

897.

BUS DRIVER—WHEN UNDER CONTRACT WITH BOARD OF EDUCATION FOR TRANSPORTATION OF STUDENTS WITH PUBLICLY OWNED AND OPERATED MOTOR VEHICLE UNLAWFUL TO TRANSPORT BASKETBALL TEAM TO DISTANT POINT FOR ATHLETIC CONTEST—MAY NOT RECEIVE COMPENSATION THEREFOR—UNLAWFUL TO OPERATE SAID VEHICLE FOR PRIVATE PURPOSE.

SYLLABUS:

1. *It is unlawful for a school bus driver employed under contract by a board of education 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 basket ball team and other persons to a distant point for the purpose of an athletic contest.*

2. *A driver of a motor vehicle registered as a publicly owned and operated motor vehicle to be used exclusively for a public purpose can not legally receive compensation for the use of said motor vehicle or for his personal services in driving said vehicle in transporting a basket ball team and other persons to an athletic contest.*

3. *It is unlawful for a bus driver to operate a motor vehicle registered as a publicly owned and operated vehicle over the public highways for any other than a public purpose. Motor vehicles so registered can not legally be operated over the public highways for any private purpose.*

4. *The operating on public highways of a motor vehicle registered as a publicly owned and operated motor vehicle for any other than a public purpose, is a violation of section 12620, General Code, and violations should be prosecuted under that section.*

COLUMBUS, OHIO, May 31, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads as follows:

“It has come to the attention of the Bureau of Motor Vehicles that certain school-bus drivers, employed under contract with Boards of Education for the transportation of school children, are using publicly owned school buses registered as motor vehicles used exclusively for public purposes under the provision of Section 6295 of the General Code, for purposes other than transporting school children to and from school.

Therefore, we submit for your opinion, the following questions:

1. Is it lawful for a school-bus driver employed under contract with a Board of Education for the transportation of children to and from school in a school-bus owned by the Board of Education and registered without charge under Section 6295 of the General Code as a publicly owned motor vehicle, to use such school bus to transport from place to place school basket ball teams and other persons, some of whom are not members of the school or connected in any way officially with the school?

2. Is it lawful for the bus driver described in the preceding paragraph to receive compensation in any manner whatsoever for such service?

3. Is it lawful for the bus driver to use such school bus on the public highway in transporting hogs, sheep, hay, grain, feed and other commodities and merchandise for or without compensation at times when said school-bus is not used to transport school children?

4. If such so-called extra usage to which the school bus is put is unlawful, under which penalty section of the law shall prosecution be brought?"

Section 6295, General Code, provides for the registration of publicly owned and operated motor vehicles without charge, and reads in part as follows:

"* * * Publicly owned and operated motor vehicles 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 law (s) relating thereto.

The secretary of state shall accept any application to register a motor vehicle owned by the federal government which may be made by any officer, department or agent of such government."

This provision of law creates an exemption from a tax and should be strictly construed. It is stated in 42 Corpus Juris, 669, that:

"An automobile owner, claiming an exemption from a statute imposing a license on automobiles, has the burden of proving the exemption, and must present a clear case."

A motor vehicle, therefore, to be entitled to registration without charge not only must be publicly owned and operated but must be used exclusively for a public purpose.

In an opinion rendered by my immediate predecessor, reported in the Attorney General's Opinions for 1929, page 1859, it was held, as disclosed by the first three branches of the syllabus:

"1. A board of education lawfully may contract for the exclusive use of a school bus for a definite time without purchasing the bus and thus becoming the owner thereof.

2. For the purposes of registration of a motor vehicle as required by Sections 6290, et seq. of the General Code, a person who is entitled to the exclusive use of such vehicle for a period of greater than thirty consecutive days will be considered the owner thereof.

3. A motor vehicle owned by a board of education, or one which the board of education has the exclusive right to use for a period of greater than thirty consecutive days, and which is used for no other purpose than the transportation of school pupils may be registered as provided by Section 6295, General Code, without charge of any kind."

