FILED
SUPREME COURT
STATE OF WASHINGTON
8/27/2019 4:59 PM
BY SUSAN L. CARLSON
CLERK

NO. 96694-0

SUPREME COURT OF THE STATE OF WASHINGTON

FIRST STUDENT, INC.,

Petitioner,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

DEPARTMENT OF REVENUE'S ANSWER TO MEMORANDUMS OF AMICI CURIAE NATIONAL ASSOCIATION FOR PUPIL TRANSPORTATION AND DURHAM SCHOOL SERVICES LP

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I. INTRODUCTION

Amici curiae National Association for Pupil Transportation (NAPT) and Durham School Services LP (Durham) both ignore the statutory context of the 1955 amendment at issue in this case. This context demonstrates that when the Legislature amended the "highway transportation business" definition in 1955, it did not intend to include school buses within that definition. When the Legislature replaced the cross references in that definition with the phrase "operating any motor propelled vehicle by which persons or property of others are conveyed for hire," it added the term "for hire" and had repeatedly distinguished school bus operators from for hire transportation. These distinctions, in addition to the Public Utility Tax (PUT) not applying to school bus operators when the "for hire" language was already in the "urban transportation business" definition, support the Department's reading of the 1955 amendment.

Instead of focusing on what the Legislature understood the phrase "for hire" to mean in the context of the amendment at issue, amici argue that various out-of-state cases support First Student's interpretation that "for hire" means simply "for compensation." While in the abstract that may be a reasonable interpretation of the term, it is not the only one. It is indeed not the only reasonable interpretation of the phrase as used in the "highway transportation business" definition. The definition in Black's

Law Dictionary at the time and the 1956 Attorney General Opinion also demonstrate that "for hire" in the PUT is ambiguous with respect to school bus operators. The Court should give weight to the Tax Commission's rules applying the B&O tax, and not the PUT, to school bus operators.

Amici further contend that the Department's 60-year interpretation is entitled to no deference because it is litigation-based. However, the fact that the Department consistently interpreted the PUT as not applying to school bus operators since the 1930s defeats that characterization. Amici criticize this rule for lacking the level of detail they would prefer—i.e., a thorough and detailed explanation of the ambiguity and its application to school bus operators. However, such detail is not required. The Legislature charged the Department and its predecessor Tax Commission with implementing and applying the tax code. The Tax Commission's rule amendment provides important contemporaneous evidence with respect to the meaning of the 1955 statutory amendment. This is particularly so when the interpretation is consistent with the statutory context and the Legislature has long acquiesced in that interpretation.

II. ARGUMENT

A. The Statutory Context of the 1955 Amendment Supports the Department's Interpretation that the PUT does Not Apply to School Bus Operators

Nothing in the PUT's language plainly indicates the Legislature intended in 1955 to subject school bus operators to that tax. RCW 82.16.010(6), (12). Instead, First Student and amici rely on the 1955 amendment to the "highway transportation business" definition wherein the Legislature replaced the cross-referenced definitions with the phrase "for hire." Under their theory, the Tax Commission's 1955 amendment continuing to exclude school bus operators from the PUT was simply an oversight that neglected to take into account the 1955 PUT amendment.[1] However, this argument fails to acknowledge the statutory history of the PUT and the Legislature's distinction between "for hire" vehicles and school bus operators in other statutes at the time of the amendment. This context shows that by eliminating the cross reference to "auto transportation company" and adding the phrase "for hire" to the "highway transportation business" definition, the Legislature did not intend to tax school bus operators under the PUT.

1. The 1955 amendment was directed at for hire vehicles like taxicabs, and not school bus operators

By the time of the 1955 amendment, the Tax Commission had excluded school buses from the PUT's "urban transportation business"

[1] In prior briefing, the Department indicated this rule amendment took effect in 1956. However, the rule change actually was effective May 1, 1955, the same date the statutory amendment to the PUT took effect, less than six weeks after it was passed.

classification for 12 years after the phrase "for hire" was added to that definition. Nonetheless, First Student and amici contend that the Legislature intended to add school buses to both PUT classifications, by adding "for hire" to the "highway transportation business" definition in 1955. However, the context of that amendment and the Tax Commission rules show the Legislature intended to add traditional "for hire" vehicles like taxicabs, not school buses, to the PUT. Prior to 1955, Rule 180 provided that the terms "highway transportation" and "urban transportation" do not include operating school buses, ambulances, garbage collection and disposal, or hauling for hire exclusively over private roads. Wash. State Tax Comm'n Rule 180 (1954) (CP 368). It also taxed taxicabs as "urban transportation" under the PUT when operating entirely in the corporate limits of any city, or in the five-mile urban zone, and as "service and other activities" under the B&O tax when operating beyond the five-mile urban zone. *Id*. Thus, prior to 1955, taxicabs were only taxable under the PUT when they met the "urban transportation" requirements. School buses were not subject to either PUT classification.

