

OFFICIAL OPINION NO. 69-85, Operation and use of school buses

STATE OF SOUTH DAKOTA  
OFFICE OF  
THE ATTORNEY GENERAL

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Dr. Gordon A. Diedtrich, State Superintendent  
Department of Public Instruction  
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 69-85

**Operation and use of school buses**

Dear Dr. Diedtrich:

We have your request for an official opinion relative to the use of school buses. You ask four specific questions which, for the purpose of clarity, have been rearranged numerically and will be answered in the order as set out.

There are many statutes involved and three former Attorney General's opinions on the same subject. It is believed that the opinion will be best understood if the particular statute applying to the question is quoted as having such application.

Please understand that all questions are understood to apply only to situations where the school bus is owned and operated by the school district and the answers do not necessarily apply to a school bus owned and operated by an independent contractor. The statutes, on the other hand, apply to both.

QUESTION NO. 1: Must the color used on a school bus transporting ten or more pupils be "national school bus chrome" for those school buses which are used exclusively for transporting children to school sponsored activities within or outside the school district when such buses are not used to transport children from their home to school and back?

The answer is in the AFFIRMATIVE.

SDCL 1967 32-32-3 provides as follows:

"The color of every vehicle which transports ten or more students and is owned or operated by or for a school district used for the **transportation of children** shall be national school bus chrome in color in accordance with the rules and regulations of the South Dakota Board of Education ... " (Emphasis added.)

QUESTIO NO.2. Must the school bus used to transport ten or more children to school activities within or outside the school district have flashing red signal lights on the front and rear when such bus is not used to transport children from their home to school and back?

The answer is in the AFFIRMATIVE.

SDCL 1967 32-32-5 provides as follows:

"Every vehicle with capacity for ten or more students owned or operated by or for school districts and used for the **transportation of school children** shall be equipped with alternately flashing red signal lights on the front and rear thereof in accordance with the standards and regulations adopted by the State Board of Education. The operator of such vehicle shall cause such alternately flashing red lights to be lighted whenever, but only whenever such bus is stopped on any highway outside of business or residential district for the purpose of receiving or discharging school children." (Emphasis supplied,)

QUESTION NO.3: Must the lettering on a school bus be concealed when such bus is used for the transportation of school children to a school activity on the public highways within or outside the school district when such transportation is not hauling children directly to and from school?

The answer is in the NEGATIVE.

SDCL 1967 13-29-1 provides as follows:

"The school board of any school district shall have the power to acquire, own, operate, or hire buses **for the transportation of students to and from its schools** either from within or without said district **or for the transportation of students and instructors to and from athletic, musical, speech, and other interscholastic contests** in which participation is authorized by the school board." (Emphasis supplied.)

SDCL 1967 32-32-2 provides as follows:

"Every vehicle owned or operated by or for a school district **used for the transportation of school children** shall bear upon the front and rear thereof plainly visible signs containing the words 'school bus' in letters not less than eight inches in height. **When any such vehicle is being operated upon a highway for purposes other than the actual transportation of children either to or from school all markings thereon indicating 'school bus' shall be covered or concealed.**" (Emphasis added.)

The last sentence of Section 32-32-2 seems to be inconsistent with the first sentence thereof, and also with Section 13-29-1.

A former Attorney General in 1957-58 AGR 84 answered the question as follows:

"The phrase 'to or from school' as used in Chapter 221 has reference to all bus operations set forth in Section 12, Chapter 13, 1955 School Law. The statute herein cited must be read together as being in *pari materia* with each other."

However, in 1963-64 AGR 102 the question was asked:

"Is it necessary for a vehicle used to transport school children from one town to another to participate in school activities, or from school site to another school site within an incorporated town, to have flashing lights and other identification signs provided for in Chapter 255 Session Laws of 1963?

"a. If such vehicle is owned by or operated under a contract with the school district . . ."

This former Attorney General answered that question as follows:

"In answer to your specific question (4), Section 1 of Chapter 255 Session Laws of 1963 provides in part as follows: . . . used for the purpose of transporting such school children **to and from school**. (Emphasis added.)

"It is therefore my opinion that the intent of the above provisions means from home to school and from school to home; therefore, the provisions of Chapter 255, Session Laws of 1963 would not apply since the transportation involved is from school to another school, or from school to some location other than home.

"In answer to your specific question (4a) . . . it is my opinion that the answer . . . is in the negative."

