

Summarizing, it is my opinion that:

1. If the Department of Liquor Control fixes the retail selling price for wine, as provided by section 6064-8, General Code, the price so fixed determines the amount of wine tax stamps which must be affixed to the container of wine as required by section 6064-41, General Code. In the event the Department of Liquor Control does not fix the retail selling price for wine as required by law, the actual selling price received by a retailer at the time of sale determines the amount of wine tax stamps that must be affixed to the container of wine.

2. By virtue of the provisions contained in sections 6064-42 and 6212-49e, General Code, the Treasurer of the State of Ohio can make a refund for unused or spoiled wine tax stamps to a purchaser of such stamps, from moneys appropriated by the legislature for such purposes.

Wine tax stamps which, after being affixed to a container and cancelled as required by law, are removed by the retailer of wine before the container of wine is sold, because the selling price as fixed by the retailer, where the Department of Liquor Control has failed to fix a retail selling price, is lower at the time of sale than at the time the stamps were affixed, may be redeemed by the Treasurer of State as unused stamps.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

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4500.

BOARD OF EDUCATION—REGISTRATION OF SCHOOL BUSES—DRIVER MUST BE REGISTERED AS CHAUFFEUR—SCHOOL BUSES EXEMPT FROM MOTOR VEHICLE LICENSE TAX—PHYSICAL EXAMINATION OF SCHOOL BUS DRIVERS.

*SYLLABUS:*

1. *A person employed by a board of education to drive a motor vehicle for the transportation of school children to and from school must be duly registered as a chauffeur, in accordance with Section 6302, General Code.*

2. *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.*

3. *All school busses as defined by Section 6295-1, General Code, should be registered in the manner provided for by Section 6294, and Section 6298; General Code, without the payment of the annual license tax as fixed by Section 6291, General Code.*

4. *Upon the registration of a school bus, as defined in Section 6295-1, General Code, the Registrar of Motor Vehicles or his deputy, as the case may be, should assign to such vehicle a distinctive number and issue to the owner a certificate of registration and two number plates, in accordance with the provisions of Section 6298, General Code, without exacting the payment of the annual license tax provided for by Section 6291, General Code.*

5. *The physical examination to determine the physical fitness of school bus drivers, spoken of in Section 7731-3, General Code, as amended by the 91st General Assembly, is to be provided for by local boards of education for all such drivers in districts of a county school district, and by the superintendent of schools in other districts.*

COLUMBUS, OHIO, August 2, 1935.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

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

“Following the recent enactment of H. B. #232 known as the Whitney Bill, the following questions have been formulated upon which we would like to have opinions rendered:

1. Is it necessary for a school bus driver to obtain a chauffeur's license in accord with Section 6302 of the General Code, in view of House Bill No. 232?

2. Does the term ‘school bus’, as defined in Section two of House Bill #232 include all school busses or only those transporting to and from public schools?

3. In view of Section two of House Bill #232, will school busses be required to be registered with the Bureau of Motor Vehicles even though they are not required to pay the annual license tax?

4. If the answer to number three is in the affirmative, may the Bureau of Motor Vehicles issue gratis license plates for such school busses?

5. Will you please interpret for us, ‘the local board of education or the superintendent, as the case may be, shall provide for a physical examination of each driver.’ Our question is: In county

districts, who is the local board of education, and who is the superintendent?"

Your questions will be taken up in the order asked.

1. This question is answered in my opinion No. 4447 rendered under date of July 22, 1935, and addressed to Sam L. Summers, Prosecuting Attorney of Portage County, Ravenna, Ohio. It is there held:

"A person employed by a board of education to drive a motor vehicle for the transportation of school children to and from school must be duly registered as a chauffeur, in accordance with Section 6302, General Code."

2. Section 6295-1, General Code, as enacted in House Bill No. 232, of the 91st General Assembly, effective September 5, 1935, reads 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."

Section 6291, General Code, referred to in the above statute, levies an annual license tax upon the operation of motor vehicles on the public roads and highways of this state. The rate of such taxation is fixed by Section 6292, General Code. Section 6294, General Code, provides in substance, that every motor vehicle which shall be operated or driven on the public roads or highways of this state shall be registered with the Registrar of Motor Vehicles. It will be observed that Section 6295-1, supra, exempts certain vehicles "however owned," from the payment of the tax levied by Section 6291, General Code. Former Section 6295, General Code, exempted "publicly owned and operated motor vehicles used exclusively for public purposes" from the payment of the said annual license tax and in terms provided that such vehicles should be registered as provided by Section 6294, General Code, "without charge of any kind." Said Section 6295, General Code, as amended in House Bill No. 112 of the 91st General Assembly, effective January 1, 1936, provides that "motor vehicles, the title to which is in the state or any political subdivision thereof and used exclusively for public purposes shall be registered \* \* without charge of any kind."

