

**LETTER OPINION
2003-L-15**

March 4, 2003

Honorable Wayne G. Sanstead
Superintendent of Public Instruction
600 East Boulevard Avenue, Dept. 201
Bismarck, ND 58505-0440

Dear Dr. Sanstead:

Thank you for your letter asking whether a van that does not conform to school bus standards contained in your department's administrative rules may be used by a public or private school to transport children to and from school or school-related activities.

State law defines "schoolbus" as follows:

"Schoolbus" means any motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or to or from school-related activities, or privately owned and operated for compensation for the transportation of children to or from school or to or from school-related activities.

N.D.C.C. § 39-01-01(67).

A "vehicle" includes every device in, upon, or by which any person or property may be transported or drawn upon a public highway." N.D.C.C. § 39-01-01(89). A "motor vehicle" includes every vehicle that is self-propelled." N.D.C.C. §39-01-01(38). Therefore, a vehicle commonly referred to as a "van" is a motor vehicle and, if operated for the transportation of children to or from school or to or from school-related activities, must comply with your department's rules on schoolbuses.

Your authority with respect to schoolbus standards provides:

Schoolbus standards - Equipment and color regulations. Only motor vehicles which have been designed by the manufacturer for the purpose of carrying passengers may be used as schoolbuses. The

superintendent of public instruction may adopt reasonable regulations, consistent with the provisions of this chapter, relating to the construction, design, operation, equipment, and color of schoolbuses and shall prepare and publish standards for North Dakota schoolbuses which must set forth the regulations. The superintendent of public instruction may issue an order prohibiting the operation on public streets, highways, and elsewhere of any schoolbus which does not comply with the regulations, and school districts operating buses which do not meet the regulations will not be eligible to receive state reimbursement for vehicular transportation. If a schoolbus is purchased for a purpose or purposes other than the public transport of schoolchildren, the purchaser shall change the color of the vehicle and deactivate or remove the warning signal lights and the stop sign on the control arm.

Highway patrolmen and all peace officers are authorized to make necessary investigations relating to compliance with the regulations adopted by the superintendent of public instruction and to make reports of their findings to the office of the superintendent of public instruction.

N.D.C.C. § 39-21-27.1. This section authorizes you to adopt administrative rules, issue orders prohibiting operation of non-complying vehicles, and impose sanctions upon school districts operating non-complying buses. Id.

You implemented that authority by adopting N.D.A.C. ch. 67-12-01, Standards for Schoolbuses. Those rules provide that all public schoolbuses operated in North Dakota must meet the minimum body and chassis standards established or referenced in the chapter. N.D.A.C. § 67-12-01-01 (emphasis added). The rules apply to buses manufactured after January 1, 2000. N.D.A.C. § 67-12-01-04. The rules adopt the body and chassis standards of the federal motor vehicle safety standards and supplement those standards with the 1995 national minimum standards for schoolbus construction if the latter exceed or are in addition to the federal motor vehicle safety standards for schoolbuses. N.D.A.C. §§ 67-12-01-02 and 67-12-01-03.

Section 39-21-27.1, N.D.C.C., authorizes you to issue orders prohibiting any party, including private schools, from using a schoolbus that does not comply with your department's rules. However, the rules that have been adopted are limited to schoolbuses operated by public schools. It is therefore my opinion that a van used to transport children to and from school or school-related activities which you find does not comply with the minimum standards adopted in your administrative rules may not be used by a public school district, whether it is owned by the district or operated under contract pursuant to

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N.D.C.C. §§ 15.1-30-06 through 15.1-30-12.¹ Vehicles used by private schools are not required to comply with your department's standards.

Sincerely,

Wayne Stenehjem
Attorney General

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¹ Transit buses utilized by students under N.D.C.C. § 15.1-30-01(3) are not schoolbuses subject to regulation because they are operated for general public transit which only incidentally includes students.