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GENERALS OFFICE
AUG 2 1 2013

August 20, 2013

OPINIONS

The Honorable Mike DeWine Ohio Attorney General 30 E. Broad St., 14th Floor Columbus, OH 43215

Re: Request for Formal Opinion- Regular Use of Vehicles Other Than School Buses for Transportation to Alternative Schools

Dear Attorney General Dewine,

I am respectfully requesting a formal opinion on the meaning of the term "alternative school" as it is used in Ohio Admin. Code 3301-83-19(C) with respect to a board of education's regular use of board-owned vehicles other than school buses to transport students to alternative schools.

Ohio Admin. Code 3301-83-19(C) states, in pertinent part:

Vehicles originally designed and constructed at the factory for nine or fewer passengers, not including the driver, to be used when the school bus transportation cannot be reasonably provided, shall not be routinely used for service to and from regularly scheduled school sessions except for preschool children, special needs children, homeless children, children inaccessible to school buses, or students placed in alternative schools.

Ohio Admin. Code 3301-83-19 (C) (emphasis added).

Ohio Admin. Code 3301-83 does not provide a definition of the term "alternative schools." Further, the Ohio Revised Code provides varying definitions of the term "alternative school." For instance, R.C. 3313.97m which pertains to intra-district open enrollment policies, defines an alternative school as "a school building other than the one to which a student is assigned by the district superintendent." R.C. 3313.97(A)(2), which concerns a special education pilot scholarship program, defines alternative school as follows:

As used in this section and in sections 3313.975 to 3313.979 of the revised code...Alternative School means a registered private school located in a school district or a public school located in an adjacent school district.

Because Ohio Admin. Code Chapter 3301-83 does not provide a definition of the term "alternative school", and the Ohio Revised Code provides varying definitions of this term, I am requesting your formal opinion as to:

- What is the meaning of the term, "alternative school" as it is used in the Ohio Admin. Code 3301-83-19(C)?
- Specifically, whether a chartered or non-chartered non-public school in which a parent voluntarily enrolls a child, but not pursuant to the special education pilot scholarship program, is an alternative school for purposes of this rule?

It appears as though a chartered or non-chartered non-public school in which a parent voluntarily enrolls a child, but not pursuant to the special education pilot scholarship program, does not meet the definition of an alternative school under Ohio Admin. Code 3301-83-19(C).

Under the maxim, expression union est exclusion alterius, if a statute or rule specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded. See *Thomas v. Freeman* (1997), 79 Ohio St.3d 221, 224-225, citing Black's Law Dictionary (6 Ed.1990)581. Ohio Admin. Code Section 3301-83-19(C) specifically exempts preschool children, special needs children, homeless children, children inaccessible to school buses, and students placed in alternative schools from the prohibition on routinely using vehicles designed for nine or fewer passengers to transport students to and from regularly scheduled school sessions. R.C. 3313.974 defines a non-public school as an "alternative" school only as it relates to students participating on the special education pilot scholarship program. Beyond this specific instance, the failure to include chartered or non-chartered non-public schools in the list of exemptions would seem to imply that the legislature did not intend to include chartered or non-chartered non-public as an exempted category under Ohio Admin. Code 3301-83-19(C).

I am certain that your opinion will prove beneficial to school districts throughout the state of Ohio. If you require any additional information, please do not hesitate to contact me.

I appreciate your attention to this matter.

Stephen J. Pronai

Sincerely,

Prosecuting Attorney Madison County, Ohio

SJP:ms