

5586

1. BUSES, SCHOOL — BOARD OF EDUCATION NOT AUTHORIZED TO TRANSPORT PERSONS FOR HIRE OR PERMIT USE OF SCHOOL BUSES TO TANSPORT PASSENGERS — USE, TRANSPORT SCHOOL CHILDREN TO AND FROM PUBLIC SCHOOLS OR PUBLIC SCHOOL FUNCTIONS.
2. PRIVATELY OWNED BUSES, EXCLUSIVELY USED TO TRANSPORT PUBLIC OR PRIVATE SCHOOL PUPILS, EXEMPT FROM ANNUAL MOTOR VEHICLE LICENSE TAX — SECTION 6291 G.C.

SYLLABUS:

1. A board of education is not authorized to engage in the business of transporting persons for hire or of using or permitting the use of school buses for the purpose of transporting passengers other than school children to and from public schools or to and from public school functions.

2. The operation of privately owned buses, which are used exclusively for the transportation of public and/or private school pupils to and from schools or to and from school functions, is exempt from the annual motor vehicle license tax levied under Section 6291, General Code.

Columbus, Ohio, November 6, 1942.

Hon. Charles Varner, Prosecuting Attorney,
Ottawa, Ohio.

Dear Sir:

I am in receipt of your request for my opinion which reads as follows:

“I would like your opinion on the question as to whether a Rural Board of Education which owns and operates school busses, has any right or authority to accept compensation for transportation of pupils to a private school, in busses used for transportation of pupils to the public school, and what additional liability would be incurred by the school board by such action.”

Perhaps no principles of law are more positively established in this state than are those relating to the powers and duties of boards of education. These boards are agencies of the state created and existent for the one and only purpose of administering laws enacted by the General

Assembly in pursuance of the constitutional mandate contained in Sections 2 and 3 of Article VI of the Constitution of Ohio, to provide by taxation or otherwise for a thorough and efficient system of common schools throughout the state and to enact laws providing for the organization and control of the public school system supported by public funds.

As such agencies, boards of education possess no powers except such as are extended to them by statute either expressly or by necessary implication to carry out express powers so granted. The strictness with which these principles are applied is evidenced by many authorities. Among late cases involving the questions may be cited the cases of *Schwing v. McClure*, 120 O. S., 335, and *Board of Education v. Ferguson*, 68 O. App., 514.

There is no statutory authority extended to boards of education to engage in the business of transporting passengers for hire nor are any powers extended to a board of education within which such power may be said to be implied as being necessary to carry out any express powers granted to such boards. The only power possessed by a board of education to provide transportation for passengers is that extended to them to provide transportation under some circumstances for school pupils to and from public schools and to and from public school functions. The cost of such transportation is provided for by law and is met from public funds. It is not regarded as transportation for hire in the sense that the passenger or some third person for him pays what is known as a "fare" for the transportation. No power whatever is extended to boards of education to carry any passengers except as noted, either gratuitously or upon payment of a fare for such transportation.

It does not, however, follow that buses used for the transportation of pupils of private schools are not exempt from the payment of the annual motor vehicle license tax levied under the provisions of Section 6291, General Code, et seq.

Section 6295-1, General Code, which exempts the operation of certain types of motor vehicles from the annual motor vehicle license tax, reads in part as follows:

"No school bus as hereinafter defined shall be required to pay the annual license tax provided for in section 6291 of the General Code. The term 'school bus' as used herein shall be

construed to mean any vehicle, however owned, used exclusively to transport school children, either to and/or from school, or to and/or from any school function, having a seating capacity of more than five persons exclusive of the driver."

It will be noted that the above section uses the words, "school children," "school," and "school functions." Ordinarily, words of a statute are to be given their natural and commonly understood meaning. Certainly, the term, "school children," in common everyday usage, is not limited to children attending public schools, nor is the word "school," when given the meaning commonly attributed to it, limited to a public school.

The above statute was under consideration in an opinion rendered by the then Attorney General, in 1935. In said opinion (Opinions of the Attorney General, 1935, Vol. II, page 950), it was held:

"Motor vehicles, however owned, having a seating capacity of more than five persons, exclusive of the driver, and used

exclusively to transport school children attending any grades embraced within those of a high school or an elementary school or kindergarten, to and from school or to and from any school function, whether the school attended be a public or private school or the school function be one of a public or private school, are exempted from the payment of the annual motor vehicle license tax provided for in Section 6291, General Code."

In view of the above, it would appear that a privately owned school bus, if used exclusively for the transportation of school children to and from schools or school functions, would be exempt from the annual motor vehicle license tax, regardless of whether or not such bus is used for the transportation of public school children to the public schools, or private school children to private schools, or both. In other words, a privately owned bus may be used to transport both public and private school pupils to and from schools or school functions and, if exclusively used for such purpose, the operation of such bus would be exempt from the motor vehicle license tax.

In view of my answer to your first question, it becomes unnecessary for me to consider your question with respect to any additional liability which might be incurred by a board of education when engaged in transporting pupils to a private school.

Respectfully,

THOMAS J. HERBERT
Attorney General.