

OPINION NO. 91-032**Syllabus:**

1. A privately owned school bus, meeting the requirements of R.C. 4511.77 and displaying an identification number in accordance with R.C. 4511.764, that is used for the transportation of children to and from school may be used for the additional, non-simultaneous purpose of transporting adults or items such as "meals on wheels" or Christmas trees, provided that it is not the board of education that is putting the bus to those uses and that the bus is operated in compliance with any statutes or regulations which apply to the particular use at issue.
2. A privately owned school bus meeting the requirements of R.C. 4511.77 and displaying an identification number in accordance with R.C. 4511.764 may also be registered pursuant to R.C. 4503.10.

To: Charles D. Shipley, Director, Department of Highway Safety, Columbus, Ohio

By: Lee Fisher, Attorney General, July 15, 1991

I have before me your predecessor's request for an opinion with respect to the following questions, which I have reworded, with the approval of a member of your staff, for purposes of analysis:

- 1) Can a privately owned, marked school bus which is used to transport children to and from school be used for the additional purpose of transporting adults who are not associated with a school?
- 2) Can a privately owned, marked school bus which displays an identification number in accordance with R.C. 4511.764 be used to transport items such as "meals on wheels" or Christmas trees in addition to its use as transportation for children to and from school?
- 3) Can a privately owned, marked school bus which displays an identification number in accordance with R.C. 4511.764 also be registered pursuant to R.C. 4503.10?

BACKGROUND

"School bus" is defined for purposes of R.C. 4511.01-.80 and R.C. 4511.99, as

every bus designed for carrying more than nine passengers which is owned by a public, private, or governmental agency or institution of learning and operated for the transportation of children to or from a school session or a school function, or owned by a private person and operated for compensation for the transportation of children to or from a school session or a school function; provided "school bus" does not include a bus operated by a municipally owned transportation system, a mass transit company operating exclusively within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous to such municipal corporation, nor a common passenger carrier certified by the public utilities commission unless such bus is devoted exclusively to the transportation of children to and from a school session or a school function.

R.C. 4511.01(F). All school buses shall be registered with the Superintendent of the State Highway Patrol who shall assign an identifying number to each school bus. R.C. 4511.764. The identifying number shall be marked in black lettering not less than six inches in height on the front and rear of the school bus. *Id.* Any school bus operated in this state must, in addition to bearing the identifying number, be painted national school bus chrome number two and be "marked on front and rear

with the words 'school bus' in black lettering not less than eight inches in height and on the rear of the bus with the word 'stop' in black lettering not less than ten inches in height." R.C. 4511.77. Each school bus must also be equipped with signal lamps in accordance with R.C. 4511.771 and, under certain circumstances, a restraining device for the operator's seat. R.C. 4511.772. "The state highway patrol shall inspect every school bus to ascertain whether its construction, design, and equipment comply with the regulations adopted pursuant to section 4511.76 of the Revised Code and all other provisions of law." R.C. 4511.761. Additionally, school buses are subject to regulation by the federal government pursuant to 15 U.S.C. §1392 (1988).

R.C. 4511.76 provides that "[t]he department of education by and with the advice and consent of the director of highway safety shall adopt and enforce" regulations concerning the construction, design, equipment and operation "of all school buses owned and operated by any school district or privately owned and operated under contract with any school district in this state." R.C. 4511.76(A). "When such buses are privately owned and operated under a contract with any school district in this state," the regulations of the Department of Education must, by reference, be made a part of the contract. *Id.* R.C. 4511.76(B), in pertinent part, requires that the Department of Highway Safety adopt and enforce regulations concerning "the safety of the construction, design, equipment, and operation of all school buses not subject to the regulation of the department of education pursuant to [R.C. 4511.76(A)]." Thus, the law governing the operation of school buses includes rules of the Department of Education and the Department of Highway Safety.

RESTRICTIONS ON USES OF SCHOOL BUSES

Your first question is whether a privately owned, marked school bus which is used to transport children to and from school may be used for the additional purpose of transporting adults who are not associated with a school. Your second question is whether a privately owned, marked school bus which displays an identification number in accordance with R.C. 4511.764 can be used to transport items such as "meals on wheels"¹ or Christmas trees in addition to its use as transportation for children to and from school. I assume, from conversations between our staff members, that by the term "marked" in your questions you mean that the bus is painted national school bus chrome number two and marked with the words "school bus" on the front and rear and the word "stop" on the rear of the bus in accordance with R.C. 4511.77. I note that your first question does not specify that the bus displays an identification number in accordance with R.C. 4511.764. However, since R.C. 4511.764 prohibits the operation of a school bus within the state unless an identifying number is displayed, I assume that the bus to which you refer in your first two questions does display an identification number. Given the similarity of your first and second questions, I shall address them simultaneously.

