Utah.

Professor Van Alstyne (1971) indicated that in his opinion student accident insurance programs are basically good and they do reduce the number of claims for liability against school districts. However, the also mentioned that the typical policy is fraudulent because it states that the school district can't be held responsible, when in fact, under the law the district is liable.

One insurance agent interviewed by the writer mentioned that the purpose of student accident insurance is to eliminate tort liability law suits. Another insurance agent who was interviewed indicated that he felt certain there have been several cases when having student accident insurance diverted liability claims against school districts, but he was not aware of any specific instances. In discussing this matter with an insurance official in California (Allen, 1971), he indicated that it is undetermined whether or not student accident insurance has affected school district liability.

As evidenced by the above information, there is no evidence which indicates for certain whether or not student accident insurance has reduced liability claims against school districts. However, it seems logical to the writer that if claims were to be paid by a student accident insurance company, that this would reduce the number of liability claims filed against school districts.

Coverage by school districts for liability and insurance for student teachers, teacher aides, volunteers and auxiliary personnel

Although a student teacher may not possess the authority to regulate pupil conduct, he may be held liable for pupil injury. A student teacher in a lawsuit against New York state was found negligent in an injury resulting to a pupil who tried to do a headstand in a physical education class. Consequently, student teachers can be held liable for

pupil injury and should protect themselves with appropriate insurance coverage. A supervising teacher who leaves the classroom to a student teacher could likewise be held liable. Possible liability may also extend to the school district and the teacher education institution (Longsbreth and Taylor, 1971).

New Jersey is one of the states that has specifically "spelled out" the student teacher situation in that state. New Jersey statutes states:

> Whenever any civil action has been or shall be brought against any person holding any office, position or employment under the jurisdiction of the board of education, including any student teacher for any act or omission arising out of and in the course of the performance of the duties of such office, position, employment, or student teaching, and the board shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeals, if any, and shall save harmless and protect such person from any financial loss resulting therefrom; and said board may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses. (New Jersey Statutes, 1968, p. 16)

In a research study of legal aspects of student teaching in the United States which included a questionnaire being sent to all 50 state departments of education, one teacher education institution in each of the states, and the local school district where each teacher education institution assigned the largest number of student teachers, the following conclusions which have implications for liability were reached:

> (1) It can be argued that administrative practice and case law establishes the right to allow student teachers to assist with the instruction in classrooms where compulsory attendance laws have compelled pupils to attend; (2) The question of student teacher authority in disciplinary matters is one that needs to be answered through statutory definition; (3) Administrative practice and case law indicate that a student teacher is not liable for his own negligent acts which result in pupil injury unless he is made liable by statute; and (4) Case law strongly supports the premise that a school district, especially if engaging in proprietory functions, or a teacher education institution is liable for negligence which results in injury to a student teacher. (Jones, 1967, p. 3055-A)

Professor Van Alstyne (1971) cited section two of the Utah law which states: "The word 'employee' shall mean and include any officer, employee or servant of a governmental entity." He indicated that as long as aides, volunteers, student teachers, etc., are performing functions as required by the school district, that under the law they would be defined as an "employee." Therefore, they would be covered under the district's liability insurance program.

CHAPTER III

PRESENTATION OF DATA

Liability Insurance Programs

All of Utah's school districts reported that the liability insurance carried was of a comprehensive nature, including coverage for school buses, automobiles and general liability. One district reported that it had a professional malpractice insurance policy as a separate policy, which covered its cosmotology program and district health nurse. Additional liability insurance coverage that various districts specifically mentioned they had were: boiler insurance, uninsured motorist, liability and medical payment, personal injury, teacher liability, products liability, driver training simulator insurance, and garage keepers liability insurance.

Without exception, all school districts reported that they had the minimum insurance coverage of: (1) $100,000 for injury to one person; (2) $300,000 for injury to two or more persons for each occurence; and (3) Property damage insurance in the amount of not less than $50,000 as mentioned in Utah Code 63-30-29. However, one district reported that it had 90 percent co-insurance on property damage.

Insurance bid specifications

Thirteen school districts reported that their liability insurance bid specifications were written in whole or in part by the district superintendent; of these, five were in the 0-999 A.D.A. category, five were in the 1,000-2,999 A.D.A. category, three were in the 3,000-4,999 A.D.A. category, and the remainder of the districts did not

report that the superintendent was involved in writing insurance bid specifications.

Sixteen districts reported that the district business official either wrote the bid specifications or assisted in the writing. Of these 16, all A.D.A. categories were represented except the districts in the 0-999 category, which indicates that the business officials in the smallest districts may not have the time or expertise that their colleagues in the larger districts have. The other 24 districts did not report that the district business official was involved in writing insurance bid specifications.

Five districts reported that their bid specifications were written by a group of insurance agents. Two of these five were in the 1,000-2,999 category, and three were in the 10,000-60,000 A.D.A. category. In the writer's contact with Dr. Allen (1971), it was found that California school districts are not required by law to bid, which is something Utah may consider in the future. Each district negotiates with various insurance companies, which Dr. Allen (1971) considers a much more effective method than bidding every three years as Utah requires.

The Los Angeles District has three insurance brokerage firms that work as a team in helping the district with their insurance matters--they would be considered the district's agent-of-record, or broker-of-record if the district had occasion to use them. This arrangement gives the district the buying power and expertise of three large firms. These brokers are paid on a commission basis by the insurance companies (in reality, it is eventually paid by the district), and so it is they who actually negotiate with the insurance companies and not the school district. If a firm thinks it has an insurance program which is equal to the present one for less money, it is invited to discuss it--

and if this proves to be the case, they are given the insurance business. This has eliminated the problem of the district being accused of not being "open." Dr. Allen (1971) stated that a district can get in a bind of not getting appropriate bids, or being "caught short" on time if it bids too often.

Fourteen districts (all A.D.A. categories being represented) reported that one selected insurance agent either prepared the bid specifications or assisted in doing so, with one of these fourteen specifically mentioning that the agent selected could not bid.

Some other specific comments in connection with methods used in writing liability insurance bid specifications were: (1) Two districts reported that their bid specifications were "assembled by the director of a Utah Multi-District Service Center"; (2) One district reported that the bid specifications were "approved by the board," before being sent to bidders; (3) One district reported that "the model was used as prepared by the state department of education, with the specifications having gone through a second revision"; (4) One district indicated that their bid specifications had been drawn up "by using the bid guide prepared by the State Board of Education"; and (5) One district reported that bid specifications had been prepared from "information received at a Utah State University workshop for the State School Board's Association."

Student teachers and auxiliary personnel insurance coverage

Twenty-seven districts reported that their liability insurance included coverage for student teachers, ten districts reported student teachers were not covered, and three districts did not respond to this question.

Twenty-three districts indicated that it should be the school district's responsibility to furnish insurance coverage for student teachers, with one district commenting that the cost is so small that it isn't any problem. Eleven districts indicated that it was not their responsibility, and 6 districts did not respond to this question. Of those districts who answered no to this question, the following answers were given as to whose responsibility student teacher insurance should be: (1) Three districts indicated the responsibility should rest with the student teachers; (2) Three districts indicated that it should be the university's responsibility.

In answer to the question: "Is your district covered for the torts of student teachers, and are they covered as individuals by your district's insurance," 27 answered yes, eight answered no and five districts did not respond to this question. Two districts commented that the district would be covered under this type of circumstance, but the individual student teachers would not be. One district stated that they have "very few student teachers," and another indicated that their district needs additional coverage.

Thirty-five districts reported that their aides were covered by the district's insurance, two districts reported they were not covered, and three districts did not respond to this question.

Nineteen districts reported that volunteers were covered by the district's insurance, 14 districts reported they were not covered and seven districts did not respond to this question.

Adequacy of insurance coverage

In answer to the question: "Do you feel that the coverage provided by your district's present liability insurance policy adequately protects

your district?", 34 districts answered yes, two districts answered no, two districts questioned whether or not they were adequately covered and two had no response. Specific comments in reference to this question were: (1) "It needs further study in our district."; (2) "Contractual coverage is needed."; and (3) "Our district needs to include volunteers and student teachers, also we need to include amounts above the $100,000, $300,000 and $50,000 minimum."

Thirty-one districts answered that they were covered against aggressive torts by their employees, three districts answered no, one questioned whether it was or not and five did not respond. Specific comments were: "We don't understand aggressive torts;" "Each case would be investigated and would be defended by the insurance company regardless."

