

In my examination of this abstract of title I noted that under date of June 22, 1912 the Pioneer Pole and Shaft Company, a corporation, being then the owner of the property here in question, conveyed the same by warranty deed to The Farmers Leaf Tobacco Company. The next notation in said abstract of title with respect to this property is a certain deed executed under date of April 21, 1920, by the Receiver of The Troy Tobacco Company, conveying this property to said Milton T. Dilts. There is nothing in the abstract of title to show the connection between The Farmers Leaf Tobacco Company and The Troy Tobacco Company or how the title to this property came to The Troy Tobacco Company by said name, and the abstract of title is in this respect defective. However, an examination of the records in the office of the Secretary of State relating to The Farmers Leaf Tobacco Company shows that in 1914 the name of the said corporation was changed to the Troy Tobacco Company. This indicates, of course, that The Farmers Leaf Tobacco Company and The Troy Tobacco Company are one and the same corporation and obviates the apparent defect in the title indicated by the abstract.

An examination of the warranty deed tendered to the State of Ohio by said Milton T. Dilts shows that the same has been properly executed and acknowledged by him and by his wife, Nannie H. Dilts, and that said deed is in form sufficient to convey to the State of Ohio a fee simple title to the above described property, free and clear of the dower interest of the said Nannie H. Dilts and free and clear of all encumbrances whatsoever.

Encumbrance estimate No. 1009 which has been submitted to me as a part of the files relating to the purchase of this property has been properly executed and shows that the encumbrance therein noted for the purchase of the above described property has been legally made against the maintenance and repair appropriation account. In this connection it is further noted from the certificate over the signature of the president of the controlling board that the amount of money necessary to pay the purchase price of this property has been released by proper action of said controlling board.

I am herewith returning to you with my approval said abstract of title, warranty deed, encumbrance estimate No. 1009 and controlling board certificate.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

---

1643.

SCHOOL BUS DRIVER—CHAUFFEUR'S LICENSE FEE NOT CHARGEABLE TO BOARDS OF EDUCATION—LIABILITY OF SAID DRIVER AND BONDSMEN FOR NON-PERFORMANCE OF CONTRACT WHEN FORMER FAILS TO REGISTER AS CHAUFFEUR.

**SYLLABUS:**

1. *The statutes do not authorize or permit the employer of persons employed to drive publicly owned motor vehicles to pay the fee or expense incident to the registration of those employes as chauffeurs in order to qualify them to drive the said vehicles.*

2. *A person who enters into a contract of employment to drive a motor vehicle for another, or for a public board or body, must qualify himself to drive*

*the said vehicle by becoming registered as a chauffeur, and if he fails to do so and is thereby prevented from carrying out the terms of his contract he is liable to an action in damages for failure to perform his contract according to its terms.*

3. *In case a person who contracts with a school board to drive a motor bus for the transportation of pupils, fails to perform his contract, for the reason that he is not a registered chauffeur and does not become registered as a chauffeur so as to permit him to carry out the terms of his contract, both he and his bondsmen may be held for failure to perform the contract according to its terms.*

COLUMBUS, OHIO, March 20, 1930.

HON. J. D. SEARS, *Prosecuting Attorney, Bucyrus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion in answer to several questions submitted to you by the Board of Education of Holmes-Liberty School District, enclosing therewith letter to you from the said board of education, submitting the questions which they desire to have answered. The letter follows:

"It has just come to our attention that we must require the drivers of our busses and their substitutes to take a physical examination costing two dollars, and a chauffeur's examination costing three dollars. This demand brings to our attention several questions upon which we desire legal advice and request that you write to the Attorney General for an opinion. The questions which we desire to submit are as follows:

1. Who shall stand the expense of these examinations?
2. If the Board of Education shall stand this, how shall it be recorded on the books of the clerk?
3. If the driver, whose contract did not provide for these examinations, refuses to take them, can he be dismissed without the board of education being held liable for the remainder of his wages or salary as provided in the contract?
4. Should the driver quit rather than take the examination, can his bondsman be held responsible to carry out the contract or forfeit the bond?
5. We own our own busses and hire seven student drivers and a mechanic who also drives a bus. We obtain our license numbers free of charge and wonder why our drivers should not likewise be licensed free of charge as the cost of the licensing will eventually come from the tax payers adding to the taxes of the already over-taxed farmers."

There appears to be a gross misunderstanding with respect to the law requiring school bus drivers to be registered with the Secretary of State and become qualified as "chauffeurs" before being permitted to drive motor vehicles used in the transportation of school children. The idea has been advanced that the authorities in insisting that school bus drivers be registered chauffeurs are requiring something that the law does not call for and that the result of their action in this respect is an imposition on the school authorities and the tax payers. One school superintendent writes in:

"From what we can learn, the law pertaining to motor transportation companies is being invoked to apply to school bus drivers."

