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JOSEPH E. BRENNAN
ATTORNEY GENERAL



10/23
10/23
RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

November 7, 1978

Honorable Robert S. Howe
52 Pine Street
South Portland, Maine 04106

Dear Representative Howe:

We are responding to your recent request for an opinion of this office on questions of law concerning public transit district buses and their use for transporting public school students. The questions deal with the interrelationship of State school bus requirements, State funding of school transportation, and so-called "tripper service." However, before getting to the questions themselves, we will summarize information you have provided, plus additional information we have acquired in order to clarify the assumptions which are the basis for this opinion.

It is our understanding that the Greater Portland Transit District and its predecessor companies have supplied transportation for school children in various ways for the cities of Portland and South Portland since 1945, utilizing transit-type buses. At present, these cities contract with the Transit District for such transportation according to a plan whereby the cities purchase coupon booklets which are distributed to eligible school children for use on specially designated buses. It is our further understanding that the buses travel the usual Transit District routes and stop at designated points, with some modification to accommodate the purpose of transporting students. Although these buses carry signs designating them as "school buses" while on these special trips, the general public may use these buses for personal transportation from point to point just as they would use regular Transit District buses.

We are informed that the Transit District obtains federal funding under the Urban Mass Transportation Act, 49 U.S.C. §§ 1601, et seq., and is therefore subject to regulations promulgated by the Urban Mass Transportation Administrator (UMTA). Regulations of UMTA concerning school bus operations are set forth in 49 CFR, Part 605. These regulations were designed to ". . . protect

private school bus operators who are in competition with federally-assisted operators in providing transportation for school students, personnel and equipment." Federal Register, Vol. 41, No. 64, p. 14127, April 1, 1976. These regulations basically forbid the use of federally-funded buses, facilities and equipment for school bus operations which may compete with private school bus operators.

A pertinent exception to the UMTA regulations is provided for "tripper service," which is defined in 49 CFR § 605.3(b) as follows:

"'Tripper service' means regularly scheduled mass transportation service which is open to the public, and which is designed or modified to accommodate the needs of various school students and personnel, using various fare collections or subsidy systems. Buses used in tripper service must be clearly marked as open to the public and may not carry designations such as 'school bus' or 'school special.' These buses may stop only at a grantee's or operator's regular service stop. All routes travelled by tripper buses must be within a grantee's or operator's regular route service as indicated in their published route scheduled." (emphasis provided)

It is our understanding that the Transit District is presently operating its school transportation as a "tripper service" under some type of waiver by UMTA of the non-designation requirement underlined in the quotation above.

In light of this background, the thrust of your questions is directed at the following problem. All school buses, including those of transit districts, must meet the requirements of 29 M.R.S.A. §§ 2011 et seq., which include the use of "school bus" signs, with certain exceptions.^{1/} Therefore, if the buses in the Transit District's present program are school buses and display a "school bus" designation, they may not be a "tripper service" in the absence of a waiver from UMTA like the present one. Conversely, buses engaged

^{1/} While school buses operated by a transit district are specifically exempted from emergency door, lateral seating and color requirements (29 M.R.S.A. § 2020), they must comply with the other requirements including "school bus" signs. Transit district buses incidentally used as school buses are also permitted to display a specified amount of advertising, even though they are required to carry "school bus" signs. 29 M.R.S.A. § 2012(1)(A). A legislative attempt to entirely exempt mass transit authorities or certified motor carriers from these provisions was unsuccessful. See: proposed Senate Amendment "A" (S-356) to L.D. 2134 of the 106th Legislature.

in a "tripper service" under a strict application of the UMTA definition would violate the sign requirement of 29 M.R.S.A. § 2012, if they are school buses.

A "school bus" is defined in § 2011, sub-§ 2 as a motor vehicle with a capacity of 10 or more passengers ". . . used to transport school children to and from school. . . ." While it is true that the Transit District's apparent "tripper service" operation may differ slightly from the "portal-to-portal" operation of other school bus programs, the basic service is still transporting school children to and from school. This is a reasonable interpretation of the service provided, and is certainly what the cities expected in entering their agreements with the District and what parents of school children expect the service to be. The fact that passengers other than school children may choose to use these buses would not change the essential purpose of this special service, especially for consideration of the State's overriding interest in the comfort, safety and welfare of the school children being transported.^{2/} Therefore, we conclude that "tripper service" buses are "school buses" within the scope of the Title 29 requirements. We believe this answers one of your questions.

Your other question is essentially whether a municipality or other school administrative unit could receive State reimbursement for transportation costs under a contract with a transit district using a "tripper service" program. We see no reason why State reimbursement would not be forthcoming under 20 M.R.S.A. § 4748 in these circumstances so long as the buses used meet all applicable State requirements for school buses. However, if UMTA decides that "tripper service" buses under these circumstances cannot comply with the State requirements (e.g., "school bus" designation) and a transit district decided to use "tripper service" buses to transport students, continued State reimbursement would be very questionable. It is difficult to answer your question more directly since we do not know what other factors may exist if and when the latter situation may present itself.

We realize that the foregoing opinion may present a future practical conflict between the requirements of the Maine statutes and UMTA funding requirements. However, it is our further opinion that this practical conflict does not cause constitutional problems of federal supremacy or preemption in light of the fact that the UMTA requirements relate solely to the receipt of federal funding and do not address the area of school bus safety which is the specific intent of the Maine statute. The safety and welfare of

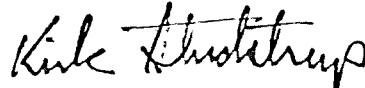
^{2/} We understand that all Transit District drivers used on these buses are licensed as school bus drivers. This may be an indication that the District also recognizes that the buses are used as school buses.

school children is clearly within the State's retained police powers and would not be preempted by a federal regulation which, in this case, was designed to protect economic benefits of private school bus operators. Indeed, the Maine statutes were recently revised to bring them into relative conformance with non-binding federal school bus safety standards. See: "Statement of Fact" for L.D. 2134, 106th Legislature, enacted as P.L. 1973, c. 780.^{3/}

You stated that the purpose of your questions is to see whether the Legislature should resolve any conflict between federal and state laws, so that the Transit District may continue to receive both federal and state funds. In light of the foregoing, we suggest that before proposing any amendment to the state requirements, it may be helpful to check with both UMTA and the National Highway Traffic Safety Administration (footnote 3 below) to make certain that an amendment is necessary and that it will not endanger other federal funding because of conflicts between federal programs.

Please continue to call on us whenever we may be of assistance.

Sincerely,



S. KIRK STUDSTRUP
Assistant Attorney General

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^{3/} The federal standards are those contained in Highway Safety Program Standard 17, "Pupil Transportation Safety," incorporated within the regulations of the United States Department of Transportation, National Highway Traffic Safety Administration. 23 CFR § 1204.4. However, there is some question as to whether these federal standards would apply to a "tripper service" operation. These standards are non-binding on the states, except to the extent that failure to include them in a state highway safety program might endanger federal funding for such program. 23 U.S.C. § 402.