Nineteen districts answered yes their liability insurance covered employees against their own aggressive torts; fifteen districts answered no, and six did not respond. One district commented that "it depends on each occurence."

In answer to the question, "Are your district's employees covered as individuals for their torts by your district's liability insurance?", 29 answered yes, 10 answered no and one did not respond. Two districts commented that their employees would be covered as long as they were within the law and were acting within the scope of their duties. One district stated, "While on duty."

Seven districts encouraged their employees to carry their own personal, "on-the-job," liability insurance. Thirty districts reported they do not encourage it and three did not respond to this question. The brief comments on this question were: "Our district has no policy

on this matter, we neither encourage or discourage it." Two districts indicated that their teachers are covered by the $10,000 Utah Education Association policy. Another district stated, "Most are covered by U.F.A., N.A.S.S.P. or N.E.S.P.A."

Analysis of insurance costs

Most districts reported that the insurance rates in their district were not greatly affected by the passage of the Utah Governmental Immunity Act. However, one district in the 0-999 A.D.A. category reported that their liability insurance had tripled. After examining the questionnaire from that particular district, the statement was not substantiated. The rates have also remained relatively stable since the enactment of the law.

Twenty-one districts reported that they have had the same insurance company since July 1, 1966, 15 reported that they have changed their insurance company since that time and four districts did not respond to this particular question.

In Table 4 the amounts paid for liability insurance by Utah's school districts are presented. As is very evident in the table, the districts in the 0-999 A.D.A. category paid more than twice as much per pupil for liability insurance than did the districts in the 10,000-60,000 A.D.A. categories in all cost classifications.

The Los Angeles District does not keep a record of insurance costs on a per pupil basis for comparison, but in "roughing" out some figures, Dr. Allen (1971) arrived at the following estimation: Based upon an enrollment of 750,000 students, and applying that to the $416,466.00 paid on liability insurance for the 1969-70 school year, an approximate cost of $.60 per student is arrived at for liability

Table 4. Total amount paid for all liability insurance during the 1969-70 school year

A.D.A. Categories	Average A.D.A.	Average Cost	Per Pupil Cost
0- 999	500	$ 875	1.75
1,000-2,999	2,000	3,269	1.63
3,000-4,999	4,000	3,566	.89
5,000-9,999	7,000	3,971	.56
10,000-60,000	30,000	21,486	.71
Overall		$ 6,633	1.18

insurance, which compares favorably with the average per pupil cost of Utah's larger school districts. However, the Los Angeles District may not be a good district to compare costs with because of its large size, its retrospective rating plan, and the deductible structure of its insurance policy.

Implications of Student Accident Insurance in Relation to School District Liability

According to one student accident insurance agent, "the purpose of student accident insurance is a 'go-between' between the school and its patrons to eliminate tort liability law suits." (Insurance Agent A, 1971)

In reference to the question: "Does your district subscribe to any type of regular student insurance plan?," 29 districts answered yes, ten answered no, and one district did not respond. One district indicated that it pays all premiums for athletes only. Twenty districts answered that they provide the opportunity for parents to purchase student insurance, but make no attempt to actively encourage such purchases. Fourteen districts reported that they actively encourage such purchases. One district mentioned that it leaves all publicity and administrative details up to the insurance company. Five districts

indicated that they handle all administrative matters connected with the issuance of student insurance policies.

The percentage of students covered by student accident insurance in Utah's school districts is presented in Table 5. Note that 75-100 percent of the students are covered in ten of the forty Utah districts.

Table 5. Number of districts and percentage of students covered by pupil accident insurance.

Districts by A.D.A.	Percentage of Students Covered						
	10-20	20-30	30-40	40-50	50-75	75-100	NR
0- 999	2	1	0	0	3	3	2
1,000- 2,999	1	2	2	1	0	3	1
3,000- 4,999	0	0	2	0	2	2	0
5,000- 9,999	1	1	1	0	1	2	0
10,000-60,000	0	0	1	3	1	0	2
Totals	4	4	6	4	7	10	5

A.D.A. = Average Daily Attendance
NR = No Response

In reference to the percentage of students by district alluded to above, one superintendent stated: "Student insurance is taken care of at the school level. Money is collected and sent directly to the insurance company and is not processed at the district office. Therefore, it is difficult to answer questions pertaining to student insurance." Another district mentioned that "due to the large number of government employees in our area, many parents already have coverage for their children."

Thirty-nine districts indicated that at least some of the students who participate in athletics are covered by pupil accident insurance, with one district not responding to this question. Thirty-five districts indicated that all participants in interscholastic athletics were covered by pupil accident insurance.

Thirty districts indicated that the student insurance plan used in their districts had been found to be beneficial to their districts, one district indicated it wasn't beneficial and one district did not respond. Of the above mentioned thirty districts: (1) Twenty-three indicated it has been beneficial from a public relations standpoint; (2) Six reported that in their opinion it has resulted in a reduction in cost of the school district liability insurance; however, no proof was received of this being the case; and (3) Eleven districts mentioned that it has resulted in a reduction in the number of claims filed against the district. Additional statements received were: (1) "It provides a service to the students."; (2) "It provides additional student protection."; (3) "It provides a service to parents of students."; and (4) "As yet, no claims have ever been filed against our district."

The following information relative to student accident insurance was provided by an insurance agent (who preferred to remain anonymous):

> I feel certain that there have been several cases where having insurance has diverted liability claims against the district, but I am not aware of any specific ones. My feeling would be that there would be a tendency to settle without making a liability claim if the settlement under the student insurance were adequate. However, because of the very low cost of any student insurance program, many of the settlements are not adequate, especially on major claims where the danger of a liability claim would be the greatest. I do feel that our plan does help remedy this situation, however, for those people who take major medical insurance since it has paid the major claims very well.
>
> However, I think it would be a mistake to feel that student insurance would be a major deterrent for diverting liability claims since I suspect that the nature of the accident would be more significant. I am aware of a claim in Idaho where the student insurance did pay approximately $900 on an eye injury, which was nearly all of the medical cost, but still the parents sued the district because they felt there was negligence involved in the accident happening in the first place. This was at Caldwell, and they were successful in collecting $9,000 as I recall.
>
> In summary, it would be my feeling that student insurance would make a contribution to diverting liability claims in

> probably more cases than they would contribute to causing liability claims, but certainly it could do either, especially when the coverage is deficient to properly pay a legitimate claim, although a contribution would be made by student insurance to divert some claims, it would be a mistake, in my opinion, to rely upon student insurance in any comfortable way to relax a vigilance against negligent acts or the purchase of liability insurance. (Insurance Agent B, 1971)

Accident Reporting Methods and Severity of Accidents Reported

Twenty-seven districts indicated that it is the policy of their district that accident reports be completed for all accidents regardless of the extent of the injury incurred. Eleven districts mentioned that accident reports are requested for most accidents, but not on those where the injury was slight. One district commented, "All accidents should be reported according to policy, but it is not enforced." As is brought out in Table 6, 32 of Utah's 40 districts make an analysis of accident reports in order to determine methods of future accident prevention.

Table 6. Analysis of accident reports (to determine methods of prevention)

	NR*	Does district analyze reports filed? Yes	No
0- 000	0	9	2
1,000- 2,999	1	8	1
3,000- 4,999	0	5	1
5,000- 9,999	0	5	1
10,000-60,000	1	5	1
Total	2	32	6

*NR = No Response

Thirty-four districts require all accident reports to be filed in one central office, five districts do not, and one district did not

respond to this question. One district commented that the accident reports are filled out at the school level and then sent to the district office at the close of each fiscal year.

Ten districts send a copy of every accident report to the insurance carrier for the district. Thirty districts do not follow such a procedure. One district indicated that only accidents of a serious nature are reported to the insurance carrier. Only ten percent of the smaller districts (0-999; 1,000-2,999; 3,000-4,999) send the reports to the insurance carrier, whereas 50 percent of the larger districts (5,000-9,999; 10,000-60,000) follow this practice.

Accident reports are kept on file as follows: Two districts keep them for one year, three districts keep them for two years, and 33 districts keep them on file for three or more years.

One district commented that "their accident reports are analyzed in principal's meetings."

