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1. SCHOOL BUS—SECTION 6295-1 G. C. AUTHORIZES WITHOUT CHARGE, ISSUANCE OF ANNUAL LICENSE TAX—ANY SCHOOL BUS USED EXCLUSIVELY TO TRANSPORT SCHOOL CHILDREN TO OR FROM SCHOOL OR TO AND FROM ANY SCHOOL FUNCTIONS.
2. SCHOOL FUNCTION INCLUDES ANY GATHERING OR EVENT DIRECTLY PERTAINING OR CONTRIBUTING TO EDUCATION OF PUPILS OF A PARTICULAR SCHOOL DISTRICT—DETERMINATION BY BOARD OF EDUCATION OF DISTRICT IN EXERCISE OF SOUND DISCRETION.
3. CERTIFICATE OF REGISTRATION WITHOUT CHARGE—NOT AUTHORIZED—SCHOOL BUS TO BE USED FOR TRANSPORTATION TO SCHOOL FUNCTIONS—ANY PERSONS EXCEPT PUPILS OF SCHOOL DISTRICT FURNISHING VEHICLE.
4. STATUTE DOES NOT AUTHORIZE REMISSION OF LICENSE FEE FOR BUSES TO TRANSPORT PUPILS TO OR FROM PLACES OR EVENTS WHICH HAVE NO RELATION TO EDUCATION OF PUPILS—EVENTS AND PLACES WOULD INCLUDE: a. PURELY PLEASURE TRIPS—b. TRIPS BY YOUTH ORGANIZATIONS HAVING NO DIRECT RELATION TO SCHOOLS.
5. QUESTION OF LEGALITY NOT AFFECTED BY FACT PUPILS PAY PART OR ALL OF COST OF TRANSPORTATION.
6. BOARD OF EDUCATION WITHOUT AUTHORITY TO MAKE EXPENDITURE OF SCHOOL FUNDS TO PAY FOR COMMERCIAL CAR LICENSE REGISTRATION REQUIRED BY SECTION 6291 ET SEQ., G. C.

SYLLABUS:

1. Section 6295-1, General Code, authorizes the issuance without charge, of a certificate of registration without payment of the annual license tax, for any school bus however owned, used exclusively to transport school children either to or from school or to and from any school functions.

2. A "school function" as referred to in Section 6295-1, General Code, includes any gathering or event directly pertaining or contributing to the education of the pupils of a particular school district as determined by the board of education of the district in the exercise of a sound discretion.

3. Section 6295-1, General Code, does not authorize the issuance of a certificate of registration without charge for a school bus to be used for the transportation to school functions of any persons except pupils of the school district furnishing the vehicle.

4. Said section does not authorize remission of such license fee for buses to be used in transporting pupils to or from places or events which have no relation to the education of such pupils. Events and places having no such relation, would include:

(a) Purely pleasure trips.

(b) Trips by youth organizations having no direct relation to the schools.

5. The fact that pupils transported by school buses to school functions, pay part or all of the cost of such transportation does not in any way affect the question of its legality.

6. A board of education is without authority to make an expenditure of school funds in payment for a commercial car license registration required under Section 6291 et seq. of the General Code.

Columbus, Ohio, October 2, 1947

Mr. Edward T. Fogo, Registrar of Motor Vehicles
Columbus, Ohio

Dear Sir:

I have before me your communication requesting my opinion, and reading as follows:

"With reference to the provisions of Section 6295-1, General Code, under which authority gratis 'school-bus' license plate registrations are issued, considerable difficulty is had in determining what constitutes a 'school function'. The Public Utilities Commission of Ohio, The State Department of Education, The Ohio State Highway Patrol, The State Department of Agriculture, Interstate Commerce Commission and this Bureau are all concerned directly or indirectly with this question which needs clarification. This Bureau has taken the position since the enactment

of that section that gratis 'school bus' license plates are confined strictly in use on a school bus used to transport school children to and from school or to and from a school function and that any other so-called extraneous use is illegal. Specifically will you give us your opinion as to whether or not the use of gratis school bus license plates is legal under the following circumstances:

1. To transport seniors after graduation on so-called sight seeing or educational trips to Washington, D. C., Canada, or other places within or outside the State of Ohio.
2. To transport school children to Columbus, Ohio, on a so-called sight seeing or educational trip to visit the State Capitol.
3. To transport school children to attend the Ohio State Fair, at Columbus, Ohio.
4. To transport school children who are members of 4-H clubs, to the Ohio State Fair.