In 1955, the Legislature replaced the cross reference in the "highway transportation business" definition, expanding its reach, but only to "motor propelled vehicle[s] by which persons or property of others are conveyed for hire." Laws of 1955, ch. 389, § 28. The Tax Commission

amended Rule 180 in 1955 to address the 1955 amendment. The Tax Commission explained "[t]he term 'highway transportation business' means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed *for hire*." Wash. State Tax Comm'n Rule 180 (1955) (CP 363) (emphasis added). Rule 180 also identified the types of businesses now clearly subject to both classifications of the PUT: "the businesses of operating taxicabs and armored cars." *Id*.

Rule 180 continued the interpretation that the terms do not include school buses, explaining "[t]he terms do not include the businesses of operating auto wreckers or towing vehicles, school busses, ambulances nor the collection and disposal of refuse and garbage." *Id*. Rule 180 directed instead that gross income from such activities "must be reported under the 'Service and Other Activities' classification of the [B&O] tax." *Id*. The following year, the Tax Commission amended Rule 224 to include those activities. Wash. State Tax Comm'n Rule 224 (1956) (CP 364-65) (adding "school bus operators" to a list of activities taxed under the B&O tax). This additional amendment illustrates the intentional nature of the Tax Commission's interpretation with respect to "school bus operators." These interpretations are consistent with the PUT not applying to school bus operators when "for hire" was added to the "urban transportation

business" definition, and with the fact that the Legislature distinguished between school buses and "for hire" vehicles.[2]

2. The Legislature distinguished between "for hire" vehicles and school buses when it amended the PUT

Amici ignore relevant statutory amendments that provide context for understanding what the Legislature intended with respect to school bus operators when it amended the PUT in 1955. Unlike the out-of-state cases upon which amici rely involving "for hire" in other contexts, the Legislature's own actions support the conclusion that school bus operators and "for hire" operators are distinct under Washington law. The Legislature was aware that it routinely treated school buses and for hire vehicles differently. Thus, to treat them differently in the PUT also was consistent with the Legislature's understanding of the term at that time.

After a series of Attorney General Opinions had concluded persons transporting students under contracts with school districts were doing so "for hire," thus requiring a "for hire" license, the Legislature amended the terms to clarify that school buses were not for hire vehicles. In 1919, the Attorney General had advised that a truck contracting with a school

[2] The fact that the tax rate for school bus operators would have tripled under the "highway transportation business" classification further supports the conclusion that had the Legislature intended such a change for school bus operators, it would have done so explicitly. *Compare* Laws of 1955, ch. 389, § 49 ("service and other activities" B&O tax rate of 0.5 percent) *with* Laws of 1939, ch. 225, § 19 ("urban transportation" rate of 0.5 percent and "highway transportation" rate of 1.5 percent).

district to transport students to and from school "is a 'for hire' car as it transports persons for remuneration and would therefore have to obtain a 'for hire' license." App. A (Op. Att'y Gen. 1919-20, at 180-81 (1919)). In 1932, the Attorney General again concluded that transporting schoolchildren for compensation from the district met the broad definition of "for hire" in existence at the time, and explained, the previous opinions had been "severely criticized" as working an unnecessary hardship on persons transporting pupils for transportation by requiring them to obtain a for hire license. App. B (Op. Att'y Gen. 1931-32, at 342 (1932)). The Opinion explained that such arguments "will have to be advanced to the legislature" because the law defining "for hire" at the time included "all motor vehicles other than auto stages, used for the transportation of persons, for which transportation remuneration of any kind is received, either directly or indirectly," and thus was "too plain for construction." *Id*.

In 1933, the Legislature responded by excluding school buses from the "for hire" vehicle license requirement, providing, in relevant part,

> Nothing in this act, or any other act, shall be construed to require a "for hire" license, directly or indirectly in the transportation of school children and/or teachers to and from school and/or other school activities.

Laws of 1933, ch. 98, § 1.

In 1947, the Legislature addressed "for hire" vehicles again. This time the Legislature provided in a session law entitled "Passenger Transportation by Motor Vehicle," the following: "[w]hen used in this act: (a) the term 'for hire vehicle' includes all vehicles used for the transportation of passengers for compensation, *except* auto stages, victory vehicles, or school buses operating exclusively under a contract to a school district . . . ." Laws of 1947, ch. 253, § 1 (emphasis added).[3]

That the Attorney General had addressed whether school buses were "for hire" when contracting with school districts, and the Legislature soon thereafter excluded school bus operators from the "for hire" license requirement, indicates the Legislature deemed school buses different from "for hire" vehicles when it amended the "highway transportation business" definition in 1955. The Legislature is presumed to "have full knowledge of existing statutes affecting the matter upon which [it is] legislating." *State v. Conte*, 159 Wn.2d 797, 808, 154 P.3d 194 (2007).

