

ATTORNEY GENERAL
STATE OF MONTANA

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VOLUME NO. 45

OPINION NO. 30

ATHLETICS AND SPORTS - Use of small transit-type bus to transport students to and from activity events;
EDUCATION - Use of small transit-type bus to transport students to and from activity events;
MOTOR VEHICLES - Use of small transit-type bus to transport students to and from activity events;
PUBLIC EDUCATION, BOARD OF - Use of small transit-type bus to transport students to and from activity events;
SCHOOL DISTRICTS - Use of small transit-type bus to transport students to and from activity events;
TRANSPORTATION, PUBLIC - Use of small transit-type bus to transport students to and from activity events;
ADMINISTRATIVE RULES OF MONTANA - Section 10.64.355;
CODE OF FEDERAL REGULATIONS - Title 49, parts 390 to 393, 395 to 397 (1993);
MONTANA CODE ANNOTATED - Sections 20-2-121, 20-10-101, -111;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 53 (1984).

HELD: A small, transit-type bus (which is smaller than a greyhound bus but larger than a nine-passenger van) is a "school bus" under Mont. Code Ann. § 20-10-101(2) and may not be used to transport students to extracurricular activities unless it meets the 1990 National Standards for School Buses adopted by the Montana Board of Public Education.

December 27, 1994

Mr. Scott B. Spencer
Lincoln County Attorney
512 California Avenue
Libby, MT 59923

Dear Mr. Spencer:

You have requested my opinion on the following question:

May a small, transit-type bus be used to transport students to extracurricular activities without meeting the requirements of the National Standards for School Buses if it meets federal safety standards for over-the-road use?

Your question arises because the Libby Public School District wants to use a passenger bus which is smaller than a greyhound-type bus but larger than a nine-passenger van to transport students to activity events without having to paint the bus yellow and black. The yellow and black paint requirement is contained in the 1990 National Standards for School Buses which have been adopted by the Montana Board of Public Education. Mont. Code Ann. §§ 20-2-121(4), 20-10-111; Mont. Admin. R. 10.64.355. These standards apply to all school buses operated in the State of Montana. Mont. Code Ann. § 20-10-101(2)(a).

A "school bus" is defined in Mont. Code Ann. § 20-10-101(2)(a) as any motor vehicle that:

- (i) complies with the bus standards established by the board of public education as verified by the Montana department of justice's semiannual inspection of school buses and the superintendent of public instruction; and
- (ii) is owned by a district or other public agency and operated for the transportation of pupils to or from school or owned by a carrier under contract with a district or public agency to provide transportation of pupils to or from school.

The following vehicles are specifically excluded from this definition:

A school bus does not include a vehicle that is:

- (i) privately owned and not operated for compensation under this title;
- (ii) privately owned and operated for reimbursement under 20-10-142;
- (iii) either district-owned or privately owned, designed to carry not more than nine passengers, and used to transport pupils to or from activity events or to transport pupils to their homes in case of illness or other emergency situations; or
- (iv) an over-the-road passenger coach used only to transport pupils to activity events.

Mont. Code Ann. § 20-10-101(2)(b). Unless excepted under these provisions, the vehicle you describe is a "school bus" and is subject to the paint requirements and other safety provisions of the National Standards for School Buses.

The exception in Mont. Code Ann. § 20-10-101(2)(b)(iii) does not apply because the vehicle you describe is designed to carry more than nine passengers. Thus, the only way that a "small transit-type bus" is exempt from the paint requirement, or any other requirement of the National Standards for School Buses, is if the vehicle qualifies as an "over-the-road passenger coach" used only to transport pupils to activity events. Mont. Code Ann. § 20-10-101(2)(b)(iv).

The phrase "over-the-road passenger coach" was construed in a 1984 opinion issued by former Attorney General Greely. The question there was whether a 14-passenger van used to transport students to and from activity events was exempted from the definition of a "school bus" under Mont. Code Ann. § 20-10-101(3)(b) (1983), which is presently Mont. Code Ann. § 20-10-101(2)(b). Concluding that it was not, Attorney General Greely reasoned:

The term "over-the-road" is commonly associated with long-distance highway transportation, while the term "passenger coach" normally refers to a large common carrier type of bus. Moreover, even if the phrase "over-the-road passenger coach" were ambiguous, legislative history clearly indicates that subsection (3)(b)(iv) is inapplicable to a small passenger van such as that involved here. In written analysis before the House Committee on Education and Cultural Resources, that portion of House Bill 794 later enacted as section 20-10-101(3)(b)(iv), MCA, was explained as exempting only "the greyhound-type buses used by many school districts for various activity events." . . . A 14-passenger van does not fall within this exception. Instead, the van here is the general type of vehicle contemplated by the subsection (3)(b)(iii) exclusion but, because its passenger capacity exceeds nine, is not excepted thereunder.

40 Op. Att'y Gen. No. 53 (1984) at 217 (citation omitted). That opinion implied that any vehicle smaller than a "greyhound-type bus" does not qualify as an "over-the-road passenger coach."

Nonetheless, you suggest that the term "over-the-road passenger coach" should be construed to mean all vehicles which meet federal standards for over-the-road use under the Federal Motor Carrier

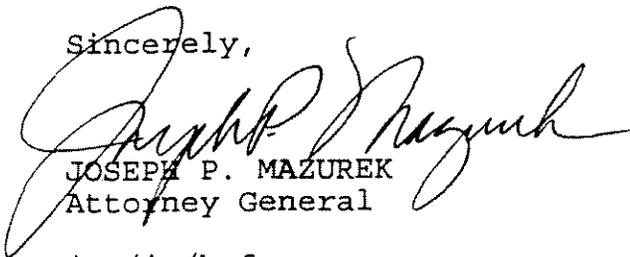
Safety Regulations, 49 C.F.R. pts. 390-393 and 395-397 (1993). Those regulations only apply, however, to motor vehicles which transport property or passengers in interstate commerce. 49 C.F.R. § 390.3. In addition, a recent rule published by the United States Department of Transportation, Office of Motor Carriers, indicates that as of January 1, 1995, any transportation performed by a governmental agency such as a public school district is not subject to the Federal Motor Carrier Safety Regulations. Consequently, there is no guarantee that a small, transit-type vehicle used to transport public school students to extracurricular activities will meet federal safety standards for over-the-road use. Without this guarantee, I am reluctant to adopt your interpretation and approve the use of any vehicle other than a "greyhound-type bus," which was clearly authorized by the legislature.

At the time the exemption for an "over-the-road passenger coach" was created, it is likely that small, transit-type buses were not widely in use as they are today. However, any attempt to expand that exemption beyond "greyhound-type buses" should be directed to the legislature, which can adequately address the issue of safety that I consider to be foremost.

THEREFORE, IT IS MY OPINION:

A small, transit-type bus (which is smaller than a greyhound bus but larger than a nine-passenger van) is a "school bus" under Mont. Code Ann. § 20-10-101(2) and may not be used to transport students to extracurricular activities unless it meets the 1990 National Standards for School Buses adopted by the Montana Board of Public Education.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/ja/brf