



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 8, 1977

ATTORNEY GENERAL OPINION NO. 77-43

Mr. David L. Ryan, Chairman
Mr. Robert N. Salmon, General Manager
Mr. Charles Clinkenbeard, Treasurer
Topeka Metropolitan Transit Authority
201 North Kansas
Topeka, Kansas 66603

Re: Schools--Transportation--Buses

Synopsis: Urban transit buses operated by the Topeka Metropolitan Transit Authority may not be used on "school tripper" routes for the transportation of students to and from school unless and until such vehicles meet the statutory requirements for school buses, and comply with regulations of the Kansas Secretary of Transportation pertaining to school buses.

* * *

Gentlemen:

You inquire whether Kansas law now permits the use of buses which are owned and operated by the Topeka Metropolitan Transit Authority for (a) special school trippers, i.e., buses operating on routes which are designed specially to transport children to and from school but which are also open to the public; (b) incidental school charters paid for by the district; and (c) transportation of students for school activities in which the transportation costs are paid by the district from an account maintained for funds which are derived from student fee assessments for extra-curricular activities of the system.

I enclose a copy of my recent opinion to Mr. Henson, concluding that a board of education may not furnish or provide transportation for its students pursuant to K.S.A. 1976 Supp. 72-8301 et seq.

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in urban transit buses which are owned and operated by the Topeka Metropolitan Transit Authority or in any bus which does not conform in both design and operation to the statutory requirements relating to school buses, such as K.S.A. 1976 Supp. 8-1556, -1730 and -2009, and regulations of the Secretary of Transportation which are adopted pursuant to K.S.A. 1976 Supp. 8-1730(c). In my judgment, that opinion prohibits the use of transit buses for purposes (b) and (c) above. However, the use of transit buses for "school trippers" for the transportation of students when not furnished or provided by the district remains in question.

The Uniform Act Regulating Traffic on Highways, K.S.A. 8-1401 et seq., at K.S.A. 1976 Supp. 8-1461, defines the term "school bus" to include

"every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school, or to or from interschool or intraschool functions or activities, and every motor vehicle privately owned and primarily operated for such transportation of children.
. . ."

This definition is not a model of precision. However, it may fairly be construed to include buses operated by the Authority when transporting children on "school tripper" routes, for these buses are in fact being operated primarily on such routes for the transportation of children to and from school. This remains so notwithstanding such buses remain open to members of the public on these routes. The fact that they are indeed operated for the purpose of transporting children to and from school brings them within the scope of K.S.A. 1976 Supp. 8-1461. Thus, such vehicles become subject to statutory provisions regulating the design and operation of school buses. For example, K.S.A. 1976 Supp. 8-2009(a) now commences thus:

"All seats on school buses shall be forward-facing and shall be securely fastened to that part or parts of the school bus which support them, and any rule or regulation of the secretary providing for any other seating arrangement shall be null and void."

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In short, buses of the Authority become "school buses" as that term is defined by the Uniform Act Regulating Traffic on Highways when used for the transportation of children to and from school on "school tripper" routes, precisely because such buses are being operated expressly and specially for the transportation of children to and from school.

The further question is raised whether Kansas law is valid insofar as it pertains to the definition of school buses, special safety requirements therefor, and their application to urban transit buses which are used in school transportation as aforesaid, on the ground that federal regulation may have preempted the area. Title 15 U.S.C.A. § 1392(d) provides thus:

"Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard. Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard."

It is urged that urban transit buses have been excluded from the federal definition of the term "school bus" to which federal motor vehicle safety standards for school buses are applicable. Thus, urban transit vehicles which are used for the transportation of school children need not satisfy the requirements of the federal standard. See 49 C.F.R. § 571.3, Federal Register, December 31, 1975; 49 C.F.R. § 571.222-S3, and -S5.1. That standard does not affect the power of the state to define the term "school bus" so as to include urban transit buses, so long as it does not

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result in the application of a different or lower standard of safety than required by the federal standard. Nothing in that standard suggests, in my judgment, that the state may not regard urban transit buses when used specially for the transportation of school children to and from school as school buses, to which state regulations apply, notwithstanding that the United States Secretary of Transportation deems it appropriate to exclude such vehicles from the federal standard. There is clearly no basis under 15 U.S.C.A. § 1392 for a conclusion that the states' power to define school buses has been preempted by the Congress.

In short, it is my judgment that buses owned and operated by the Transit Authority for the transportation of students to and from school, or for charters on school functions, may not be so used, because such buses fail to meet the design and equipment specifications of cited statutes and regulations of the Kansas Secretary of Transportation.

Moreover, in my judgment, 1977 House Bills 2046 and 2047 would permit such buses to be used as school buses, for thereunder, such transit buses would fall within the definition of the term "school bus" in both chs. 8 and 72, K.S.A. Under existing law, in any instance in which a board of education furnishes or provides transportation for its students, the vehicles so employed must conform with the definition in K.S.A. 1976 Supp. 72-8301. However, with the enactment of House Bills 2046 and 2047, transit buses would be excepted from that restrictive definition, and would thus be eligible for use by school districts for the transportation of school children.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: The Honorable Lee Hamm
State Representative

Mr. Charles Henson