

157.

SCHOOL BUS—OWNED AND OPERATED BY PAROCHIAL SCHOOL—
NOT ENTITLED TO RECEIVE GRATIS LICENSE PLATES.

SYLLABUS:

1. Section 6295, General Code, does not authorize the Department of Motor Vehicles to register any motor vehicles, without charge, unless the following elements concur: (a) They are publicly owned. (b) They are publicly operated. (c) They are used exclusively for public purposes.

2. A school bus owned and operated by a parochial school for its school purposes is not a publicly owned and operated motor vehicle used exclusively for public purposes, within the meaning of Section 6295, General Code.

COLUMBUS, OHIO, February 20, 1933.

HON. J. P. BRENNAN, *Commissioner of Motor Vehicles, Columbus, Ohio.*

DEAR SIR:—Your recent request for opinion reads:

“A dispute has arisen as to the interpretation of paragraph No. 4 of Section 6295, G. C.

I am hereby requesting your formal opinion upon the following set of facts:

Are school busses owned and operated by a parochial school entitled to gratis plates as provided in paragraph No. 4, Section 6295 G. C.?

License plates have been purchased and paid for under protest, and the grounds for protest are that the school is open to the public.”

The language contained in Section 6295, General Code, to which you refer in your inquiry, is 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.”

In order for the owner of a motor vehicle to be exempt from the payment of the license fees this section of the statute requires the following circumstances to exist:

1. It must be publicly owned.
2. It must be publicly operated.
3. It must be used exclusively for public purposes.

It is to be noted that the statute uses the conjunctive “and”, not the disjunctive “or”. I am not overlooking the rule of statutory construction set forth in Section 27, General Code, that:

“In the interpretation of parts first and second, unless the context shows that another sense was intended, the word * * ‘and’ may be read ‘or’, and ‘or’ read ‘and’, *if the sense requires it; * **” (Italics the writer’s.)

The express language of the statute only authorizes the change of the word "and" to "or" when the sense requires it; that is, when, from the other language contained in an act, it is clearly indicated that the legislative intent was to make the clauses or phrases of an act disjunctive but they have been joined by the word "and" as though by error, a court upon finding that such condition exists may read the word "and" as though it were "or" in order to carry out the legislative intent otherwise expressed in the act.

The word "public" is a word of several shades of meaning. In its enlarged sense it takes in the entire community, the entire body politic. *State vs. Hensley*, 75 O. S., 255. That is, when applied to a city it refers to all the people within the particular city, as distinguished from any particular class or party within the city. Thus, a *public* park is one open to all the people within a particular district generally, and not merely open to a specific class to the exclusion of all other classes of people.

The word "public" is also used to refer to governmental functions as distinguished from private enterprises. A *public* officer has been defined as one elected or appointed to discharge a public duty and upon whom the *public* has the right to call for the discharge of that duty. *State ex rel. vs. Bish*, 12 O. N. P. (N. S.) 369.

In the case of *State ex rel vs. Schauss*, 3 O. C. C. (N. S.) 388, the court held that a manual training and polytechnic school founded upon private donation is not a "*public* school."

Taking into consideration the fact that the purpose of the motor vehicle license tax is for the support of governmental functions and purposes, that it purports to levy a tax on all motor vehicles operated on the highways, except such as are specifically exempted therefrom, and that a tax on the motor vehicles of state agencies would require a mere bookkeeping entry which would have, of necessity, to be paid either from the tax levied by virtue of the act of which Section 6295, General Code, is a part, or from taxes otherwise levied, it is my opinion that the legislature used the word "public" in the sense of "governmental."

If I am correct in this assumption, vehicles owned and operated exclusively by and for a parochial school or other sectarian institution would not be "publicly owned and operated motor vehicles used exclusively for public purposes" and would not be entitled to have motor vehicle license plates issued to them without charge.

This conclusion is further fortified by the rule of statutory construction stated by Wanamaker, J., in *State ex rel. Keller vs. Forney*, 108 O. S. 463, 467:

"The rule is well and wisely settled that exceptions to a general law must be strictly construed. They are not favored in law, and the presumption is that what is not clearly excluded from the law is clearly included within the law."

The motor vehicle license law levies a tax on vehicles using the highways. That portion of Section 6295, General Code, quoted above, exempts certain vehicles from the payment of such tax. An exception to a statute is a provision therein which "exempts from the operation of the statute persons, things, or cases which would otherwise be included therein." (Black on Interpretation of Laws, §107). Such provision is, therefore, an exception clause and requires a strict construction.

Specifically answering your inquiry it is my opinion that:

1. Section 6295, General Code, does not authorize the Department of Motor Vehicles to register any motor vehicles, without charge unless the following

elements concur: (a) They are publicly owned. (b) They are publicly operated. (c) They are used exclusively for public purposes.

2. A school bus owned and operated by a parochial school for its school purposes is not a publicly owned and operated motor vehicle used exclusively for public purposes, within the meaning of Section 6295, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

158.

APPROVAL, NOTES OF TWINSBURG TOWNSHIP RURAL SCHOOL DISTRICT, SUMMIT COUNTY, OHIO—\$4,000.00

COLUMBUS, OHIO, February 20, 1933.

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

159.

APPROVAL, ARTICLES OF INCORPORATION OF THE MODERN LIFE INSURANCE COMPANY.

COLUMBUS, OHIO, February 21, 1933.

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

DEAR SIR:—I acknowledge receipt of the articles of incorporation of The Modern Life Insurance Company.

I find that the same are not inconsistent with the Constitution and laws of the United States and of this State, and I am therefore herewith returning them to you with my approval endorsed thereon.

Respectfully,

JOHN W. BRICKER,
Attorney General.

160.

PAROLE—PRISONER UNDER NAUGHT TO THIRTY YEAR SENTENCE
—ELIGIBLE FOR PAROLE UPON COMPLIANCE WITH SECTION
2211-8, G. C.

SYLLABUS:

A prisoner committed to the Ohio Penitentiary to serve a naught to thirty year sentence for the violation of a statute which does not fix a minimum term of im-