As a preliminary matter, I note that there are no statutes which directly prohibit the use of privately owned marked school buses for both the transportation of children and other purposes. In fact, R.C. 4511.762, which states that "no person who is the owner of a school bus which is used or to be used *exclusively* for purposes other than the transportation of children" (emphasis added) shall operate such bus unless the school bus markings required by R.C. 4511.77 have been removed,² clearly implies that marked school buses may be used for purposes

¹ By use of the term "meals on wheels" I assume you mean a service by which meals are delivered to the elderly or the ill.

² R.C. 4511.762 addresses the operation of "school buses" which are used exclusively for purposes other than the transportation of children. "School bus" is defined by R.C. 4511.01(F) as a bus which is operated for the transportation of children to or from a school session or a school function. However, if the definition of "school bus" given in R.C. 4511.01(F) is attributed to R.C. 4511.762, R.C. 4511.762 is rendered meaningless since, obviously, a bus which is operated for the transportation of children to or from a school session or a school function cannot be used exclusively for purposes other than the transportation of children. Because it is a basic

other than just the transportation of children. Since the prohibition only applies to school buses used exclusively for purposes other than the transportation of children, see 1970 Op. Att'y Gen. No. 70-158 at 2-313, the logical inference is that the General Assembly is aware of, and chose not to prohibit, the operation of marked school buses *both* for the transportation of children and for other purposes.

Additionally, I find no statutes which prohibit the use of a school bus which displays an identification number in accordance with R.C. 4511.764 for purposes other than the transportation of children to and from school. In fact, I note that, where the General Assembly has intended to prohibit the use of a motor vehicle displaying certain required markings or equipment for any purpose other than its primary purpose, it has done so in clear, concise language. For example, R.C. 4513.182(A) requires a motor vehicle "owned, leased or hired by a nursery school, kindergarten, or day-care center" to be equipped with and display two amber flashing lights and a sign bearing the designation "caution-children" while used for the transportation of children to or from such an institution. R.C. 4513.182(B) provides, however, that "[n]o person shall operate a motor vehicle displaying the lights and sign required by this section for any purpose other than the transportation of preschool children as provided in this section." Thus, if the General Assembly had intended to prohibit the use of a school bus which displays an identification number pursuant to R.C. 4511.764 for any purpose other than the transportation of children to and from school, it could have easily done so.

Although the legislature has not declared a policy prohibiting the use of school buses for purposes in addition to the transportation of pupils to and from school, it has prohibited the operation of a school bus within the state in violation of the regulations of the Department of Education and of the Department of Highway Safety. R.C. 4511.76(A) and (B). See also *Patton v. Springfield Board of Education*, 40 Ohio St. 3d 14, 531 N.E.2d 310 (1988). I must consider therefore whether the regulations of either the Department of Education or the Department of Highway Safety prohibit the dual uses you describe.

The regulations of the Department of Highway Safety do not address the use of school buses for purposes other than the transportation of children. Such use is addressed, however, by the regulations of the Department of Education. 3 Ohio Admin. Code 3301-83-16, which governs the non-routine use of school buses, defines "non-routine use" as "transportation of passengers for purposes other than regularly scheduled routes to and from school." The rule provides a list of non-routine uses which are approved and specifies that "[s]chool buses may be used for non-routine trips only when such trips will not interfere with routine transportation services."³ *Id.* None of the expressly approved non-routine uses includes "the transportation of adults not associated with a school," or the transportation of items such as meals on wheels or Christmas trees.⁴ The question thus presented by rule 3301-83-16 is whether that rule, by failing to expressly authorize them, prohibits the use of privately owned marked school buses for the purposes you describe. I do not

tenet of statutory construction that a statute should be construed to avoid unreasonable or absurd consequences, *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St. 3d 382, 481 N.E.2d 632 (1985), I find that the legislature did not intend the definition of "school bus" in R.C. 4511.01(F) to apply to the use of that term in R.C. 4511.762.

³ A member of your staff has indicated that the transportation of children to and from school does not take place simultaneously with any other use.

⁴ 3 Ohio Admin. Code 3301-83-16(A) does list some non-routine uses which include the transportation of adults under specific conditions. For example, rule 3301-83-16(A)(4) permits "[t]rips for transportation of the aged when contracted with a municipal corporation or a public or nonprofit private agency or organization delivering services to the aged." However, since you have expressed your awareness of this rule, I assume that the transportation of adults with which you are concerned is broader than that expressly approved by the rule.

believe that it does. Rule 3301-83-16, rather, only limits the uses to which a board of education may itself put school buses operated under its auspices.

R.C. 4511.76(A) expressly states that "when [buses] are privately owned and operated under contract with any school district in this state, [the Department of Education and Department of Highway Safety] regulations shall, by reference, be made a part of any such contract with a school district." Therefore, the provisions of rule 3301-83-16 apply to privately owned and operated school buses only when those buses are being operated in fulfillment of a contract. The language of the rule itself supports this conclusion. As noted, the rule specifically permits the non-routine use of school buses and provides a list of approved non-routine uses. Paragraph (B) of rule 3301-83-16 requires the board of education to recover costs incurred in connection with any of those non-routine uses. Such a reimbursement requirement only makes sense if the rule is read as a limitation on the board of education's use of its own school buses or its use of buses provided by private owners pursuant to a contract with the board of education. The requirement is meaningless if the private owner and operator uses the school bus for purposes other than those covered by a contract with the board of education, since, in that case, the board of education obviously incurs no costs.

