

1968 O. A. G.

OFFICIAL OPINION NO. 11

April 8, 1968

**SCHOOLS—MOTOR VEHICLES—POLICE, STATE—
Department of Vehicle Inspection Having Authority
to Inspect School Buses. Facilities of State Police
for Such Inspections. Authority of School Bus
Committee to Adopt Another Agency's
Standards.**

Opinion Requested by Hon. Richard D. Wells, State Superintendent of Public Instruction.

I am in receipt of your request for an Opinion concerning inspection of school buses and the authority of the School Bus Committee to propound rules for said inspection. Specifically you ask:

- "1. Can the School Bus Committee require school buses to be inspected by an inspection station licensed by the Department of Vehicle Inspection?
- "2. If such a requirement is valid, would the State Police still be required to make a vehicle inspection in the areas not inspected by the inspection station?"

The powers and duties of the State School Bus Committee are set out in section 502 of the School Transportation Code of 1965, Acts 1965, ch. 260, Burns IND. STAT. ANN. § 28-3929, which provides in part:

"The state school bus committee shall have the power and authority to perform the following functions:
"(a) Prescribe, by official rules and regulations, standards for the construction of school buses;

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“(b) Prescribe, by official rules and regulations, standards for the equipment of school buses;

“(c) Provide for the inspection of all school buses, both new and used, which are offered for sale, lease or contract;

“(d) Provide for the annual inspection of all school buses;

“(e) Prepare and maintain an approved list of school buses which have passed inspection tests as required in subsections (c) and (d) of this section. . . .”

The Legislature has thus specifically given the power to the State School Bus Committee to prescribe by official rule and regulation standards for both construction and equipment of school buses. Further, the State School Bus Committee is given the power to “provide for” the inspection of all school buses offered for sale, lease or contract, and the annual inspection of all school buses. The term “provide for” is obviously used in a logistic sense. That is, the Committee sets the time and place, notifies drivers, supplies forms, etc. The actual inspection is to be made by the Indiana State Police.

“The Indiana State Police shall annually inspect all school buses, including school buses operated by any private school used for the transportation of school children, to determine whether the bus complies with the safety requirements prescribed for the construction and equipment of school buses in the official rules and regulations of the state school bus committee; and, upon inspection, if the bus is found to meet all such prescribed safety requirements, the inspecting officer shall issue a certificate to the owner of the bus stating thereon that the bus has been inspected and has been found to comply with the prescribed safety requirements. Such certificates shall be prepared in the manner as prescribed by the Indiana State Police.” (Emphasis added.) Section 701 of the School Transportation Code of 1965, Burns § 28-3931.

That section also forbids the Bureau of Motor Vehicles to issue an annual registration plate for any school bus unless the owner presents an Indiana state police inspection certificate.

Obviously, the power to prescribe standards for a certain type of light or signal on a school bus would be useless without the power to require that the equipment function properly. The same is true of standards for brakes or any other item of equipment or manner of construction.

“The rule is elementary that the grant of principal power carries with it by implication all other powers necessary to carry out the principal power conferred, and thereby to make effectual and complete whatever is authorized to be done by the principal or general authority granted.” *State ex rel. Gillispie v. Barr*, 173 Ind. 446, 450-451, 88 N.E. 604 (1909).

When read together, the provisions granting power to the Committee must include a grant of implied power to prescribe not only manner of construction and items of equipment, but also the standards of maintenance and performance for each item of required equipment.

The Department of Vehicle inspection was created by Acts 1967, ch. 317, Burns §§ 47-3401—47-3413. That Act provides for the annual inspection of motor vehicles by licensed inspection stations. On and after January 1, 1969 (or an extended date no later than six [6] months thereafter) no motor vehicle subject to inspection under that statute may be driven upon the public highways of the State without displaying a certificate of inspection and approval. Act, section 12, Burns § 47-3412. School buses were not specifically excluded from the category “vehicles subject to inspection” in that statute. However, in my Official Opinion No. 20 of 1967 at p. 125, I pointed out the peculiar qualifications of the School Bus Committee to establish standards for school buses, and concluded that school buses were not required to be inspected and display a certificate pursuant to that act in order to use the public highways:

“It should also be noted that Acts 1965, ch. 260, requires school buses to have certain characteristics

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(e.g., flashing red lights: Section 807; Burns § 28-3940) not required of other vehicles, and therefore necessitates a procedure of school bus inspection different from inspection of other vehicles. Similarly, the School Bus Committee is composed of persons especially aware of the problems inherent in transporting children (See Section 501; Burns § 28-3928), and is therefore better qualified to establish equipment and inspection requirements in relation to school buses.

