

PUBLIC INSTRUCTION, SUPERINTENDENT OF: School bus drivers—contracts may be terminated by condition impossible of performance.

March 15, 1937.

Hon. Grover Van Duyn,
Assistant Superintendent of Public Instruction,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of March 13th submitting the following questions:

“A school bus route is awarded in accordance with the provision of chapter 59 of the Acts of 1931. Before the expiration of the contract, the pupils living on the bus route moved leaving no children for transportation on the route.

1. Should the trustee dismiss the bus driver according to the provision of section 2 of this Act?
2. In case the bus driver is not dismissed, should the trustee pay him even though no children are transported?
3. In case such a situation exists in a State School Relief Corporation, should the claims be allowed for services prior to the dismissal of the bus driver?”

In answer to your first question it will be noted that section 2, chapter 59 of the Acts of 1931, contains the following provision:

“Any such school bus driver shall be employed subject to dismissal at any time for incompetence, negligence, failure to perform his duties or for any other just cause.”

Whether or not the fact that all pupils living on the bus route have moved away and the driver has thus been left without pupils to transport would be just cause for dismissal, within the meaning of the above quoted statute, presents some question. However, it has always been the law that:

“When the performance of a contract becomes impossible non-performance is excused and no damages can be recovered.”

Gregg School Township v. Hinshaw, 76 Ind. App. 503.

The same rule of law is announced in the case of State, ex rel., v. Hillis, 79 Ind. App. 599, wherein the Indiana Appellate Court announces the rule as follows:

“The performance of a contract is excused when its performance is a physical impossibility.”

It would seem, therefore, that it being impossible for the bus driver to perform his contract to transport children, the Township Trustee would be warranted in canceling his contract.

In answer to your second question it would seem that the contract should be terminated as soon as it is apparent that there will be no further need for the services of a bus driver during the school year. From that date on his services should be dispensed with.

The same rule would seem applicable to the third question and in my opinion the claim should only be allowed and paid until such date as it is apparent that the services of the bus driver will no longer be needed.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Conditional sale contracts—applicable to livestock.

March 16, 1937.

Hon. F. M. Call, Supervisor,
Division of Installment Finance,
Indianapolis, Indiana.

Dear Sir:

Your letter of March 9th submits the following questions:

First: “Can conditional sales contracts which have arisen as a result of the sale of livestock be properly classified as contracts for the sale of goods as that term is defined in section 1 of the Retail Installment Sales Act?”