The Legislature also established different minimum ages for drivers of school buses and "for hire" vehicles. Whereas drivers of a "motor vehicle while in use as a school bus for the transportation of pupils

[3] The fact that over time, the Legislature has excluded additional transportation types from the definition of "for hire vehicle" in RCW 46.72.010 does not change the fact that the Legislature had specifically distinguished school buses from for hire vehicles at the time of the 1955 amendment. That the Legislature has not repudiated the Department's recognition of this distinction in the PUT further supports this conclusion.

to or from school" needed to be at least eighteen years old, drivers of "any for hire vehicle, auto stage or other motor vehicle while in use as a public passenger carrier for hire" needed to be at least twenty-one years old. Laws of 1937, ch. 188, § 48. While the minimum age for both is now 18, the Legislature continues to list these two categories separately. RCW 46.20.045, entitled "**School bus, for hire drivers—Age**," provides: A person who is under the age of eighteen years shall not drive:

> (1) A school bus transporting school children; or
> (2) A motor vehicle transporting persons for compensation.

Another example of the Legislature distinguishing between these businesses is in the requirement that certain vehicles stop at railroad crossings. The Legislature applied this requirement to any person operating "any vehicle carrying passengers for hire" or "operating any school bus." Laws of 1937, ch. 189, § 104. In current statutes, the Legislature continues to maintain this distinction. For example, RCW 46.61.687(5) requires the use of child passenger restraints, and separately lists "for hire vehicles" and "school buses" as exempt from that statutory requirement. In light of this statutory context, had the Legislature intended to include school buses within the PUT's "highway transportation businesses" classification, it would have used language to that effect rather than "for hire," a term that was consistently distinguished from school bus

operators. At a minimum, this statutory context establishes the 1955 amendment to the PUT is ambiguous with respect to school buses.

3. The interpretation advanced by amici is inconsistent with the statutory context of the 1955 amendment

Relying on out-of-state cases, NAPT argues that "for hire" has only one common law meaning, "for compensation," and thus the Legislature intended to bring private school bus operators contracting with school districts within the PUT when it amended the "highway transportation business" definition in 1955. Br. Amicus Curiae NAPT at 2-5. In doing so, NAPT repeats the strawman argument advanced by First Student in its Petition for Review, that the Court of Appeals "adopted" the definition of "for hire" from Black's Law Dictionary. *Id*. NAPT then argues that such definition, which contemplates the charge for transportation to be paid by the passengers, is inconsistent with out-of-state cases and other uses of the term "for hire" in the PUT.

However, the Court of Appeals did not "adopt" the definition from Black's Law Dictionary; it simply recognized it was a reasonable interpretation of the term at the time of the amendment, rendering the term "for hire" ambiguous and reliance on the Tax Commission's rule appropriate. *First Student, Inc. v. Dep't of Revenue*, 4 Wn. App. 2d 857, 871, 423 P.3d 921 (2018). NAPT further advances its strawman theory by

contending that the Black's Law Dictionary definition cannot be reconciled with the statutory context of the PUT, and would lead to absurd results. Br. Amicus Curiae NAPT at 5-6. But again, neither the Department nor the Court of Appeals "adopted" this definition. The interpretation at issue is whether school bus operators are taxed under the PUT or the B&O tax. The ambiguity as to whether school buses contracting with school districts satisfy the "for hire" requirement in the "highway transportation business" definition is answered in the Department's rule that school buses are not taxed under the PUT. This rule is consistent with the Legislature's understanding of the terms at the time.

B. The Department's Interpretation of the PUT is Consistent with the Statute and Not Litigation-Based

Since the Legislature adopted the B&O tax and the PUT in 1935, the Department's rules have taxed school bus operators under the B&O tax for "service and other activities." During that time, the rules have reflected its interpretation that the PUT does not apply to school bus operators. Amici contend the Department's defense of these rules is litigation-based because the rules do not provide the level of detail they desire, i.e., identifying the precise statutory terms they are interpreting, and therefore cannot reflect a considered position to which the Court should provide deference. But this argument misses the mark.

In the first sentence of the 1955 amendment to Rule 180, the Tax Commission states that the term "highway transportation business" means "operating any motor propelled vehicle by which persons or property of others are conveyed *for hire*." Rule 180 (1955) (CP 363) (emphasis added). Rule 180 "explains the tax reporting responsibilities of persons engaged in the business of transporting by motor vehicle persons or property *for hire*." WAC 458-20-180(1) (emphasis added). This language contradicts the notion that Rule 180 does not interpret the term "for hire."