It cannot be denied that the phrase "to and from school" means transportation from home to school and school to home as set out in the opinion of 1963-64 AGR 102. Nor can it be denied that the statutes are in pari materia. We are of the opinion that the Attorney General's opinion in 1957-58 AGR 84 is the better law. The statutes in Chapter 32-32 SDCL 1967 embrace the public safety aspect of the operation of the school bus. The intention of the Legislature to give school children maximum protection for their health and safety while riding on the school bus on the public highways, or when such bus is stopped for the purpose of loading or unloading such children is clear and undeniable.

Under the rules of statutory construction inconsistencies of statutes must be reconciled, if possible. In 82 CJS 838 appears the following statement:

"In other words, apparently conflicting statutes should be so construed as to reconcile the conflict, if possible, by a reasonable construction."

The opinion of 1963-64 AGR 102, *supra*, failed to take into consideration Sections 32-32-3 and 32-32-5 which were part of the original law found in Section 3, Chapter 255, Session Laws of 1963, and made no exceptions to the requirements that the bus be painted a certain color and have the flashing red light signals when "used for the transportation of children." It would seem rather ridiculous to require the words "school bus" to be covered when children are being transported for authorized curricular activities to other towns, or not from home to school when the bus otherwise must be painted "school bus color" and have the red flashing signals attached thereto.

It is our opinion that the last sentence in Section 32-32-2, *supra*, refers to the use of the bus when being used for **school purposes** other than the transportation of children.

QUESTION NO.4: Maya school district grant the use of a school bus as a community service or for hire to an individual, organization or association to transport children to activities which are not school sponsored activities?

The answer is in the NEGATIVE if the bus is operated at the expense of the district by a school district employee.

Section 13-24-20:

"The school board may rent or grant the use of school **facilities** or of any land belonging to the school district for any purposes which it may deem to be advisable as a community service for such compensation as may be determined by it, provided that such use shall not interfere with school activities. Any person or persons or public body so using any such school facilities or land shall be responsible to such school district for any and all damages that may be caused by reason of such use or occupancy. The school district shall not be held liable for any suit for damages which might arise as the result of such use or occupancy." (Emphasis added.)

There can be no question but what a school bus is a school facility, and the statute authorizes the school board to rent or grant the use of such facility as a community service for such compensation as may be determined by it, provided that such use shall not interfere with school activities.

It is elementary that the Legislature did not intend by this statute to authorize school districts to compete with commercial transportation.

It is understood that the temptation would be great on the part of any school board to authorize the school bus, not otherwise in use, to be used to transport the American Legion Baseball Team, the Boy Scouts or other non-school sponsored activities for children. However, it would be doing such members of any school board a disservice on my part not to point out that such authorization is fraught with danger. For illustration, there is a possibility that the liability insurance carried by the district does not cover such use and the children not fully protected in case of accident.

Also, there are other factors regarding the licensing of moter carriers and compensation payments for the unusual use of the highway which must be considered.

The licensing of motor carriers is under the jurisdiction of Public Utilities Commission. The Commission's authority is found in Ch. 49-28 SDCL 1967. Section 49-28-2 contains the following exception:

"Motor vehicles used solely in the transportation of school children, school teachers or the employed personnel of a school district to and from consolidated or other schools or on trips approved by the school district board for the purpose of participating in interscholastic activities or other educational programs;"

The subject of motor carrier compensation certificates is found in Chapter 32-9 of SDCL 1967. With respect to the exemption of school buses from the payment of compensation, Section 32-9-3(2) provides as follows:

"When operating school buses while used for school purposes;"

This exemption is much broader than the one found in Section 49-28-2, *supra*, but still requires an activity which is for a school purpose insofar as the transportation of children is concerned.

Under the general rule of law, an exemption must be strictly construed against the person claiming such exemption. This exemption is limited to (1) trips for contests between schools, (2) each operation having first been approved by the district board, and (3) must be an activity which is an integral part of the school curriculum or interscholastic activity.

There is a former Attorney General's opinion in 1935-36 AGR 466 wherein the principle enunciated, to the effect that if a school district operates a bus outside of its statutory authority it becomes a common carrier and the bus is subject to the same compensation and liability as any other common motor carrier, applies to this question.

In my opinion a school district has no authority to engage in the proprietary function of a common carrier or to pay a motor carrier license fee or compensation for the unusual use of the highway.

The one exception to the above negative answer is a case where the entire bus is loaned or rented for a period of time to a private individual or organization for the purpose of becoming a common carrier to transport children for community enterprises, thereby making such user an independent contractor. Such individual or organization would have to comply with the motor carrier and compensation laws and provide its own liability insurance.

Respectfully submitted,

Gordon Mydland  
Attorney General