Also, may such license plates be used legally, whether the school bus is privately owned or owned by a Board of Education, after the close of the school year to transport Boy and Girl Scouts, young members of church groups, members of various Youth Councils or other youth organizations, to summer camps, baseball games or other places?

Does the fact that fares may be charged or a 'share-expense' plan used, have any bearing in the matter? Does the fact that a Board of Education designates a trip as a school function necessarily mean that such trip is in fact a school function? Does a Board of Education have the authority to make an expenditure for the payment of a commercial car license plate registration? Also, are students attending a University or College classified as 'school children' as that term is used in Section 6295-1, General Code?"

Section 6295-1, General Code, to which you direct attention, in so far as relevant, 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. * * *."

(Emphasis added.)

This section as originally enacted in 1935 (116 O. L., 503), contained the language above quoted and nothing else. It has since undergone an

amendment which added further provisions regarding vehicles belonging to the United States government, but which are not relevant to our present inquiry. Prior to its enactment in 1935 it had been provided by Section 6295, General Code, that "publicly owned and operated motor vehicles used exclusively for public purposes shall be registered as provided by this chapter, without charge of any kind." As the law then stood, there was no specific exemption as to school buses, and it was accordingly held in an opinion found in 1933 Opinions of the Attorney General, p. 821, that it was unlawful for a school bus driver employed under contract for the transportation of school children, to operate a motor vehicle registered as a publicly owned and operated motor vehicle under Section 6295, General Code, over the public highways to transport a high school basketball team and other pupils to a distant point for the purpose of an athletic contest.

It is quite probable that the opinion just referred to may have had something to do with causing the General Assembly at its next session to enact Section 6295-1 *supra*. At any rate, it is notable that in expressly authorizing school buses to be exempted from the payment of a license tax, the General Assembly saw fit to provide that they should be so exempted when used to transport school children not only to and from school but also to and from any school function. However, while taking note of this language, which seems to broaden the purposes for which school buses could be used, we should not overlook the use of the word "exclusively", which clearly forbids the conveyance of anyone other than school children.

When it came to the enactment of the new school code of 1943, provision was made in Section 4855, General Code, *requiring* boards of education to provide transportation for elementary school pupils living more than two miles from the school, and *authorizing* the transportation of high school pupils. That provision was not new to the law, but had been embodied in somewhat similar terms in former Section 7731, General Code. In the new school code, however, the General Assembly did see fit to interject a provision which did not appear in the former law in regard to the purchasing of school buses by boards of education. In Section 4855-5, General Code, it is provided:

"Boards of education, in the purchase of school buses and other equipment used in transporting children to and from school

and to other functions as authorized by the boards of education shall be authorized to make such purchases on the following terms, to-wit: not less than one-fourth of the purchase price thereof shall be paid in cash;" etc. (Emphasis added.)

While neither this section nor Section 6295-1 supra, expressly authorize boards of education to provide buses for transporting children to "school functions" in addition to their primary purpose of transporting pupils to and from school, yet the inference seems irresistible that the legislature distinctly recognized that boards of education were empowered to provide and permit the use of school buses for purposes other than the transportation of pupils to and from school. The use of the words in the section last quoted, "other functions as authorized by boards of education", seems to me to give rise to the clear implication that the legislature intended to permit boards of education a certain discretion in using or permitting the use of school buses for transportation of pupils of the schools to and from extra-curricular events which in their judgment were a proper and useful part of the school training or contributed in some way to the education of the children.

Considering the above provisions of the law and the further provision of Section 4855-6, General Code, authorizing boards of education to procure liability and property damage insurance covering school buses and providing accident insurance covering "all pupils transported under the authority of such boards of education", I held in Opinion No. 1661, rendered March 5, 1947, that boards of education have authority to permit their school buses to be used for the purpose of transporting athletic teams and other pupils of their respective schools to and from athletic contests. The same principle was recognized in an opinion of my immediate predecessor, found in 1942 Opinions of the Attorney General, p. 805, wherein it was held:

"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." (Emphasis added.)