Moreover, the Department rules need not specifically define the term "for hire" for the Court to conclude the term is ambiguous and defer to the agency's interpretation of the PUT. *In re Sehome Park Care Ctr., Inc.*, 127 Wn.2d 774, 903 P.2d 443 (1995). In *Sehome Park*, this Court relied on the Tax Commission's 1961 rule resolving an ambiguity as to whether a tax exemption for patient services applied to for-profit nursing homes. The rule did not specifically discuss that a comma rendered the term ambiguous, but instead described the types of organizations to which the exemption applied. *Id*. at 780. The Court declined to disturb this 30-year interpretation. *See also Lacey Nursing Ctr. Inc. v. Dep't of Revenue*, 103 Wn. App. 169, 180, 11 P.3d 839 (2000) (deferring to contemporaneous Tax Commission rule in 1951 identifying specific

businesses to which tax statute applied, without detailing the ambiguity that formed the basis for the distinction).

Here too, the Tax Commission amended Rule 180, interpreting the PUT as not applying to school bus operators, immediately after the 1955 amendment. Not only was the rule consistent with the statutory context in which the Legislature distinguished school buses from "for hire" vehicles, but it reflected the understanding of the terms in Washington at the time. This Court should likewise decline to disturb this 60-year interpretation.

The Tax Commission's longstanding interpretation of the PUT differs significantly from the cases discussed by amici involving ad hoc positions not reflected in rule or longstanding agency policy. For example, in *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 814, 828 P.2d 549 (1992), the Department of Ecology relied on "trial testimony for the proposition that the agency has interpreted 'development' and 'substantial development' to include bridge removal." The Court declined to defer to Ecology's position because it was nothing more than an isolated action. *Id*. at 815. In contrast, the Department here has consistently interpreted the PUT as not applying to school bus operators, as reflected in its rules since the B&O tax and PUT were enacted.

This interpretation also differs from *Sleasman v. City of Lacey*, 159 Wn.2d 639, 151 P.3d 990 (2007), wherein the Court declined to defer to

the City's interpretation of the term "partially developed." The Court rejected it not only because it conflicted with the ordinance's plain language, but also because the definition "was not part of a pattern of past enforcement, but a by-product of current litigation." *Id*. at 646. Here again, the Department's application of the B&O tax classification of "service and other activities" classification to school bus operators is a longstanding position consistently reflected in agency rule.

The other cases cited by amici in support of their arguments that agency deference is not appropriate are similarly inapplicable. *Othello Community Hospital v. Employment Security Department*, 52 Wn. App. 592, 762 P.2d 1149 (1988), involved a policy, not a rule, that ignored a statutory period of disqualification in determining unemployment benefits. And the practice of excluding employer-provided benefits like health care coverage from its computation of workers' compensation in *Cockle v. Department of Labor and Industries*, 142 Wn.2d 801, 16 P.3d 583 (2001), was inconsistent with the broad statutory mandate to protect workers. In contrast, Rule 180 is consistent with the PUT and there is no broad statutory mandate or policy warranting a broad reading of its applicability.

C. The Ambiguity in Whether School Buses Contracting with School Districts are "For Hire" is Also Demonstrated by Other Contemporaneous Interpretations

In addition to the statutory context distinguishing school buses from "for hire" vehicles discussed above, the definition of "for hire" in common use at the time of the 1955 amendment supports its ambiguity. In evaluating the 1955 amendment adding the phrase "operating any motor propelled vehicle by which persons or property of others are conveyed *for hire*" to the "highway transportation business," the Court of Appeals correctly recognized that the phrase "for hire," undefined in the PUT, is subject to more than one reasonable interpretation and thus ambiguous. *First Student*, 4 Wn. App. 2d at 871. That conclusion is supported by the definition in Black's Law Dictionary, and the Washington Attorney General Opinion recognizing that charging a fare for school bus transportation would cause such vehicles to acquire a "for hire" status. App. C (Op. Att'y Gen. 242 at 4 (1956)).

This Court regularly turns to Black's Law Dictionary as providing the common law or ordinary meaning of undefined statutory terms. For example in *AllianceOne Receivables Management, Inc. v. Lewis*, 180 Wn.2d 389, 395, 325 P.3d 904 (2014), the Court identified Black's as the authority to define "recover." Similarly, in *State v. Watson*, 155 Wn.2d 574, 578-79, 122 P.3d 903 (2005), the Court turned to Black's to define "ex parte communication," in the absence of a definition in the Rules of Appellate Procedure, the Code of Judicial Conduct, and Washington case

law. *See also State v. Taylor*, 150 Wn.2d 599, 602, 80 P.3d 605 (2003) ("The term 'final judgment' is not defined in the RAP. Therefore, we turn to *Black's Law Dictionary*."); *Am. Cont'l Ins. Co. v. Steen*, 151 Wn.2d 512, 519-20, 91 P.3d 864 (2004) (relying on 1933 edition of Black's Law Dictionary to define "retroactively annulled," explaining that when terms are not defined by the Legislature, courts look to a dictionary in use at the time the statute was adopted to given them their plain and ordinary meanings). Here, the phrase "for hire" is undefined in the PUT and consideration of the definition in Black's Law Dictionary is appropriate.

The 1951 edition of Black's Law Dictionary provides a relevant definition of the phrase at the time of the enactment:

> **FOR HIRE OR REWARD.** To transport passengers or property of other persons than the owner or operator of the vehicle for a reward or stipend, to be paid by such passengers, or persons for whom such property is transported, to owner or operator. Michigan Consol. Gas Co. v. Sohio Petroleum Co., 32 N.W.2d 353, 356, 321 Mich. 102.

Black's Law Dictionary 773 (4th ed. 1951) (CP 374).

In the *Michigan Consolidated Gas* case, the Michigan Supreme Court surveyed various definitions of the phrase "transport for hire." 321 Mich. 102, 32 N.W.2d 353, 356 (1948). The Court identified the definition, with the requirement that the reward or stipend "be paid by such passengers" provided by the South Dakota Supreme Court in *City of Sioux*

Falls v. Collins, 43 S.D. 311, 178 N.W. 950, 951 (1920). The Court also cited *Kroger Grocery & Baking Co. v. City of Cynthiana*, 240 Ky. 701, 42 S.W.2d 904 (1931), another case referencing that requirement.

The fact that the disputes in these cases involved the transportation of property, rather than passengers, does not mean the definition is invalid. Instead, the courts' referencing the fact that passengers were responsible for the fare in transportation provided "for hire or reward" illustrates that such a requirement was consistent with the common understanding of the phrase at the time. This is consistent with the Court of Appeals' reading, which recognized that a "fair reading of this particular definition makes one facet of the term 'for hire' apparent: any compensation or remuneration (*i.e.*, 'reward or stipend') paid to 'transport passengers or property' was 'to be paid by such passengers.'" *First Student*, 4 Wn. App. 2d at 868. The Court of Appeals also pointed out that the publication Words and Phrases provided the same definition. *Id*. (citing 17A Thompson-West, *Words & Phrases* 37 (Permanent ed. 2004)).

The Department does not dispute that other states have considered the phrase and concluded that the passenger need not be responsible for the fare in order to acquire a "for hire" status. But this does not mean that such an interpretation represents the only common or reasonable understanding of the phrase. Washington courts have not squarely

answered this question, and thus there is no definition in Washington of the "term well known to the common law," despite what NAPT suggests. Br. Amicus Curiae NAPT at 3.

This conclusion is also supported by the Washington Attorney General Opinion from 1956, which advised local school boards about school bus transportation after concluding that the state Board of Education lacked the authority to regulate the use of school buses. App. C (Op. Att'y Gen. 242 at 4 (1956)). In that opinion, the Attorney General advised that "[n]o charge may be made of the passengers. School buses are licensed upon a tax-exempt basis [under] RCW 46.16.020. To charge a fare would cause such vehicles to acquire a 'for hire' status under RCW 46.04.190." This opinion advising that charging school bus passengers a fare would render the school buses a "for hire vehicle" is consistent with the definition in Black's Law Dictionary's. This contemporaneous discussion of school buses acquiring a "for hire" status when passengers are responsible for the fare demonstrates that "for hire" is ambiguous.

D. If the PUT Applies, First Student Would Bear the Burden of Proving its Transportation Qualifies Under the Urban Transportation Business Rate

First Student filed this action as a tax refund under RCW 82.32.180 and thus bears the burden of proving that the B&O tax it paid was incorrect and proving the correct amount of the tax. In seeking a

refund based on the applicability of the "urban transportation business" tax rate, First Student must satisfy the elements of that statute to qualify for a refund. In addition to the geographic requirements, that definition has an additional element that the vehicle must be operating "for public use in the conveyance of persons or property for hire." RCW 82.16.010(12). Amici are correct that "public use" does not mean "everybody all the time," as the Supreme Court explained in *Terminal Taxicab Co. v. Kutz*, 241 U.S. 252, 255, 36 S. Ct. 583, 60 L. Ed. 984 (1916). There, the Court concluded that a taxi company operating a business under contracts with hotels to furnish vehicles for hotel guests was operating for "public use." The Court explained, the "public generally is free to go to hotels if it can afford to, as it is free to travel by rail, and through the hotel door to call on the plaintiff for a taxicab." *Id.*; *see also Courtney v. Util. & Transp. Comm'n*, 3 Wn. App. 1002, 422 P.3d 911, *rev. denied,* 191 Wn.2d 1002 (2018).

