

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 63

HIGHWAY PATROL - School bus inspections;  
MOTOR VEHICLES - Definition of "school bus;"  
SCHOOL BUSES - Definition of "school bus;"  
MONTANA CODE ANNOTATED - Section 1-2-107; Title 20,  
Title 61, chapter 1, Title 61, chapter 8, Title 61,  
chapter 9.

HELD: Vehicles operated by the Head Start Program and privately owned vehicles operated for compensation by or for parochial schools, as well as all vehicles operated by or for public school districts, for the purpose of transporting children to and from school are "school buses" within the meaning of section 61-1-116, MCA. Accordingly, they must comply with the statutory provisions in the Motor Vehicle Code (Title 61, MCA) relating to school bus equipment, operation and inspection.

14 June 1982

Colonel Robert W. Landon  
Administrator  
Highway Patrol Division  
Department of Justice  
303 North Roberts  
Helena, Montana 59620

Dear Colonel Landon:

You have asked my opinion on the following question:

What constitutes a school bus for the purposes of Title 61, MCA?

Specifically you have inquired whether buses operated by parochial schools and by the federally sponsored Head Start Program are to be considered "school buses" under section 61-1-116, MCA. If so, they must comply with all the equipment requirements and traffic regulations of Title 61, MCA, pertaining to school buses. See, e.g., § 61-8-350(2), MCA (school bus to stop at railroad crossings); § 61-8-351(2), MCA ("school bus" signs to appear on front and rear of bus), (driver must actuate

OPINIONS OF THE ATTORNEY GENERAL

lights whenever the bus is to be stopped on a highway or street to receive or discharge school children); § 61-8-402(4), MCA (school bus must be equipped with flashing red and amber lights). In addition, motorists would be obliged to stop for properly marked Head Start and parochial school vehicles whenever their flashing red signal lights were in operation. § 61-8-351(1), MCA.

Section 61-1-116, MCA, defines "school bus" as follows:

"School bus" means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school. [Emphasis added.]

The statute utilizes both proprietary and functional criteria to define the term "school bus." A school bus may be publicly or privately owned. If privately owned, it must be operated "for compensation." To be considered as a school bus, a motor vehicle must also be used "for the transportation of children to or from school."

Resolution of your question turns on the interpretation given to the terms "school," "compensation" and "public or governmental agency."

For the purposes of the education title (Title 20), section 20-6-501, MCA, defines "school" as follows:

As used in this title, unless the context clearly indicates otherwise, the term "school" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense. [Emphasis added.]

Under section 1-2-107, MCA, a definition of a word in one part of the Code is applicable anywhere that word appears in the Code unless a contrary intention appears. In my opinion, a contrary intention does plainly appear in the express limitation of that definition to Title 20. The term "school bus" is defined by section 20-10-101, MCA. Again, however, by express statutory provision, that definition expressly applies only to the

## OPINIONS OF THE ATTORNEY GENERAL

use of the term in Title 20. Sections 20-6-501 and 20-10-101, MCA, defining "school" and "school bus," respectively, for the purposes of the education title are not in pari materia with section 61-1-116, MCA, defining "school bus" for the purpose of the Motor Vehicle Code. (See § 61-1-101, MCA.) The two titles govern different subjects. The concern of Title 20 is the administration of the public educational system in particular. The thrust of Title 61 is traffic safety and motor vehicle regulation in general. Furthermore, Title 20 and Title 61 both define "school bus" differently. The definition contained in section 61-1-116, MCA, is plainly broader in scope than the definition provided in section 20-10-101, MCA, which expressly limits "school bus" for the purpose of Title 20, inter alia, to motor vehicles owned by, or under contract to, a public school district. Section 61-1-116, MCA, makes no attempt to similarly limit the term.

Legislative intent is the polestar of statutory interpretation and that intent must be determined, if possible, from the plain meaning of the words used in a statute. Haker v. Southwestern Ry. Co., 176 Mont. 364, 369, 578 P.2d 724, 727 (1978). The words used in a statute should be given their usual and ordinary meaning. Rierson v. State, 37 St. Rptr. 627, 630, 614 P.2d 1020, 1023 (1980).

A school, in the ordinary acceptance of the word, is a place where general education is imparted to young people; it refers to an institution conducting a course of general education and mental training similar to that offered to children by a public education system. Cadet-ettes Corp. v. Brown, 406 N.E.2d 538, 540 (Ohio App. 1977); State ex rel. Church of the Nazarene v. Fogo, 79 N.E.2d 546, 547 (Ohio 1948); 68 Am. Jur. 2d Schools § 1 (1973). The term refers to "an institution of learning of a lower grade, below a college or university; a place of primary instruction," Cadet-ettes, 406 N.E.2d at 540-41. The word "school" includes private as well as public institutions of learning. 68 Am. Jur. 2d Schools § 1 at 360, § 307 at 627 (1973). It does not, however, include a "Sunday school" providing solely religious instruction. Fogo, 79 N.E.2d at 547.

