

1983 WL 182072 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 7, 1983

*1 Honorable Charlie G. Williams
State Superintendent of Education
South Carolina Department of Education
Rutledge Building
Columbia, South Carolina 29201

Dear Dr. Williams:

You have requested the advice of this office as to whether a school district may provide transportation on state-owned buses to school children living a half mile or more off main transportation routes. [Section 59-67-420 of the Code of Laws of South Carolina](#), 1976, as amended, imposes certain restrictions on such transportation, the applicability of which are in question here.

Relevant portions of [§ 59-67-420](#) are set out as follows:

It is hereby declared to be the policy of the State, acting through the State Board of Education, to assume no obligation to transport any child to or from school who lives within one and one-half miles of the school he attends, nor to provide transportation services extending within a one-mile radius of the residence of any child, . . . (emphasis added).

Thus, the question is whether a district's payment of the costs of transportation extending within a one mile radius of the residence of a child would violate the restriction in [§ 59-67-420](#) on the State's providing such 'transportation services.'

The scope of the reference to 'provide transportation services' is undefined. Related statutes indicate that the reference should be interpreted broadly to include incidents of the operation of a state-owned bus beyond mere payment of the cost of its use. [Sutherland Statutory Construction](#), vol. 2A § 51.03 (4th Ed). Section 59-67-410 vests ' . . . control and management of all school bus transportation . . . in the State in the State Board of Education (State Board).' The routes of all state-owned equipment are to be approved by the State Board and the local board of trustees. § 59-67-490. The State Board is responsible for the expenses of the operation of state-owned equipment, but not county or other locally owned equipment, except as provided in § 59-67-540. It is also responsible for the training of bus drivers. § 59-67-470. The State Board of Education is required to pay for insurance premiums of insurance on state-owned vehicles, which includes self-insured no-fault payments, and the State's immunity is waived up to the coverage limits. §§ [59-67-420](#), [59-67-765](#) and [59-67-770](#). These provisions demonstrate that the State's duties in providing 'transportation services' are much greater than the mere payment of costs. Accordingly, a school district's payment of operation costs would not absolve the State of its responsibilities as to state-owned equipment. Therefore, a reasonable construction of the one mile restriction would require its application to all state-owned equipment regardless of whether a school district agreed to pay the costs of operation.

An additional question exists as to whether the one mile radius restriction is mandatory. ¹ The restriction is declared to be the 'policy of the State.' Policy is a settled or definite course or method adopted and followed by a government . . . Ordinarily, where the lawmaking power distinctly states its design, no place is left for construction.' [Williamson v. City of High Point](#), 215 NC 96, 195 SE 90, 97 (1938). Thus, making the restriction 'policy' indicates that it is mandatory. This conclusion is supported by its application to 'any child (emphasis added).'

² Further support is provided by the legislature's expressly making the drawing of these routes subject to these limitations. § 59-67-490. Moreover, in 1978, the legislature chose to add an exception to the one and one-half mile distance from school restriction when necessary for the health and safety of the children, but

added no such exception for the one mile radius. Act 644, Part II § 6A. Finally, the one mile radius restriction has not been administratively construed to allow payment of the costs of transportation within that radius although regulations at the time of the 1978 amendment allowed the payment of the costs of transportation within the one and one-half mile zone. Rule 43-80 (State Board of Education), vol. 24 of the Code (1976 and as amended). See supra; Sutherland, vol. 2A § 49.07. The State Board has recently amended its regulations to permit variances therefrom where ‘clearly in the interests of safety, efficiency and economy’ (South Carolina State Register vol. 6, Issue 9, p. 188); however, the existing regulations do not set out the one mile radius restriction, except to the extent that it might be deemed incorporated into the restrictions to route buses in the most direct route for children qualifying for transportation. Rule 43-80, as amended. Thus, the variance § 49.05. For all of the above reasons, the one mile radius provisions appear mandatory; however, this matter is not free from doubt because of the absence of express direction as to this question in the statute.

*2 Although § 59-67-420 is not expressly clear as to the scope of applicability of the radius restriction, because of the above reasoning we recommend that it be followed in the absence of serious questions of safety. Because of the uncertain scope of the restriction, in the event of such safety problems, we recommend that the variance provision be utilized so as to vary the route and services for the concerned. No authorization is contained in statutory or regulatory law for the payment of a charge for such special services as to the radius restriction. Finally, because of the doubtful construction of § 59-67-420, we recommend that legislative clarification be sought.

Please contact us if we may be of further assistance.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

Footnotes

- 1 It is recognized that in construing statutes, the ordinary rules of grammar should be applied unless they lead to an absurd result. Busching v. Superior Court of Ventura County, 115 Cal. Rptr. 241, 524 P.2d 369, 374 (1974). A construction that the ‘obligation’ portion of the statute is inapplicable to the radius restriction would avoid use of a double negative. Moreover, the scope of the meaning of ‘obligation’ itself varies according to the context in which it is used. 29 Words and Phrases, ‘Obligation.’
- 2 Of course, routing a bus route so as to avoid coming within one mile of every student's house would probably be impossible, would certainly be absurd, and would clearly not be intended by the legislature. A reasonable reading of the restriction is that the bus must not be routed within one mile of a student's house unless the house is within that distance of a safe and direct route selected under the authority of § 59-67-490. See R43-80, vol. 24 of the Code.

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