

1371.

## OHIO STATE PUBLIC SCHOOL EMPLOYES RETIREMENT SYSTEM—SCHOOL BUS DRIVER—WHO OWNS EQUIPMENT—RELATION TO BOARD OF EDUCATION—SPECIFIC CONTRACT—RENTALS—JOINT OWNERSHIP.

## SYLLABUS:

1. *The eligibility for membership in the State Public School Employes Retirement System, of a school bus driver who owns his own equipment and under contract to transport pupils for a board of education depends wholly upon whether or not the relationship existing between the board of education and the bus driver is that of employer and employe, and can only be determined by the terms and conditions of the specific contract existing between the board of education and the bus driver.*

*Where a board of education enters into a contract with a bus driver, whereby the bus driver is to furnish the bus and transport a certain number of pupils to and from school over certain designated routes, such bus driver is an "employe," and eligible to membership in the State Public School Employes' Retirement System, if the terms and conditions of the contract are such: that the bus driver cannot perform the work of transporting the pupils according to his own ideas, but, is subject to the orders, control and supervision of the board of education as to the mode and manner of performing the work of transporting the pupils; and that, he must submit to, and be guided by, the direction of the board of education as to the details of transporting the pupils and cannot refuse to obey such directions. If, however, the terms and conditions of the contract are such, that the bus driver may, in accordance with the specifications as to route, time and number of pupils set forth in the contract, perform the work of transporting the pupils and all details thereof, according to his own ideas, without being subject to the orders or control of the board of education as to the mode and manner of transporting the pupils, and the board of education has not reserved any supervision over the bus driver while performing the work, except to ascertain whether or not he is performing the work of transporting the pupils in accordance with the specifications set forth in the contract as to time, number of pupils and route, then said bus driver may be said to be an independent contractor and not eligible to membership in the State Public School Employes' Retirement System.*

2. *The question of whether or not a driver, who is employed by an owner of a bus who has rented his bus to a board of education, is eligible to membership in the State Public School Employes' Retirement System, depends upon whether or not the owner of the bus by the terms*

*of the contract existing between the board of education and the owner, is an employe of the board of education.*

*If the terms and conditions of the contract between the board of education and the owner of the bus are such, that the board of education is to furnish to the owner the said rented bus and in the operation of the same he is subject to the control and supervision of the board of education, the owner of the bus is an employe of the board of education, and the driver also being subject to the control and supervision of the board of education in the operation of said school bus, is an employe of the board of education, and thereby eligible to membership in the State Public School Employes' Retirement System.*

*If by the terms and conditions of the contract between the board of education and the owner of the bus, the board of education is to furnish to the owner of the bus the bus it has rented from him, and in the operation of the bus in transporting pupils the owner of the bus is not subject to the control and supervision of the board of education, and, the relationship existing between the board and owner of the bus, is that of independent contractor, then the driver employed by such owner of the bus is not an employe of the board of education, and thereby not entitled to membership in the State Public School Employes' Retirement System.*

3. *The question of whether or not a bus driver, who owns the bus equipment jointly with the board of education, is eligible to membership in the State Public School Employes' Retirement System depends upon whether the relationship between him and the board is that of employer and employe. This can only be determined by the terms and conditions of the specific contract existing between the board of education and the driver. The joint ownership of the bus is not a vital factor in determining the existing relationship.*

COLUMBUS, OHIO, October 26, 1937.

*Ohio State Public School Employes' Retirement System, Room 508, Ohio State Savings Building, Columbus, Ohio.*

GENTLEMEN: This will acknowledge receipt of your recent communication which reads as follows:

"In many school districts in the state of Ohio children are transported to and from school on a contract basis. In the administration of the Retirement System we are confronted with questions on eligibility for membership.

The following questions arise in regard to bus drivers:

1. Is a bus driver who owns his own equipment and is under contract to distribute pupils for a board of education, eligible for membership in the Retirement System?