OPINIONS OF THE ATTORNEY GENERAL

According to Webster's New International Dictionary (2d ed. 1941), "compensation" means "[t]hat which constitutes, or is regarded as, an equivalent or recompense;...that which compensates for loss or privation;...remuneration; recompense."

Clearly, privately owned vehicles are "school buses" within the meaning of section 61-1-116, MCA, if their owners are reimbursed in any manner for transporting children to or from school. A private or parochial school which operates any motor vehicle to transport children to and from its school and charges parents for that service, either by way of tuition or by a direct billing, is operating a "school bus" under section 61-1-116, MCA. The statutory definition of school bus is broad enough to include vehicles owned and operated by parochial schools, as well as private vehicles under contract with parochial schools or with public school districts to provide transportation of children to or from school.

By the plain and ordinary meaning of the term, "a public or governmental agency" is broad enough to encompass both federal and state agencies. Whether they are federally or privately owned, Head Start vehicles would, therefore, fall within the ownership criteria of section 61-1-116, MCA. Since the Head Start program would seem to impart general, primary education to the young, the program falls under the broad meaning of the word "school" as used in the statute. Hence, Head Start vehicles transporting children to and from such programs must be considered to be "school buses" for the purposes of Title 61. It is noteworthy that in 1976, the acting chief counsel of the National Highway Traffic Safety Administration (NHTSA) concluded in a memorandum that vehicles carrying children to and from Head Start programs are "school buses" for federal purposes. NHTSA Memorandum of February 18, 1976. There are two definitions of "school bus" in programs administered by NHTSA. Section 201 of the Motor Vehicle and School Bus Safety Amendments of 1974 added a definition of "school bus" to section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. § 1391), as follows:

(14) "[S]choolbus" means a passenger motor vehicle which is designed to carry more than 10 passengers in addition to the driver, and

## OPINIONS OF THE ATTORNEY GENERAL

which the Secretary determines is likely to be significantly used for the purpose of transporting primary, preprimary, or secondary school students to or from such schools or events related to such schools;

NHTSA accordingly amended its definition of "school bus" in 49 C.F.R. § 571.3, effective October 27, 1976, as follows:

"School bus" means a bus that is sold, or introduced in interstate commerce, for purposes that include carrying students to and from school or related events, but does not include a bus designed and sold for operation as a common carrier in urban transportation.

In the view of NHTSA a Head Start program designed to afford educational benefits to "preprimary" school children could reasonably be described as a "preprimary school" and its attendees are "preprimary school students." Hence, the NHTSA memorandum concluded that, under 49 C.F.R. § 571.3, a vehicle sold after October 27, 1976, for the purpose of transporting students to and from Head Start programs would have to comply with the school bus safety requirements established under the National Traffic and Motor Vehicle Safety Act.

The definition of school bus found at 49 C.F.R. § 571.3 reflects current congressional policy regarding school buses and, therefore, has a bearing on the scope of the definition of school bus in Uniform Highway Safety Program Standard No. 17 (23 C.F.R. § 1204.4), Pupil Transportation Safety, issued by NHTSA pursuant to its authority under the National Highway Safety Act of 1966 (23 U.S.C. § 401, et seq.). This standard sets minimum requirements for a state highway safety program dealing with pupil transportation and includes requirements for the identification, operation, and maintenance of school buses. Because No. 17's requirements apply to all vehicles while in operation as school buses and because neither NHTSA regulations nor the relevant statutes distinguish between categories of "school," the acting chief counsel of NHTSA concluded in his 1976 memorandum not only that Head Start vehicles are school buses for the purpose of Standard No. 17, but also that both



## OPINIONS OF THE ATTORNEY GENERAL

private and public educational institutions, whether profit or nonprofit institutions, were "schools" under the federal definitions.

The conclusions reached by the NHTSA memorandum are re-enforced by both the similarities between Head Start and parochial school transportation, on the one hand, and public school transportation, on the other, and by the legislative history underlying the federal definitions. The apparent purpose of transportation is to give children instruction at a central site. The risks encountered by parochial and Head Start school children while traveling to or from the site are the same as those encountered by public school children. The congressional definition of school bus contained in section 102 of the National Traffic and Motor Vehicle Safety Act Amendments of 1974 (15 U.S.C. § 1391) is necessarily broad. It was intended to include a wide variety of passenger vehicles. See H.R. Rep. No. 93-1191, 93rd Cong., 2d Sess. 42, reprinted in [1974] U.S. Code Cong. & Ad. News 6046, 6076. Similarly, the scope of the Highway Safety Act of 1966, pursuant to which Uniform Standard No. 17 was promulgated, is broad. The express purpose of that enactment is the promotion of safety on the nation's highways in general. S. Rep. 1302, 89th Cong., 2d Sess., reprinted in [1966] U.S. Code Cong. & Ad. News 2741, 2743. In promulgating its administrative definition of "school bus" (49 C.F.R. § 571.3), NHTSA construed the congressional definition (15 U.S.C. § 1391) to include private as well as public school buses. See 40 Fed. Reg. No. 251, 60033 at 60034 (1975).

