



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706

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MOTOR VEHICLES:

School Bus Safety -
Application and Construction of
Public Act 78-1244 (School Bus
Safety Law)

Langhorne Bond
Director
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, Illinois 62764

Dear Mr. Bond:

Your letter asks my opinion concerning two particular applications of Public Act 78-1244. In each instance you have formulated an interpretation embodied within a regulation. You first ask:

"Are buses operated by or on behalf of churches for the transportation of children to Sunday School, Bible School and other religious education programs 'school buses' as defined

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in Section 1-182 of the Code and, therefore, subject to the color, equipment and driver training requirements set out therein? These activities are generally provided once or twice a week or daily for two or three weeks during the year. Church buses are often operated by volunteer drivers."

That you have interpreted the Act to be applicable to the above is clear from your proposed regulation:

"However, buses owned or operated by or for religious institutions for the transportation of persons in connection with a Sunday School, Bible School or other religious education program shall not be subject to the provisions of this manual or the provisions of the Illinois Vehicle Code, which apply to 'school buses' until July 1, 1975." (Department of Transportation, Office of Transportation Safety, Vehicle Inspection Section, Test Lane Bulletins 74-10 and S.B. 74-11.) (emphasis added.)

It is also clear from the Senate Debates of Senate Bill 1548, which became Public Act 78-1244, (78th General Assembly, Senate June 11, 1974, pp. 30-37), the testimony given at hearings of the Joint Illinois Motor Vehicle Laws and School Problems Commissions Subcommittee Studying All Aspects of School Bus Safety (held January 15,

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1974, and March 12, 1974) and the Subcommittee staff studies and correspondence that the legislature has recognized the urgent need for increased safety standards and improved equipment in all school buses. In explaining the intent of Senate Bill 1548, Senator Glass, its sponsor, stated:

"We've seen a lot attention to this matter in news media [see, for example, the Chicago Tribune series beginning November 20, 1974]; there has been four years approximately of hearings by the Federal Government under the National Highway Traffic Safety Administration and the promulgation of Federal Standard 17. And, under that standard all the States will have to comply with better school bus safety laws by 1977. This series of bills simply advances the dates for compliance with regard to a number those provisions." (78th General Assembly, Senate June 11, 1974, p. 31.) (insert added.)

Federal Standard 17 defines a "type I school vehicle" as:

"[A]ny motor vehicle with motive power, except a trailer, used to carry more than 16 pupils to and from school. This definition includes vehicles that are at any time used to carry schoolchildren and school personnel exclusively, and does not include vehicles that only carry schoolchildren along with other passengers as part of the operations of a common carrier." (49 C.F.R. §1204.4.)

The Standard does not define "school" however. An examination of the Standard and the explanatory materials promulgated by

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the National Highway Traffic Safety Administration (NHTSA) indicates that the application of the Standard is dependent upon how the State defines "school". NHTSA NOTICE 900 and TSP - 917.

Section 1-182 of the Motor Vehicle Code (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 1-182), as amended by Public Act 78-1244, defines "school bus" as:

"(a) Every motor vehicle, except as provided in paragraph (b), owned or operated by or for any of the following entities for the transportation of persons in connection with any activity of the entity: a school operated by a religious institution or a public or private nursery, primary, secondary or parental school.

(b) This definition does not include the following:

- (1) a bus operated by a public utility, municipal corporation or common carrier authorized to conduct local or interurban transportation of passengers when such bus is on a regularly scheduled route for the transportation of other fare paying passengers or furnishing charter service for the transportation of groups on field trips or other special trips or in connection with special events or for shuttle service between attendance centers or other educational facilities and not over a regular or customary school bus route;
- (2) a motor vehicle designed for carrying not more than 9 passengers which is not registered as a school bus under Section 3-808."

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It will be noted that paragraph (a) speaks of "a school operated by a religious institution". There is no statutory definition of "school" in Illinois. In a series of decisions dealing with the right of certain institutions to tax exemptions under article IX of the 1870 Constitution, however, Illinois courts have said:

"A school, within the meaning of the constitutional provisions, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptance of the word. What are called schools are conducted for teaching dancing, writing, deportment, and other things, which are not schools in the ordinary sense.'" (emphasis added.)