School buses providing transportation to students pursuant to contracts with school districts, however, are different. While such transportation services serve a segment of the public because schoolchildren are members of the public, they are not available to anyone in the public who wishes to use that transportation. This is distinct from First Student's charter bus services to churches, youth groups, and summer camps, which are available to anyone in the public who has the means to

hire them. Thus, if the PUT applies, then First Student would need to prove its transportation services are offered to the general public.

III. CONCLUSION

When the Legislature amended the "highway transportation business" definition in 1955, the statutory context of the PUT and other statutes demonstrates that the Legislature considered school buses distinct from "for hire" vehicles. The phrase "for hire" as used in the PUT is ambiguous as to whether it includes school bus operators contracting with school districts. The Tax Commission's 1955 and 1956 rules are consistent with the statutory context and contemporaneous interpretations. The Court should reject amici's reliance on out-of-state cases and unsupported theory that the Department's longstanding interpretation reflected in its rules is litigation-based.

RESPECTFULLY SUBMITTED this 27th day of August, 2019.

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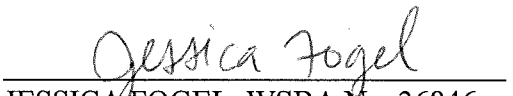

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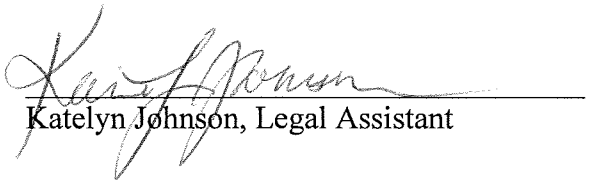
I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 27th day of August, 2019, at Tumwater, WA.



Katelyn Johnson, Legal Assistant

APPENDIX A

Dietrich v. Fargo, 87 N. E. 518, 194 N. Y. 359, 22 L. R. A. (N. S.) 696.

In preventing their taking during certain seasons of the year in an act relating to game, the legislature of this state has expressly recognized bear as a game animal and has by the laws of this state protected the species enumerated in the section quoted above.

Section 30 of the Game Code of 1913 (Rem. 1915 Code, sec. 5395-30) provides:

"It shall be unlawful for any person at any time to sell or offer for sale any of the game birds, game animals or song birds protected by the laws of the state of Washington. Any person violating any of the provisions of this section shall be guilty of a misdemeanor."

It follows therefore that black, brown and cinnamon bear, being game animals protected by the laws of the state, the sale or offering for sale of the animals or their meat is unlawful.

Yours respectfully,
GLENN J. FAIRBROOK,
Assistant Attorney General.

OLYMPIA, WN., October 29, 1919.

Mr. William Stuart, Deputy Prosecuting Attorney, Kelso, Wn.

DEAR SIR: We are in receipt of your letter of October 25, which reads as follows:

"School district No. 36 of this county employs a large motor truck for the purpose of transporting the pupils of the district to and from the school.

"Kindly advise me if this auto truck should be classed as an auto stage and the fee of $3.00 per passenger capacity be collected."

We assume that the owner of the truck receives remuneration for the transportation of these pupils. Sub-

division 4, section 2, chapter 59, Laws of 1919, defines an auto stage as follows:

"'Auto stage' as distinguished from 'automobile' shall mean a motor vehicle used for the purpose of carrying passengers, baggage and freight on a regular schedule of time and rates: *Provided, however*, That no motor vehicle shall be considered an auto stage where the whole route traveled by such vehicle is within the corporate limits of any incorporated city."

We do not believe that a motor vehicle operated under the circumstances outlined in your letter can be said to be an auto stage. The employment arises out of a specific contract for a single purpose and the automobile is not used for the transportation of the general public, nor does it run on a regular time schedule and with fixed rates in the sense that these terms are used in the statute.

Such a vehicle, however, is a "for hire" car as it transports persons for a remuneration and would therefore have to be provided with a "for hire" license. (Opinion to Fred C. Brown, March 19, 1919.)

Yours respectfully,

L. L. THOMPSON,
Attorney General.

OLYMPIA, WN., October 29, 1919.

Mrs. Josephine Corliss Preston, Superintendent of Public Instruction, Olympia, Wn.

DEAR MADAM: In your letter of October 25th you state that certain private organizations are conducting courses in directed athletics and gymnastics. You inquire if individual students in schools enumerated in section 2, chapter 89, Laws of 1919, may be excused from the physical training therein provided for because of participation in these privately conducted courses, and if so, is there any legally constituted authority which may properly determine standards to be met by such privately conducted courses to the end that pupils participating

APPENDIX B

OLYMPIA, WN., October 7, 1932.

