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THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

February 19, 2020

The Honorable Jason C. Gallion
414 James Senate Office Building
Annapolis, Maryland 21401-1991

Dear Senator Gallion:

You have asked for advice concerning Senate Bill 755, "Education - Harford County - Liability of School Bus Contractors." Specifically, you have asked whether the General Assembly may provide that an entity operating school buses for the Harford County Board of Education is not liable for damages in excess of the limits of the Board of Education's insurance coverage for a vehicular accident or an act or omission of an officer, director, or employee of the entity. The immunity does not apply if the event involved gross negligence, reckless, willful, or wanton misconduct, or intentionally tortious conduct. It is my view that there is no legal objection to the bill.

Statutory provisions providing private parties including contractors with partial or even total immunity from suit are not unusual. The General Assembly creates many of them. See Courts and Judicial Proceedings Article ("CJ"), Title 5, Subtitles 4, 6, and 8. Among them are limited immunity for volunteers of charitable organizations, CJ § 5-407, limited immunity for personnel of fire companies and rescue companies, CJ § 5-604, and immunity for the owners of caves, CJ § 5-804.

Immunity for private entities can also be part of the common law. The Maryland Court of Appeals created the doctrine of charitable immunity in 1885, *Perry v. House of Refuge*, 63 Md. 20 (1885), and it was upheld by a federal court in *Sanner v. Trustees of the Sheppard and Enoch Pratt Hospital*, 278 F. Supp. 138, 144 (D. Md. 1968). In addition, courts will extend the qualified immunity available to government officials to government contractors. See e.g., *Melchert v. Pro Electric Contractors*, 892 N.W.2d 710 (Wis. 2017) (A private contractor was entitled to governmental immunity for damage done while carrying out the government's specifications.). The standards for doing so were set out by the Supreme Court in *Richardson v. McKnight*, 521 U.S. 399, 404 (1997).

In short, the creation of new immunities is common, and will generally be upheld if it is neither arbitrary nor irrational. *Sanner*, 278 F. Supp. at 142.

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Sincerely,

A handwritten signature in black ink, appearing to read 'K. M. Rowe', with a large, stylized flourish at the end.

Kathryn M. Rowe
Assistant Attorney General

KMR/kmr
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