(Voisard v. County of Lake, 27 Ill. App. 2d 365, 169 N.E. 2d 805, 808; Turnverein "Lincoln" v. Bd. of Appeals, 358 Ill. 135, 192, 192 N.E. 780; People ex rel. McCullough v. Deutsche, etc., Gemeinde, 249 Ill. 132, 94 N.E. 162, 164.) It has also been consistently stated that the words used in a statute should be given their ordinary, plain or commonly accepted meaning unless to do so will defeat the manifest intent of the legislature. (Nelson v. Union Wire Rope Corp., 31 Ill. 2d 69; Lincoln National Life Ins. Co. v. McCarthy,

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10 Ill. 2d 489.) It is my opinion that, while the term "school" may not be subject to any but the most general definitions except for particular regulatory purposes, the common understanding of the term excludes from within it, the "Sunday school, bible school and other religious education programs" you speak of in your letter. It is, furthermore, my opinion that this position is in accord with the legislative intent underlying the act.

Section 3-808 of the Motor Vehicle Code (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 3-808) sets forth the vehicle registration fees for governmental, religious and not-for-profit organizations. In so doing, it classifies these vehicles in terms of the purposes for which they are used and the organization or institution which so use them. The language in this statute, therefore, clearly relates to the same purpose and objectives as that found in section 1-182 of the Motor Vehicle Code (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 1-182), as amended by Public Act 78-1244.

"Statutes which relate to the same thing or to the same subject are in pari materia even though they were enacted at different times.

It is a primary rule of statutory construction that not only the intention of the legislature be deduced from the whole statute and from its every material part, but statutes in pari materia should be construed together. (citations omitted.)" (People ex rel. Nordstrom v. Chicago and N.W. Railway Co., 11 Ill. 2d 99, 106; See, also, People v. Midway Landfill, Inc., 23 Ill. App. 3d 1080, 1082.)

Close examination of the structure and language of the classifications set forth in section 3-808 reveals an obvious intent to provide mutually exclusive classes. Among the distinct classifications set forth are the following:

"(a)2. Vehicles operated exclusively as a school bus for school purposes by any school district, or religious, or denominational institution."

"(a)6. Vehicles used exclusively as a school bus for any school district, or religious, eleemosynary or denominational institution, which are neither owned nor operated by such district or institution."

"(a)4. Vehicles operated exclusively by any religious denomination for the transportation of its members for religious purposes or operated primarily in the conduct of other religious activities of the denomination."

The distinction between subparagraphs 2 and 6 and subparagraph 4 is clear. The "Sunday school, bible school and other religious educational programs" to which you

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refer are "religious activities" and are provided "for religious purposes" within the meaning of subparagraph 4. Any non-religious educational services provided are purely incidental. Applying the rule of construction cited in the preceding paragraph, and the doctrine of expressio unius est exclusio alterius (which, simply stated, means the exclusion of all other things not mentioned) (In re Estate of Tilliski, 390 Ill. 273, 283), it is my opinion that, had the legislature intended to include in its definition of "school buses" those "buses operated by or on behalf of churches for the transportation of children to Sunday school, bible school and other religious education programs", it would have included language similar to that found in subparagraph 4. (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 3-808(a)4.) Instead, the legislature restricted itself to language very close to that found in subparagraphs 2 and 6 of section 3-808 (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 3-808(a)2 and 6.) An examination of the testimony submitted to the Joint Illinois Motor Vehicle Laws and School Problems Commissions Subcommittee Studying All Aspects of School Bus Safety (out of which Senate

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Bill 1548 arose) reveals that the legislature was urged to provide greater regulation of "Sunday school" buses and to require numerous safety features on all vehicles transporting large numbers of children. (See, testimony of Stuart Kaiserman and "School Busses and School Bus Safety, A Background Study, March 1974" by Charles Nicodemus.) The plain language of Public Act 78-1244 demonstrates, however, that the legislature decided not to provide everything sought by those who testified and lobbied for new equipment on and broader regulation of these vehicles.

Since it is my opinion that the vehicles in question are not "school buses", the proposed regulation delaying application of Public Act 78-1244 to them is invalid. Ruby Chevrolet, Inc. v. Dept. of Revenue, 6 Ill. 2d 147, 126 N.E. 2d 617.