The question, therefore, underlying your inquiries involves an interpretation of what is meant by the words "other functions", as used in Section 4855-5, and "any school function" as used in Section 6295-1. The

words "function" or "public function" are frequently used as legal terms in defining the powers and duties pertaining to a public office or officer. *State v. Hyde*, 121 Ind., 20; *Booth v. Minneapolis*, 103 Minn., 223; *Desantelle v. Woolen Company*, 28 R. I., 261. Referring to cities, it was said that a public function is one which is exercised by virtue of certain attributes of sovereignty delegated to a city for the welfare and protection of its inhabitants or the general public. *McLeod v. Duluth*, 174 Minn., 184. To like effect, *Plant Food Company v. Charlotte (N. Car.)*, 199 S. E., 712.

Plainly, these definitions when applied to public schools would not describe the kind of "function" with which the statutes here in question are dealing. They would rather describe the official powers that are lodged in the boards of education and which they may only exercise by formal action. Plainly, these are not the kind of functions in which school children could take part or on account of which they may be furnished transportation. It would be absurd to contend that the school functions to which school pupils may be transported in school buses should be limited to such matters as meetings of the board of education at which the boards transact the public business which is committed to them.

We must turn to a different and popular definition of "school function". We find in Webster's International Dictionary the definition of "function", as follows:

"A public or social ceremony or gathering; a festivity or entertainment; especially one somewhat formal."

We need not accept that definition as entirely controlling. I cannot, however, escape the conviction that the General Assembly recognized what most educators recognize, namely, that the education of children does not consist solely in the study of the three R's. There may be differences of opinion as to whether modern trends of education have departed too far from these fundamentals but we must face the fact that there has been a wide departure and that many schools carry the extra-curricular activities of school pupils to an extreme. However, our General Assembly has seen fit to commit to boards of education a wide discretion in the management of schools, and in connection with the transportation of pupils in school buses has indicated that buses may be provided for the transportation of pupils "to other functions, as authorized by the boards of education."

Conceding, however, that the law has committed to the sound discretion of the boards the determination of what gatherings, festivities or entertainments are a legitimate part of the education of the children, yet it is evident that this discretion is easily capable of abuse and that it must be confined within reasonable limits. In the first place, there is no indication in the law that it was intended to allow a board of education to use school funds in the purchase of buses to convey any person whomsoever except *its own school pupils*, and secondly, since the powers of boards of education are strictly limited to the management and conduct of the public schools, the "functions" which they may sanction must relate in some way to the schools and to the training of the children therein. This does not mean that all school functions must be held and conducted in the school-house. A class in botany may learn more from a visit to the fields and forests than it could possibly learn in a school room. A class in history could learn a great deal by personal observation of buildings or places having great historical significance. It is conceivable that students in political science might acquire a great deal of practical knowledge by watching the work of the General Assembly and the several state offices. Furthermore, there are legitimate school functions held outside the school building which doubtless contribute to the social culture of the pupils, and some which intensify their loyalty to the school, such as athletic contests in which some of their number participate as representing their school.

Here, however, we come face to face with the question whether there is a limit beyond which these expeditions should not be sanctioned. It could well be claimed that if a trip to the state capitol is educative, a trip to the national capitol is even more so; and if Washington, why not New York or San Francisco? If a study of the geological formations of Ohio is of value to the pupils, why not pursue that study to the more varied geological wonders of other states? Certainly, a reasonable limit is reached somewhere, but who is to say where that limit lies?

These suggestions bring me to the proposition that it is not within my province to lay down any specific rules as to what "school functions" a board of education may or may not sanction. As I have already indicated, that is a matter which has been committed by the law to the sound discretion of the board. Even the courts are reluctant to interfere with the exercise of the discretion of public officers or boards such as a board

of education, so long as they are exercising powers given them by the law. It is said in 36 Oh. Jur., p. 192:

“A court has no authority to control the discretion vested by the statutes in a board of education or to substitute its judgment for that of the board upon any question it is authorized by law to determine. * * *

Since the control and management of the schools of the state is given to the boards of education by the statute, these boards cannot be interfered with in any manner by the court; nor will a court restrain such boards from carrying into effect their determination of any question within their jurisdiction except for an abuse of discretion, a gross abuse of the discretionary powers given, or such a wrongful and arbitrary act as shows a gross, wanton, and intentional abuse of discretion, fraud, or collusion on the part of such boards in the exercise of their statutory authority.”