2. If a board of education rents several busses from an owner and he in turn employs drivers, will they be eligible for membership?

3. In case there is a joint ownership of bus equipment between the driver and the board of education, is the driver eligible for membership?"

Boards of education, being public agencies employed in administering the public school system of the state, are required to provide adequate school privileges for all public school children. In order that all pupils may secure these adequate school privileges, Section 7731, General Code, places a mandatory duty on boards of education under certain circumstances, "to provide transportation for such pupils to and from school." However, there is no provision in the law requiring a board of education to furnish this transportation by means of busses owned by the board of education, or by contracting for privately owned school bus transportation service. Subsection (d) of Section 7595-1c, General Code, provides as follows:

"(d) For districts in which transportation of pupils is necessary, an amount equal to the approved cost of such transportation service which shall be in addition to the amounts specified in paragraphs (a) and (b) or (c) of this section.

The director of education shall prescribe regulations governing methods and means of transportation and shall make recommendations as to the cost of foundation programs for pupil transportation in districts in which transportation is deemed necessary. The effects of sparsity of population and of other conditions reasonably beyond the control of the board of education of the school district shall be considered in the determination of such transportation costs. The costs of transportation in all instances shall be determined and fixed by the local boards of education, but not to exceed that recommended by the director of education."

It is to be observed from the provisions of this subsection *supra*:— that, the director of education shall prescribe regulations governing methods and means of transportation; and that, the cost of transportation shall be determined and fixed by the local board of education, not to exceed that recommended by the director of education. I am advised

that the director of education has not prescribed any regulations as to mode, method or means of transportation. Therefore, it is entirely within the discretion of a board of education to determine whether to purchase its own busses and contract with drivers to operate same, or to contract for privately owned school bus transportation. Whichever method the board of education employs to provide for transportation service, it creates either the relationship of master and servant, or independent contractor.

It is well to observe at this time, that, "the words 'employer' and 'employee' are the outgrowth of the old terms 'master' and 'servant'." 26 O. J., 148, Section 2.

The eligibility for membership in the "State Public School Employes' Retirement System", of a school bus driver who owns his own equipment and is under contract to transport pupils for a board of education, depends wholly upon whether or not he is an "employee", as defined in Section 7896-64, General Code, which reads in part, as follows:

"The following words and phrases as used in this act, unless a different meaning is plainly required by the context, shall have the following meanings:

'Employee' shall mean any person regularly employed in the public schools of the State of Ohio other than members of the state teachers' retirement system or any other retirement system established under the laws of this state; and any employe, not a member of the state teachers' retirement system, or of any other retirement system established under the laws of this state, in any school or college or other institution wholly controlled and managed, and wholly or partly supported by the state or any subdivision thereof, the board of trustees or other managing body of which shall accept the requirements and obligations of this act. In all cases of doubt the retirement board shall determine whether any person is an employe, as defined in this paragraph, and its decision shall be final."

In an opinion rendered by a former Attorney General, in Opinions of the Attorney General for 1933, Volume I, page 473, a question of a similar nature was discussed, in regard to whether or not a bus driver who owned a school bus and was hired by a board of education, was an "employee" within the meaning of that term as used in Section 1465-61, General Code, a section of the Workmen's Compensation Act. In that opinion it was held:

"1. The relation existing between the board of education

and the bus driver under contract for the transportation of pupils must be determined by the terms of the specific contract, whether employe or independent contractor. Where the relationship of independent contractor exists between the board of education and the person contracting for the transportation of the pupils, the amount paid the independent contractor should not be included in the amount expended for services of employes, as required in the report in Section 1465-65, General Code."

Likewise, in Opinions of the Attorney General for 1933, Volume III, page 2025, it was held:

"It is a question of fact to be determined by the terms of the specific contract whether or not the relationship existing between the board of education and the bus driver, is that of employer and employe, or independent contractor."