In summary, there are no statutes which directly prohibit the use of a privately owned, marked school bus which displays an identification number pursuant to R.C. 4511.764 for purposes in addition to the transportation of pupils to and from school, nor do the respective rules of the Department of Education and the Department of Highway Safety prohibit such use. I note, however, that any particular use of a bus may be limited or regulated by some otherwise applicable statute. *See, e.g.*, R.C. Chapter 4551 (regulating the transportation of Christmas trees); R.C. Chapter 4923 (regulating private motor carriers). Whether these or any other statutes apply depend on the particular facts of each case and the use to which the bus is put. Therefore, I find that a privately owned, marked school bus which displays an identification number pursuant to R.C. 4511.764 and which is used to transport children to and from school may be used for the additional, non-simultaneous purpose of transporting adults or transporting items such as "meals on wheels" or Christmas trees, provided that it is not the board of education that is putting the bus to those uses and provided that the bus is operated in compliance with any statutes or regulations which apply to the particular use at issue.

REGISTRATION OF SCHOOL BUSES

Your third question is whether a privately owned marked school bus which displays an identification number in accordance with R.C. 4511.764 also may be registered pursuant to R.C. 4503.10. R.C. 4511.764, discussed above, provides that the Superintendent of the State Highway Patrol shall require all school buses to be registered in the name of the owner with the state highway patrol and shall assign an identifying number to each school bus registered. In effect, your question asks whether the registration of a school bus pursuant to R.C. 4511.764 precludes registration pursuant to R.C. 4503.10. R.C. 4503.10 requires, in pertinent part, that

except as provided in section 4503.103⁵ of the Revised Code, 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 is operated or driven upon the public roads or highways shall cause to be filed each year...a written application or a preprinted registration renewal notice issued under section 4503.102 of the Revised Code, the form of which shall be prescribed by the registrar, for registration for the following registration year, which shall begin on the first day of January of every calendar year and end on the thirty-first day of December in the same year.

⁵ R.C. 4503.103 provides for multi-year registration for certain persons owning or leasing twenty or more motor vehicles used principally in connection with an established business.

R.C. 4503.10(A) (footnote added). Thus, pursuant to R.C. 4503.10, every owner of a motor vehicle which is operated upon the public roads or highways is required to register that vehicle.

R.C. Chapter 4503, however, lists several exceptions to this general requirement, including an exception for certain school buses. R.C. 4503.17 provides, in part, that

No school bus as defined in division (F) of section 4511.01 of the Revised Code is required to pay the annual license tax provided for in section 4503.02 of the Revised Code or to apply for or display registration plates, provided: the school bus complies with the requirements of sections 4511.76 to 4511.77, inclusive, of the Revised Code.

R.C. 4503.17(A). Thus, a school bus as defined in R.C. 4511.01(F) is not required to apply for or display registration plates provided it complies with R.C. 4511.76 to 4511.77.

Neither R.C. 4503.10 nor R.C. 4511.764 expressly prohibits the registration of a school bus under both sections, nor does the language of either section imply such a prohibition. Furthermore, although R.C. 4503.17 provides that certain school buses are not *required* to apply for or display registration plates, it does not prohibit registration pursuant to R.C. 4503.10. In fact, R.C. 4503.17(B) specifically provides that the owner of a school bus, other than a board of education, which is used as a school bus during the school year under a contract with a board of education, may, upon proper application for registration and the payment of a license fee of twenty-five dollars, use such bus during summer vacation periods to transport children and their authorized supervisors to and from any camping function sponsored by a nonprofit, tax-exempt, charitable, or philanthropic organization. Registration pursuant to R.C. 4503.17 is required for school buses used for these particular purposes. Therefore, I find that a privately owned, marked school bus which displays an identification number in accordance with R.C. 4511.764 may also be registered pursuant to R.C. 4503.10.

Accordingly, it is my opinion, and you are hereby advised that:

1. A privately owned school bus, meeting the requirements of R.C. 4511.77 and displaying an identification number in accordance with R.C. 4511.764, that is used for the transportation of children to and from school may be used for the additional, non-simultaneous purpose of transporting adults or items such as "meals on wheels" or Christmas trees, provided that it is not the board of education that is putting the bus to those uses and that the bus is operated in compliance with any statutes or regulations which apply to the particular use at issue.
2. A privately owned school bus meeting the requirements of R.C. 4511.77 and displaying an identification number in accordance with R.C. 4511.764 may also be registered pursuant to R.C. 4503.10.