This opinion was predicated on the fact that the busses were used for nothing else except school purposes, and during the vacation months were stored

in a garage upon the school property, and were not used at all as long as school was not in session. It was pointed out in that opinion that the motor vehicles must be publicly owned, owner being defined in paragraph 12 of section 6290, General Code, to include a person or firm having the right to the exclusive use thereof for a period greater than thirty days, and publicly operated to entitle the motor vehicle to registration without charge.

Section 6291, General Code, designates the tax imposed as a license tax. This tax in effect is not a license tax. It is an excise tax upon the operation of motor vehicles upon the public highways. See *Firestone, et al. vs. City of Cambridge*, 113 O. S. 57; *Fisher Bros. Co. vs. Brown*, 111 O. S. 602; *Foltz Groc. & Bak. Co. vs. Brown*, 111 O. S. 646.

Upon the payment of the proper fees, the certificate of registration issued and distinctive numbers assigned to an owner of a motor vehicle, the owner is not deemed to have received from the state a grant of a license to use the public highways. The certificate and plates are merely evidence that the owner has properly registered the motor vehicle for taxation and has paid the tax. It is not a grant of a license from the state to the use of the public highways. A motor vehicle, therefore, to be exempt from the motor vehicle tax must not only be publicly owned but must also be publicly operated. Should said vehicle, which is publicly owned, be used for any other than a public purpose it is subject to the motor vehicle license tax. In an opinion rendered to Hon. Charles S. Leasure, Prosecuting Attorney, Zanesville, Ohio, under date of April 18, 1933, being opinion No. 635, it was held as disclosed by the first two branches of the syllabus, that:

"1. A board of education is not authorized by law to pay the expenses of furnishing basket ball uniforms for a high school basket ball team.

2. A board of education is not authorized under the law to pay the expenses of transporting a basket ball team to a distant point for the purpose of holding a basket ball contest between that team and another high school team."

It was pointed out in that opinion that the transporting of the team and the pupils to a distant point for the purpose of an athletic contest was not a school purpose. It would follow that when the school busses, which have been registered without charge, under section 6295, General Code, are being used to transport pupils to an athletic contest, the busses are not being used for a public purpose and the vehicle is subject to the motor vehicle tax. To be exempt from such tax the vehicle must be exclusively used for a public purpose, and this section must be strictly construed.

I am therefore of the opinion that it is illegal for a school bus driver employed under a contract with a board of education to operate a motor vehicle registered as a publicly owned and operated vehicle in the transportation of a basket ball team and other pupils to an athletic contest. A motor vehicle registered as publicly owned and operated can legally be used only for public purposes.

Considering your second question, whether or not a bus driver can legally receive compensation for driving the bus to transport persons to a basket ball game, it is a question of fact to be determined who is the owner of the motor vehicle. The mere fact that a vehicle is registered as a publicly owned and op-

erated vehicle does not, if the facts prove otherwise, make the vehicle a publicly owned vehicle. As to the legal title of the vehicle it has been held that a bill of sale is not necessary to the legal conveyance of the title of the motor vehicle. *Commercial Credit Co. vs. Schrayner*, 120 O. S. 568.

In the application for the registration of the motor vehicle, a representative of the school board made an oath that the vehicle was publicly owned and operated and that the school board had a right to its exclusive use. If as a matter of fact the school board is the owner of the bus, the driver can not legally use the bus for other than a public use. Neither can he be legally compensated for doing an illegal act. If as a matter of fact the driver is the legal owner of the vehicle and the board of education is not entitled to the exclusive use of the vehicle, the owner should be required to register the vehicle as a privately owned vehicle and pay the tax as prescribed by law for such vehicle.