The first question contained in your request does not set up any facts whereby it can be determined whether the bus driver referred to; is an "employe" or an "independent contractor." It merely states that a contract "to distribute pupils" exists between the board of education and the bus driver, and that, the bus driver "owns his own equipment." The fact that a contract was entered into between the bus driver and the board of education, is not a determinative factor. A contractual relationship exists in case of either master and servant or independent contractor. In the case of *Snodgrass, Admr. vs. The Cleveland Co-operative Coal Company*, 31 O. A., 470, at page 480, it was said:

"The term 'independent contractor' presupposes the existence of a binding contract between the parties, for a breach of which a cause of action arises. There can be no relationship of 'independent contractor' without the existence of such binding contract between the parties."

The relationship of master and servant ordinarily arises out of a contract for hire, oral or written. In an opinion rendered by a former Attorney General, Opinions of the Attorney General for the year 1928, Volume I, page 665, it was said:

"The term 'appointment or contract of hire' must be given its usual and ordinary meaning. It creates between the parties the relation of master and servant, as distinguished from that created by an independent contract. You can ascertain the facts

and determine whether or not such an appointment or contract of hire exists in the particular case, and thereby determine whether or not the teacher in question is an employe'."

Likewise, the ownership of the equipment by the bus driver is immaterial in determining whether or not the relationship is that of employer and employe, or independent contractor. In the case of *City of Tiffin vs. McCormick*, 34 O. S., 638, at page 642, the Court said:

"It is true that the service, namely, the quarrying of stone in the employer's quarry, was to be done by the use of powder and tools furnished by the employer; but this condition in the contract did not affect the legal relation between the parties. It was significant only as a matter affecting the rate of compensation."

To the same effect is the fourth paragraph of the syllabus of the case of *Snodgrass, Admr. vs. Cleveland Co-operative Coal Company*, supra:

"4. The fact that one is engaged in doing piecework and furnishes his own tools in the doing of such work does not make him an independent contractor, rather than servant."

You will readily appreciate that with only the facts at hand of ownership of the bus and the existence of a contract, it is impossible to render an opinion as to whether or not the bus driver referred to in the first question, is an "employe" within the meaning of the State Public School Employes' Retirement System. As stated hereinabove, there is no requirement that the board of education enter into a contract providing for pupil transportation service in any certain mode or method. This being the case, various and divers types of contracts for pupil transportation service exist throughout the state.

The recent enactment of the State Public School Employes' Retirement System Act, makes the question of whether or not a bus driver is an "employe," as defined by the Act, of importance and statewide interest. The law as to "master and servant" and "independent contractor" is well settled in Ohio. Although no hard and fast rule can be laid down which can be applied in all cases, I think it advisable at this time to set forth in a general manner the conditions under which the relationship of a board of education and a bus driver would be that of an "independent contractor" or that of an "employe."

The law seems well settled that the determining factor of whether the relationship is that of independent contractor or employe depends upon the right to control; and that the right to control refers to an actual control, as distinguished from a mere supervisory control. This rule is well stated in Ohio Jurisprudence, Vol. 21, page 624, Section 3, as follows:

*"The control over the work performed is the vital test in determining whether one is an independent contractor or a mere servant. Generally, if the contract is under the control of the employer, he is a servant, if not under such control, he is an independent contractor. \* \* The ultimate question is not whether the employer actually exercises control over the performance of the work, but whether he has the right to control."* (Italic the writer's.)

Further continuing, at page 626, Section 4, it is said:

*"Generally speaking, every contract for work to be done by an independent contractor leaves in the employer at least a certain degree of control—the result to be such as stipulated for in the contract. \* \* The control of the work reserved in the employer which makes a master-servant relation is a control of the means and manner of performance of the work as well as the result. Where, however, the employe represents the will of the employer only as to the result, but not as to the means or manner of accomplishment, he is an independent contractor."* (Italic the writer's.)