“Thus, there is no reason to believe that the enactment of Acts 1967, ch. 317, was intended to abrogate the powers and duties given the Indiana State Police and the Indiana School Bus Committee in relation to school buses, and it is therefore my opinion that such powers and duties continue unchanged.” 1967 O.A.G. at p. 130.

“It is my opinion that the 1967 General Assembly did not intend to include school buses within the purview of ch. 317, nor to make school buses subject to the provisions of that Act.” 1967 O.A.G. at p. 132.

However, in my 1967 Opinion, I specifically excluded any consideration of the validity or effect of a *rule of the Committee* requiring inspection of school buses by a licensee of the Department, 1967 O.A.G. at p. 132.

Although the School Bus Committee is uniquely qualified to determine the standards for school bus construction and equipment, the Indiana State Police Department has never been given the facilities and manpower to conduct the thorough type of mechanical inspection of a vehicle which the statutes contemplate shall be made by licensed inspection stations. The State Police Department does not have vehicle lifts, equipment to pull wheels, test brakes and wheel alignment, etc. The licensed stations will undoubtedly have such equipment and the manpower to utilize it. Therefore, it appears to me that the safety of the school children of the state would be promoted by requiring school bus owners to obtain certificates of inspection and approval, if it can be legally done.

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The Administrator of the Department of Motor Vehicle Inspection is empowered, subject to the approval of the Board of Vehicle Inspection and the Superintendent of the Indiana State Police Department, to adopt rules and regulations necessary to govern a vehicle inspection program, and such rules shall include

“The items of vehicle equipment to be inspected and the manner of inspection: Provided, That the items to be inspected shall include, but not be limited to: steering mechanism, front and rear end suspension, brakes, treadwear of the vehicle’s tires, lighting equipment, horns and required signal and warning devices, mirrors, windshield wipers, mufflers and exhaust system and safety glass. . . .” Acts 1967, ch. 317, § 9, Burns § 47-3409.

The present regulations of the School Bus Committee provide standards for all of the above listed items on school buses, and for many others. The Department of Vehicle Inspection may require that other equipment be subject to inspection by its licensees, and undoubtedly will establish operating and performance standards for each piece of equipment inspected.

Your first question is whether the School Bus Committee may require school buses to be inspected by an inspection station licensed by the Department of Vehicle Inspection. As previously stated, the School Bus Committee is the administrative body qualified by statute and by composition to promulgate standards for school bus construction and equipment. Since the Committee is an administrative body with only the authority and power given by statute, this authority must be exercised by the Committee itself and may not be delegated, *New York Cent. R. R. v. Public Serv. Comm’n*, 191 Ind. 627, 635, 134 N.E. 282, 285 (1922). However, I can see no objection to the Committee’s adopting by reference the standards of another Indiana agency which the Committee itself has determined are proper standards. (See 1964 O.A.G. p. 170, approving the Legislature’s adoption of administrative regulations by reference.) An example of this practice is given by the rules of the State Board of Health, Reg. H.

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S. E. 20, adopted March 11, 1955, filed April 19, 1955, Burns RULES AND REGS. ANN. (35-2601)-5, in which the State Board of Health adopts Volume V of the Rules and Regulations of the Administrative Building Council of Indiana. An adoption of all of the rules of one agency by another would not, of course, be necessary in such a case.

It is my opinion that, to the extent to which any standards which may be adopted by the Department of Vehicle Inspection are also adopted by reference by the School Bus Committee, the School Bus Committee may legally require by rule that compliance with those standards be evidenced by a certificate of inspection and approval issued by a licensed inspection station. The Indiana State Police would thereafter determine at an annual inspection whether each school bus has a current and valid certificate of inspection and approval for those pieces of equipment for which the Committee had adopted the standards of the Department.

