of connivance or fraud, is conclusive and final. Morgan County v. Seaton (1890), 122 Ind. 521, 525, 24 N. E. 213; Board, etc. v. Osburn (1892), 4 Ind. App. 590, 594, 31 N. E. 541.”

My conclusion to your second question is that if the quarantine is executed by the county health officer the county pays for other expenses attendant as a result of the quarantine, whether the person quarantined lives in a rural section or in the town.

ACCOUNTS, STATE BOARD OF: Cities, Towns and Townships—Liability in tort of municipal corporations and their rights to insure against such liability.

February 14, 1938.

Hon. W. P. Cosgrove,
State Examiner, State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of February 5, wherein you request an opinion upon the following questions:

“1. Can a civil city or civil town purchase public liability and property damage insurance to cover police cars, fire trucks and other motor vehicles and legally pay the premiums for such insurance out of public funds?

“2. Can a township trustee purchase public liability and property damage insurance to cover township-owned school buses and injury on school premises, and legally pay the premium for such insurance out of public funds?

“3. Can a school city, or school town, purchase public liability insurance covering damages for negligence and pay the premium for such insurance out of public funds? Can the premium for such insurance be paid from athletic funds or other activities funds?”

The answer to your first question must be in the alternative due to the phrase “other motor vehicles” as from the facts contained in your letter I am unable to ascertain in what
capacity they are owned and operated and it is upon such facts that liability attaches to a city or town for the negligent operation of its vehicles. The courts of this state have uniformly held that municipalities are not liable for damages for the negligent acts of their officers or agents when the same are engaged in some governmental function.

Indianapolis v. Williams, 58 Ind. App. 447;
City of Huntingburg v. Morgan, 90 Ind. App. 573;
Friel v. School City of Crawfordsville, 142 Ind. 27;
Aiken v. Columbus, 167 Ind. 139.

Therefore, if the vehicles named in your first question are engaged in governmental act, the city or town is not liable for any damages occasioned by the operation thereof. A governmental act is usually defined as one which is performed not to promote private interests of the municipality, but as one performed for public benefit and includes the following activities and services: fire protection, police protection, health services, schools and educational activities and the maintenance of buildings and equipment used in fostering the foregoing. Police and fire protection being governmental functions of a municipality, there cannot, under the foregoing general rule, be any liability on the municipality for the negligent operation of motor vehicles for such purposes. Therefore, it is my opinion that a city or town not having any liability for the negligent operation of its police cars and fire trucks, any expenditure of public funds for public liability and property damage insurance for a non-existent liability would be illegal.

The question of liability for damages arising from the negligent operation of "other vehicles" would depend upon whether they were used by the municipality in a governmental capacity or in a private proprietary function in which a city or town may legally engage. If the city or town engages in such proprietary function it is liable for the negligent management of the same and for the negligent acts of its officers and employees engaged in such activities.

City of Huntingburg v. Morgan, 90 Ind. App. —;
Aiken v. City of Columbus, 167 Ind. 139;
City of Kokomo v. Loy, 185 Ind. 18.

Cities and towns engaging in such activities are liable for their torts and it follows that they may insure against such contingent liability.
Your second question is likewise answered in the negative. The school corporation is a part of the educational system of the state and is an agency of the state. It then follows that a township is not liable for the negligent acts of its officers and employees performing a governmental act in administering its school system.

Freel v. City of Crawfordsville, 142 Ind. 27;
Commissioners of Jasper County v. Allman, 142 Ind. 513;

Specifically, the Appellate Court of Indiana has decided that a school corporation is not liable for injury resulting from the negligent operation of a school bus.


Nor is a school corporation liable for the negligent management and maintenance of a school premises, the Supreme Court having decided the question in the case of Freel v. City of Crawfordsville, supra. In view of the foregoing I am therefore of the opinion that the purchase of insurance to insure against a non-existent liability by the trustee would be unlawful.

The answers to your first two questions in effect precludes the necessity of an answer to your third question. From the foregoing it is obvious that liability insurance can only be purchased for private proprietary functions in which a municipality may engage.

The operation of schools being a governmental function, for the negligent operation of which there is no tort liability, it follows that the payment of premiums for insurance against a non-existent liability would be illegal regardless out of what fund the same might be paid, athletic or otherwise.

In regard to the questions presented herein, I call your attention to the apparent conflict in the cases due to the indefinite line of demarcation between governmental and proprietary functions in which a city may engage. The present trend of courts is to classify many activities formerly considered governmental as proprietary thereby imposing liability upon the municipality. Though the decisions of the Indiana courts are definite upon the question, the many new activities in which municipalities engage will have to be classified and in view of
the present trend it is possible that new liabilities will be im-
posed upon such municipalities. It is likewise true that the legis-
lature may remove the exemption from liability and there-
by subject municipal corporations to new obligations.

LABOR, DIVISION OF: Child labor—certificates—must pro-
cure from authorities in place of resident and place of
employment. February 15, 1938.

Mrs. Mary L. Garner, Director,
Bureau of Women and Children,
Division of Labor,
Room 404, State Capitol,
Indianapolis, Indiana.

Dear Madam:

Receipt is acknowledged of your request for an official
opinion in answer to the following questions:

"1. May a city superintendent of schools issue cer-
tificates to minors who reside in the city but work in
the county?

"2. May a county superintendent issue certificates
to minors who reside in the county but are employed
in a city situated in the county?

"3. If a minor resides in one county but is employed
in another, commuting daily, shall he secure his cer-
tificate in the county of his residence, the county where
he is employed, or both?

"4. Where a minor resides in another state but is,
employed in Indiana, commuting daily, it has been the
policy of the bureau to require a certificate from each
state. Should this policy be continued?"

Your attention is called to section 28-519 Burns’ Indiana
Statutes Annotated, 1933, which recites in part as follows:

"It shall be unlawful for any person, firm or corpora-
tion to hire or employ or permit any minor between the
ages of fourteen (14) and eighteen (18) years to work
in any gainful occupation until such person, firm or
corporation shall have secured and placed on file in the