The creation of the relationship of employer and employe, where the employer has the control of the mode and manner of performance of the work as well as the result is well demonstrated in the case of *Snodgrass, Admr. vs. Cleveland Cooperative Coal Co.*, supra. The facts in that case, as presented by the evidence, were:—that, the company employed one Adams, who was to use his own truck to haul coal, for and in behalf of the company, to whatever destination he was directed to haul it. There was no job or defined quantity of work contracted for. The services of Adams were subject to be determined at the pleasure of either party. Neither party in the case of a determination of the work could base a cause of action against the other as for breach of contract.

The court held in that case that the fact that the coal was to be hauled in Adams' own truck, "does not affect the legal relationship." The court said, at page 478:

“If one submits himself to the direction of this employer as to the details of the work, fulfilling his wishes, not merely as to the result, but also as to the means by which that result is to be obtained, he is regarded as a servant \* \* one who is subject to the will of his employer, and who cannot properly refuse to obey his directions as to the mode in which the work is to be done, is not a contractor but a servant.”

To the same effect, is the case of *City of Tiffin vs. McCormick*, 34 O. S., 638, in which the facts were as follows: The owner of a stone quarry hired a person “to go into the quarry, quarry stone therein, break the same to a certain size, and pile them up so they can be measured”, and “had no other or further control” over the employe, who was “to furnish and find the gunpowder and other tools”, and receive compensation at the rate of \$1.00 per perch. The discussion found in the body of the opinion, proves most helpful in defining an “employe”. On page 642, the court said:

“But we are of opinion that the true relation between the city, as proprietor of the stone quarry, and Ardner, was that of master and servant, instead of employer and independent contractor within the principle of the rule above stated. There was no ‘job’ or defined quantity of work contracted for. The services of Ardner were subject to be determined at the pleasure of either party. The compensation was to be measured by the quantity of labor performed. It appears to us to have been an ordinary contract for work and labor, which creates, between the employer and employed, the relation of master and servant, within the meaning of the law in regard to that subject.”

In the case of *Snodgrass, Admr. vs. Cleveland Cooperative Coal Co.*, supra, it is stated that where one contracts to do a specific piece of work, executing the work either entirely according to his own ideas, or in accordance with the plan previously given to him by the person for whom the work is done, without being subject to the orders of the latter with respect to the details of the work, is regarded as a contractor and not as a servant.

This principle is well demonstrated in the case of *Klar vs. The Erie Railroad Company, et al.*, 118 O. S., 612. In that case the Erie Railroad Company leased to the Youngstown Equipment Company its property in Kent, consisting of yards, car shops, roundhouses, machinery, equipment, etc., and contracted with it for the repair of all freight



cars thereafter to be delivered to it by the Erie Railroad Company at said repair plant and tracks. Under the terms of the contract the railroad company designated the nature and character of the repairs, but reserved no right of control over the mode and manner of doing the work that was under the direction and control of the Youngstown Equipment Company. The compensation was on a cost plus basis, the Erie Railroad Company to furnish the money to pay the employes and to furnish free transportation to the officers of the Youngstown Equipment Company. The court held:

“2. Where a corporation contracts with another for the doing of certain work without retaining the right to control or direct the manner in which such work shall be done, it is not liable to third persons for injuries resulting from the negligence of the employee of such contractor.

3. The right of such corporation to designate the repairs it desired to have made and later ascertain whether the same were made in accordance with the specifications does not withdraw from the contractor his control over the manner of conducting the work.” (*Hughes vs. Railway Co.*, 39 Ohio St., 461, approved and followed.)

In the case of *Industrial Commission of Ohio vs. McAdow*, 126 O. S., 198, the record discloses that the county commissioners employed one McAdow to do a specific job within a maximum price, with no reservations of control on the part of the county commissioners, McAdow having the power of furnishing his own materials and of hiring his own assistants, thereby controlling the amount of his profits. The court held:

“Such person is an independent contractor and not an employe, within the meaning of Section 1465-61, General Code.”