The question presented here, is whether or not it is the intent of the law to exempt from the payment of the annual motor vehicle license tax all

conveyances having a seating capacity of more than five persons, exclusive of the driver, used exclusively for the transportation of school children to and from school or school functions, regardless of the type or kind of school or school functions; in other words, whether or not the exemption applies only to conveyances of the type mentioned, used for the transportation of school children to and from the public schools and to and from public school functions. The question is purely one of statutory construction. All authorities agree that the intent of the law is the essence of the law and that the primary rule and purpose of interpretation or construction is to ascertain and give effect to the intent of the lawmakers who enacted the law. It is said that the intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained. Courts do not make laws, but interpret them and enforce them as they are found. *Ludlow vs. Johnston*, 5 Ohio, 553; *Henry vs. Trustees*, 48 O. S. 671; *Logan Natural Gas and Fuel Company vs. Chillicothe*, 65 O. S., 186. How this intention is to be ascertained is answered by the principles and rules of exposition. If a statute is plain, certain and unambiguous, so that no doubt arises from its own terms as to its scope and meaning, a bare reading suffices and an interpretation is needless.

The Supreme Court of this state stated this principle in an early case and it has been referred to and applied in many later cases. In *McCormick vs. Alexander*, 2 Ohio, 65 (1825) it is said:

“If the language of the statute is unambiguous there is no room for construction.”

In *Slingluff vs. Weaver et al.*, 66 O. S., 621, it is stated:

“But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.”

Without further comment, it must be conceded that the terms of Section 6295-1, General Code, are clear, forthright and unambiguous, if we can be satisfied as to the intent to be accorded to the words “school children,” “school”, and “school functions” as used in this statute. In determining the intent of the legislature in the use of the words in the statute we cannot read the legislators’ minds or determine their motives nor in fact, would we be

justified in doing so if it were possible. We must content ourselves with taking the words as we find them and construing them with an eye single to what the legislature said and not what it might have meant to say, without the aid in this case of anything that can be gathered from the context itself, is history, the contemporaneous circumstances leading to its enactment or speculation as to the situation which it might have been designed to remedy.

The words "school children", "school" and "school functions" are in common use, and as so used, are not confined exclusively to public schools and the children attending public schools. They have not been accorded a technical meaning by either the courts of this state or by the legislature. In many statutes the term "public school" is used where its operation is to be confined exclusively to public schools and in others the context shows conclusively that public schools are meant. It would serve no purpose to detail the numerous statutes where this occurs. Had the legislature intended this statute to apply to conveyances for the transportation of public school children only, it of course could have easily said so, but I do not regard that fact as conclusive. It is of some significance, however.

A general rule of statutory interpretation of words and phrases used in a statute is stated in Lewis' Sutherland Statutory Construction, 2nd Ed., Sec. 389, as follows:

"Primarily—that is, in the absence of anything in the context to the contrary—common or popular words are to be understood in a popular sense. \* \* It is a familiar rule of construction alike dictated by authority and common sense that common words are to be extended to all the objects which in their usual acceptance they describe or denote."

The rule is well settled in this state that the ordinary and natural import of words consistent with the common sense of the community is to be adopted in arriving at the legislative intent. *Allen vs. Little*, 5 Ohio, 65; *State vs. Peck*, 25 O. S., 26; *Norris vs. State*, 25 O. S., 217.

No one will deny that in common everyday usage the term "school children" is not limited to children attending the public schools or that the word "school" is not used when reference is made to private schools as well as public schools. Moreover, private schools have recognition in the law, and such schools when inspected and approved by the Director of Education have a standing similar to public schools. (Sections 7651 and 7763-1, General Code.) Annual reports to the Superintendent of Public Instruction are required from such schools (Section 359, General Code); and attendance at private schools satisfies the requirements of the compulsory school laws of this state. (Sections 7762-6 and 7763, General Code.)