In your second question, you ask:

"May the Department of Transportation certify a school bus as being in 'safe mechanical condition, as determined pursuant to this Chapter (Illinois Revised Statutes, Chapter 95 1/2)' if such bus is not equipped with the type of stop arm required by Section 12-803, as amended by

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Public Act 78-1244, where such compliance is impossible because of unavailability of the equipment. The Department is aware of only one company, the Speciality Equipment Company of South Carolina, which manufactures this type of stop arm. Such a stop arm is used in only one other state besides Illinois. This firm has indicated to us that they are presently delivering this equipment 90 days from the date of order. Could the Department certify school buses on the basis of compliance with the provisions of Section 12-803 of the Vehicle Code prior to amendment or on the basis of substantial compliance with the present provisions of Section 12-803 until the required equipment becomes available to school bus operators in Illinois."

Public Act 78-1244 adds article VIII to chapter 12 of the Illinois Vehicle Code (contrary to the assertion set forth in Department of Transportation, Office of Transportation Safety, Vehicle Inspection Section, Test Lane Bulletin, S.B. 74-11). Section 12-803 of the Code (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 12-803, added by Public Act 78-1244) provides:

"Each school bus shall be equipped with a stop signal arm on the driver's side of the school bus which may be operated either manually or mechanically. The arm shall be a hexagon shaped semaphore approximately 18 inches wide and 18 inches long and of 16-gauge metal. 'STOP' shall be painted on both sides in white letters at

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least 6 inches high with a brush stroke approximately 7/8 inch wide and on a red background approximately 8 inches x 16 inches. Decals may be used instead of painting. The remaining area of the stop signal arm shall be painted white and shall either be reflectorized or shall have 2 double faced lamps with plain, red lens approximately 4 inches in diameter located one at the topmost and one at the bottommost position of the arm. Such lamps shall light and flash when the arm is extended and shall turn off and stop flashing when the arm is closed."

In response to this statute and the fact situation described, the Department has promulgated the following regulation:

"Because of the present unavailability of this type of hexagon stop signal arm, (designated in §12-803) the foregoing requirement shall not become mandatory until July 1, 1975.

Until July 1, 1975, all buses must have the type of stop signal arm described above or a stop signal arm which conforms to either of the following two specifications:

Rectangular - with minimum 8-1/2 inches, maximum 10 inches. Length minimum 18 inches, maximum 22 inches. This semaphore surface on both sides must be painted a bright red as a background with the word 'STOP' in white letters 6 inches high on both sides. The semaphore must have a band of white around the edge 1/2-inch in width on both sides as a border contrast.

Hexagon - 16-gauge. This arm to be a hexagon shaped semaphore approximately 18 inches wide and 18 inches long."

Before discussing the regulation, it is necessary to analyze the statutes which it purports to apply. The Illinois Supreme Court in People v. Elgin Home Protective Association, 359 Ill. 379, at 383 to 384, stated the general rule applicable in this situation as follows:

"* * * The primary object in construing a statute is to ascertain and give effect to the true intent and meaning of the legislature in enacting it, and it is the intention of the law-makers that makes the law. (Hoyne v. Danisch, 264 Ill. 467.) For the purpose of ascertaining and giving effect to the intention of the law-makers it is proper to consider the occasion and necessity for the law. Where the intention of the legislature in adopting the act is clearly expressed and its objects and purposes are clearly set forth, the courts are not confined to the literal meaning of the words used when to do so will defeat the obvious legislative intention and result in absurd consequences not contemplated or intended by the legislature. In such cases the literal language of the statute may be departed from, and words may be changed, altered, modified and supplied, or omitted entirely, if necessary to obviate any repugnancy or inconsistency between the language used and the intention of the legislature as gathered from a consideration of the whole act and the previous condition of legislation upon that subject. (People v. Fox, 269 Ill. 300; People v. Patten, 338 id. 385.)"

It has also been stated:

"[I]t is presumed that the legislature acted

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with full knowledge and information as to the subject matter of the statute and the existing conditions and relevant facts relating thereto." (34 I.L.P. "Statutes" §130.)

We must, therefore, presume the legislature was aware that immediate compliance with section 12-803 is impossible for a great many school bus operators. The intent of the legislature is clear: To provide safer school bus transportation to both passengers and non-passengers. The act became effective on September 5, 1974. Most of the vehicles used to transport school children had already been inspected and received approval for their continued use from the Department of Transportation. Many schools were already in session. If we were to construe the statute as requiring immediate compliance, the effect would be to suddenly prevent the use of a majority of the school buses in Illinois, leaving thousands of school children and parents to their own devices with regard to getting to school and school-related activities. While it might well be argued that such a result would actually increase the hazards facing school children in their commuting to and from school (since, for example, both the school buses

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and their drivers are subject to inspections and testing far in excess of that required of private automobiles and their drivers). thereby flying directly in the face of the obvious legislative intent, we need not go so far. It is required, merely, that we apply common sense in construing the statute.