In an opinion rendered by a former Attorney General, *Opinions of the Attorney General for 1912, Volume I, page 757*, it was held that where the employer has no control over the employe; does not provide the place where the work shall be done, and does not exercise any supervision over the employe while performing the work, such person cannot be considered as within the class specified by the language of Section 1465-58, General Code.

From the foregoing, the following observations may be made:— that, where a board of education enters into a contract with a bus driver, whereby the bus driver is to furnish the bus and transport a

certain number of pupils to and from school over certain designated routes, such bus driver is an "employee" and eligible to membership in the State Public School Employees' Retirement System, if the terms and conditions of the contract are such:—that the bus driver cannot perform the work of transporting the pupils according to his own ideas, but, is subject to the orders, control, and supervision of the board of education as to the mode and manner of performing the work of transporting the pupils; and that, he must submit to, and be guided by, the direction of the board of education as to the mode and manner of performing the work of transporting the pupils; and that, he must submit to, and be guided by, the direction of the board of education as to the details of transporting the pupils and cannot refuse to obey such directions. If, however, the terms and conditions of the contract are such, that the bus driver may, in accordance with the specifications as to route, time, and number of pupils set forth in the contract, perform the work of transporting the pupils, and all details thereof, according to his own ideas, without being subject to the orders or control of the board of education as to the mode and manner of transporting the pupils, and the board of education has not reserved any supervision over the bus driver while performing the work, except, to ascertain whether or not he is performing the work of transporting the pupils in accordance with the specifications set forth in the contract as to time, number of pupils and route, then said bus driver may be said to be an independent contractor and not eligible to membership in the State Public School Employees' Retirement System.

The answer to your second question, as to whether or not drivers who are employed by owners who have rented their busses to a board of education are eligible to membership in the State Public School Employees' Retirement System depends upon whether or not the owner of the bus is an employe, or, an independent contractor.

It is possible, and no doubt many such situations exist, wherein the board of education rents a bus from the owner and enters into a contract with the owner of the bus to drive the same, and by the terms and conditions contained in such contract the owner of the bus is to hire and pay any drivers he may employ to operate the bus. If the terms and conditions of the contract between the board of education and the owner of the bus are such, that the board of education is to furnish to the owner the said rented bus and in the operation of the same he is subject to the control and supervision of the board of education, the owner of the bus is an employe of the board of education. Any person whom the owner of the bus employs to operate the bus, is subject to the same control and supervision of the board of education as the owner of the bus. That

one can hire, pay, and have control of an employe, and that said employe can be an employe of the employer of the person who hired and pays said employe, is well demonstrated in the following cases:

*Toledo Stove Co. vs. Walter F. Recp.*, 18 C. C., 58—

“One who agrees to do a certain part of the employer’s work at so much per piece and to furnish the labor, the employer to furnish the room and machinery and to keep the machinery in repair, is not an independent contractor, but a mere foreman, and his workman who continues to work, relying on his promise that a defect in a machine shall be repaired, can hold the employer liable.”

*Standard Millwork Co. vs. Beck*, 14 O. C. C. (N. S.) 425—

“One is not an independent contractor who operates a part of a manufacturing plant under an arrangement whereby he is to have entire control of all the employes at work in that portion of the plant, and the owner is to furnish the material for manufacture together with the use of the plant.”

The conclusions of the two foregoing cases were based on the fact that the employer furnished the plant and machinery and retained control and supervision over both the person who agreed to do the work according to the contract, and the one such person hired to help him.

In an opinion rendered by a former Attorney General, Annual Report of the Attorney General for 1912, Volume I, page 767, it was stated in the body of the opinion, as follows:

“In the case to which you refer in your inquiry above quoted, where the employer furnishes a place in which the employe is to work, or furnishes the tools, machinery or appliances with which the employe is to work, or in fact *exercises a control over the employe in any respect, \* \* it is my opinion that such an employe must be classed as an employe of the proprietor or manufacturer who owns or controls the main business or factory which gives rise to the employment, whether the employe works, or is employed by an independent contractor or agent of the proprietor or manager owning or controlling the plant.*” (Italics the writer’s.)