Safety Inspection Programs

There was no significant differences in the safety inspection programs relative to the various sizes of Utah's districts, other than that the smallest districts involved the superintendent in the safety program, and the largest districts had specialized personnel specifically assigned to the safety program. Therefore, Table 7 is a combined table of all school districts. All but one district of those that responded indicated that inspections are required on buildings. Two districts reported no inspections of grounds are required, and one district reported that it didn't require an inspection of buses. Eleven districts did not require an inspection to detect hazardous routes for students to walk.

Table 7. Safety inspection program of Utah's school districts

	Buildings	Grounds	Buses	Hazardous Routes for Walking
District requires inspection of:				
Yes	37	35	36	22
No	1	2	1	11
No response	2	3	3	7
Frequency of inspections:				
Constant	3	3	5	1
Daily	1	1	5	1
Weekly	5	6	8	1
Monthly	7	8	4	1
Varies	1	1	1	2
Quarterly	3	2	1	0
Semi-annually	8	6	6	2
Yearly	2	2	2	4
Inspections made by:				
Superintendent	1	1	2	2
Safety Director	2	2	3	3
Maintenance Supervisor	9	7	10	2
Principal	23	20	3	4
Custodian	7	5	0	0
Teacher	5	5	0	0
Bus Driver	0	0	7	0
Checklist used for inspection:				
Yes	23	17	25	6
No	11	14	7	8
Sometimes	1	1	1	1

Additional comments from districts: (1) "Hi-way Patrol may inspect any time." (2) "Handled by insurance company." (3) "Employees are to report any hazardous conditions immediately." (4) "Continual evaluation by supervisors of buildings, grounds, buses, with report to central office of hazards."

The majority of districts required inspections of buildings and grounds on either a weekly, monthly or semi-annual basis. The most frequently mentioned time for bus inspections was on a weekly basis. Of those districts requiring an inspection of hazardous routes for walking, the most frequently used period of time was on a yearly basis.

The most frequently involved personnel to make safety inspections were: (1) Principals in the inspection of buildings, grounds and hazardous routes for walking; (2) the maintenance supervisor in the inspection of buses. Inspection checklists were used in a majority of the districts, with the exception of inspection of hazardous routes for walking.

Most districts feel that the following areas should be observed to detect the hazardous activities of students: playgrounds, classrooms, students before and after school, students entering and leaving buildings, school bus behavior, athletic events, lunchrooms and restrooms. Also, most districts feel that there are certain personnel who should be making the observations. However, the various classifications of personnel who should make the observations varied depending on the different sizes of school districts (see Appendix C for detailed presentation). Teachers were mentioned most frequently as the personnel who should observe the playground and classroom activities of students. Both the principal and teachers were mentioned as being the "key" personnel to observe students before and after school, at athletic events and in the lunchroom.

Insurance carrier participation in the safety programs of Utah's school districts

Of the eleven districts in the 0-999 average daily attendance category, four districts indicated that their insurance carrier did participate in the safety program of their district, six districts reported that their company did not participate, and one district did not respond to this question. Of the four districts that indicated insurance company participation, three reported that their insurance carrier made an actual inspection of the school facilities. One reported that the carrier gave safety suggestions resulting from the claims experience of the district. One district reported that its insurance carrier provided instructional materials relevant to the school safety program. Additional comments made by these districts were: (1) "Our insurance company makes fire inspections and general checks," (2)"Inspection forms are furnished by our company twice per year," (3) "Our company makes an actual inspection of our boiler."

Of the ten districts in the 1,000-2,999 average daily attendance category, three districts indicated that their insurance carrier did participate in the safety program of their district, seven districts reported that their company did not participate. Of the three districts that indicated insurance company participation, none reported that their insurance carrier made an actual inspection of the school facilities. One reported that the carrier gave safety suggestions resulting from the claims experience of the district. One district reported that its insurance carrier provided instructional materials relevant to the school safety program. One district commented that: "Our insurance company provides a safe school bus driver award program for our district."

Of the six districts in the 3,000-4,999 average daily attendance category, three districts indicated that their insurance carrier did participate in the safety program of their district, three districts reported that their company did not participate. Of the three districts that indicated insurance company participation, two reported that their insurance carrier made an actual inspection of the school facilities. Two reported that the carrier gave safety suggestions resulting from the claims experience of the district. Two districts reported that their insurance carrier provided instructional materials relevant to the school safety program.

Of the six districts in the 5,000-9,999 average daily attendance category, two districts indicated that their insurance carrier did participate in the safety program of their district, four districts reported that their company did not participate. Of the two districts that indicated insurance company participation, one reported that its insurance carrier made an actual inspection of the school facilities. One reported that the carrier gave safety suggestions resulting from the claims experience of the district. One district reported that its insurance carrier provided instructional materials relevant to the school safety program. One additional comment made by a district was: "Our insurance company has offered to aid us with our safety program."

Of the seven districts in the 10,000-60,000 average daily attendance category, three districts indicated that their insurance carrier did participate in the safety program of their district, two districts reported that their company did not participate, and two districts did not respond to this question. Of the three districts that indicated insurance company participation, three reported that their insurance carrier made an actual inspection of the school facilities. All three

reported that the carrier gave safety suggestions resulting from the claims experience of the district. Three districts reported that their insurance carrier provided instructional materials relevant to the school safety program.

The Administration of Liability Claims and Litigation Involving Utah's School Districts

Due to the fact that there were only nineteen out of Utah's forty districts that reported they kept a record of all claims filed against them, the information relative to the types of activities students were engaged in which resulted in claims was given mainly as a result of the significant claims that could be remembered by the personnel interviewed for this study. Table 8 gives a compilation of the activities students were engaged in which resulted in claims being filed against the districts. The greatest number of claims were reported by the six districts in the 5,000-9,999 A.D.A. category. The greatest number of incidents which resulted in claims were related to elementary playground activities.

As a result of further investigation of the claims alluded to in Table 8, the writer obtained detailed information through interviews with various personnel connected with the claims which were of a more serious consequence. The information received is presented according to school districts by category. There were no claims which resulted in litigation reported in the districts in the 0-999 A.D.A. category, nor were there any of significance in the 5,000-9,999 A.D.A. district category.

Table 8. Types of activities students were engaged in which resulted in claims being filed--by district categories

Activity Engaged in which Resulted in Claim	Number of Claims by District Size (A.D.A.) 0-999	1,000-2,999	3,000-4,999	5,000-9,999	10,000-60,000	Totals
Elementary Playground	1	0	1	11	2	15
Physical Education Classes	0	0	1	0	1	2
Vocational Education Classes	0	0	0	2	0	2
Regular Classroom Activity	0	2	2	1	3	8
Athletics	3	0	0	6	1	10
Bus Accidents	0	3	4	1	4	12
TOTALS	4	5	8	21	11	49

Additional comments from districts: "We do not have a complete record of claims filed with insurance company. Whenever a serious accident occurs, the insurance company is notified--their adjuster visits the people involved, and have at times made adjustments."

Claims in the 1,000-2,999 A.D.A. district category resulting in litigation

School bus claim. This was a bodily injury case involving a student who was injured while riding a school bus. The accident happened while a school bus was transporting students to a basketball game being held at the "state tournament." The claim was settled out of court in the amount of $700.00. The school district's liability insurance covered the claim. No school district employees were personally held liable in the claim. In the opinion of the person being interviewed, most of the accidents that happen in this particular district seem to be during the period in which the state basketball tournament is conducted. This case resulted in the district informing its school bus drivers to use extra precautions while driving to and from activities.

Claims in the 3,000-4,999 A.D.A. district category resulting in litigation

District vehicle claim. This was a claim in which the injured party sued the school district for an estimated $17,000 for injuries suffered when a school district employee (in a district vehicle) ran into the vehicle of the injured party. The district reported that the claim was settled out of court, and the amount awarded was not known by the district. The district's liability insurance did cover the claim. In conclusion, the district reported that in its opinion, the claim was valid.

