SOLDIERS' AND SAILORS' CHILDREN'S HOME: Liability of members of board or administrative officials for injuries to students.

September 2, 1938.

Hon. Ara K. Smith, Superintendent,
Indiana Soldiers' and Sailors' Children's Home,
Knightstown, Indiana.

Dear Sir:

In your letter of August 25, 1938, you say:

"We are writing for an opinion of the possible financial responsibility incurred by the board of directors, general superintendent or superintendent of schools at the Knightstown Soldiers' and Sailors' Children's Home, in case of an injury to any member of our athletic teams in a regularly played game. We understand that in the public schools they do carry this responsibility, but here the situation may be different due to the fact that the officials of the institution become the legal guardians of the students enrolled here."

The Indiana Soldiers' and Sailors' Orphans' (Children's) Home was established and located by chapter 14 of the Acts of 1887. Parenthetically, I might say that this original Act has been amended from time to time as to certain sections. Section 2 of the original Act as amended provides in substance that the trustees of the institution shall have general charge and management of the home. Provisions are also made by another section for the appointment of a superintendent.

Section 11 of the original Act as later amended provides in part as follows: "The superintendent, under the orders, rules and regulations made by the trustees, shall have the immediate charge and management of said home, and shall direct and control the resident officers and employees thereof and shall superintend, with care, the management and education of the pupils therein * * *.

Section 15 of this same Act of 1887 provides in part that: "The pupils of said home shall be so taught and treated as to promote their physical, intellectual and moral improvement, and shall be trained in habits of industry, studiousness and
morality * * *." Provision is then made for various types of training.

We see from a reading of the statute creating the school that the home was unquestionably organized for a public purpose and as far as the operation of the school and its attendant functions are concerned it would be governed by the rules laid down effecting school corporations. Since the statute, a portion of the substance of which is set out above, suggests the care of the pupils enrolled at the home, the matter of engaging in athletic interschool contests is a matter of judgment and discretion and is not a purely ministerial function.

In a rather early case in Indiana decided in 1895 it was said:

"It is well established that where subdivisions of the state are organized solely for a public purpose, by a general law, that no action lies against them for an injury received by a person on account of the negligence of the officers of such subdivision, unless a right of action is expressly given by statute. Such subdivisions then, as counties, townships, and school corporations, are instrumentalities of government, and exercise authority given by the state, and are no more liable for the acts or omissions of their officers than the state."

Freel v. School City of Crawfordsville, 142 Ind. 27, 28.

The Appellate Court of Indiana in the case of Medsker v. Etchison, 101 Ind. App. 369, held there was no liability for injury to a pupil because of an accident on a playground slide. The slide placed on the playground by the school authorities through usage had sloped and a six-year-old child in using the slide was injured. Suit was filed for damages and in holding there was no liability against the school officers the court said:

"Of course the teachers (the superintendent and coach) can not be liable unless it be shown that they individually were guilty of the active negligence which caused the wrong. There is no evidence that they did or failed to do any act which was directly responsible for the injury. There is no showing that it was the duty of any one of the three to make a daily or periodical
inspection of this particular slide or of playground equipment, nor that it had been specifically enjoined upon them, by the board, to be personally or individually responsible for the maintenance of this equipment. We do not say by this that even if these things had been done that there could be a recovery here, but we do say that these facts and possibly others must be present before they could be guilty of negligence. Even though they should be guilty of negligence, whether or not the law provides a remedy is still another question and not before us here. It is not shown that these teachers did any act or omitted to do any act whereby it could be said that they were negligent.

"The Legislature had delegated to this school board certain duties of the sovereignty, namely, the care and education of the children of school age during certain periods. To do this they are granted the control and management of property necessary to such undertakings. In the exercise of such power they are immune from responsibility unless the Legislature which created them also decreed that they should be liable for certain acts of omission or commission."

Also in the case of Adams v. Schneider, 71 Ind. App. 249, 258, the court there said:

"We hold that the appellees, members of the school board, in determining that there should be field day exercises in connection with their school were acting within their jurisdiction, and that such act, together with their action in determining the manner in which such exercises should be conducted, was discretionary, and that for injuries resulting therefrom they were not liable."

The statute which created the Indiana Soldiers’ and Sailors’ Children’s Home does not expressly provide for liability and therefore on the basis of the rules laid down by the cases from which I have quoted, it is my opinion that no liability would attach to yourself or any other school officer so long as an injury did not result to a pupil as result of a corrupt motive on the part of the school officials.