

OFFICIAL OPINION NO. 72

December 30, 1965

Hon. William E. Wilson, Superintendent  
Department of Public Instruction  
227 State House  
Indianapolis, Indiana

Dear Mr. Wilson:

I am in receipt of your letter of October 6, 1965, in which you make certain inquiries as to the interpretation and effect of Acts 1965, Chapter 260, Section 301, the same being Burns IND. STAT. ANN., (1965 Supp.), § 28-3919. Your specific questions are:

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“1. In order to comply with the terms of the contracts, should these bus drivers who cannot meet the specified qualifications provided for by the Act be allowed to drive school buses after the effective date thereof or does the Act invalidate such employment contracts as of the effective date of July 1, 1965?

“2. Sec. 301 (b) reads as follows:

(b) Possession and full normal use of both hands, both arms, both feet, both legs, both eyes and both ears;

What interpretation should be put on the wording, ‘Possession and full normal use?’

“3. Does Section 301 (b) restrict a school bus driver from driving with—

- (a) one finger amputated?
- (b) one joint of finger amputated?
- (c) using a hearing aid?
- (d) using a leg brace, etc.?”

1. Your first question embodies two separate inquiries:

- (A) May the General Assembly enact a law that would result in the nullification of bus driver contracts, and

## OPINION 72

(B) Was such the intent of the 1965 General Assembly?

Each problem must be separately considered.

(A) Both the Constitution of the State of Indiana and the Constitution of the United States restrict legislative interference with contract rights. Nevertheless, the Legislature may, in certain instances, validly enact laws that will interfere with contract rights. One such instance is in the exercise of the police power of the state. This point was explicitly made in *Finerty, Auditor v. State ex rel. School City of Gary*, 213 Ind. 470, 12 N.E.2d 941 (1938), wherein the Indiana Supreme Court said, on page 474:

“The prohibitions contained in Article 1, Sec. 24 of the Constitution of the State of Indiana, and in Article 1, Sec. 10 of the Constitution of the United States, against the impairment of contracts, do not restrict the exercise of the State’s police power to protect the public health, safety and general welfare.”

There can be not doubt that a statute which establishes minimum physical requirements for school bus drivers is a valid exercise of the police power of the state even though the statute might detrimentally affect certain individual contracts. In *City of Indianapolis v. Ryan*, 212 Ind. 447, 7 N.E.2d 974 (1937), the Indiana Supreme Court sustained as a valid exercise of the police power a statute which prohibited private individuals from transporting garbage through the streets of cities of the first class even though the contracts of certain individual garbage haulers were thereby nullified.

(B) Chapter 260, § 301 of the 1965 Act begins:

“SEC. 301. No person shall be permitted to drive a school bus for the transportation of school children unless such person possesses the following qualifications: . . . .”

There is no indication in the above language that the Legislature intended that those drivers presently under contract who do not meet the physical requirements should be permitted to drive for the remainder of their contracts. In

fact, Acts 1965, ch. 260, § 912, the same being referred to in the note under Burns IND. STAT. ANN., (1965 Supp.), § 28-3951, declared an emergency and provided that the entire Act should be in full force and effect from and after July 1, 1965.

If the Legislature had intended that drivers presently under contract should be permitted to continue driving for the duration of their contract even if they could not meet the physical requirements, the Legislature would have so provided. An example of such a provision may be found in Acts 1935, ch. 303, § 4, the same being Burns IND. STAT. ANN., (1948), § 28-3908, which established a schedule for dispensing with those school buses then in operation which did not conform to the requirements prescribed by the Act. Omission of such a provision indicates that the Legislature intended that those persons not meeting the physical requirements should cease driving school buses as of July 1, 1965.

Therefore, it is my Official Opinion that the General Assembly could and did intend that as of the effective date of July 1, 1965, no person who was unable to meet the physical requirements would be permitted to drive a school bus.

However, failure to meet the physical requirements set out in Section 301 does not automatically invalidate the outstanding contracts of those drivers who own all or part of the school bus equipment. There are provisions for a satisfactory fulfillment of the contract by such drivers which is set out in Acts 1965, ch. 260, § 213, the same being Burns IND. STAT. ANN., (1965 Supp.), § 28-3915, the second paragraph of which provides:

“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, he shall be required to furnish a substitute driver, approved as to qualifications by the school corporation; or he may assign his contract to a person who is qualified to operate a school bus pursuant to the provisions of this act, subject to the approval of the governing body. In the event such school bus driver refuses or neglects to furnish a qualified substitute driver or to assign his contract to a

## OPINION 72

qualified person, the contract of the school bus driver may be terminated and cancelled by the governing body of the school corporation after reasonable written notice is given to the school bus driver and he is afforded an opportunity to be heard, either in person or by counsel. In the event the school bus driver owns all or part of the school bus equipment and his contract is cancelled pursuant to the provisions of this section, the governing body is authorized to purchase the school bus equipment owned by the school bus driver at the fair market value of such equipment, such fair market value to be determined by agreement of the contracting parties: Provided, That the governing body in the purchase of such school bus equipment is not required to comply with the provisions of Chapter 329 of the Acts of 1963."

The Act, then, only prohibits those persons who do not meet the physical requirements from driving. They are permitted to fulfill their contracts by providing an acceptable substitute as driver.

Principles for the construction of statutes are set out in 2 R. S. 1852, Ch. 17, Sec. 1, the same being Burns IND. STAT. ANN., (1946), § 1-201. That section begins:

"The construction of all statutes of this state shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute:

"First. Words and phrases shall be taken in their plain, or ordinary and usual, sense. . . ."

The above principle has been repeatedly and consistently affirmed by Indiana Courts. (See 25 Ind. Dig., Statutes § 188, for lists of cases affirming.)

Therefore, the phrase "Possession and full normal use" must be taken in its plain and ordinary sense.

Taking the phrase thusly, it appears that the statute requires that an individual both have the physical limb or organ rather than a prosthetic substitute, and be able to employ that limb or organ to the same extent and with the same ease and

facility as the average person. Any physical defect with which a school bus driver is suffering must bear a reasonable relation to the driver's ability to drive a bus without difficulty and function properly otherwise as a bus driver. It must be pointed out that in those instances where the governing body has to make a determination, the criterion is to be "full normal use."

As pointed out in this Opinion, the question of the fitness of a person to serve as a school bus driver is an administrative decision to be made by the governing body of the school corporation. Each case should be decided in light of its peculiar facts and circumstances. The standards which should be used to determine the fitness of a person to serve as a school bus driver who suffers from defects set out in your question #3 have been stated in this Opinion.

This Opinion would invade the administrative prerogative of the various governing bodies of the school corporations if it attempted to decide categorically with certainty and finality whether or not persons who suffer the physical defects listed in your question #3 could qualify to serve as school bus drivers.

In conclusion, it is my Official Opinion that the Legislature intended that school buses should be driven only by those persons who do not suffer from physical handicaps that might adversely affect their behavior either during the normal operation of the bus or in an emergency situation.

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OFFICIAL OPINION NO. 73

December 31, 1965

Mr. Richard L. Worley  
State Examiner  
912 State Office Building  
Indianapolis, Indiana

Dear Mr. Worley:

This is in answer to your following request for an Official Opinion:

1. Under the provisions of the Acts of 1903, Ch. 86, Burns' 22-3101, et seq. and the Acts of 1917, Ch.