It therefore can be said that where a driver of a school bus,

who is employed by an owner who has rented his school bus to the board of education, and the driver is subject to the control and supervision of the board of education in the operation of said school bus, said driver is an employe of the board of education and is thereby eligible to membership in the State Public School Employes' Retirement System.

It further must be noted that if by the terms and conditions of the contract between the board of education and the owner of the bus, the board of education is to furnish to the owner of the bus the bus it has rented from him, and in the operation of the bus in transporting pupils, the owner of the bus is not subject to the control and supervision of the board of education, and, the relationship existing between the board and owner of the bus, is that of independent contractor, then the driver employed by such owner of the bus is not an employe of the board of education, and thereby not entitled to membership in the State Public School Employment Retirement System.

This principle is clearly set forth in some of the cases cited hereinabove, in reference to the defining of independent contractor.

In the case of *Klar vs. The Erie Railroad Company*, supra, it was held that plaintiff was an employe in the exclusive employment of the Youngstown Equipment Company, who was an independent contractor of the Erie Railroad Company, the court at page 619, said:

"In the contract in question here not only was the method and manner of performing the work which the equipment company was employed to do within the power and control of that company but the plaintiff and all others having anything to do with the making of said repairs were, *in fact employes of that company and in its service exclusively.*" (Italics the writer's.)

In the case of *Industrial Commission of Ohio vs. McAdow*, supra, the court, in determining that McAdow was an independent contractor and not an employe within the meaning of Section 1465-61, General Code, placed particular emphasis on the facts that he had the power of furnishing his own materials and of hiring his own assistants, thereby controlling the amount of his profits. It is obvious that if McAdow could not be considered an employe, any assistant he hired and over whom he had complete control and supervision could not be an employe of the county commissioners with whom McAdow had contracted for the work to be performed.

To the same effect is the case of *Industrial Commission of Ohio vs. Henderson*, 43 O. A., 20, where at page 22, the court said:

“It is a well-recognized rule that, when a man is hired, he is hired to perform some act. This contract was not one which required any services on the part of the defendant in error. It called for his doing a job of work by the use of men, materials and machinery. There is nothing in the contract calling for any part of the work to be done by the defendant in error himself.

Under this contract he had a right to employ the men he needed, pay them such wages as he saw fit, discharge them if he desired to, or, in other words, he had the entire control of the men performing the work under this contract.”

In an opinion rendered by a former Attorney General, Opinions of the Attorney General for 1930, Volume I, page 731, the question was whether the board of education should pay the premium on a bond for a driver of the bus “who is an employe of the owner of the bus.” It was held therein:

“When, however, such driver is employed by a contractor with whom the board of education has contracted for the transportation of pupils within the district, the board of education is not authorized to pay the premium on a surety bond given by such driver.”

This opinion was based on the fact that the driver was an employe of the bus owner and not in the employment of the board of education.

In your third question you make inquiry as to whether the driver is eligible to membership in a case where there is a joint ownership of bus equipment between the driver and the board of education. As hereinabove stated, the ownership of the bus is not the vital factor in determining whether the driver is an employe or independent contractor. In a situation where the board of education and driver jointly own the bus, and the board of education and the driver enter into a contract which makes provision for payment of the expenses of operating the bus, and also provides, that the driver is to transport the pupils and have full control and supervision over the manner and mode of transporting the pupils, such a contract creates the relationship of independent contractor. In a case where there is joint ownership of the bus and the contract between the driver and

board of education provides for payment of the expense of operating the bus between the board of education and the bus driver, and also provides that the driver is to operate the bus, but that, the control and supervision over the manner and mode of operating the bus in transporting the pupils are to be exercised by the board of education, the bus driver would be an employe of the board of education and entitled to membership in the State Public School Employes' Retirement System. In other words, the question of whether or not a bus driver who owns the bus equipment jointly with the board of education, is eligible to membership in the State Public School Employes' Retirement System, depends upon whether the relationship between him and the board of education is that of employer and employe. This can only be determined by the terms and conditions of the specific contract existing between the board of education and the driver.

