

THE FOWLER LAW FIRM PC



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THE FOWLER LAW FIRM NEWSLETTER

Don't Let Transportation Issues Run you Over

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Submitted by Laura S. Fowler, Attorney at Law with The Fowler Law Firm PC

Dear Readers:

The last few weeks we have sent suggestions to our readers about things to immediately plan for that can be implemented this Fall. Transportation legal issues are routinely ignored or misunderstood both in public schools and junior college districts, and they can have huge implications for your budget. While this may not be a thrilling read when discussed in the hypothetical, when and if this happens to you your life will become very exciting... in a most unpleasant way!

If you are reading this, you may be of the opinion that this isn't your job. You are a campus principal (or a Human Resources Administrator or a Chief Financial Officer), and this is precisely what you hired the risk manager and purchasing officers to do. And yet, those individuals are often the least able to help you in avoiding the huge exposure and liability of transportation; although they buy and manage risk, they don't define the mission. So here are a few tips that could save you hundreds of thousands of dollars and immeasurable heart break. A word of warning: these remarks apply exclusively to public schools and junior college districts. For cities, counties, public four-year universities, and private educational institutions (who are typically 501c3's), very different rules of law apply.

First, **know this:** if an employee drives his **personal** automobile while performing school or college duties, regardless of whether they are ones he has been expressly requested to perform or ones he would have performed in the normal course of his duties, and even if you had **no idea** he was performing them, if there is an accident caused by his negligent operation of a motor vehicle, and there is either personal injury or property damage caused by his negligent acts, the college or school district is liable. This liability is capped at \$100,000.00 per injured party, with a total cap of \$300,000.00 for all injuries arising out of a single occurrence of bodily injury or death, and \$100,000 for each single occurrence of injury to or destruction of property.

Texas Civil Practice & Remedies Code Section 101.021: Governmental Liability

<http://tlo2.tlc.state.tx.us/statutes/docs/CP/content/htm/cp.005.00.000101.00.htm#101.021.00>

Texas Civil Practice & Remedies Code Section 101.021: Limitation on Amount of Liability

<http://tlo2.tlc.state.tx.us/statutes/docs/CP/content/htm/cp.005.00.000101.00.htm#101.023.00>

Perhaps you are taking comfort in the fact that your school or district has purchased excellent automobile liability insurance? Well, that may be true, but often Risk Managers do not elect to purchase

automobile liability insurance for employees driving their own vehicles, or they elect to purchase insurance that covers accidents at a certain minimum... say, "over \$100,000.00." This leaves a huge hole in coverage because many drivers only elect what Texas law requires them to have, that being (beginning April 1, 2008) \$25,000 per injured person, \$50,000 for all injuries stemming from the same accident, and \$25,000 in property damage. This exposes your institution to a sizable uninsured risk if you allow any of your employees to perform duties using their own vehicles or if you don't insist that they have coverage that matches yours.

Texas Transportation Code Section 601.051: Requirement of Financial Responsibility

<http://tlo2.tlc.state.tx.us/statutes/docs/TN/content/htm/tn.007.00.000601.00.htm#601.051.00>

Then there is the issue that many personal automobile insurance policies expressly exclude any accident that occurs in the course of work-related operation of a motor vehicle, either the owner's car or a leased car. When your employees travel, do you require them to obtain liability insurance if they rent a car? Do you know if your policies cover this risk? This is a significant issue easily overlooked by many institutions.

To summarize, here are some examples of the typical situations that can surprise you:

First, as noted above, whether the education institution or the employee owns the car makes **no** difference in whether the institution is liable. If the operator of the vehicle is performing duties in the scope and course of his employment, and his negligence injures someone or causes property damage, the institution is liable.

Second, when employees rent or lease vehicles, such as an airport rental car when they travel on education institution business, they create liability and may have **no** personal insurance that covers the activity. You may want to check your master insurance to see what happens when a car is leased.

Third, when employees try to be good neighbors and transport students who live near them, or take them home because the parents or caregivers did not show up, that probably creates liability. We say probably because typically, if it truly is an employee giving a student who is a friend of his children a ride home, it may be construed as a non-school related act of kindness. But rest assured, in the event of a serious accident, the college or school district will be drawn in to it only to find it may have **no** insurance that defends or indemnifies the activity.

Volunteers are another tricky area. What you instruct your volunteers to do and how you allow them to do it can either create more liability or minimize it. To date in Texas, volunteers have not created liability for school districts and junior college districts. However, when the kindly administrator (who feels sorry about a volunteer spending so much personal income on fuel) decides to approve a small 'volunteer allowance', a huge uncertainty for the institution is unintentionally created. Do not do this without carefully reviewing the facts with your legal counsel. Small acts of kindness, while admirable and well-intentioned, have created more issues of liability than most of you probably realize!

These remarks are not intended to make the reader **panic** and start changing everything Monday morning. The best thing you can do is to train those in charge of volunteers and employees operating a personal motor vehicle (particularly if students are being transported) to think very carefully about whether the action is truly necessary, and to think very carefully about their own insurance, their own exposure, and that of the District.

Your author will note that through the years she has given this advice to audiences of college and school district administrators many times. Almost every time, one or more administrators leave the room to go make a call back to their office to see if they really do have the insurance coverage they need to protect themselves and their district. That may not be the best time to analyze your risk management needs, but is certainly a better time than after the sheriff calls about a serious accident involving your students or your employees!

In your every motor vehicle adventure, we wish you the very best.

Laura Fowler and THE FOWLER LAW FIRM P.C. are so grateful to so many of you who have helped to make our firm a success. The Fowler Law Firm P.C. is a full service law firm whose attorneys have many years of experience in the handling of education institution issues, both public and private, non-profit associations, real estate, family law, probate and estate, business formation and taxation and all aspects of copyright, trademarks and patents. We never charge a client a fee or incur any expense until the client understands and agrees. In addition, we often counsel with your clients and friends and give them the information they need at no charge when we cannot truly be of service. For more information or to refer a matter to us please contact us at (512) 441-1411 or visit our website at www.thefowlerlawfirm.com.

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As with any legal issues, please consult your attorney with questions.