Such is not the case at all; nor is the requirement that school bus drivers be

registered with the Secretary of State and qualified as chauffeurs something new to the law. This requirement existed as early as 1908, before motor transportation companies were thought of and perhaps before many, if any, school districts transported their pupils by means of motor vehicles. At that time transportation of school pupils, when done at all, was accomplished by horse-drawn vehicles in practically all cases, I dare say, but if in any case motor vehicles were used, the law required that the drivers be registered chauffeurs and the law has been in force at all times since then, although it probably has not been enforced, in most cases, at least. The fact that it has not been enforced, has been due to the oversight of the authorities charged with the duty of enforcing it, and not to the lack of legal authority for enforcing the provisions of law relating thereto.

In 1908, the first general law in the State of Ohio was enacted, providing for the registration and regulation of motor vehicles, (99 O. L. 538). The Act is entitled: "An Act to provide for the registration, identification and regulation of motor vehicles." Section 3 of the Act read as follows:

"The term 'chauffeur' shall mean any person operating a motor vehicle for hire or as the employe of the owner thereof."

Section 17 of the Act provide as follows:

"Every person hereafter desiring to operate a motor vehicle as a chauffeur, shall file in the office of the Secretary of State, upon the payment of the registration fee of two dollars (\$2.00) an application for registration which shall state: The name and address of the applicant, and that he is competent to operate a motor vehicle; the trade name and the kind of motor power of the vehicles or vehicle he is competent to operate; and whether or not the applicant has ever been previously convicted of a violation of any of the provisions of this act, giving the date and place of such conviction, and the provisions of this act violated, if any."

Section 18 and 19 of the Act provided for the manner of registration of chauffeurs by the Secretary of State, after receiving application therefor, and for the issuance by the Secretary of State to each chauffeur of a badge upon which there was to be stamped the words, "Registered chauffeur No.-----, State of Ohio -----", with the registration number inserted thereon, which badge was to be worn by such chauffeur at all times while operating a motor vehicle upon the public roads or highways of the State.

From the foregoing, it is clear that if a board of education provided for the transportation of school pupils by a motor bus after the above Act was passed, the driver of such motor bus would be an employe for hire, and would necessarily be required to comply with the law with reference to registration, as stated above.

Although the act providing for the registration and regulation of motor vehicles has been amended in some particulars, a great many times since 1908, the provision with reference to "chauffeurs" has been changed but little, except that they are now required before being registered to pass an examination as to their qualifications and it is provided in Section 6302, General Code, that that examination shall be, "such examination as to qualifications as the Secretary of State shall require."

The definition of the word "chauffeur" which is practically the same as that contained in the Act of 1908, above referred to, is now found in Section 6290, General Code, and the provision for examination and registration is contained in

Section 6302, General Code, which provides, among other things, that, "no chauffeur's certificate of registration shall be issued to any person under sixteen years of age."

The law with reference to this subject is too clear to admit of controversy, and I am at a loss to understand how anyone could have conceived the idea that an attempt was being made to invoke the law pertaining to motor transportation companies and apply it to school bus drivers.

The law requiring operators of vehicles used by motor transportation companies to be registered and qualified as chauffeurs is contained in Section 614-97, General Code, and was not enacted until 1923. It will be observed from the provisions of Section 614-97, General Code, that it is unlawful for any motor transportation company to cause, allow or permit any motor propelled vehicle operated by it as a motor transportation company to be driven by any person under the age of twenty-one years, and that each such person must be a registered chauffeur, as provided by Section 6302, General Code, in so far as the same may be applicable. The provisions of this section, however, have no application or pertinency to the provisions of law with respect to the drivers of school busses, who, it will be observed, may be employed under certain circumstances as young as sixteen years of age, as will appear upon examination of Section 7731-3, General Code, hereinafter referred to.

In 1921, when the use of motor vehicles for the transportation of school children became quite general, the Legislature realizing the dangers incident to such transportation and probably with appreciation of the fact that the law with reference to registered chauffeurs was not being generally enforced, provided by Section 7731-3, General Code, specially for the safeguarding of the transportation of school children, by requiring in addition to the provisions of law with reference to registered chauffeurs that the drivers of such vehicles should give a bond and receive a certificate from the county board of education of the county where he is employed or from the superintendent of schools, in a city school district, certifying that the person was of good moral character and was qualified for such position.

We must presume, at least, that the legislature at the time of the enactment of Section 7731-3, General Code, knew of the provisions of law with reference to the registration of chauffeurs and the requirement that all drivers of motor vehicles for hire must be registered chauffeurs and probably knew of the lack of enforcement of those provisions of law, and therefore provided specially for the qualification of motor bus drivers who drove motor vehicles in the transportation of school pupils. The Legislature did not, however, at that time, exempt school bus drivers from the other provisions of law then in force, but merely provided additional qualifications by the enactment of Section 7731-3, General Code.

It is clear, from the law, that persons who desire to become employes to drive school busses, must qualify themselves as such, and of course pay the necessary fee for such qualification. Without discussing the subject in further detail, it is sufficient to refer to two former opinions of this office which are enclosed herewith. Opinion No. 1443, rendered under date of January 24, 1930, holds as follows:

"1. An operator of a school bus used to transport pupils to and from a schoolhouse is a chauffeur within the meaning of Section 6290, General Code, and should be registered after having made application and successfully passed an examination as to qualifications as set forth in Section 6302, General Code.

