



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

*Harris / The
Committee*

BRUCE E. BABBITT
ATTORNEY GENERAL

October 21, 1977

Mr. Robert J. Roberson
Deputy Yuma County Attorney
Post Office Box 1048
Yuma, Arizona 85364

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ARIZONA ATTORNEY GENERAL

Re: 77-191 (R77-56)

Dear Mr. Roberson:

I have reviewed your February 11, 1977 opinion addressed to Mr. William Pagnotta, Bouse Elementary School District No. 26, concluding that a school district may contract with a private company or individual to provide transportation for an exceptional child to and from special education classes in an adjacent school district. The Attorney General concurs with your conclusion and submits the following guidelines for any school district contemplating such a contract.

A school district, or the county school superintendent, must provide necessary transportation for handicapped children pursuant to A.R.S. § 15-1015. A school district is expressly permitted, when a district finds it to be economically advantageous, to contract for transportation with another political subdivision or with a common or contract carrier. A.R.S. § 15-1626.A. The contract must be in writing. Atty.Gen.Op. No. 62-21-C.

It appears that the entity contracting with the school district to provide these transportation services would, at a minimum, be a contract motor carrier of passengers as that term is defined in A.R.S. § 40-601.A.6. Thus, the contractor would be subject to the jurisdiction and the regulation of the Arizona Corporation Commission and would have to obtain at least a contract carrier's permit as required by A.R.S. § 40-608. This office suggests that the school district make any transportation contract contingent on the contracting entity obtaining this permit. Commission procedures relating to applying for and receiving either this permit or, if necessary, a common carrier's certificate of convenience and necessity are contained in A.C.R.R. R14-5-303 and R14-5-304.

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Any private company or individual under contract with a school district to provide transportation is bound by Department of Transportation regulations, pursuant to A.R.S. § 28-900.B:

Any officer or employee of any school district who violates any of the regulations [of the Department of Transportation--see A.C.R.R. Title 17] or fails to . . . comply with the regulations in any contract executed by him on behalf of a school district shall be guilty of misconduct and subject to removal from office or employment. Any person operating a school bus under contract with a school district who fails to comply with any of the regulations shall be guilty of breach of contract and the contract shall be canceled after notice and hearing by the responsible officers of the school district.

The driver of a school bus is required to obtain a chauffeur's license. A.R.S. § 28-414.B. School bus* is defined in A.R.S. § 28-101.41 as including:

. . . privately-owned [vehicle] and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.

* Compare the definition of bus in A.R.S. § 28-104.4 which is incorporated by reference in the definition of school bus.

4. "Bus" means a motor vehicle designed for carrying more than fifteen passengers and used for the transportation of persons, and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

41. "School bus" means a bus owned by a public or governmental agency or other institution, and operated for the transportation of children to or from home or school on a regularly scheduled basis or privately-owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.

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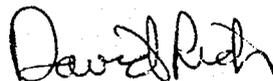
The driver of a school bus must enforce A.R.S. § 28-901.A which limits the maximum number of persons who can ride the bus and A.R.S. § 28-901.B which sets standards for receiving and discharging children at school.

The question of liability insurance is resolved by A.R.S. § 15-453:

A. The board of trustees may purchase public liability and property damage insurance covering school bus drivers while driving school busses.

Sincerely,

BRUCE E. BABBITT
Attorney General



DAVID RICH
Assistant Attorney General

DR:jrs



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February 11, 1977

Mr. William Pagnotta
Bouse Elementary District No. 26
Post Office Box S
Bouse, Arizona 85325

Dear Mr. Pagnotta:

This opinion is in response to your request for an opinion on the following question:

Can a school district contract with a private company or individual to provide transportation for an exceptional child to and from her special education classes in an adjacent school district?

Answer: Yes.

Arizona Revised Statutes §15-442(6) requires the Board of Trustees of a school district to provide transportation for any child when deemed for the best interest of the district, whether within or without the district, county or state. Furthermore, A.R.S. § 15-1015 specifically requires the governing board of each school district to provide both special education for all handicapped, except emotionally handicapped, children and to provide necessary transportation for these children. This section also authorizes a district to cooperate with other districts in establishing special education programs and to contract with other public or private schools to provide for the education and services for exceptional children if unable to provide satisfactory education and services through its own facilities and personnel in accordance with the rules and regulations prescribed by the division of special education. There is nothing

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preventing the Board from contracting with a private individual or company for this transportation.

Before deciding who to award the contract to, however, be sure to consider the following two points.

It is imperative that the Board carefully review those persons desiring to provide this transportation to ensure that the person awarded the contract is a responsible individual and has no history of negligent driving.

The board must also ensure, through the contract, that the person awarded the contract is covered by sufficient liability insurance to cover damages arising from possible accidents connected with the transporting of the child and that this coverage remains in effect through the term of the contract.

If you have any other questions regarding this matter, please do not hesitate to contact me.

A copy of this opinion is being forwarded to the Attorney General for his concurrence or revision.

Sincerely,



ROBERT J. ROBERSON
DEPUTY COUNTY ATTORNEY

RJR/jeh