Among the cases cited, is *Brannon v. Board*, 99 O. S., 309, where it was held:

“A court has no authority to control the discretion vested in a board of education by the statutes of this state, or to substitute its judgment for the judgment of such board, upon any question it is authorized by law to determine.

A court will not restrain a board of education from carrying into effect its determination of any question within its discretion, except for an abuse of discretion or for fraud or collusion on the part of such board in the exercise of its statutory authority.”

As indicated in the foregoing quotation, a court will restrain a board of education if its proposed act, though within its powers, is wholly arbitrary and a plain abuse of its discretion. This was illustrated in the case of *Watkins v. Hall*, 13 O. C. C., 255, where it was held:

“While a township Board of Education has exclusive control within its jurisdiction, in the selecting of a schoolhouse site and of the size and character of the building to be erected thereon, yet, where such board, without any valid reason or necessity therefor, is about to expend the public funds in taking down a suitable and satisfactory school-building on a central and improved lot, and re-erect it at another place in the district, a court of equity may properly enjoin the same, as an abuse of discretion and authority.”

It appears to me, however, that a proper application of the definition, together with the language of the statutes quoted, must result in eliminating trips which have no relation to the school but are purely of the nature of joy rides. Furthermore, it is quite clear that the use of the buses to transport young persons indiscriminately, merely because they are members of some non-school organization, would be an abuse of the discretion of the board, even though the organization may be of unquestionable value to the youth. For the reason above indicated, it appears to me that the use of the buses for transporting children who were formerly but are no longer pupils, or college students or other persons not pupils of the school, is not permissible. As before pointed out, the exemption granted to buses is to those used "exclusively to transport school children."

I have already called attention to an opinion of a former Attorney General holding that a board of education is not authorized to engage in the business of transporting persons for hire in its school buses. However, I do not consider that the fact that the pupils pay or share the expense of those trips has any bearing on the question of whether a bus is being used for an authorized purpose.

You raise the further question whether the board of education has authority to make an expenditure for the payment of a commercial car license registration. Section 6295, General Code, which prescribes the license fees to be paid by the owners of commercial cars contains this provision:

"Motor vehicles, the title to which are in the state or any political subdivision thereof and used exclusively for public purposes shall be registered as provided in this chapter, without charge of any kind; but this provision shall not be construed as exempting the operation of such vehicles from any other provision of this chapter and the penal laws relating thereto."

Boards of education are without authority to purchase or own motor vehicles for use other than for public purposes, and it therefore follows that whatever such vehicles they do own, are exempt from payment of the license fee. Of course, the board is without authority to spend public funds to pay for a license fee for a privately owned motor vehicle, even though the owner might, under contract with the board, be using it as a school bus. The answer to your question is therefore in the negative.

Specifically answering your questions, it is my opinion:

1. Section 6295-1, General Code, authorizes the issuance without charge, of a certificate of registration without payment of the annual license tax, for any school bus, however owned, used exclusively to transport school children either to or from school or to and from any school functions.

2. A "school function" as referred to in Section 6295-1, General Code, includes any gathering or event directly pertaining or contributing to the education of the pupils of a particular school district as determined by the board of education of the district in the exercise of a sound discretion.

3. Section 6295-1, General Code, does not authorize the issuance of a certificate of registration without charge for a school bus to be used for the transportation to school functions of any persons except pupils of the school district furnishing the vehicle.

4. Said section does not authorize remission of such license fee for buses to be used in transporting pupils to or from places or events which have no relation to the education of such pupils. Events and places having no such relation would include:

(a) Purely pleasure trips.

(b) Trips by youth organizations having no direct relation to the schools.

5. The fact that pupils transported by school buses to school functions, pay part or all of the cost of such transportation, does not in any way affect the question of its legality.

6. A board of education is without authority to make an expenditure of school funds in payment for a commercial car license registration required under Section 6291 et seq. of the General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General.