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MEMORANDUM

TO: Chuck Adams, Superintendent
Members, Board of Education of Spencer County

FROM: Grant R. Chenoweth 

DATE: September 21, 2012

RE: School Sponsored or Endorsed Off-School Property Activities

You have requested an opinion concerning the potential, or not, for increased liability for the Board of Education in the event a school-sponsored activity, such as prom, is held on property which does not belong to the Board of Education or is outside the school district, and whether or not the Board would bear any responsibility for transporting students to the activity if it is held outside the school district. It is the opinion of this office that the Board would not risk any greater liability by sponsoring or endorsing a student activity on property which does not belong to the Board of Education, regardless of where that property is located, than the Board would bear for conducting an activity on Board-owned property, and that the Board bears no responsibility for providing transportation for students to and from events conducted off of school property.

There are two (2) converging legal issues relating to school-sponsored or endorsed events being conducted at facilities other than on school property. One is the requirement of supervising students at the event. That responsibility, through appropriate school district personnel and by sufficient number, guided by the nature of the activity and age/maturity of the students, is unequivocally required and on-going throughout the duration of the event. Secondly, the responsibility exists to ascertain the reasonable safety and security of the chosen venue much as a parent would do, in that the concept of *in loco parentis* is in play as to the students while at the off-site location of the school activity.

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Additionally, if an off-site facility is being rented for the express purpose of hosting the school-sponsored or endorsed event, the "lease agreement" must be entered into by the board of education upon motion passed at a meeting, not by a school or principal or club, etc. A careful review of the use agreement, by whatever name it has been given, is critically important. Not infrequently such documents contain "hold harmless/indemnification" language that is constitutionally forbidden as to a State entity, which includes a local board of education. Also to be looked out for is language requiring the resolution of disputes between the parties through arbitration and requiring the renter to submit to jurisdiction in the county where the facility is located or even in another state if the facility is owned by an out-of-state parent corporation. The Board's liability insurance policies, which have not been reviewed by this office, may not have language which would specifically cover injuries incurred due to some defect in a structure which is not owned and maintained by the Board. However, in the event such a venue is selected, it is believed the Board's insurance policy would be subject to having a "rider" added to cover a particular event.

A board of education is not required to provide transportation between a school and a non-school location in the county or an out-of-county location. Obviously, that is so with away athletic/academic contests for non-participants, or with students attending a dance, prom, graduation. The school district must hold students to a strict account for their conduct during the off-site event which would include pre-event activities such as decorating a meeting room/ballroom, etc., for a school-sponsored or endorsed activity. It is the opinion of this office that the Board of Education would not bear any legal responsibility for injuries incurred by a student while en route to or from a school-sponsored activity if transportation is being provided by anyone other than the Board or a common carrier contracted to the Board.

If you have questions or desire to discuss this matter further, please contact this office.

GRC:jc