Gun powder case. In another district a history class had been studying the Revolutionary War period, and one of the students volunteered to bring his father's "muzzle loading" gun to school to demonstrate. His teacher gave him permission to bring the gun, and she (teacher) had been assisting the student in the demonstrations most of the day. However, toward the end of the demonstrations the student ran out of gun powder

which was of a low grade. He went to the store and obtained some more gun powder which was of a higher grade. The student returned to school and loaded the gun with the high grade of powder, and there were several students circled around him watching the demonstration. When the student touched the powder off, it exploded, the gun disintegrated and the shattered metal from the gun injured eight students. The boy who was the most seriously injured lost most of one hand. A claim was filed as a result of the accident. Due to the nature of the accident and the high emotional "pitch" that results when an eye or limb is lost which seems to overshadow the facts, the insurance agencies involved decided to participate in a settlement rather than get involved in a costly court case. Therefore, there were three insurance companies who participated in the settlement equally to cover the medical costs incurred by the injured party and to provide him with an artificial limb. The attorney on the part of the injured boy settled with the insurance agencies of: (1) The school district, (2) The gun powder company, and (3) The teacher.

Claims in the 10,000-60,000 A.D.A. district category resulting in litigation

Blank cartridge case. This case resulted in a student being injured as a result of another student firing blank cartridges from a gun. According to information provided the writer by a district official, the case resulting from the above incident was dismissed from court due to the fact that: (a) A summons was never served on the "shop" teacher, where the plaintiff and defendant were in attendance together at the time of the accident; (b) a $300 bond was never posted. It was felt by the district that they (plaintiffs) were taking a "shot gun" approach

against the district, when the one party may have had a possibility for recovery from the boy who did the shooting, and his parents because of his negligence. In the opinion of the district, from the standpoint of negligence, it did all that could be expected when the boy, after being questioned by the homeroom teacher, stated that he no longer had blank cartridges; when in fact he had some hidden in his pockets. However, the writer tends to question if the gun should have ever been allowed on the school premises in the first place.

Soccer goal post case. The case took place during a noon hour in which an elementary school teacher was supervising students on the playground. There was a group of boys who were playing on a portable soccer goal post which had been placed on the playground by the school district for use by one of the district's high school soccer teams. The teacher warned the boys not to climb up and hang from the goal post. After the warning from the teacher, the students continued to play on the goal post.

A short time later, the goal post fell over and struck an eight-year-old third grade boy who was killed. The mother of the boy then sued the district. The district administration thought that there was going to be a considerable amount of trouble with the mother, because of her emotional state, not only from her son's death, but also because of a recent divorce from her husband.

As a result of the district handling the case very candidly and tactfully, a publicized court case did not take place. The case was settled out of court, with the district's insurance company giving the mother an approximate settlement of $80,000. At the time, it was realized by the district administration that the parent may have been able to receive a much larger settlement, but because of her desire for

a quick settlement out of court, she took the $80,000 rather than taking the case to court for possibly more money.

Prior to the accident, the district administration thought that ample precautions had been taken in bracing the soccor goal post in a manner that would avoid any serious accidents. After the accident, however, it became very evident that not only was there some apparent danger with the soccer goal posts, but also with several other pieces of playground equipment being used in the district. Since the accident, the district adopted a policy that no portable soccer standards be allowed, and that all equipment must be anchored like a football standard. Also, a number of safety warnings and precautions were issued on all equipment.

University tennis player case. Another case of significance made available to the writer which also took place in the 10,000-60,000 A.D.A. district category follows. The case was of a criminal nature against a teacher, as a result of him "shaking" a university student. The university student had been invited to play tennis by a high school student on the high school tennis courts. Following the match the two boys were in the locker room. The coach evidently approached the university student about his long hair. Words apparently were exchanged, which led to an argument and the coach allegedly shook the university student who reportedly used abrasive language.

According to the school district, the university student defied the rules of the school. In their (district's) opinion, the student's long hair wasn't the problem, the problem was that the university student said that because he wasn't a student at the high school, the school had no authority over him, therefore (in district's opinion) the conflict was the matter of authority, rather than long hair.

At the time of this writing the case was in litigation (university student filed criminal charges for attack against the coach). In the district's opinion: (1) no physical harm was done to the student, (2) the student was without reason to challenge the authority of the school, (3) the authority of the school had to be exercised. (However, it is interesting to note that the school district under its insurance policy felt it could not defend its employee.) The coach's personal liability insurance company had a clause, that there is not any coverage if there is criminal negligence or if an employee acts outside the scope of his employment. Therefore, his insurance company withdrew its support from the case. It has been brought to the writer's attention that the professional organization the coach belongs to is giving him some legal assistance in defending his case. The insurance adjuster that the writer interviewed in connection with this case made the statement, "Most of the serious problems we run in to are where teachers made a quick rash decision to act without thinking through the consequences of their actions." He indicated that this type of problem could be solved if tempers could be controlled, but in dealing with people this is an impossibility.

The trampoline case. The concluding case (10,000-60,000 A.D.A. category) cited by the writer in this study is one which probably carries the greatest emotional impact.

A student was participating in a physical education class and was going through different maneuvers on a trampoline while her instructor was observing her. The student struck her neck on the side of the trampoline bracing, which resulted in complete paralization of the student. As of the time of this writing, the injured student is unable to function normally (paraplegic).

The father of the injured girl filed suit, which resulted in the district and teacher being considered at fault--because of the fact that the safety devices instructed to be used by the trampoline manufacturer were not properly installed, in fact they were still in a closet close by the trampoline. The district's insurance company, the teacher's insurance company and the student's accident insurance company all participated in a settlement. As a result of this incident, this particular school district no longer allows the use of trampolines.

Additional information relative to the handling of claims by Utah school districts

With reference to the districts making an attempt to analyze claims filed against it, to determine methods of preventing such claims in the future, the following responses were given. Seventeen districts reported that they did analyze the claims, seven districts reported that they did not, and 16 districts did not respond to this question. Of the above indicated districts which answered yes, one reported that it is board policy to analyze the claims, one district reported that they made a thorough statistical analysis of the claims; two districts reported that they made a periodic spot check of the claims filed. Eleven districts reported that they made a general check of claims filed as they were received. Three districts reported that a selection and routing of claims is made to the chairman of the department in which the claim occurred. One district reported that they didn't receive enough claims to classify them.

Policy in handling claimants. The policy of school districts in handling potential claimants was reported as follows. When potential claimants inquire as to the possibility of obtaining money from the district to defray the cost of damages incurred as a result of a school

connected accident, 18 districts reported that they briefly explained the circumstances under which school districts in Utah may be held liable, and suggested that a claim be filed only if it was felt that these circumstances were present at the time of the accident. One district reported that it discouraged the potential claimant from filing a claim regardless of whether or not it was felt the claim was legitimate. Four districts reported that they remained strictly neutral, and four indicated that they refer all claims to their insurance company. Thirteen districts did not respond to this particular question.

Procedures in filing claims. When a claimant was certain he wanted to file a claim against the district, the districts reported the following procedures were used. Four districts told the claimant that the claim must be filed within a certain number of days after the accident occurred. Two districts told the claimant to see his lawyer. Fourteen districts told them to talk to the insurance carrier for the district. Ten districts instructed them to write a letter to the board of education explaining the circumstances surrounding the accident. Two districts instructed the claimants to fill out and return a standard district claim form which would be given or sent to them. Six districts reported that the only information given was in answer to questions asked by the potential claimants. One district commented: "We have not had enough experience to standardize our practice." There was only one district that did not respond to this question.

Personnel responsible for answering questions asked by claimants. The personnel normally charged with the responsibility for answering questions posed by potential claimants were reported as follows. Twenty-four districts reported that the superintendent is charged with the responsibility. Eleven districts reported that the district business

official is given the responsibility. One district reported that the insurance carrier is given the responsibility of answering questions posed by the claimant. One district reported that the superintendent, board, and insurance agent work together on these matters. One district reported that the insurance adjuster, principal and safety director are given the responsibility. Two districts did not respond to this question.

Instructions to administrators in handling claimants. The instructions that districts give to administrators of their individual schools concerning the best way to handle potential claimants were reported as follows. Twenty districts reported that they gave no information other than directing the potential claimant to call the central office of the board of education, and direct their questions about claims to them. Four districts reported that they explained to the claimant the circumstances under which boards of education in Utah may be held liable. Three districts reported that they provided the potential claimants with a claim form and requested that they complete it and send it to the office of the board of education. Four districts reported that no special attempt is made to inform the administrators in their districts of the best policy for handling potential claimants. "Each administrator handles these problems as he sees fit." One district reported that this has never been a problem, but it may be in the future. One district reported that the principal files a report with the insurance company, and the insurance company takes it from there. Seven districts did not respond to this particular question.

