

MAINE STATE LEGISLATURE

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Joseph T. Edgar, Secretary of State

State

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School Bus Operator's License; Result of Failure of Test on Operation of Bus.

SYLLABUS:

A school bus operator who has failed to successfully complete the examination prescribed by 29 M.R.S.A. § 2012 cannot continue to operate such a vehicle pending re-examination.

FACTS:

Title 29, § 2012 provides for the licensing of school bus operators. Those provisions prescribe that no person shall be permitted to operate a school bus having a seating capacity of 10 or more persons, in the actual conveyance of school children, until that person complies with the requirements established in said Section. School bus operators must successfully complete an examination formulated by the Secretary of State in order that the applicant demonstrate his ability to operate a school bus described in said Section. Paragraph 4 of Section 2012 requires that an application for such an examination be filed with the Secretary of State within 30 days next following the commencement of operation of a vehicle used as a school bus.

Some time ago, an individual duly filed an application for the examination prescribed in Section 2012 and was administered that examination. The individual failed to successfully complete the examination and he has again filed an application for re-examination.

QUESTION:

May an individual who has failed to successfully complete the examination prescribed by 29 M.R.S.A. § 2012, 3, and who is not exempt under said Section, continue to operate a vehicle with a seating capacity of 10 or more persons in the actual conveyance of school children, pending his re-examination by the Secretary of State?

ANSWER:

No.

REASONS:

The provisions of 29 N.R.S.A. § 2012 relating to the examination and licensing of school bus operators do not apply to substitute or occasional drivers who are not regularly employed as school bus operators and who do not operate a school bus for more than 10 days in any school year. (See the last paragraph of that Section.) In all other instances, the provisions of said Title and Section have application; and the question raised here involves the continued operation of a school bus by an operator who has failed to successfully complete the examination prescribed by the Secretary of State. While it is true that paragraph 4 of § 2012 allows an applicant a 30-day period within which to file for the examination, said language does not evidence a legislative intention that an applicant for such examination may continue to operate a school bus notwithstanding that he has failed to successfully complete the Secretary of State's prescribed test and has applied for re-examination. Instead, paragraph 4 of § 2012 means no more than that applicants must file for examinations within a particular stated period of time, i.e., within 30 days next following their commencement of operation of school buses.

The reason why the Legislature has authorized the Secretary of State to prescribe examinations for school bus operators is clearly apparent from a reading of paragraph 3 of § 2012: " * * * to determine his ability to operate the specific vehicle which will be driven while transporting school children or any comparable type vehicle." Such a requirement exists to furnish a greater guarantee that proper use of the vehicle will be made; and that it will be operated in compliance with the law. Emerson Troy Granite Co. v. Pearson, 74 N. H. 22, 64 A. 502; and Maclean v. Heipris, 304 Mass. 237, 23 N. E. 2d 95.

Because the third paragraph of § 2012 requires a school bus operator to evidence his ability to operate a school bus through the successful completion of an examination prescribed by you, it is not unreasonable to conclude, as did the New Hampshire Court in Bennett v. Dupris, 92 N. H. 265, 29 A. 2d 421, that the school bus operator must show fitness to avoid the statutory presumption of unfitness. Again, under the given facts, the applicant has demonstrated unfitness.

In conclusion, an applicant who has failed to successfully complete the examination prescribed by § 2012 may not continue to operate such school bus pending re-examination.

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