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Administrative Unit for Special Institutions of the State Board of Health acting in the capacity of governing body of the Indiana Agency for the Blind, and negotiated through the Director of the Indiana Agency for the Blind, who is the officer designated by statute to administer the Plan. It would be advisable to have the final Plan bear the written approval of the Administrative Unit.

OFFICIAL OPINION NO. 43

November 29, 1967

SCHOOLS—School Transportation Code—Legality of One Contract Providing for Several Routes—Power of State School Bus Committee to Inspect.

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

This is in response to your recent letter requesting an Official Opinion concerning Acts 1965, ch. 260, known as the "School Transportation Code of 1965." Your questions have been interpreted as follows:

1. May a person who owns the school bus he drives and several other school buses bid for and sign a contract to transport school children over several routes and hire drivers for the other buses? If your answer is in the affirmative, under whose jurisdiction are the bus drivers so hired?

2. Is it legal for the state school bus committee to ask the driver of the bus at the time of an inspection thereof to show a copy of his contract with a school corporation as well as his certificate of ownership and driver's license?

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In response to your first question, Acts 1965, ch. 260, § 203, as found in Burns § 28-3905, provides in part as follows:

“In the event *any school bus driver* is required to furnish either the school bus body or the school bus chassis, or both the body and the chassis, the governing body of a school corporation shall be required to enter into a written contract *with such school bus driver. . .*” (Emphasis added.)

Section 102 of the Act, Burns § 28-3901(e) defines a “school bus driver” as “Any person who is charged with the responsibility of operating a school bus.”

Sections 204 and 205 of the Act, as found in Burns §§ 28-3906 and 28-3907, require that each school corporation adopt specifications for school bus driver contracts, and that among other things the specifications adopted by the school corporation show

“(d) The type of school bus equipment required to be furnished by the school bus driver, . . .

“(e) The amount of public liability and property damage insurance coverage, if any, required to be furnished by the school bus driver; and the amount of surety bond required to be furnished by the school bus driver: . . .

“(g) Any other relevant information necessary to advise prospective bidders of the terms and conditions of any proposed school bus contract.”

Acts 1965, ch. 260, the “School Transportation Code of 1965,” contains other references which indicate that the “school bus driver” is the contracting party with the school corporation. Section 211 of the Act, as found in Burns § 28-3913, provides that “Any school bus contract entered into under the provisions of this act shall not be sold or assigned except by written agreement entered into by both parties to the original contract, and signed by the assignee or purchaser of the contract.” Section 212 of the Act, Burns § 28-3914, specifies reasons for which a school bus driver may provide

a temporary substitute. A permanent substitute driver may be employed under Section 213 of the Act, Burns § 28-3915, "In the event a school bus driver who owns all or part of the school bus equipment is found, as the result of a physical examination, to be physically unfit to perform his contract, . . ."

All the language above points to the conclusion that one may not legally sign more than one contract for more than one route unless he as the driver is physically able to perform personally the driving of each school bus. I find no provision of the act which expressly provides or by necessary implication suggests that a school bus driver contracting under the foregoing statutory provision may enter into a contract for several routes and hire drivers to drive the buses.

With respect to the question above your letter mentions Section 215 of the Act, as found in Burns § 28-3917, which authorizes a school corporation to enter into a contract for the transportation of school children ". . . with any regular route common carrier of passengers, which carrier operates under and pursuant to the jurisdiction of the public service commission of Indiana. . . ." The statute further provides that,

" . . . Any contract, negotiated and let pursuant to the provisions of this section, shall provide that such common carrier shall be solely responsible for the employment, physical condition and conduct of any bus driver employed by such carrier: Provided, That school bus drivers employed by such common carriers shall not be required to have a physical examination as provided elsewhere in this act, however such contract shall provide that carrier shall submit a certificate to the governing body showing that any school bus driver used in the performance of the contract meets the physical requirements of school bus drivers as provided in section 301 of this act."

Thus it is my opinion that a person who owns several school buses may not contract to carry school children over

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several routes and employ drivers for those routes unless he is operating as a regular route common carrier of passengers pursuant to a certificate issued by the Public Service Commission of Indiana. Drivers employed by such a regular route common carrier of passengers would be under the carrier's supervision and control, who, as a contracting party with the school corporation, must assure the proper conduct and performance of the drivers. (This opinion does not consider whether a person who owns several school buses could lease these buses to drivers who then individually would enter into contracts with the school corporation.)

There is one section of the School Transportation Code which, at first glance, would seem to require an answer different from that above. Acts 1965, ch. 260, § 908, the same being Burns § 28-3950, provides:

“(a) As used in this section the term ‘person’ shall mean any individual, association, partnership or corporation.