In finding Head Start buses to be "school buses" under Montana law, there is no danger in running afoul of federal law. Far from preempting state law on the matter, federal law complements state regulation of Head Start vans as school buses.

The definition of school bus which appears in section 61-1-116, MCA, is the original definition of "school bus" which appeared in the Uniform Vehicle Code (U.V.C.) from 1934 until 1962. U.V.C. Act V, § 1(e) (Rev. eds. 1934, 1938, 1944); U.V.C. Act V, § 1(f) (Rev. eds. 1948, 1952); U.V.C. § 1-156 (Rev. ed. 1954); U.V.C. § 1-160 (Rev. ed. 1956). As of 1972, a total of twenty states had adopted, with slight modification, the same

## OPINIONS OF THE ATTORNEY GENERAL

definition. E. Yaw, National Committee on Uniform Traffic Laws and Ordinances, "Laws Requiring Drivers to Stop for School Buses," 1 Traffic Laws Commentary No. 5 (August 1972), prepared for the United States Department of Transportation, National Highway Traffic Safety Administration (NHTSA) at p. 4. In 1957, the Attorney General of Arizona, which had adopted the same U.V.C. definition as has Montana, had occasion to address much the same issue as is presented here. He held that the legislative definition of "school bus" was sufficiently broad to include not only buses owned and operated by school districts but also parochial school buses owned and operated by private institutions. 57-135 Op. Att'y Gen. at 139 (Ariz. 1957). He concluded that the equipment requirements and traffic regulations pertaining to school buses "were enacted for the purpose of protecting not only the children attending public school but all children of the state regardless of what type of school they attend." Id. In other states, the purpose of provisions relating to equipment and operation of school buses has also been declared to be the promotion of the safety of school children riding the bus. See, e.g., Hunter v. Boyd, 28 S.E.2d 412, 414 (1943).

It should be noted that under section 61-9-502(1), MCA, the Highway Patrol is statutorily obliged to conduct semiannual inspections of school buses. Under section 61-9-502(2), MCA, the Patrol is directed to determine whether "the school buses meet the minimum standards for school buses as adopted by the board of public education." Under section 20-10-111, MCA, the board of public education must promulgate uniform safety standards relating to "the design, construction, and operation of school buses in Montana." Because the Legislature has seen fit to incorporate by reference the board of education's safety standards into section 61-9-502(2), MCA, all school buses as defined by section 61-1-116, MCA, whether public or private, must comply with those standards and must be inspected semiannually by the Highway Patrol.

Under section 20-10-111(1)(a)(ii), MCA, the school bus standards promulgated by the board of public education may not be inconsistent with the "minimum standards adopted by the national highway safety bureau," now the National Highway Traffic Safety Administration (NHTSA).

OPINIONS OF THE ATTORNEY GENERAL

See Act of Oct. 15, 1966, P.L. 89-670, § 6(a)(1)(A), 80 Stat. 937, 49 U.S.C. § 1655; Act of Dec. 31, 1970, P.L. 91-605, Title II, § 202, 84 Stat. 1740.

The Legislature amended the aforementioned inspection statute, § 61-9-502, MCA, in 1973 to bring it in compliance with the requirement of semiannual school bus inspection set forth in NHTSA's Uniform Standard No. 17. As discussed above, the federal definition of school bus includes all vehicles equipped to carry more than 10 passengers that are likely to be "significantly used" to transport preprimary, primary, or secondary school children to and from school or school events, whether the school be public or private. See 15 U.S.C. § 1391(14); 49 C.F.R. § 571.3. The federal definition was not, however, intended to include private motor vehicles used to transport members of the owner's household or other students in a car pool arrangement. H.R. No. 93-1191, 93rd Cong., 2d Sess., reprinted in [1974] U.S. Code Cong. & Ad. News 6046, 6076. It should be noted that Montana law, unlike federal law, does not define "school bus" in terms of the number of students carried. Since the federal definition of school bus applies to private school as well as public school vehicles and since Montana's school bus inspection statute, § 61-9-502, MCA, was amended in 1973 in order to comply with the requirements of the federal Uniform Standard No. 17, it is my opinion that section 61-9-502(1), MCA, requires semiannual inspections of both private and public school buses as well as Head Start vehicles.

THEREFORE, IT IS MY OPINION:

Vehicles operated by the Head Start program and privately owned vehicles operated for compensation by or for parochial schools, as well as all vehicles operated by or for public school districts, for the purpose of transporting children to and from school are "school buses" within the meaning of section 61-1-116, MCA. Accordingly, they must comply with the statutory provisions in the Motor Vehicle Code (Title 61, MCA) relating to school bus equipment, operation and inspection.

Very truly yours,

MIKE GREELY  
Attorney General