It is significant, although perhaps not of controlling importance, that in

other statutes confined solely to the transportation of children to and from public schools, the vehicle to be used in such transportation is spoken of as a "school wagon or motor van" instead of a "school bus." This expression is used in Section 7731-3, General Code, which was enacted in the same act of the legislature in which Section 6295-1, General Code, here under consideration, was enacted. Section 7731-3, General Code, relates to the qualifications of the drivers of conveyances for the transportation of children to and from public schools. Such conveyances are referred to in the statute as "school wagons or motor vans" although the title of the act refers to these drivers as "school bus drivers."

The expression "school wagon or motor van" is also used in Section 7731-5, General Code, enacted in 1933. This statute provides for liability and property damage insurance for conveyances used in the transportation of children to and from public schools.

The only other statutes in this state in which the term "school bus" appears are Sections 12604, 12604-1, 12604-2 and 12604-3, General Code, which statutes contain certain regulatory measures as to the operation of school busses on the public highways, and Sections 614-84 and 614-103, General Code, which define "motor transportation companies" and "private motor carriers" which are subject to regulation by the Public Utilities Commission.

Said Sections 12604, et seq. were enacted in 1933, by act of the legislature entitled, "An Act requiring vehicles to come to a complete stop when approaching school busses receiving or discharging passengers." In Section 12604, General Code, the term "school bus" is defined very much the same as it is defined in Section 6295-1, General Code, as follows:

"The term school bus when used in this act shall mean any vehicle being used to convey children to and from school and which is marked in front and rear with the words 'school bus' in plain lettering readable in daylight at a distance of at least two hundred feet from such vehicle."

Although there has been no judicial pronouncement on the question so far as reported decisions are concerned, it is a fact that since the enactment of the said law police officers and persons generally, have regarded the statute as applying to conveyances transporting pupils to private schools as well as to public schools. I am also informed that administrative officers in charge of the administration of the laws relating to public utilities have regarded the term "school bus" as used in Sections 614-84 and 614-103, General Code, to include those conveyances transporting school pupils to private schools as well as those transporting school children to public schools.

In Lewis' Sutherland Statutory Construction, 2nd Ed., Sec. 358, it is said:

“The legislature cannot authoritatively declare what the law is or has been; that is a judicial function and appertains to the courts. The legislature has exclusively the power to make laws, and thus declare what the law shall be. A legislative construction of a statute is entitled to consideration and will often have much weight. In cases of doubt and uncertainty the solemn declaration of the legislative branch of the government, or practical construction by the executive department, gives a certain sanction, and will be influential with the courts. So the meaning of particular words in a recent statute will have weight; and their meaning may be inferred from earlier statutes in which the same words or language has been used, where the intent was more obvious or had been judicially established. The words of a statute, if of common use, are to be taken in their natural, plain, obvious and ordinary signification; \*\*”

The word “school” as I have heretofore noted, in popular usage denotes such institutions as provide instruction to pupils whether they be public or private institutions, and the term “school children” is popularly used to describe those who attend some school, whether public or private. Webster defines the word “school” as, “An institution of learning of lower grade than a college or university—a place of primary instruction.” In *Ruling Case Law*, Vol. 24, page 556, it is said:

“A school, in the ordinary acceptance of the word is a place where instruction is imparted to the young. \* \* The word ‘school’ is a generic term, and in its broad sense must be held to include all schools or institutions, whether of high or low degree. \* \* So the word ‘school’ as used in constitutional and statutory enactments has been frequently defined by the courts as referring only to the public common schools generally established throughout the United States and usually known as the ‘common schools’ of the country. \* \* Similarly, the words ‘school children’ have been held to be limited to scholars in the lower grades but the word ‘pupils’ is of broader significance and includes scholars in advanced institutions as well. \* \* In the broad sense of the word ‘school’ includes private as well as public institutions of learning.”

Courts of other states have in some instances, limited the meaning of the word “school” as used in the Constitution and statutes, to public schools as stated in *Ruling Case Law*, supra. An examination of these cases, however, discloses that in almost every instance either the context of the statute or the inevitable result of the application of pertinent rules of statutory construction led the court to the conclusion reached. In the instant case I find no justification for limiting the words “school busses” as used in Section 6295-1,

General Code, to conveyances used for the transportation of school children to and from public schools. Because of the use of the words "school children" in the statute, the term "school busses" should not be extended to include conveyances that might be used in the transportation of adults to and from institutions of higher learning or those of a higher grade than what are commonly intended to be elementary and high schools.