Claims processing procedures. In processing claims filed against districts, 10 districts reported that they are always sent to the board of education, seven districts reported that they are always included in the minutes of the board meetings, two districts reported that they are sent

to the board with recommendations as to what should be taken on the claim, 19 districts reported that the claims are always sent to the insurance carrier regardless of whether or not it is felt the claim was legitimate. One district commented that there had not been enough claims to even set a procedure. Another district commented that they are referred to the insurance carrier by the business office.

Utah's Present Tort Liability Law

The information received from Utah's school districts reported in this particular section, relates to the opinions of the district administrators of the adequacy or inadequacy of the Utah Governmental Immunity Act or Tort Liability Law based on their experience in working with it since July 1, 1966.

The districts reported that the following procedures have been brought about in the administration of liability claims filed against them, as a result of the passage of the Tort Liability law: "We now refer claims to our insurance carrier, where we didn't prior to the law;" "We commenced reporting all accidents to the district office;" two districts reported that they "started carrying insurance;" "We have not had enough experience to know what to change;" "None--we appear to be inactive because of no claims, we pay our premiums and think of other pressing problems--times may change;" "We started to keep complete records;" "Our district appointed a safety director, and we now conduct periodic inspections;" "We had no procedure prior to the law, now we do."

As is pretty well self evident, the passage of the law did have an effect on Utah's school districts. It was interesting to note that during the writer's interviews of the various districts in the state, there

seemed to be overtones of a general fear as a result of the passage of the law. This fear seemed to stem from the fact that most districts still do not entirely understand the law and the implications it has on the operation of their districts. Based upon the information received by the writer for this study, their fears seem unjustified.

Opinions concerning retention of the current law

It is significant to note in Table 9 that in all district A.D.A. categories but 0-999 and 5,000-9,999, over 50 percent of the districts reporting favored the retention of the present law. The writer was originally of the notion that the smaller the district size, the less satisfied they would be with the law. However, the report from the districts in the 5,000-9,999 category seems to dispute this notion. The majority of districts favor the retention of the law.

Table 9. Districts' opinions concerning the retention of the current tort liability law

A.D.A.	Favors Retention	Does Not Favor Retention
0- 999	5	5
1,000- 2,999	6	3
3,000- 4,999	5	1
5,000- 9,999	3	3
10,000-60,000	3	0
Total	22	12

No Response = 6. Additional comment from district: "It helps keep us on our toes."

Opinions concerning the need for changes in the law

Twice as many districts were of the opinion that changes were not needed in the law, than those that indicated changes were needed

(see Table 10). Of those districts that were of the opinion changes were needed in the law, the following specific comments were received: "More definition is needed on school district responsibility and policy;" "Abolish--do away with the Tort Liability law;" "Changes are needed on the limitations of liability for contractual coverage and property;" "There should be no bid requirement."

Table 10. Districts' opinions concerning whether there are changes needed in the current school district liability law

A.D.A.	Changes Needed	Changes Not Needed
0- 999	3	5
1,000- 2,999	2	5
3,000- 4,999	2	4
5,000- 9,999	2	4
10,000-60,000	1	2
Total	10	20

No Response = 10.

Opinions relative to the possibility of having an insurance specialist on a statewide basis

Twenty-one of the 33 districts which responded (see Table 11) to the question of whether or not they would favor an insurance specialist answered in the affirmative. It is significant to note that the smaller districts are more in favor of an insurance specialist.

Some of the specific comments made by the school districts relative to how they would propose to make use of an insurance specialist were: "Interpretation of the law and assist in writing bid specs;" "Develop a statewide, state sponsored insurance fund and program;" "On

Table 11. Districts' opinions concerning whether they would be in favor of an insurance specialist on a statewide basis to assist them with their insurance problems

A.D.A.	Favors a Specialist	Does Not Favor a Specialist
0- 999	10	1
1,000- 2,999	7	2
3,000- 4,999	2	3
5,000- 9,999	2	3
10,000-60,000	0	3
Total	21	12

No Response = 7.

a consultant basis when he is needed;" "Advise on insurance programs--give recommendations on policy cases when called upon;" "Give general assistance and comparisons with other districts." Some of the specific comments made against an insurance specialist were: "Not in favor of one--can get better service on a local basis;" "An insurance specialist would necessitate having too many more forms and reports;" "The State Board of Education should provide districts with the needed help."

Based on the responses given and the statements made, it appears evident that if an insurance specialist were made available, he should have considerable expertise not only in insurance matters, but also in the legal aspects of education.

Opinions of the district as to whether or not they need more information about the administration of the Tort Liability Law

As is brought out in Table 12, the districts in the two smallest A.D.A. categories felt they needed more information about the law, whereas with the largest districts this was not the case. Again, this alludes to the fact that the larger districts may have the additional personnel to handle all of the details related to the law.

Table 12. Districts' responses on whether they need more information about the administration of the tort liability law

A.D.A.	Need More Information	Do Not Need More Information
0- 999	7	3
1,000- 2,999	6	2
3,000- 4,999	1	3
5,000- 9,999	2	4
10,000-60,000	0	3
Total	16	15

No Response = 9.

Some of the specific comments from various districts as to the additional information needed were: "Comparison information with other districts;" "General information--particularly on evaluation of our insurance coverage to determine whether or not it is adequate;" "Information on extra-curricular programs;" "Procedures in case of claims and information about specific types of coverage;" "Proper practices, current changes, and statistical information from other administrative units."

CHAPTER IV

SUMMARY, FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

Summary

The problem

The problem was that the effect of the implementation of the Utah Governmental Immunity Act (tort liability law) on school operation in Utah was not known.

The purpose of the study

The purpose of this study was to determine school district experience in administering the law, and to make recommendations based on the findings. Specifically, some of the questions this study dealt with were:

1. What has been the experience of Utah school district administrators in administering the law, and in their opinions, are there changes needed in the law--and if so, in what specific areas?
2. Is the law as presently constituted adequate for school districts, or are there some aspects of the law that need to be amended, based on the experience of Utah school districts in administering the law?

Procedures

To accomplish the purpose of this study, information was obtained through the use of a questionnaire being sent to the administrator responsible for the administration of the tort liability program in

each of Utah's 40 school districts, with the instruction that the writer would contact them to assist them in filling out the questionnaire. A personal interview was conducted with 15 of the districts, with the other 25 districts being contacted by telephone. Where supplemental information was needed, follow-up letters, telephone calls and/or additional personal contacts were made. Additional information which could not be received from Utah's school systems was obtained from: insurance agents, legal advisors, insurance supervisor for the Los Angeles School District, and representatives of Educator's Mutual Insurance Association.

In order to make the information obtained more relevant to the various sizes of school districts, where applicable the data were tabulated and presented according to size as determined by average daily attendance.

Findings and Conclusions

As a result of this study the following findings and conclusions are presented.

Experience of school district administrators in administering the law

Finding: There have been no apparent significant changes in school operation or curriculum in Utah's school districts, as a result of the implementation of the tort liability law. However, some school districts started keeping records of accidents, accident reporting systems have been initiated, a claims procedure has been developed, and periodic safety inspections are being made of school grounds and facilities.

Finding and Conclusion: Fifty-two percent of Utah's school districts would favor an insurance specialist to assist them with their insurance programs, with most of these being the smaller districts. Therefore, it is concluded that small districts need more outside assistance with their insurance programs than the large districts. This may explain why larger districts are more satisfied with the law.

Finding and Conclusion: The majority of school districts have stayed with the same insurance agency since the passage of the law. Therefore, it is concluded that it may be more economical and provide better service to school districts to allow them to negotiate a contract, rather than require bidding every three years.

Finding and Conclusion: The school districts would probably be held responsible for the actions covered by the law, of anyone performing services for them with or without pay. Therefore, it seems logical to conclude that such agents should be covered under the district's insurance policy.

Finding and Conclusion: Student accident insurance programs are considered to be beneficial to the school districts of Utah from the standpoint of: public relations and reduction in claims filed against districts. However, no "concrete" evidence was found to substantiate this finding. Based on the information received from this study and until further information is available, it is concluded that it is worthwhile to have student accident insurance available in a district.

Finding: Some school districts may be giving wrong impressions to parents relative to student accident insurance purchased by the parents, by inferring that school districts are not responsible or liable for what happens to students while at school. This is in direct contradiction to the present law.