In answer to your second question, the Indiana State Police would continue to inspect each school bus annually to determine whether it complies with the standards adopted by the School Bus Committee. However, in relation to the items required by rule to satisfy Department of Vehicle Inspection standards adopted by the Committee, a mechanical inspection by the police would not be necessary. Instead, the State Police would determine whether the school bus has a valid and current certificate of inspection and approval. The State Police would, of course, also make a mechanical inspection of those items for which the Committee has adopted standards without reference to the standards of the Department.

Although this method may prima facie by a simple one, it does present many practical difficulties. The Department of Vehicle Inspection is not required to consult the School Bus Committee before amending its rules. Standards of the Department originally satisfying to the Committee for school bus standards may be lowered by the Department for good and sufficient reasons for other like vehicles. Each amendment by the Department to a standard adopted by the Committee by reference would have to be considered by the Committee and adopted or rejected.

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If the Committee should adopt some, but not all, of the standards of the Department which would be applicable to vehicles like school buses, the inspection stations would be expected to perform only a partial inspection for school buses in contrast to the full inspection performed for like vehicles. Unless provision is made by the Department for a certificate of partial inspection and approval for school buses only, licensed inspection stations will undoubtedly be reluctant, and may refuse, to issue such partial certificates.

The annual inspection of school buses ordinarily occurs in September. The statute creating the Department of Vehicle Inspection authorizes the Administrator, subject to the approval of the Board and the Superintendent of the Indiana State Police Department, to adopt rules which shall include:

“5. The period when vehicles subject to inspection shall be inspected. . . .” Acts 1967, ch. 317, § 9, Burns § 47-3409.

The School Bus Committee undoubtedly would desire that the certificate of inspection and approval of a bus be current when it is examined by the Indiana State Police, *i.e.*, issued within no more than a few months (or less), prior to inspection by the police. If the inspection of other vehicles designated by the Department to be inspected during the same months in which school buses would be inspected would fill the capacity of the inspection stations, the owners of school buses or some other vehicles may be physically unable to obtain the required inspection certificates. Further, unless sufficient inspection stations capable of inspecting school buses are licensed by the Department, it could become physically impossible for all of the owners of school buses in the state to obtain the required certificates of inspection and approval.

Therefore, it is my opinion that the adoption of rules of the Department of Vehicle Inspection by reference by the School Bus Committee would create an impossible situation for the Committee and for owners of school buses and other motor vehicles unless the Committee secures the consent and cooperation of the Department, and the Department passes rules which make the program feasible. Further, since the Indiana State Police Department not only inspects school buses

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annually, but enforces the statute requiring vehicle inspection, see Acts 1967, ch. 317, § 10, Burns § 47-3410, the consent and cooperation of the Indiana State Police Department to such a plan would be necessary.

With the cooperation of all three of these state agencies, the adoption of Department standards by the Committee would be feasible as well as legal.

OFFICIAL OPINION NO. 12

April 10, 1968

ELECTIONS—Display of Model Voting Machine Inside “Chute” at Precinct Polls.

Opinion Requested by Hon. Chester K. Watson, State Senator.

The following is my answer to your letter requesting my opinion on the legality of the use of sample voting machines as is permitted by the Allen County, Indiana Election Board. Your question, restated, is whether or not it is legally permissible to display the *model voting machine*, outside the “*chute*” at a precinct polling place at an election conducted pursuant to the Indiana Election Code.

It is not legally permissible to so place the model voting machines because the machine would be beyond the use, control and jurisdiction of the Precinct Election Officials.

No voting machine may be used at *official* elections unless it is accompanied by a mechanical model machine suitable for instructing voters, Acts 1945, ch. 208, § 382, as found in Burns IND. STAT. ANN. § 29-5802.

The “chute” leads toward the structure where the voting machines and most of the other official election board paraphernalia are housed. The legislative definition of the term “chute” follows: