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Opinion Committee

AUSTIN, TEXAS 78701-1494 • (512) 463-9734

September 8, 1995

RQ-846

FILE # ML-35810-95

I.D. # 35810

The Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711

Re: A.G. Op. No. DM-362

Dear General Morales:

A.G. Op. No. DM-362, issued on August 25, 1995, appears to conclude that any vehicle used to transport public school students must have certain equipment required for a school bus under the Transportation Code and must be driven by a person qualified as a school bus driver. By this letter, I am requesting reconsideration of the interpretation in DM-362 of the definition of a school bus. I am also requesting clarification regarding additional issues raised by Senate Bill 1 relating to the use of privately owned vehicles.

DM-362 concludes that the portion of the definition of "school bus" in the Transportation Code, formerly in Section 2(e) of Article 6701d, that refers to requirements in "the most recent edition of standards as produced and sponsored by the National Commission on Safety Education of the National Education Association, Washington, D.C." is unconstitutional. I do not disagree with that conclusion. However, I question whether the subsequent conclusion to give effect to the remainder of that definition is consistent with the rule that, when part of a statute is found to be unconstitutional, the remainder will only be sustained if the legislature would have enacted the statute without the part that is held unconstitutional. The effect of DM-362 could be to significantly broaden the definition of a school bus to include every vehicle used to transport a student to or from school or a school-related activity or event. It is questionable that the legislature would have intentionally enacted a statute that has this effect.

The most recent expression of the legislature with respect to school transportation is Senate Bill 1 of the 74th Legislature. S.B. 1 requires a school district to transport certain numbers of students for certain purposes in a "school bus," but authorizes the transportation of less than 10 students in a "passenger car" (34.003, Education Code). Clearly, the legislature did not consider every vehicle used to transport students to be a "school bus" since it made an explicit and purposeful distinction between the circumstances under which use of a "school bus" is required and use of a "passenger car" is permitted. As you know, under former law, school districts were required, with certain exceptions, to purchase school buses through the General Services Commission. Generally, I believe, "school buses" are considered to be vehicles that, at the time of purchase, met the specifications used by the General Services Commissions for the purchase of school buses. Please address the distinction in Section 34.003, Education Code, between a "school bus" and a "passenger car." Specifically, please address whether a motor vehicle with a seating capacity greater than that of a passenger car as defined by Section 541.201, Transportation Code, may be used under Section 34.003, Education Code, to transport less than 10 students. If not, may such a vehicle be used if it is modified to seat a number of persons that is not greater than 10?

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Also, DM-362 appears to conclude that a vehicle owned by a private person, such as a teacher or parent, is subject to the same requirements as a vehicle owned or leased by a school district when the vehicle is in use to transport students to and from school or school activities. Please clarify your opinion with respect to safety requirements and driver qualifications for school vehicles as applied to privately-owned vehicles used to transport students to and from school or school activities.

Thank you for consideration of these concerns regarding DM-362.

Sincerely yours,

A handwritten signature in cursive script that reads "Mike Moses".

Mike Moses
Commissioner of Education

MM/shs