Honorable Charles R. Maybury, Director of Licenses, Olympia, Wn.

DEAR SIR: We have your letter of October 3d, together with enclosures, which reads as follows:

"We have had several opinions from you with reference to school buses involving those owned by the school district, those leased by the school district for their exclusive use and those hired by the school district for part time work.

"We are enclosing herewith a letter requesting that we take this matter up further with you with reference to the school bus that is rented on part time and used the balance of the time for their own use. I am enclosing herewith the letter referred to from Charles R. Sargent, clerk of the Chelan Public Schools."

In the letter from Mr. Chas. R. Sargent, clerk of Lake Chelan public schools, our previous opinions on this question are severely criticized as working an unnecessary hardship on persons transporting pupils for a compensation by requiring them to obtain a "for hire" license. A case is cited where the party transporting a few children a short distance receives only $10.00 a month. We heartily agree with the argument advanced by Mr. Sargent, from the standpoint of public policy, but unfortunately this argument will have to be advanced to the legislature. The law is too plain for construction.

Section 6313 (12), Rem. Comp. Stat., defines "for hire" as follows:

" 'For hire' shall be taken to mean all motor vehicles other than auto stages, used for the transportation of persons, for which transportation remuneration of any kind is received, either directly or indirectly."

There is no statute exempting transportation of school children from the operation of this statute. Surely Mr. Sargent will understand that we cannot disregard the plain language of this statute.

We have construed section 2, chapter 309, Laws of 1927, as amended by section 1 (s), chapter 180, Laws of

1929, in favor of school districts by holding that a school district leasing a bus for more than thirty days and the school having the "exclusive use thereof" is entitled to an exempt license. This is, however, as far as we can go under the present statutes.

Undoubtedly a person carrying school children takes into consideration the amount of the cost of his "for hire" license in arriving at the amount he charges the school district for this service. This, of course, is an indirect charge against the school district, but it is no more a charge than the tax paid on the gasoline used in the school bus or the personal property taxes paid by the owner of the bus. There would be just as much reason under the law to exempt the owner of the bus from personal property tax or from the payment of liquid fuel tax on gasoline used in the bus as there is in exempting him from the license tax on the bus. These, however, are matters within the discretion of the legislature. Neither this office nor the courts have the power to legislate by construing statutes contrary to the plain language used by the lawmakers.

Yours respectfully,
JOHN H. DUNBAR,
Attorney General.

OLYMPIA, WN., October 11, 1932.

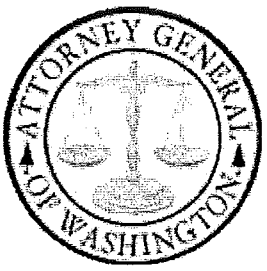
Honorable Charles R. Maybury, Director of Licenses, Olympia, Wn.

DEAR SIR: We have your letter of October 6th, which reads as follows:

"Under the provisions of chapter 140, Laws of 1931, will a motorcycle taxicab be required to have a for-hire license and thereby be charged the regular seat fees in addition to the $3.00 basic fee?"

Section 6326, Rem. Comp. Stat., as amended by section 1, chapter 140, Laws of 1931, provides in part as follows:

APPENDIX C



Published on *Washington State* (https://www.atg.wa.gov)

Attorney General Don Eastvold

SCHOOLS AND SCHOOL BUSES -- REGULATING USE OF

The state board of education lacks authority to adopt rules having the force and effect of regulations on the use of school buses and they should be regarded as advisory only.

- - - - - - - - - - - - -

April 9, 1956

Honorable Pearl A. Wanamaker
President
State Board of Education
Olympia, Washington

Cite as: AGO 55-57 No. 242

Dear Mrs. Wanamaker:

In your letter of March 26, 1956, you enclosed a copy of school bus usage regulations adopted by the state board of education which became effective July 1, 1955. The state board requests our opinion on these regulations.

In our opinion the state board of education lacks the authority to adopt rules having the force and effect of regulations on this subject and they should be regarded as advisory only.

ANALYSIS

RCW 28.58.100, which prescribes the general powers of boards of directors of all classes of school districts, provides in part:

"Every board of directors, unless otherwise specially provided by law, shall:

"* * *

[[Orig. Op. Page 2]]

"(11) Provide and pay for transportation of children to and from school whether such children live within or without the district when in its judgment the best interests of the district will be subserved thereby, but the board is not compelled to transport any pupil living within two miles of the schoolhouse."