3. It will be observed that under the terms of Section 6295-1, General Code, supra, as enacted in Section 2 of House Bill No. 232 of the 91st General Assembly, no annual motor vehicle license tax as levied by Section 6291, General Code, need be paid for school busses as defined in the statute. This statute does not exempt such vehicles from registration as provided by Sections 6294 and 6298, General Code. Said Section 6294, General Code, provides that *every* owner of a motor vehicle and *every* person mentioned as owner in the last certificate of title, bill of sale or sworn statement of ownership of a motor vehicle which shall be operated or driven upon the public roads or highways of this state shall file a written application for registration of the vehicle. This statute details what the application shall contain. Section 6298, General Code, provides that upon the filing of the application and the payment of the annual motor vehicle license tax the Registrar of Motor Vehicles, or his Deputy with whom the application is filed, shall assign to such motor vehicles a distinctive number and issue to the owner a certificate of registration and two number plates in duplicate, except in the case of trailers.

There is no language in Section 6295-1, General Code, that exempts the owner of a school bus from filing the application for registration as provided for by Section 6294, General Code, or excuses the registrar of motor vehicles or his deputy, as the case may be, from issuing to the owner a certificate of registration and distinctive number plates upon the receipt of such an application. This statute merely exempts the payment of the license tax and it therefore follows that the application for registration should be filed and certification of registration and number plates issued the same as for other vehicles for which the law requires the payment of the annual license tax.

4. Your fourth question is answered in number 3, above.

5. As pertinent to your fifth question, Section 7731-3, General Code, as enacted in House Bill No. 232 of the 91st General Assembly, 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 quali-

fied physically and otherwise for such position. The local board of education or the superintendent, as the case may be, shall provide for a physical examination of each driver to ascertain his physical fitness for the employment; said board or superintendent shall choose the examining physician; and, said examination shall be the only one necessary for a driver to pass. Any certificate may be revoked by the authority granting the same on proof that the holder thereof has been guilty of improper conduct or of neglect of duty and the said driver's contract shall be thereby terminated and rendered null and void."

From the terms of the above statute it appears that the certificate spoken of is to be issued by the county board of education for drivers of school busses in districts of a county school district and by the superintendent of schools in city districts. It further provides that the local board of education or the superintendent, *as the case may be*, shall provide for a physical examination for each driver, to ascertain his physical fitness for the employment, and it seems clear that the intention of the law is that the superintendent of schools in districts other than those of a county school district shall provide for the physical examination spoken of and that the local board of education shall provide for this examination in districts under the control of the county board of education. As a matter of fact, the law makes no provision for a superintendent of schools in districts of a county school district. See *Lee vs. Brewster*, 29 O. N. P., N. S., 134.

In specific answer to your questions, I am of the opinion:

1. A person employed by a board of education to drive a motor vehicle for the transportation of school children to and from school must be duly registered as a chauffeur, in accordance with Section 6302, General Code.

2. 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.

3. All school busses as defined by Section 6295-1, General Code, should be registered in the manner provided for by Section 6294 and Section 6298, General Code, without the payment of the annual license tax as fixed by Section 6291, General Code.

4. Upon the registration of a school bus, as defined in Section 6295-1, General Code, the Registrar of Motor Vehicles or his deputy, as the case may be, should assign to such vehicle a distinctive number and issue to the owner

a certificate of registration and two number plates, in accordance with the provisions of Section 6298, General Code, without exacting the payment of the annual license tax provided for by Section 6291, General Code.

5. The physical examination to determine the physical fitness of school bus drivers, spoken of in Section 7731-3, General Code, as amended by the 91st General Assembly, is to be provided for by local boards of education for all such drivers in districts of a county school district, and by the superintendent of schools in other districts.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4501.

APPROVAL, NOTES OF SPRINGFIELD RURAL SCHOOL DISTRICT, SUMMIT COUNTY, OHIO, \$11,538.00.

COLUMBUS, OHIO, August 2, 1935.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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4502.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTORS—JOHN W. TAYLOR AND CHARLES BONFIELD.

COLUMBUS, OHIO, August 3, 1935.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted two bonds, each in the penal sum of \$5,000.00, with sureties as indicated, to cover the faithful performance of the duties of the officials as hereinafter listed:

John W. Taylor, Resident District Deputy Director in Mahoning County—The American Bonding Company of Baltimore.

Charles Bonfield, Resident District Deputy Director in Hamilton County—United States Fidelity and Guaranty Company.