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VEHICLE FOR TRANSPORTATION, SCHOOL CHILDREN—DRIVER OR PERSON WHO ACTUALLY OPERATES SUCH VEHICLE REQUIRED TO GIVE SUFFICIENT AND SATISFACTORY BOND—REQUIREMENT IF DRIVER EMPLOYED DIRECTLY BY BOARD OF EDUCATION OR BY CONTRACTOR OF BOARD WHO CONTRACTED TO TRANSPORT BY MEANS OF ONE OR MORE VEHICLES—SECTION 7731-3 G. C.

SYLLABUS:

The driver or person who actually operates a vehicle for the transportation of school children should give a sufficient and satisfactory bond as required by the provisions of Section 7731-3, General Code, whether or not the said driver is employed directly by the board of education or by a contractor of the board who has contracted to furnish transportation by means of one or more vehicles.

Columbus, Ohio, February 11, 1943.

Mr. Charters D. Maple, Acting Prosecuting Attorney,
Warren County, Lebanon, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

“The Board of Education of the Lebanon Village School District desires me to ask you whether or not under section 7731-3 they would be required to have bonds from the drivers of school buses.

The facts are these. The Board of Education has contracts for transportation with several individuals, some having one bus, some having two buses, and one having six buses, but said Board has no contracts with anyone, nor is anyone employed as a driver of a school bus. The contracting parties furnish a \$500.00 bond for performance of their contract for transportation for each bus that is figured in the contract, but no bond is had of the drivers, nor does the Board of Education have anything to do with hiring them, except that the individuals must meet with the approval of the superintendent, have a chauffeur's license, and pass a physical examination.

Is this sufficient under the above numbered section?”

The pertinent portion of Section 7731-3, General Code wherein is set out the qualifications of school bus drivers, reads as follows :

“When transportation is furnished in city, rural or village school districts no one shall be employed as driver of a school wagon or motor van who has not given satisfactory and sufficient bond and who has not received a certificate from the county board of education of the county in which he is to be employed or in a city district, from the superintendent of schools certifying that such person is at least twenty-one years of age and is of good moral character and is qualified physically and otherwise for such position.”

The language of the above statute seems clear in that it expressly prohibits the employment of anyone as the driver of a conveyance used for the transportation of school children unless he gives a satisfactory and sufficient bond as well as being qualified in other respects as to certification by the proper authorities as to his age and physical and moral fitness as provided by the statute. No limitation or exception is contained in the statute with respect to who employs the driver, whether it be the board of education or a contractor of the board. There can be no doubt that the word “driver” as used in the statute is meant to be the individual who exercises actual physical control of the vehicle. The language used by the legislature, when analyzed grammatically is susceptible of no other construction. Had it been meant to refer to a contractor of the board of education who simply agrees to provide transportation without any reference to who is to be in actual physical control of the vehicle, it would no doubt have been so provided as the two terms are in common use and are often applied to such definite situations. A contractor who agrees to furnish more than one bus obviously could not be the driver or physical operator of more than one. His contract may call for his actual operation of one bus, if he consents to furnish several, in which case he of course would be required to meet the requirements of the statute as to giving bond and furnishing a proper certificate as to age and physical and moral fitness the same as those who are placed by him in physical control of the others. If his contract, whereby he simply agrees to furnish transportation by means of one or more vehicles does not provide for him to operate one of them and he does not do so, he is not required to give a bond or furnish the certificate of age and physical and moral fitness so far as this statute is concerned, at least. In such cases it would not be customary at least, to refer to him as a “driver” and I have no knowledge of its ever having been so done either in the law or in ordinary parlance and I do not think the General Assembly meant to use the word in that sense in the statute here under consideration.

The distinction between a driver of a school conveyance and a contractor for such transportation was considered at some length in an opinion of a former Attorney General, which opinion appears in the published Opinions of the Attorney General for 1933, at page 473. See also, Opinions of the Attorney General for 1933, page 2025.

The question here involved was considered by the then Attorney General in 1928, which opinion will be found in the Opinions of the Attorney General for that year, at page 211. The first branch of the syllabus of that opinion reads as follows:

“The driver of a school wagon or motor van used in the transportation to and from a public school is required to execute a bond conditioned upon the faithful discharge of his duties as such driver.”

In the course of the opinion, on page 213, the Attorney General, after quoting the statute, Section 7731-3, General Code, said:

“It will be observed that the statute provides that the drivers of school wagons or motor vans used in the transportation of pupils must give a bond. This requirement applies, whether the school district owns the wagon or van and employs a driver, or whether the transportation of pupils is provided for by contract and the contractor employs the driver. In either case the driver of the wagon or van must give a bond as required by statute.”

I am therefore of the opinion in specific answer to your question that the driver or person who actually operates a vehicle for the transportation of school children should give a sufficient and satisfactory bond as required by the provisions of Section 7731-3, General Code, whether or not the said driver is employed directly by the board of education or by a contractor of the board who has contracted to furnish transportation by means of one or more vehicles.

Respectfully,

THOMAS J. HERBERT,
Attorney General.