If the state board has authority to regulate the use of school buses it must be found in RCW 43.63.140 which provides in relevant part:

"The state board of education shall:

"* * *

"(6) Prepare an outline course or courses of study for the kindergarten, elementary school, junior high school, and high school departments of the common schools, and prescribe such rules for the general government of the common

schools, as shall secure regularity of attendance, prevent truancy, secure efficiency, and promote the true interest of the common schools;"

Our statutes provide that boards of directors of school districts are required to enforce the regulations of the state board of education. The pertinent inquiry is whether or not the state board acted within its authority in promulgating regulations pertaining to use of school buses.

From 1909 until 1955 local boards were operating their school transportation systems as they saw fit. In some cases both the limitations of law and the dictates of reasonable judgment were exceeded. Uniform policies in regard to control of school transportation equipment seldom existed. Considerable pressure was exerted on many school boards at the community level to liberalize and expand the use of school buses. The adoption of these regulations by the state board was an attempt to supply the answer to what many school people regarded as an important problem--how to achieve some standard of uniformity for the use of school buses throughout the state.

[[Orig. Op. Page 3]]

We cannot believe that the statute directing the state board to prescribe rules for the general government of the common schools as shall promote the true interest of the common schools constitutes authority to prescribe detailed regulations for the use of school buses.

Transportation needs of individual districts are infinitely varied. Considerations such as location, population, terrain, climate, size and facilities of the district must be taken into account. We are advised that forty-two percent of the school districts of the state have a school population of 100 or less. We do not feel the legislature ever intended to delegate to the state board authority to prescribe detailed rules for use of school buses applicable to every school district of the state. We think it impractical to draft comprehensive rules on this subject which reasonably and equitably would meet the varied needs of the various school districts.

In our judgment the responsibility of prescribing rules defining uses to which school buses may be devoted has been delegated by the legislature to the local boards. The duty of providing school transportation is specifically that of the local districts. The language authorizing local boards to exercise their judgment as to what will subserve the best interest of their districts, while not directly applicable to the precise problem, does provide an indication of the legislative intent.

The grant of authority to the local boards must be confined to the standards prescribed by the statute. The statutory standard is contained in the words "transportation of children to and from school." To determine the latitude available to local boards it is first necessary to define the word "school."

We are convinced that the legislature had in mind a more inclusive meaning than schoolhouse. The fact that the statute employs the term "school" as above quoted and uses the word "schoolhouse" in connection with the two-mile provision in the same sentence is, in our view, significant.

"School" is a generic term and denotes an institution for instruction or education and is not measured by the walls of a building. State v. Kalaher, Wisc. 129 N.W. 1060.

[[Orig. Op. Page 4]]

Having determined that the local boards must decide where their buses may travel we offer the following counsel and suggestions for their consideration:

1. School buses may not be leased or loaned to individuals or organizations. See the opinion of this office to the governor, dated July 11, 1942, which denied such authority even for the purpose of providing farm labor transportation during the war emergency.

2. No charge may be made of the passengers. School buses are licensed upon a tax-exempt basis under RCW 46.16.020. To charge a fare would cause such vehicles to acquire a "for hire" status as defined by RCW 46.04.190.

3. Trips outside the district must have the specific authorization of the local board. To justify such trips the board should find:

(a) That the purpose of the trip is to permit the students to participate in a school activity;

(b) that the school's participation is such activity is sponsored, directed and supervised by school district authorities as a definite part of the curriculum or educational program of the district; and

(c) the student participants to be transported must be required to participate in the activity as a part of the curriculum or educational program.

4. A substantial portion of the cost of purchase and operation of school buses comes from state funds. This money comes from taxpayers irrespective of whether or not their children use such school transportation facilities.

5. Local boards should adopt written rules for their own districts which define the school transportation program.

By way of illustration, a district board may make a formal policy determination that all regularly scheduled league football and basketball [[Orig. Op. Page 5]] games are an integral part of the high school physical education program and that participation of the school band at a Memorial Day parade and at a community festival in neighboring towns is a recognized part of the music department curriculum. In such situations the student participants in these activities should be entitled to be transported in district buses if the local board decides to do so.

We have every confidence that the primary consideration of school directors has been and will continue to be the best interest of the school children. We share what we conceive to be the view of the legislature: that local boards of school directors should manage the transportation systems of their districts, that they will exercise prudence and good judgment and with a full awareness of their responsibilities.

We are submitting a copy of this opinion to the Legislative Council because we feel this subject is deserving of its review and careful consideration.

We sincerely hope the foregoing comments will prove helpful.

Very truly yours,
DON EASTVOLD
Attorney General

ANDY G. ENGEBRETSEN
Assistant Attorney General

ATTORNEY GENERAL'S OFFICE - REVENUE & FINANCE DIVISION

August 27, 2019 - 4:59 PM

Transmittal Information

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