2. Any person who is employed for the purpose of operating a motor vehicle, and so operates a motor vehicle must be registered as a chauffeur."

In a later opinion,, No. 1551, rendered under date of February 24, 1930, it is held, as stated in the syllabus:

"1. Persons employed by a board of education to drive a school wagon or motor van for the transportation of school pupils must be duly registered as a 'chauffeur' after making application therefor and successfully passing an examination as to his qualifications, in the manner provided in Section 6302, General Code.

2. A board of education is not authorized or permitted by law to pay the fee which must be paid for a chauffeur's license to properly qualify a person for employment by the board as a driver of a school wagon or motor van used in the transportation of pupils."

Inasmuch as this law has been somewhat neglected in the past, many boards of education now find themselves with contracts for the transportation of pupils in which it is not provided that the drivers be registered as chauffeurs. Some boards of education which own their own busses have contracted with drivers for the operation of those busses and are at this time in the midst of a school year with contracts of this kind covering the entire year. Inasmuch as persons who are not registered chauffeurs may not lawfully be permitted to drive motor vehicles for hire, anyone who contracts to drive a motor vehicle for another, and is not qualified to do so because he has not been registered as a chauffeur, and who does not become qualified so that he can perform his contract, is liable to an action in damages for failure to carry out his contract according to its terms. If he has given a bond, conditioned to faithfully perform his contract and he fails to perform it because of his not being qualified to do so, or does not become qualified to do so, his bondsmen are liable on the bond.

Complaint is made that by requiring school bus drivers to comply with the law with reference to being registered as chauffeurs the tax payers are burdened with the cost of procuring those licenses because, in the last analysis, the school board pays that cost even though the person himself pays it in the first place in order to become qualified. That is no doubt true, but it would seem that the protection afforded by the securing of competent drivers greatly exceeds the additional cost, and if there is anything for which money may be well spent, it certainly is for the protection of school children while being transported to school. There are no doubt individual instances, and perhaps many of them, where un-registered chauffeurs would be as safe, and perhaps safer, than those who are registered, but that does not change the law or prove that by a consistent enforcement of the law much improvement will not be made, in the aggregate, in the care exercised in the transportation of school pupils.

In specific answer to the questions submitted to you by Holmes-Liberty Board of Education, in the order asked, I am of the opinion that:

First, the expense of registering chauffeurs who are employed to drive school busses must be met by the drivers themselves, who must qualify themselves before they may be lawfully employed, just as a school teacher must be certificated before he is qualified to teach, and no one would expect a board of education to pay the fee which a person must pay to secure a teacher's certificate when hiring a teacher.

Second, in view of the answer to the first question, the second question needs no answer.

Third, a person who contracts with a school board to drive a motor vehicle for the transportation of pupils, who is not a registered chauffeur and who refuses to take the examination to become qualified to carry out his contract may be dismissed by the board without incurring any liability on account of such dismissal.

Fourth, if a person contracts with a school board to drive a motor vehicle for the transportation of school pupils and he is not qualified to perform his contract for the reason that he is not a registered chauffeur, and does not become qualified by becoming registered as a chauffeur, his bondsmen may be held in damages for his failure to perform his contract according to its terms.

Fifth, it is provided in Section 6295, General Code, that publicly owned and operated motor vehicles used exclusively for public purposes shall be registered without charge. For that reason, a school board that owns its own school busses and uses them for no other purpose than for transporting school pupils, may have those busses registered without charge. There is no similar or analogous provision of law with reference to chauffeurs who operate publicly owned motor vehicles. Such chauffeurs must become registered as such, to qualify them to drive publicly owned motor vehicles, and there is no authority for the employer if he be a public officer or public board to pay the fee for the registration of chauffeurs who are hired to drive the publicly owned motor vehicles.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1644.

CHAUFFEUR—LICENSE AND PHYSICIAN'S FEES FOR SUCH EMPLOYEES NOT CHARGEABLE TO BOARD OF EDUCATION, TOWNSHIP TRUSTEES OR COUNTY COMMISSIONERS.

*SYLLABUS:*

*There is no authority of law for a board of education, a board of trustees of a township, or the county commissioners of a county to pay the fees and incidental expenses of employes of such boards who must necessarily be registered as "chauffeurs" or to reimburse such persons for the fees and expenses paid by them to become so registered.*

COLUMBUS, OHIO, March 20, 1930.

HON. PAUL J. WORTMAN, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, as follows:

"Pursuant to our conversation and following your opinion No. 1443 dated January 24, 1930, a copy of which you so kindly enclosed me, will you give us your opinion as to whether or not a school board, board of trustees of a township, or the county commissioners of a county may pay the license fee required for a chauffeur's license, together with whatever fee may be charged by a physician for the required medical examination. Also, as to whether or not, if such chauffeur has paid such fees he can be reimbursed by such boards."

Inasmuch as boards of trustees of townships, county commissioners of counties, and boards of education are public boards created by statute, and have such powers only, as are expressly granted to them by statute or necessarily included within such express grants in order to carry the express grants of power to fruition, it becomes