

- "1. Is a junior college bus of a district junior college whose district is coterminous with the independent school district, a public school bus? If not, would the fact that one or more high school students ride the bus for convenience make it a public bus?
- "2. Is a junior college bus that is owned and operated by the junior college through territory not in the school district a public school bus?
- "3. Considering the commonsense requirement of safety and efficiency, is there no sort of legal reasoning that can make a capable young man who is over 19 and under 21, who can pass any reasonable but rigid test given by the licensing division of the Highway Patrol, eligible to drive a public school bus?"

On September 18, 1939 this department ruled in opinion No. 0-1369 that a boy over 19 and under 21 years of age with disabilities removed could not lawfully operate a school bus. A copy of that opinion is enclosed. Said opinion was based upon the provisions of Section 14, Senate Bill No. 15, Acts Forty fourth Legislature, Second Called Session, at page 1785, which provides that "it shall be unlawful for any person who is under the age of twenty-one (21) years to drive a motor vehicle while in use as a school bus for the transportation of pupils to and from school * * * * *."

Section 5 of the recently enacted Driver's License Law, same being House Bill No. 20, Acts Forty seventh Legislature, Regular Session, provides as follows:

"Sec. 5. * * * * .

"No person who is under the age of twenty-one (21) years shall drive any motor vehicle while in use as a school bus for the transportation of pupils to or from school, nor any motor vehicle while in use as a public or common carrier of persons nor in either event until he has been licensed as a chauffeur."

It is well settled that where a statute has been

construed by executive departments of this state and is thereafter re-enacted without any substantial change of verbiage, it will receive the same construction. See 39 Texas Jurisprudence, pp. 266 and 267 for numerous authorities. For this additional reason, we are of the opinion that our Opinion No. 0-1369 correctly states the law on the question contained therein.

Section 1, Subsection (d) of House Bill No. 20, supra, re-enacts the definition of a "school bus" contained in House Bill No. 16, Chapter 369, Acts Forty-fifth Legislature, Regular Session (1937), page 752, and reads as follows:

"Sec. 1.

"The following words and phrases when used in this Act shall, for the purpose of this Act, have the meaning respectively ascribed to them in this title.

"* * * *

"(d) 'School Bus.' 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."

If the answers to your questions depended only upon the provisions of the recently enacted Driver's License Law, same being House Bill No. 20, supra, there might be room for argument as to whether a person might be 21 years of age in order to be licensed to drive a bus for the junior college when used to transport only the college students to and from the said college. This would be so because House Bill No. 20, supra, in defining the term "school bus", refers to the transportation of "children to or from school". There is some authority for the proposition that college students are not included within the terms "children" or "school children". There is also some authority for the proposition that the term "college" is not included within the meaning of the word "school".

In arriving at the answer to your questions, we must consider the provisions of Article 2687a, Vernon's Annotated Civil Statutes, which reads, in part, as follows:

"The trustees of any school district, common or independent, making provision for the transportation of pupils to and from school, shall for

such purpose employ or contract with a responsible person or firm. No person shall be employed to transport pupils, who is not at least twenty-one years of age and a competent driver of motor vehicles and sound in body and mind. (Underscoring ours). All motor vehicles operated by school districts, directly or by contract, in the transportation of pupils shall be covered and so glassed or curtained at the sides and rear as to protect the pupils from the inclemencies of the weather, and shall at all times be equipped with efficient lights and brakes.
* * * ."

Section 4 of Article 2815h, Vernon's Annotated Civil Statutes, reads as follows:

"Sec. 4. A junior college establishment and maintained by an Independent School District or city that has assumed control of its schools, or where the same has been organized as a Junior College District under the provisions of this Act prior to October 15, 1935, as an independent entity, or may hereafter be so created, and/or wherein the boundaries of the Junior College District are the same, or substantially the same, as the Independent School District, shall be governed, administered, and controlled by and under the direction of the Board of Education of such District or city.

"The said Board of Education of such Junior College District, under the provisions of this Act, shall in addition to all of the powers and duties vested in them by the terms of this Act, be furthermore vested with all the rights, powers, privileges, and duties conferred and imposed upon Trustees of Independent School Districts by the General Laws of this State, so far as the same may be applicable thereto and not inconsistent with this Act."

Article 2687a, supra, clearly provides that the board of trustees of an independent school cannot employ any person to transport pupils who is not at least 21 years of age. It is to be noticed that this statute contains no such term as "school bus", nor does it define such term. Furthermore, the word "pupils" is broad enough to apply to junior college students. See Webster's New International Dictionary and Northrop v. City of Richmond, 53 S.E. 962. We note further that Section 4 of Article 2815h, imposes the same

duties on the board of education of a junior college that are imposed upon the board of trustees of an independent school district insofar as such are applicable and consistent. The provisions of Article 2687a, supra, that no person under 21 years of age shall transport pupils, is just as applicable to a junior college as it is to an independent school district.

We answer your first and second questions by saying that no person can transport junior college students to or from the Edinburg Junior College in any motor vehicle used for transporting such persons who is under 21 years of age. The same rule is equally applicable to the transportation of grade school and high school pupils to or from a grade school or a high school.

We answer your third question by saying that we know of no legal reasoning which might be used to evade the express command of the Legislature.

We trust that we have satisfactorily answered your questions.

Yours very truly

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LS:ob:wc
Encl.

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s/Grover Sellers
FIRST ASSISTANT
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Approved Opinion Committee By s/BWB Chairman