Finding: As evidenced from some of the claim settlements since the enactment of the law, insurance agencies for school systems, employees, and any other involved parties seem to develop a working relationship in reaching settlements to possibly eliminate some complicated and costly court cases.

Adequacy of the present Utah Governmental Immunity Act

Finding and Conclusion: The majority of Utah's school districts are of the opinion that the present tort liability law should be retained, and that no changes are needed in it. Therefore, it seems logical to conclude that the law has been satisfactory to the school districts of Utah since its enactment. However, the districts indicated a need for additional information in administering the law.

Finding: Insurance costs had not risen over the five year period sufficiently to become an excessive burden to school districts. No evidence was found which would suggest a need for a state financed insurance program for tort liability.

Finding: There have not been enough cases to clearly define what acts school districts and individual employees would be held liable for under the law. As far as the law has been tested, employees have been covered as long as they were acting within the provisions of the law and the scope of their employment.

Recommendations

The writer makes the following recommendations, based upon the information received relative to this study.

1. Even though claims have not been brought against school districts and their employees extensively since the passage of the law; it is recommended that school districts conduct in-service activities. The purposes of these activities would be to familiarize employees with the tort liability law, to improve safety practices, and accident reporting methods, in order to alleviate possible claims against the employees and school districts.

2. It is recommended that a uniform claims procedure be developed in Utah which would include a means for the state to disseminate information, enabling school districts to benefit from the experience of each other.

3. In order to eliminate confusion as to the coverage of auxiliary personnel under the law, it is recommended that the law be rewritten to specifically state that school districts are responsible for the acts of any person performing an authorized service for the school system.

4. Inasmuch as school districts do not know the extent to which their insurance provides protection for the employees of school districts, it is recommended that a study be conducted to determine the

extent of insurance coverage for employee protection in each school district of the state.

5. Since the majority of Utah's districts have not received lower insurance bids by agencies other than their original insurer as a result of the bid requirement in the law, it is recommended that the law be rewritten to allow state agencies to renegotiate their insurance contract without bidding. However, if an agency wants to submit a bid or the school district feels a better contract can be obtained by bidding, bids should be open.

6. It is recommended that an insurance specialist (familiar with school law) be made available by the State Department of Education to assist school districts with their insurance programs upon request. The need for such a person is more prevalent in the small school districts of the state.

7. Because of the evident lack of general understanding about the law on the part of Utah's school districts, it is recommended that the State Department of Education hold regional conferences to acquaint districts with, and provide general information about the tort liability law.

8. It is recommended that a study be made to determine the relationship of school district liability insurance and the liability coverage carried by district employees in Utah, i.e., duplication of insurance coverage, omission of coverage.

9. It is recommended that a study be conducted to determine the relationship of school district liability insurance and pupil accident insurance in Utah.

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APPENDIX A

LETTER TO SCHOOL DISTRICT ADMINISTRATORS

UTAH STATE UNIVERSITY · LOGAN, UTAH 84321
COLLEGE OF EDUCATION

DEPARTMENT OF
EDUCATIONAL
ADMINISTRATION

Utah's "Governmental Immunity Act" (Tort Liability Law) holding school districts legally liable for negligence, went into effect on July 1, 1966. Since that time there has not been a follow-up study to gather information in connection with Utah's School Districts, such as: liability insurance programs used, implications of student insurance in relation to school district tort liability, accident reporting methods, safety inspection programs, administration of liability claims; changes in policies, procedures, buildings and equipment etc. as a result of tort liability claims and/or court actions, and the district administrator's opinions of Utah's present tort liability law.

The College of Education at Utah State University has the support of the Utah State Department of Education to conduct the study as outlined above. It has been agreed that recommendations are to be made in connection with revising and up-dating the Utah state guide for school district administrators entitled: RECOMMENDATIONS FOR SCHOOL DISTRICT ADMINISTRATION OF THE UTAH "GOVERNMENTAL IMMUNITY ACT" IMPOSING TORT LIABILITY ON GOVERNMENTAL ENTITIES. Also recommendations for the revision of Utah's present law may be made. A major portion of this project involves gathering information relative to the experience of Utah school districts since July 1, 1966 and current practices employed by Utah school districts.

The attached questionnaire has been carefully constructed to obtain this needed information. It is mainly composed of check-answers, "Yes" or "No" and brief explanation answers to require the least amount of time possible for its completion. It is suggested that the person in your district responsible for the administration of the liability insurance program, be in charge of completing the questionnaire. Approximately two weeks from the date that you receive this letter, we will make contact with your district to assist in answering questions that may need clairification, to discuss the questionnaire with the person responsible for filling it out and to either pick up the completed questionnaire or have it sent upon its completion (envelope enclosed).

It is our desire to come up with recommendations which will be beneficial to the school districts of Utah. May we ask for your assistance in securing the data required, so that this project will prove valuable to all concerned with the matter of school district liability in Utah.

Respectfully yours,

U.S.U. DEPARTMENT OF EDUCATION ADMINISTRATION

Terrance E. Hatch

Dr. Terrance E. Hatch, Professor of Education

Steven H. Peterson

Steven H. Peterson, Project Research Director

APPENDIX B

QUESTIONNAIRE FOR UTAH SCHOOL DISTRICTS

QUESTIONNAIRE FOR UTAH SCHOOL DISTRICTS

This questionnaire, through the use of check-answers, "Yes" or "No" and brief explanation answers, has been constructed to require the least amount of time for its completion. Unfortunately, all answers to the questions asked cannot have been foreseen. Therefore, at the bottom of most of the questions you will find space available for you to write in additional comments or answers, if you do not feel that one of the alternatives provided by the questionnaire adequately describes the policy or procedure followed by your district. The time period under consideration in answering these questions, is from July 1, 1966 to the present time. If exact information is not available, answer the questions according to your best estimate. Please make liberal use of the additional answer space where needed, and feel free to communicate with your insurance agent or other district personnel for help in answering questions about which they may be able to assist you. For some questions more than one answer may be appropriate, if so check more than one.

All answers to the questions herein asked will be treated in summary form to retain anonymity.

I. GENERAL INFORMATION:

A. Name of district_____
B. Type of district (K-8)____ (K-12)____ (K-14)____ (Other)____
C. A.D.A. for the 1969-70 school year_____
D. Total amount paid for all liability insurance for the 1969-70 school year $_____
E. Name of insurance company_____. Has this been your company since July 1, 1966? Yes___ No___

II. LIABILITY INSURANCE PROGRAM:

A. What kind of liability insurance does your district carry?
___Comprehensive liability insurance including coverage for bus and auto
___Comprehensive liability insurance including auto but not bus
___Comprehensive liability insurance not including bus and auto coverage
___Automobile public liability insurance as a separate policy
___Professional (Malpractice) insurance as a separate policy
___Contractual public liability insurance as a separate policy
___Products public liability insurance as a separate policy
___Owners, landlords and tenants insurance as a separate policy
___Self-insurance
Additional coverage or features:_____
_____

B. What method does your district use in writing liability insurance bid specifications?
___Bid specifications written by superintendent
___Bid specifications written by district business official
___Bid specifications written by other district personnel
___Bid specifications written by group of insurance agents
___Bid specifications written by a selected insurance agent
___Other:_____

C. How much liability insurance does your district carry? (Please place answers in the appropriate spaces provided)

	Each Person	Each Occurrence	Single Limit	Excess	Total yearly premium-current policy
BODILY INJURY:					
Including Bus & Auto	$_____	$_____	$_____	$_____	$_____
Including Auto only	$_____	$_____	$_____	$_____	$_____
Excluding both Auto & Bus	$_____	$_____	$_____	$_____	$_____
PROPERTY DAMAGE:					
Including Auto & Bus	$_____	$_____	$_____	$_____	$_____
Including Auto only	$_____	$_____	$_____	$_____	$_____
Excluding both Auto & Bus	$_____	$_____	$_____	$_____	$_____
IF INSURE SEPARATELY:					
Additional Liability Insurance Carried (_____)	$_____	$_____	$_____	$_____	$_____
Additional Liability Insurance Carried (_____)	$_____	$_____	$_____	$_____	$_____

(1) Does the above indicated coverage include: Student Teachers? Yes____ No____ ; Aides? Yes____ No____ ; Volunteers? Yes____ No____