In answer to your third inquiry, it would follow that a motor vehicle registered as a publicly owned and operated motor vehicle must be used exclusively for a public purpose and said motor vehicle can not be used for a private purpose. If said motor vehicle is used for a private purpose it is subject to the regular license tax as provided by law for privately owned motor vehicles. The bus driver can not legally use such school bus which has been registered as a publicly owned vehicle on the public highways in transporting merchandise or commodities for a private purpose, for or without compensation, during the time said bus is under contract to be used in transporting school children.

Your fourth question makes inquiry under what penal section prosecution should be brought where a motor vehicle is registered as a publicly owned and operated vehicle and is being used for a private purpose.

Section 12620, General Code, provides a penalty for operating a motor vehicle which is not properly registered, over the public highways, and reads as follows:

"Whoever, being the owner or chauffeur of a motor vehicle operated or driven upon the public roads or highways, fails to file or cause to be filed annually the application for registration required by law or to pay the tax therefor, shall be fined not more than twenty-five dollars."

If the motor vehicle which has been registered as a publicly owned and operated motor vehicle to be used exclusively for a public purpose and is being used for a private purpose, the motor vehicle is not properly registered. Section 12620, General Code, *supra*, provides a penalty for the operation of a motor vehicle over the public highways for which the application for registration required by law has not been made and the proper tax paid. If said motor vehicle is not used exclusively for public purposes, the proper registration has not been made. Even if the school board is deemed the owner, the vehicle is not entitled to registration unless said vehicle is used exclusively for a public purpose. The owner is liable under this section for failure to file the application for registration required by law and pay the tax, and likewise the chauffeur, in this case the bus driver, if said vehicle is operated over the public highways.

In specific answer to your inquiries, it is my opinion that:

1. It is unlawful for a school bus driver employed under contract by a board of education 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 basket ball team and other persons to a distant point for the purpose of an athletic contest.

2. A driver of a motor vehicle registered as a publicly owned and operated motor vehicle to be used exclusively for a public purpose can not legally receive compensation for the use of said motor vehicle or for his personal services in driving said vehicle in transporting a basket ball team and other persons to an athletic contest.

3. It is unlawful for a bus driver to operate a motor vehicle registered as a publicly owned and operated vehicle over the public highways for any other than a public purpose. Motor vehicles so registered can not legally be operated over the public highways for any private purpose.

4. The operating on public highways of a motor vehicle registered as a publicly owned and operated motor vehicle for any other than a public purpose, is a violation of section 12620, General Code, and violations should be prosecuted under that section.

Respectfully,

JOHN W. BRICKER,
Attorney General.

898.

COUNTY BOARD OF EDUCATION—COUNTY EDUCATIONAL EQUALIZATION FUND DISTRIBUTED ON BASIS OF SURVEY MADE ON OR BEFORE FIRST SATURDAY IN APRIL—UNAUTHORIZED TO USE ANY OTHER PLAN OF DISTRIBUTION—WHEN PLAN NOT APPLICABLE.

SYLLABUS:

1. *The schedules adopted by a county board of education in pursuance of its survey made on or before the first Saturday in April of any year, as directed by Section 7600, General Code, form the basis for the distribution of the county educational equalization fund during the entire following school year.*

2. *The mere fact that the semi-annual settlements of a county auditor with the county treasurer, as directed by Section 2596, General Code, are not made at the precise time provided for by statute, on account of delinquencies, late closing of books, etc., does not justify a county board of education in using any other plan for the distribution of the county educational equalization fund than that based upon the schedules adopted by the county board of education, in pursuance of its survey of the county school district made on or before the first day of the previous April, as directed by Section 7600, General Code.*

3. *The schedules adopted by a county board of education in pursuance of its survey of the county school district made on or before the first day of April 1933, form the basis for the distribution of the county educational equalization levy to be made after the August, 1933, settlement of the county auditor with the county treasurer, but have no application whatever to the distribution following the February, 1933, settlement.*

COLUMBUS, OHIO, May 31, 1933.

HON. GLENN P. BRACY, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion in answer to the following questions: