

1980 WL 120663 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 11, 1980

***1 Re: Opinion Concerning Department of Social Services' Vehicles**

Mr. Vinton D. Lide
General Counsel
South Carolina Department of Social Services
Post Office Box 1520
Columbia, South Carolina 29202

Dear Mr. Lide:

You have requested the opinion of this Office as to whether certain motor vehicles operated by the Department of Social Services (DSS) to transport preschool children to nursery school and day care facilities must conform to the state requirements, applicable to regular school buses operated by the State Board of Education.

The term 'school bus' is defined in the Code of Laws of South Carolina, 1976, as amended, at §§ 56-3-20(b), 56-5-190, and 59-67-10. Sections 56-3-20(b) and 56-5-190 are contained in Title 56 of the Code, which pertains to motor vehicles generally; moreover, the latter statute, in defining School Bus, refers to Title 59, Chapter 67, pertaining to education generally and school buses specifically. Section 59-67-10 defines 'school bus' as follows:

When used in this article, 'school bus' shall be construed to mean every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned or operated for compensation for the transportation of children to or from school.

The above definition clearly makes 'transportation of children to or from school' the essential element in determining whether any motor vehicle in question is a 'school bus'. Neither the Motor Vehicle Code in Title 56 nor Chapter 67 of Title 59 defines the term 'school'. 'School' is defined in § 59-21-10; however, the application of 'school' in that statute is restricted to the article in which it is contained, dealing with 'State Aid for Schools'. 'Private School' and 'Public School' are defined in §§ 59-1-110 and 59-1-120, respectively, but these definitions merely distinguish the public or private nature of schools without assigning any particular meaning to the term 'school'.

My research indicates that the South Carolina Supreme Court has not had occasion to opine upon the term in question. Numerous decisions in other states have construed the term, and the North Carolina case of [Benvenue Parent-Teacher Association v. Nash County Board of Education](#), 4 N.C. App. 617, 167 S.E.2d 538 (1969), is typical. There, citing New York authority, the court states, "A school the court holds to be an institution consisting of a teacher and pupils, irrespective of age, gathered together for instruction in any branch of learning, the arts or the sciences."

Thus, the question becomes whether the nursery schools and day care facilities involved are actually schools. I am informed that all facilities involved are 'child day care facilities' as defined in § 43-35-10. This statute includes, 'day nurseries, nursery schools, day care centers, group day care homes and family day care homes' but specifically excludes, among others, '(1) any educational facility, whether private or public, which operates solely for educational purposes in grades one or above; (2) five-year-old kindergarten programs operated by public daytime programs, with or without stated educational purposes, operating no more than four hours a day and receiving children younger than lawful school age . . .'. The exclusions in the above statute appear to exclude institutions that exist for an educational purpose, and thus, the covered institutions would most probably not

come within the meaning of the term 'school'. See [Possekel v. O'Donnell](#), 9 Ill. Dec. 332, 51 Ill. App. 3d 313, 366 N.E.2d 589 (1977), wherein an Illinois appellate court questioned whether an institution licensed under Illinois' Child Care Act, and not specifically licensed as a nursery school or kindergarten, could be accorded the status of a 'school'.

*2 For the foregoing reasons, the opinion of this Office is that the subject motor vehicles are not required by state law to conform to requirements applicable to state-owned school buses. You further inquire in the alternative whether the subject motor vehicles should be painted and marked in the same fashion as school buses.

The South Carolina Code of Laws provides no clear cut prohibition against marking the motor vehicles in question like school buses; yet, the apparent intention of the General Assembly gleaned from Chapter 67 of Title 59, is that only buses serving schools be marked as school buses. For instance, § 59-67-50 requires that former school buses be stripped of markings indicating they were used as school buses ' . . . before private or public use may be made of them'. Section 59-67-60 states that former school buses be painted a color other than yellow. Section 59-67-410 states, 'The control and management of all school bus transportation in the state shall be vested in the State Board of Education.' An obvious conflict arises if the State Board of Education would not have control over the vehicles in question, should such vehicles be marked as school buses. While answer to the question is not clear cut, the opinion of this Office is that motor vehicles not actually engaged in transporting students to a 'school' should not be marked as state school buses, absent authorizing legislation.

With kindest regards,

Sincerely,

Paul S. League
Assistant Attorney General

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