(2) Do you feel it is the school district's responsibility to furnish coverage for student teachers? Yes____ No____. If No, whose responsibility is it? (Briefly explain)_____

(3) Is your district covered for the torts of student teachers, and are they covered as individuals by your district's insurance? Yes____ No____

Additional comments:_____

D. Is your liability insurance policy based on a retrospective rating plan, i.e., the insurance premium is subject to change, either increase or decrease, depending on the claims experience of the district for the period covered? Yes____ No____

E. Does your district encourage some school employees to carry their own personal, "on-the-job," liability insurance? Yes____ No____. If yes, which employees are encouraged to carry their own personal liability insurance, i.e., all employees, bus drivers, industrial art teachers, etc.? (Briefly explain)_____

F. Do you feel that the coverage provided by your district's present liability insurance policy adequately protects your district? Yes____ No____. If your answer is No, what changes would you recommend in the coverage currently in effect?_____

G. Does your liability insurance cover your district against aggressive torts by employees? Yes____ No____

H. Does your liability insurance cover employees against aggressive torts by employees? Yes____ No____

I. Are your district's employees covered as individuals for their torts by your district's liability insurance? Yes____ No____

III. IMPLICATIONS OF STUDENT INSURANCE IN RELATION TO SCHOOL DISTRICT TORT LIABILITY:

A. What percentage of the students in your district are covered by pupil accident insurance? ___(75-100) ___(50-75) ___(40-50) ___(30-40)
___(20-30) ___(10-20) ___(0-10)

B. Are some of the students in your district, who participate in athletics, covered by student insurance? Yes___ No___. If yes, does this insurance cover:
___All participants in interscholastic athletics?
___Tackle football players? ___Baseball players?
___Basketball players? ___Track participants?

C. Does your district subscribe to any type of regular student insurance plan?
Yes___ No___ If yes, does your district:
___Pay all premiums?
___Provide an opportunity for parents to purchase such insurance, but make no attempt actively to encourage such purchases?
___Actively encourage parents to purchase personal liability or accident insurance?
___Leave all publicity and administrative details up to the insurance company?
___Handle all administrative matters connected with the issuance of such a policy?

D. If your district subscribes to a student insurance plan, has it been found to be beneficial to your district? Yes___ No___. If yes, in what ways have you found it beneficial?
___Public relations
___Reduction in cost of school district liability insurance
___Reduction in the number of claims filed against the district
___Other:_____

IV. METHODS USED IN REPORTING ACCIDENTS AND THE SEVERITY OF ACCIDENTS REPORTED:

A. Is it the policy of your district to request that accident reports be completed on:
___All accidents, regardless of the extent of the injury incurred?
___Most accidents, but not on those where the injury was slight, i.e., minor cuts or abrasions.
___Only on those accidents where a fairly severe injury was incurred, i.e., broken or fractured bone, deep lacerations, etc.?
___Only those accidents where there is a possibility of a claim being filed?
___Our district does not have a policy on this matter. The determination as to what types of accidents should be reported is left to each individual school principal.
___Other:_____

B. Does your district require all accident reports to be filed in one central office?
Yes___ No___

C. Is a copy of every accident report sent to the insurance carrier for your district?
Yes___ No___

D. How long are the accident reports of your district kept on file? ___6 months
___1 year ___2 years ___3 or more years

E. Does your district make an attempt to analyze the accident reports filed with the central office to determine, if possible, methods of preventing accidents?
Yes___ No___

V. SAFETY INSPECTION PROGRAM (Please indicate answers in the appropriate spaces provided):

A.

	District Requires Inspection of (Yes or No)	Frequency of Inspections (Wkly.Mo.Etc.)	Inspections Made By (Tchr.Pr.Etc.)	Checklist used for Inspection (Yes or No)
Buildings				
Grounds				
Busses				
Hazardous Routes for Walking				
(Other)				

Additional comments or answers:

B. In your opinion are there areas which should be observed to detect hazardous activities of students? Yes___ No___. Which of the areas or activities listed below should be observed, by whom should the observations be made and does your district make the observations? (Please indicate answers in the appropriate spaces provided):

Area and/or Activity:	Should be Observed (Yes or No)	Who Should Make Observations (Pr. Tchr. Cstdn. Etc.)	Does Your Dst. Make These Observations (Yes or No)
Playground			
Classroom			
Students Before and After School			
Students Entering & Leaving Buildings			
School Bus Behavior			
Athletic Events			
Lunchroom or Cafeteria			
Restrooms			
Other:			

C. Does the insurance carrier for the district participate in the safety program of the school district? Yes___ No___. If yes, does this participation include:

___An actual inspection of school facilities?
___Safety suggestions resulting from the claims experience of the district?
___Instructional materials relevant to the school safety program?

Other comments:

VI. THE ADMINISTRATION OF LIABILITY CLAIMS:

A. What types of activities were students engaged in which resulted in claims being filed and the number filed?

___Elementary playground	___Number filed
___Physical Education classes	___Number filed
___Vocational Education classes	___Number filed
___Regular classroom activities	___Number filed
___Athletics	___Number filed
___Other:	___Number filed

Additional comments:

B. Damage claims filed against your district by agencies or individuals who were neither district employees or students:
Number filed___, Reasons (Briefly explain):_____

C. Briefly describe the nature of the claims for which damages were paid:_____

D. Briefly describe the nature of the claims for which damages were not paid:_____

E. Briefly explain the types of claims taken to court and the court's decision:_____

F. How much has your district paid for damage claims since July 1, 1966?

1966-67 School Year	1967-68 School Year	1968-69 School Year	1969-70 School Year
$_____	$_____	$_____	$_____

G. How many claims have resulted in court decisions: (Write in number)
___For your school district
___Against your school district
___For individual school district employee
___Against individual school district employee
___For both district and individual employee
___Against both district and individual employee
___Others:_____

H. How many students have collected on their student accident insurance and how much has been collected by them since July 1, 1966?

1966-67 School Year	1967-68 School Year	1968-69 School Year	1969-70 School Year
$_____	$_____	$_____	$_____
No. of Students___	No. of Students___	No. of Students___	No. of Students___

I. Does your district keep a record of all damage claims filed against it?
Yes___ No___. If yes, does your record include:
___Name of claimant ___Date of accident ___Date claim was filed
___Date claim was presented to Board of Education
___Date claim was sent to insurance carrier
___Attorney representing claimant, if applicable
___Trial number, if applicable ___Safety suggestions resulting from claim
___Amount of damages asked for in claim
___Disposition of claim, i.e., denial, paid, pending, compromised, etc.
___Copies of all correspondence received by the district pertaining to claims which have been sent to the insurance carrier for the district, i.e., letter of complaint, claims filed by attorneys, court summonses, etc.

J. Does your district make an attempt to analyze claims filed against it to determine, if possible, methods of preventing the occurrence of such claims in the future?
Yes___ No___. If yes, does this analysis consist of:
___A thorough statistical analysis
___A periodic spot check of the claims filed
___A general check of the claims filed as they are received
___A selection and routing of pertinent claims to the chairman of the department involved in the accident, e.g., physical education, industrial arts, maintenance.

K. Policy of your district in handling potential claimants:

1. When a potential claimant inquires as to the possibility of obtaining money from the district to defray the cost of damages incurred as a result of a school-connected accident, is it the general policy of your district to:
   ___Briefly explain the circumstances under which school districts in Utah may be held liable and to suggest that a claim be filed only if it is felt that these circumstances were present at the time of the accident?
   ___Discourage the potential claimant from filing a claim regardless of whether or not it is felt the claim is legitimate?
   ___Remain strictly neutral, i.e., tell the potential claimant to see his lawyer, to check the law, etc.?
   Additional comments or answers:_____

2. When a claimant is certain that he wants to file a claim against the district, what specific information is given to him?
   ___The claim must be filed within a certain number of days from the date the accident occurred?
   ___To see his lawyer?
   ___To talk to the insurance carrier for the district?
   ___To write a letter to the Board of Education explaining the circumstances surrounding the accident?
   ___To fill out and return a standard district claim form which will be given or sent to him?
   ___The items which must be included in the claim?
   ___The only information given by our district is in answer to questions asked by the potential claimant. We do not, as a rule, volunteer information.
   Additional comments or answers:_____

3. Who is normally charged with the responsibility for answering questions posed by potential claimants?
   ___The superintendent of schools?
   ___The business official for the school district?
   ___A secretary or receptionist?
   ___Other:_____

4. What instructions does your district give to the administrators of the individual schools in your district concerning the best way to handle potential claimants?
   ___Give no information other than directing the potential claimant to call the central office of the Board of Education and direct their questions about claims to them.
   ___Explain to the claimant the circumstances under which board's of education in Utah may be held liable.
   ___Provide the potential claimant with a claim form and request that he complete it and send it to the office of the Board of Education.
   ___No special attempt is made to inform the administrators in the district of the best policy for handling potential claimants. Each administrator handles these problems as he sees fit.
   ___Other:_____

L. How long are liability claims kept on file by your district?
   ___Indefinitely
   ___For one year after the date the claim was filed
   ___Other:_____

M. In processing damage claims filed against the district, are the claims:
   ___Always sent to the Board of Education?
   ___Always included in the minutes of the Board of Education?