“(b) No person is authorized to engage in the operation of any school bus, or school buses, unless such person has negotiated and executed a contract with a public school corporation in which contract the school corporation assumes the responsibility of paying for the transportation of its children. . . .”

The broad definition of “person” contained in subsection (a) of the statute above combined with the prohibition contained in subsection (b) could imply that the statute would permit any “person” as therein defined to operate a school bus pursuant to a valid contract. Since certain of the entities, such as corporations, included in the definition could “operate” a school bus only through employees, the statute could further imply that the owner of school buses could negotiate a contract with a school corporation and hire individuals to drive the bus.

This implication, however, is not valid. The purpose of the section of the Act above is not to grant the power to contract to operate school buses, but rather to prohibit the operation of school buses except under a contract entered into as

provided elsewhere in the Act (or in accord with certain exceptions omitted from the above reproduction of the statute). This section prohibits the operation of school buses both by those entities (corporations, associations) that do not have the power to enter into a proper contract and by those entities (real persons) who do have, but have not exercised, such power. To prohibit the unauthorized operation of school buses the statute must by necessity be written in more inclusive terms than those portions of the Act authorizing certain individuals to operate school buses. Subsection (a), *supra*, provides a very inclusive definition of "person," but it also specifically limits that definition to the one section.

Your second question has to do with the powers and duties of the "State School Bus Committee," a statutory body or state agency created by Acts 1965, ch. 260, § 502, as found in Burns § 28-3929. Generally, the applicable law by which the powers and duties of a state statutory body are determined is set out in 26 I.L.E., State, § 36, page 147, as follows :

"State agencies have only those powers, duties, or authority which have been properly granted to them by law, either expressly or by necessary implication, and they may act only within the limits of the authority conferred on them. Where the statute creating the agency clearly sets forth the scope and extent of its powers and duties, no other powers and duties can be implied."

Also see :

State ex rel. Licking Township v. Clamme, 80 Ind. App. 147, 134 N.E. 676 (1923).

Boone County REMC et al. v. Public Serv. Comm'n., 129 Ind. App. 175, 155 N.E. 2d 149 (1958).

Citizens Gas & Coke Util. v. Sloan, 136 Ind. App. 297, 196 N.E. 2d 290, 3 Ind. Dec. 20 (1964), and 1958 O.A.G. p. 164.

Section 502 of the "School Transportation Code of 1965," Burns § 28-3929, provides as follows :

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“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;

“(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; and

“(f) Prescribe standard forms for school bus contracts, subject, however, to the approval of the state board of accounts.”

A careful examination of the foregoing powers and duties of the State School Bus Committee reveals no express provision in the statute authorizing the committee to question school bus drivers in order to inspect copies of their contracts with school corporations, their certificates of school bus ownership, or their driver's licenses, or both. The provisions clearly show a legislative intent to confine the powers and duties of that committee to the adoption of rules and regulations to fixing standards for the construction of school buses, for the equipment of school buses, to provide for the inspection of such buses, to prepare an approved list of school buses which have passed inspection tests, and to prescribe standard forms for school bus contracts subject to the approval of the State Board of Accounts. Nor can it reasonably be implied that as an incident to the enumerated powers and duties and in order to facilitate the performance of those duties, the State School Bus Committee can examine school bus drivers' contracts with school corporations, their driver's licenses and their certificates of bus ownership.

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School bus drivers are required to have the proper driver's licenses and legal possession of a school bus, and school buses (other than common carriers or certain buses transporting private school students) can only be operated pursuant to a contract with a public school corporation. But the State School Bus Committee is not empowered to enforce these statutory requirements.

In summary, the answer to your first question is that only a licensed regular route common carrier of passengers may contract with a school corporation to provide transportation for school children over several different school bus routes and hire drivers for those routes. Drivers hired by such common carriers are under the direct supervision and control of the carrier, who is responsible for their performing in accord with his contract. The answer to your second question is that the State School Bus Committee has the power and duty to inspect school buses and their equipment, but not the power to examine the driver's license, certificate of bus ownership, and contract.

OFFICIAL OPINION NO. 44

December 4, 1967

**MARRIAGE—Performance of Ceremony by Nonresident—
Criminal Sanctions Applicable in Certain Instances.**

Opinion Requested by Hon. H. Charles Winans, Prosecuting Attorney, 75th Judicial Circuit.

I am in receipt of your request for an opinion on the following question:

“Does Burns § 44-301, Acts 1897, ch. 86, § 1, p. 129, prohibit the performance of a marriage ceremony