(1957 Chevrolet v. Division of Narcotics Control of Dept. of Public Safety, 27 Ill. 2d 429, 189 N.E. 2d 347; School Directors of School District No. 82, Whiteside County v. County Board of School Trustees of Whiteside County, 15 Ill. App. 2d 115, 145 N.E. 2d 285.) We may do so even if the effect is to qualify the universality of the statute's language. (City of East St. Louis v. Union Electric Co., 37 Ill. 2d 537, 542, 229 N.E. 2d 522, cert. denied, 88 S. Ct. 1034, 390 U.S. 948, 19 L. Ed. 2d 1137.) To construe the statute as requiring immediate compliance would result in absurd, inconvenient and unjust consequences, which must be avoided. (See, Reynolds v. The City of Tuscola, 48 Ill. 2d 339, 270 N.E. 2d 415; City of East St. Louis v. Union Electric Co., supra; People ex rel. Barrett v. Thillens, 400 Ill. 224, 79 N.E. 2d 609.) Thus, it cannot be said the legislature would have intended that the majority of the school

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buses in the State either stop running or that their operators risk criminal penalties (Ill. Rev. Stat. 1973, ch. 95 1/2, pars. 16-101 and 16-104) because of the present unavailability of a particular type of stop signal arm.

Common sense and the rules of statutory construction decreed by our courts, require, therefore, that consideration be given those school bus operators who, through no fault of their own, find it impossible to comply with the requirement in section 12-803 of a particular type of stop signal arm. You have represented that it was impossible to bring school buses in the State into compliance in time for their December/January inspection. (See, sec. 13-109 of Public Act 78-1244.) The proposed regulation, therefore, provides that the vehicles must be equipped with the section 12-803 stop signal arm requirement before they will be approved in their next inspection, which will occur after July 1, 1975. You have also represented that it is not unreasonable to expect all school buses to install this type of arm by July 1. This regulation requires, in the interim, that all school buses be immediately equipped with one of three different types of stop signal arm. The

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types permitted as temporary alternatives to that required by section 12-803 are essentially similar to it, are easily visible and presently available. It is apparent that this regulation is in tune with the legislative policy espousing improved school bus safety: It requires immediate compliance with all the safety requirements except that of section 12-803 and it forces school bus operators who cannot strictly comply with this section to provide equipment substantially similar to it until July 1.

Regulations promulgated by administrative agencies must be in accordance with the statutory authority vested within the agency. (People ex rel. Polen v. Hoehler, 405 Ill. 322, 90 N.E. 2d 729.) Section 12-100 of the Vehicle Code (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 12-100), defines "Department" as:

"The Department of Transportation of the State of Illinois, acting directly or through its duly authorized officers and agents."

Section 12-812(a) (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 12-812(a) as added by Public Act 78-1244) provides:

"(a) The Department may promulgate rules and regulations to more completely specify the equipment requirements of this Article."

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It is my opinion that the regulation in question falls within the grant of power to the Department of Transportation found in section 12-812(a), is reasonable (Barnash v. Rubovits, 46 Ill. App. 2d 409, 197 N.E. 2d 134), not arbitrary or in contravention of the express provisions of Public Act 78-1244 (People v. Kueper, 111 Ill. App. 2d 42, 249 N.E. 2d 335), and is, therefore, valid. Note, however, I possess no information concerning and, therefore, express no opinion as to the validity of the procedure by which the regulation was issued.

In summary, it is my opinion that: (1) Buses operated by or on behalf of churches for the transportation of children to Sunday school, bible school and other religious educational programs are not "school buses" as defined in section 1-182 of the Vehicle Code as amended by Public Act 78-1244; and (2) The Department of Transportation may certify a school bus as being in "safe mechanical condition" if it meets the equipment and inspection requirements of the Vehicle Code as amended by Public Act 78-1244 except that the requirement of section 12-803 may be waived where the vehicle complies with the valid

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regulation discussed above.

Very truly yours,

A T T O R N E Y G E N E R A L