

VOLUME NO. 41

OPINION NO. 69

EDUCATION - Responsibility for cost of medical examination required for certification of bus drivers and teachers;

EMPLOYEES, PUBLIC - Responsibility for cost of medical examination required for certification of bus drivers and teachers;

SCHOOL DISTRICTS - Responsibility for cost of medical examination required for certification of bus drivers and teachers;

TEACHERS - Responsibility for cost of physician's certificate required for certification;

MONTANA CODE ANNOTATED - Sections 20-3-324(1), (2), 20-4-101(1), 20-4-104(1), 20-4-201, 20-10-101(3)(a)(ii), 20-10-102(1), 20-10-103, 39-2-301;

OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 54 (1982).

- HELD: 1. School bus contractors and school districts which employ school bus drivers are not responsible for paying the cost of the medical examination required for certification of school bus drivers.
2. School districts are not responsible for paying the cost of the physician's certificate required for the certification of teachers.

18 June 1986

Ed Argenbright
State Superintendent
Office of Public Instruction
State Capitol
Helena MT 59620

Dear Mr. Argenbright:

You have requested my opinion on the following questions:

1. Are school bus contractors responsible for paying the cost of the medical examination required for certification of school bus drivers?
2. Are school districts which employ school bus drivers responsible for paying the cost of the medical examination required for certification of school bus drivers?
3. Are school districts responsible for paying the cost of the physician's certificate required for the certification of teachers?

These questions concern the scope and applicability of section 39-2-301, MCA, which provides:

Unlawful for employer to require employee to pay cost of medical examination as condition of employment. (1) It shall be unlawful for any employer to require any employee or

applicant for employment to pay the cost of a medical examination or the cost of furnishing any records of such examination as a condition of employment.

(2) The term "employer", as used in this section, shall mean and include an individual, a partnership, an association, a corporation, a legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air, or express company doing business in or operating within the state.

(3) The term "employee", as used in this section, shall mean and include any person who may be permitted, required, or directed by any employer, as defined in subsection (2) of this section, in consideration of direct or indirect gain or profit to engage in any employment.

(4) Any employer violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding \$100 for each such offense.

I conclude that school bus contractors and school districts are "employers" as that term is used in section 39-2-301, MCA. However, I further conclude that the contractors and the districts do not require the medical examinations as a condition of employment and therefore are not responsible to pay the cost of the medical examinations.

School bus contractors are carriers who are under contract with school districts to provide transportation of pupils to and from school. School bus contractors privately own and operate the school buses which they use for the conveyance of the pupils. See §§ 20-10-101(3)(a)(ii), 20-10-102(1), MCA. While such contractors are probably private rather than common carriers (see In re Transportation of School Children, 117 Mont. 618, 161 P.2d 901 (1945)), they also engage in business as individuals or corporations and thus come within the definition of "employer" as that term is defined in section 39-2-301(2), MCA.

School districts are public corporations with limited powers exercised through boards of trustees. See Finley v. School District No. 1, 51 Mont. 411, 415, 153 P. 1010, 1011 (1915). The trustees of a school district have the authority to employ and dismiss school bus drivers and teachers. § 20-3-324(1), (2), MCA. Whether considered in the category of "corporation" or "trustee," a school district also comes with the definition of "employer" as that term is defined by section 39-2-301, MCA. Thus the provisions of section 39-2-301(1), MCA, apply to both private contractors who employ school bus drivers and school districts which employ school bus drivers and teachers.

However, section 39-2-301(1), MCA, provides that the employer may not require an employee or applicant for employment to pay the cost of a medical examination as a condition of employment. My review of the applicable statutes indicates that neither the school bus contractor nor the school district requires the medical examinations necessary for certification. Instead, the examinations are statutory requirements imposed by the Legislature upon persons who wish to be certified and considered for employment as school bus drivers or teachers. State law requires qualification and certification as a condition of employment; the employer contractors and districts are without authority to alter or waive the qualification and certification requirements and cannot be viewed as requiring the medical examinations which are necessary for certification.

Section 20-10-103, MCA, provides in pertinent part:

School bus driver qualifications. Any driver of a school bus shall be qualified to drive such school bus by compliance with the following requirements:

....

(4) he has filed with the district a satisfactory medical examination report, on a blank provided by the superintendent of public instruction, signed by any physician licensed in the United States or, if acceptable to an insurance carrier, any licensed physician;

....

(7) he has filed with the county superintendent a certificate from the trustees of the district for which the school bus is to be driven certifying compliance with the several driver qualifications enumerated in this section.

Violation of this statute by employing a nonqualified driver would subject a contractor or a school district to the penalties provided in sections 20-10-104 and 20-1-207, MCA.

Section 20-4-104(1), MCA, sets forth the qualifications for certification as a teacher:

Qualifications. (1) Any person may be certified as a teacher when he satisfies the following qualifications:

....

(b) He has a certificate of a licensed physician attesting to his satisfactory health.

....

Except in an emergency, the trustees of a school district are authorized to employ as teachers only those persons who hold valid teacher certificates. § 20-4-201, MCA. The Legislature has required all teachers to obtain a certificate prior to teaching in the state's public schools. § 20-4-101(1), MCA.

These statutes make it clear that the medical examination for school bus drivers and the physician's certificate for teachers are requirements of certification rather than employment. I have previously distinguished between certification statutes and hiring practice statutes. See, e.g., 39 Op. Att'y Gen. No. 54 (1982). Since both contractors and districts as employers are bound by law to employ only certified persons as bus drivers and teachers, these employers cannot be said to require the medical examinations necessary for certification. The Legislature has established the qualification requirements for bus drivers and teachers, and the Legislature is not the employer.

Local school districts have always been subject to legislative control and statutory requirements. See School District No. 12, Phillips County v. Hughes, 170 Mont. 267, 552 P.2d 328 (1976). If a district or a school bus contractor should require an employee or applicant for employment to submit to a medical examination other than the examination required for certification, the district or the contractor would have to pay the cost of the examination. But securing the medical examination and physician's certificate necessary for certification is a qualifying step separate and distinct from applying for employment, and the cost of that examination and certificate is the responsibility of the employee or applicant rather than the contractor or the district.

THEREFORE, IT IS MY OPINION:

1. School bus contractors and school districts which employ school bus drivers are not responsible for paying the cost of the medical examination required for certification of school bus drivers.
2. School districts are not responsible for paying the cost of the physician's certificate required for the certification of teachers.

Very truly yours,

MIKE GREELY
Attorney General