You will observe that no question was asked, and no expression is given in this opinion, as to whether or not a board of education and a bus driver may jointly own a bus.

Therefore, in specific answer to your questions, it is my opinion:

1. The eligibility for membership in the State Public School Employes' Retirement System, of a school bus driver who owns his own equipment and is under contract to transport pupils for a board of education, depends wholly upon whether or not the relationship existing between the board of education and the bus driver is that of employer and employe, and can only be determined by the terms and conditions of the specific contract existing between the board of education and the bus driver.

Where a board of education enters into a contract with a bus driver, whereby the bus driver is to furnish the bus and transport a certain number of pupils to and from school over certain designated routes, such bus driver is an "employe", and is eligible to membership in the State Public School Employes' Retirement System, if the terms and conditions of the contract are such:—that the bus driver cannot perform the work of transporting the pupils according to his own ideas, but, is subject to the orders, control, and supervision of the board of education as to the mode and manner of performing the work of transporting the pupils; and that, he must submit to, and be guided by, the direction of the board of education as to the details of transporting the pupils and cannot refuse to obey such directions. If, however, the terms and conditions of the contract are such, that the bus driver may, in accordance with the specifications as to route, time and number of pupils set forth in the contract, perform the work of transporting the pupils and all details thereof, according to his own ideas, without being subject to the orders

or control of the board of education as to the mode and manner of transporting the pupils, and the board of education has not reserved any supervision over the bus driver while performing the work, except to ascertain whether or not he is performing the work of transporting the pupils in accordance with the specifications set forth in the contract as to time, number of pupils and route, then said bus driver may be said to be an independent contractor and not eligible to membership in the State Public School Employes' Retirement System.

2. The question of whether or not a driver, who is employed by an owner of a bus who has rented his bus to a board of education, is eligible to membership in the State Public School Employes' Retirement System, depends upon whether or not the owner of the bus by the terms of the contract, existing between the board of education and the owner, is an employe of the board of education.

If the terms and conditions of the contract between the board of education and the owner of the bus are such, that the board of education is to furnish to the owner the said rented bus and in the operation of the same, he is subject to the control and supervision of the board of education, the owner of the bus is an employe of the board of education and the driver also being subject to the control and supervision of the board of education in the operation of said school bus, is an employe of the board of education, and thereby eligible to membership in the State Public School Employes' Retirement System.

If by the terms and conditions of the contract between the board of education and the owner of the bus, the board of education is to furnish to the owner of the bus, the bus it has rented from him, and in the operation of the bus in transporting pupils, the owner of the bus is not subject to the control and supervision of the board of education, and, the relationship existing between the board and the owner of the bus, is that of independent contractor, then the driver employed by such owner of the bus is not an employe of the board of education, and thereby not entitled to membership in the State Public School Employes' Retirement System.

3. The question of whether or not a bus driver, who owns the bus equipment jointly with the board of education, is eligible to membership in the State Public School Employes' Retirement System depends upon whether the relationship between him and the board is that of employer and employe. This can only be determined by the terms and conditions of the specific contract existing between

the board of education and the driver. The joint ownership of the bus is not a vital factor in determining the existing relationship.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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1372.

APPROVAL—BONDS OF CUYAHOGA COUNTY, OHIO,  
\$11,000.00.

COLUMBUS, OHIO, October 26, 1937.

*The Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of Cuyahoga County, Ohio, \$11,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above county dated October 1, 1937. The transcript relative to this issue was approved by this office in an opinion rendered to your commission under date of October 23, 1937, being Opinion No. 1368.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said county.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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1373.

APPROVAL—BONDS OF CUYAHOGA COUNTY, OHIO,  
\$39,000.00.

COLUMBUS, OHIO, October 26, 1937.

*The Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of Cuyahoga County, Ohio, \$39,000.00.