

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

March 25, 2004

Opinion No. 04-051

School Buses and Seat Belts

QUESTIONS

1. Does 2003 Tennessee Public Acts, ch. 299 (the Act), now codified at Tenn. Code Ann. § 55-9-602, require the use of seat belts for all school transportation vehicles (public or private)?
2. If the school transportation vehicles (public or private) have a manufacturer's gross weight rating of 10,000 pounds or less, are seat belts required?
3. If yes, who would be liable if the children did not wear the seat belts?

OPINIONS

1. 2003 Tenn. Public Acts, ch. 299, does not require seat belts in school buses.
2. Under the Act, if the school transportation vehicle weighs 10,000 lbs. or less, is not exempt from mandatory seat belt use under federal law, and is not used as a public or livery conveyance for passengers, the Act requires seat belts or child restraint systems for children ages four (4) through fifteen (15).
3. Facts and circumstances are so critical to the question of liability that we cannot answer this question.

ANALYSIS

This opinion is limited to school transportation for school-age children.

When effective,¹ the Act will amend Tenn. Code Ann. § 55-9-602, which deals specifically with child passenger restraint systems. This statute is directed to "any person" who transports

¹This Act becomes effective July 1, 2004.

children of a certain age, weight or height. Neither the present version of Tenn. Code Ann. § 55-9-602 nor the Act mentions school buses or student school transportation. The statute and the Act refer to “motor vehicles” and “passenger motor vehicles.”

To answer your questions, we begin by defining certain terms.

1. School transportation vehicle: We have not found a definition of this phrase but have assumed, for purposes of this opinion, that you refer to buses and van-type equipment² used to transport school children to and from school.

2. School bus: In an earlier opinion, this office determined that the term "school bus," as used in Tenn. Code Ann. § 49-6-2109(d) and State Board of Education Rule 0520-1-5-.02, meant a vehicle that was owned by the county, the local school system, or under private contract with a carrier for compensation that transported students to and from school and school-related activities and was painted national school bus glossy yellow. Op. Tenn. Att’y Gen. No. 93-44 (May 12, 1993).

Under current motor vehicle statutes, we find two definitions of the term “school bus.” Tenn. Code Ann. § 55-50-102(44) states that the term “school bus” means

every motor vehicle operated for the transportation of children to or from school or school-related activities and is operated for compensation.

Tenn. Code Ann. § 55-8-101(52) has a similar, but slightly different, definition. This statute defines a “school bus” as

every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

The State Board of Education sets minimum standards for school buses. Tenn. Admin. Rules, *State Board of Education*, 0520-1-5-.02. The State Board’s *Tennessee Minimum School Bus Standards* define school buses by type and require them to be painted national school bus yellow. All school bus types have a gross vehicle weight rating of over 10,000 lbs.³

²Under State Board of Education rules, van-type equipment used to transport not fewer than eleven (11) nor more than sixteen (16) must have seat belts. Tenn. Admin. Rules, *State Bd. of Edc.*, 0520-1-5-.02(1)(a)(3.).

³“Tennessee Minimum School Bus Standards,” at <http://www.state.tn.us/sbe/busstandards.html>.

3. Motor vehicle: A “motor vehicle” is “every vehicle which is self-propelled, excluding motorized bicycles and every vehicle that is propelled by electric power obtained from overhead trolley wires.” Tenn. Code Ann. § 55-1-103(3). It is also defined as “any vehicle which is self-propelled and designed to be used on public highways.” Tenn. Code Ann. § 55-5-106(e)(4).

4. Passenger motor vehicle: Under Tenn. Code Ann. § 55-9-602 as now written, a “passenger motor vehicle” is “any motor vehicle with a manufacturer’s gross vehicle weight rating of eight thousand five hundred pounds (8,500 lbs.), or less, that is not used as a public or livery conveyance for passengers.”⁴ The Act uses the same definition but increases the weight rating to 10,000 lbs. 2003 Tenn. Public Acts, ch. 299, § 7.

As noted, the Act does not use the term “school bus.” Basically, it makes any person transporting a child of a certain weight, height, and/or years responsible for the child’s being appropriately protected and restrained while riding in a motor vehicle.⁵ While the Act does not use the term “school bus,” two sections refer to transporting children of school age:⁶ Section 1.(a)(3) and Section 2.(1)(A) and (B). The first provision deals with transporting children ages four (4) through eight (8) in a passenger motor vehicle. Children ages five (5) through eight (8) are school age.⁷ A school bus is not a passenger motor vehicle, at a minimum because a school bus weighs over 10,000 pounds. A school bus is a motor vehicle, under the definitions given above, but the Act uses the term “motor vehicle” only in reference to children under four (4), that is, not school age.

As noted, the Act refers to “motor vehicles” and “passenger motor vehicles” only, and not to “school buses.” Because the General Assembly specifically used the terms “motor vehicles” and “passenger motor vehicles” and specifically defined “passenger motor vehicles,” we believe that the

⁴The terms “passenger car” and “passenger motor vehicle” do not apply to motor vehicles which are not required by federal law to be equipped with safety belts. Tenn. Code Ann. § 55-9-601(c). *See also* 49 C.F.R. § 571.208 (requiring seat belts for passenger in cars manufactured after January 1, 1972).

⁵For a child under one year of age, or any child weighing twenty (20) pounds or less, the Act requires a rear-facing position restraint system. For children one (1) through three (3) weighing greater than twenty (20) pounds, the Act requires a forward-facing restraint system. For children four (4) through eight (8), the Act requires the use of a belt positioning booster seat system. For children ages nine (9) through twelve (12), or any child who is five feet (5’) tall or taller and up to twelve years old, seat belts are required in a passenger motor vehicle. Seat belts are also mandated in passenger motor vehicles for children thirteen (13) through fifteen (15). An exception is made for a child not capable of being safely transported in a conventional child passenger restraint system; the child must be restrained in a specially modified, professionally manufactured restraint system meeting the same intent. 2003 Tenn. Public Acts, ch. 299, §§ 1 and 2.

⁶School age is five (5) through seventeen (17). Tenn. Code Ann. § 49-6-3001.

⁷For children from infancy to age four (4), *see also* Admin. Tenn. Rule, *Department of Human Services*, 1240-4-1-.07 (transportation standards for group child care homes); 1240-4-3-.10 (child care centers serving pre-school children); 1240-4-4-.07 (family child care homes).

omission of the use of the term “school bus” was deliberate and that the General Assembly did not intend the Act to include school buses *per se*. See, e.g., *Beach v. Ingram and Associates, Inc.*, 927 F.Supp.255, 259-60 (M.D. Tenn. 1996) (“It is a basic canon of statutory construction that the expression of one thing is the exclusion of another: ‘Expressio unius est exclusio alterius.’”). As noted earlier, school-age children must be in restraints or seat belts in certain vehicles other than school buses.

Local boards of education must carry liability insurance or its equivalent. Tenn. Admin. Rules, *State Board of Education*, 0520-1-5-.01. The unique facts and circumstances of an accident, however, will be critical to a determination of liability, and without them, it is not possible to opine on who would be liable. See, e.g., *Leach v. Metropolitan Government of Nashville*, 2002 WL 31528531 (Tenn. App. 2002).

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

KATE EYLER
Deputy Attorney General

Requested by:

The Honorable Steven Buttry
State Representative
214 War Memorial Bldg.
Nashville, TN 37243-0118