___Sent to the Board of Education only when it is felt that the claim is legitimate?
___Sent to the Board of Education with a recommendation as to the action which it should take on the claim?
___Always sent to the insurance carrier regardless of whether or not it is felt the claim is legitimate?
___Sent to the insurance carrier only when it is felt that the claim is legitimate?
Additional comments or answers:_____

N. What procedures, if any, have been brought about in the administration of liability claims filed against your district as a result of the passage of the Tort Liability Law? (Briefly explain):_____

VII. UTAH'S PRESENT TORT LIABILITY LAW:

A. Do you favor the retention of the current Tort Liability Law, which holds school districts liable for negligence? Yes___ No___

B. Do you feel that there are changes needed in the current school district liability law? Yes___ No___ If so, what are they? _____

C. Would your district be in favor of an insurance specialist on a state-wide basis to assist you with your insurance problems? Yes___ No___ If yes, how would you propose to make use of the specialist? _____

D. Does your district have an attorney who is informed on tort liability law? Yes___ No___ If yes, Name of Attorney_____

E. Does your district need more information on the administration of the tort liability law? Yes___ No___ If yes, what kinds of information:_____

III. DO YOU HAVE KNOWLEDGE OF CHANGES HAVING BEEN BROUGHT ABOUT IN YOUR DISTRICT IN FACILITIES OR PROGRAMS, AS A DIRECT RESULT OF EITHER THE FILING OF LIABILITY CLAIMS OR COURT DECISIONS RESULTING FROM SUCH CLAIMS?

Yes___ No___ If yes, please give examples of the changes that have taken place and their causes: _____

THANK YOU

APPENDIX C

PERSONNEL WHO SHOULD MAKE OBSERVATIONS TO DETECT HAZARDOUS ACTIVITIES OF STUDENTS BY DISTRICT A.D.A. CATEGORIES

Table 13. Areas which should be observed to detect hazardous activities of students in the 11 districts in the 0-999 average daily attendance category

	Playground	Classroom	Students Before & After School	Students Entering & Leaving Building	School Bus Behavior	Athletic Events	Lunchroom	Restrooms
Should be observed								
Yes	10	10	7	5	10	9	8	8
No	0		0	0	0	0	0	0
Who should make observations								
All personnel	1	1	1	1	1	1	1	1
Principal	2	1	4	4		3	2	2
Aides	1	1						
Teachers	8	8	3	1		3	3	1
Custodian	1	1						2
Superintendent	1	1					1	
Manager					1	1		
Supervisor			1				1	
Driver					7			
Coach						3		
Does your district make these observations								
Yes	10	8	5	4	9	8	6	6
No	0	1	1	1	0	0	1	1

Additional comments from districts: (1) "Off grounds play equipment."

Table 14. Areas which should be observed to detect hazardous activities of students in the ten districts in the 1,000-2,999 average daily attendance category

	Playground	Classroom	Students Before & After School	Students Entering & Leaving Building	School Bus Behavior	Athletic Events	Lunchroom	Restrooms
Should be observed								
Yes	9	9	8	8	9	9	9	9
No	0	0	1	1	0	0	0	0
Who should make observations								
Principal	5	2	5	4	1	6	3	2
Teacher	7	7	4	4	2	5	2	
Custodian	1	1	1	3			1	6
Supervisor		1			1			
Aides				1				
Students					1			
Driver					6			
Coach						1		
Student Council								1
Police								
Lunchroom Supervisor							3	
Does your district make these observations								
Yes	8	8	8	8	8	8	8	7
No	1	1	1	1	1	1	1	1

Additional comments from districts: (1) "All areas are now under observation daily."

Table 15. Areas which should be observed to detect hazardous activities of students in the six districts in the 3,000-4,999 average daily attendance category

	Playground	Classroom	Students Before & After School	Students Entering & Leaving Building	School Bus Behavior	Athletic Events	Lunchroom	Restrooms
Should be observed								
Yes	6	6	6	6	6	6	6	6
No	0	0	0	0	0	0	0	0
Who should make observations								
Principal	3	1	2	2	1	2	2	2
Teacher	4	4	3	2		1	2	2
Custodian	1					1		1
Aides	1	1	1	1				
Coach						1		
Department Emp.						1	1	1
Bus Driver					4			
Does your district make these observations								
Yes	6	5	4	4	5	5	5	5
No	0	0	1	1	0	0	0	0

Additional comments from districts: (1) "All persons involved with activities should make observations."

Table 16. Areas which should be observed to detect hazardous activities of students in the six districts in the 5,000-9,999 average daily attendance category

	Playground	Classroom	Students Before & After School	Students Entering & Leaving Building	School Bus Behavior	Athletic Events	Lunchroom	Restrooms
Should be observed								
Yes	6	6	6	6	6	6	6	4
No	0	0	0	0	0	0	0	2
Who should make observations								
Principal	1	1	1	2		1	2	
Teacher	2	5	3	4	1	4	2	1
Custodian	1							1
Supervisor	1						2	
Aides								
Driver					5			
Lunchroom Supervisor							2	
All Hired	1		1	1		1		1
Team	1	1	1	1	1	1	1	1
Does your district make these observations								
Yes	6	6	5	6	6	5	6	4
No	0	0	1	0	0	1	0	1

Table 17. Areas which should be observed to detect hazardous activities of students in the seven districts in the 10,000-60,000 average daily attendance category

	Playground	Classroom	Students Before & After School	Students Entering & Leaving Building	School Bus Behavior	Athletic Events	Lunchroom	Restrooms
Should be observed								
Yes	6	5	5	5	6	6	5	5
No	0	0	0	0	0	0	0	0
Who should make observations								
Principal	3	1	2	2	1	4	4	2
Teacher	3	4	2	2		2	2	2
Custodian	1	1	1	1		1	1	2
Supervisor					1		1	
Driver					4			
Coach						1		
All Employees	1	1	2	2	1	2	1	1
Counselor						1	1	
Does your district make these observations								
Yes	4	4	4	4	4	4	4	3
No	0	0	1	0	0	0	0	1

VITA

Steven Howard Peterson

Candidate for the Degree of

Doctor of Education

Dissertation: Administration of Utah's Governmental Immunity Act by Utah's School Districts

Major Field: Educational Administration

Biographical Information:

Personal Data: Born in Richfield, Utah, May 8, 1943, son of Howard Leon and Donnetta Lewis Peterson; married Sylvia Staples on September 20, 1961; five children--Shelly Sue, Stefenee Ann, Shauri Dee, Staci Donn, and Shauna Lee.

Education: Attended elementary school in Monroe, Utah; graduated from South Sevier High School, Monroe, Utah, in 1961; received Associate of Science degree from Snow College, Ephraim, Utah, in 1963; received a Bachelor of Science degree in Education from Utah State University, Logan, Utah in 1965, with a composite major in Business Education and Distributive Education; completed the requirements for the Doctor of Education degree, majoring in Educational Administration, at Utah State University, Logan, Utah, in 1972.

Professional Experience: 1965-1966, a business and distributive education teacher in the Iron County School District, Cedar City, Utah; 1966-1968, business teacher at Sevier Valley Technical School in Richfield, Utah; 1968-1970, Director of Business Affairs (Clerk of the Board of Education), Sevier School District, Richfield, Utah; 1970-1972, Administrative Intern to the Dean of the College of Education, Utah State University, Logan, Utah; 1971 to present, Superintendent, Piute County School District, Junction, Utah.