

Van/"school bus"/Commercial Vehicle

Number: AGO 92-63

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Subject:
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Mr. Fred O. Dickinson, III
Executive Director
Department of Highway Safety and Motor Vehicles

RE: HIGHWAY SAFETY AND MOTOR VEHICLES, DEPARTMENT OF—BOARD OF REGENTS—MOTOR VEHICLES— DRIVER'S LICENSES—SCHOOL BUSES—SCHOOLS— UNIVERSITIES—university van designed to transport more than ten persons, including the driver, is not a commercial motor vehicle, as long as it is not used to transport pre-K through 12 students to and from school or school activities.

QUESTION:

Is a van designed to transport more than ten persons, including the driver, which is used by the state university system considered a "school bus" and, therefore, a commercial vehicle, requiring its driver to possess a commercial driver's license pursuant to Ch. 322, F.S.?

SUMMARY:

A van used by the university which is designed to transport more than ten persons, including the driver, is not a "school bus" under s. 234.051, F.S., and, therefore, unless otherwise covered by the definition of a "commercial vehicle" set forth in s. 322.01(8), F.S., is not a commercial vehicle requiring its driver to possess a commercial driver's license.

Your department has taken the position that a van designed to transport more than ten persons, including the driver, is a "school bus" if used by a public or private prekindergarten through grade 12 or college level educational facility. The Board of Regents, however, does not agree that such a vehicle used by the university system is a "school bus" as defined in s. 234.051, F.S. The vans used by the university are designed to transport more than ten persons, including the driver, but do not have characteristics which would otherwise make them subject to the definition of a "commercial motor vehicle" in s. 322.01(8), F.S. The issue, therefore, is whether the vans used by the university are school buses as defined in s. 234.051, F.S.

Section 322.53(1), F.S., provides:

"Except as provided in subsection (2),[1] every person who drives a commercial motor vehicle in this state is required to possess a valid commercial driver's license issued in accordance with the requirements of this chapter."

"Commercial motor vehicle" is defined, for purposes of Ch. 322, F.S., as any motor vehicle or motor vehicle combination used on the streets or highways, which:

- "(a) Has a gross vehicle weight rating of 26,000 pounds or more;
- (b) Has a declared weight of 26,000 pounds or more;
- (c) Has an actual weight of 26,000 pounds or more;
- (d) Is designed to transport more than 15 persons, including the driver;
- (e) Is a *school bus designed to transport more than 10 persons, including the driver*, or
- (f) Is transporting hazardous materials and is required to be placarded in accordance with Title 49 C.F.R. part 172, subpart F."[2] (e.s.)

Section 322.01(36), F.S., states that a "[s]chool bus" is "a motor vehicle, as defined in s. 234.051, operated for the transportation of students to or from school or to or from school-sponsored activities." "School bus" is defined by s. 234.051(1), F.S., as "a motor vehicle regularly used for the transportation of prekindergarten through grade 12 students of the public schools to and from school or to and from school activities, and owned, operated, rented, contracted, or leased by any school board[.]"

The plain language of these statutes makes the definition of "school bus" in s. 234.051, F.S., applicable to a school bus designed to transport more than ten people, including the driver. Thus, only those motor vehicles contemplated in s. 234.051, F.S., which do not otherwise fall within one of the categories of "commercial vehicle" in s. 322.01(8), F.S., would be subject to the commercial licensing requirements of Ch. 322, F.S.

As long as the university system does not use the above-described vans to transport prekindergarten through grade 12 students of the public schools to and from school or school activities, such as in the university teaching schools, such vans would not be school buses as the term is defined in s. 234.051, F.S. It does not appear, therefore, that the drivers of such vans would be required to have a commercial driver's license.

While the preceding discussion answers your question, I would note, in response to comments included in your letter and accompanying materials, that for purposes of uniform traffic control under Ch. 316, F.S., a "commercial motor vehicle" includes "[a]ny self-propelled or towed vehicle used on the public highways in commerce . . . designed to transport more than 10 passengers, including the driver." [3] Furthermore, the term "bus" as used in Ch. 316, F.S., is defined as "[a]ny motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons" [4] There is no provision in Ch. 316, F.S., such as the one in s. 322.01(36), F.S., restricting the definition of a "school bus" to the one contained in s. 234.051, F.S.

Section 316.615, F.S., requires that all motor vehicles, other than private automobiles and school buses with a seating capacity of less than twenty-four pupils, used primarily for the transportation of pupils to school, comply with the requirements for school buses in Ch. 234, F.S. For purposes of this section, the term "school" includes "all public and private nursery, preelementary, elementary, secondary, and college level schools." [5] Thus, university system buses with a seating capacity of twenty-four or more pupils must comply with the requirements for school buses in Ch. 234, F.S. [6]

Chapters 316 and 322, F.S., however, have separate areas of operation. There is no indication that the terms of one may be used interchangeably with the other to broaden each statute's application. While administrative interpretations by the agency required to enforce a statute are entitled to great weight,[7] an agency may not enlarge its authority beyond that provided in a statutory grant.[8] Thus, a commercial driver's license is required only for those commercial motor vehicles specified in Ch. 322, F.S. The Department of Highway Safety and Motor Vehicles, therefore, may not expand the definition of a commercial motor vehicle to encompass a university van designed to transport ten or more persons, including the driver, which does not otherwise fit within the definition of a commercial vehicle in Ch. 322, F.S., for purposes of requiring the driver of such a vehicle to have a commercial driver's license.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/t

[1] Section 322.53(2), F.S., states:

"The following persons are exempt from the requirement to obtain a commercial driver's license:

- (a) Drivers of authorized emergency vehicles;
- (b) Military personnel driving military vehicles;
- (c) Farmers transporting farm supplies or farm machinery within 150 miles of their farm, or transporting agricultural products to or from the first place of storage or processing or directly to or from market, within 150 miles of their farm;
- (d) Drivers of recreational vehicles, as defined in s. 320.01; and
- (e) Drivers who operate straight trucks, as defined in s. 316.003, that are exclusively transporting their own tangible personal property which is not for sale."

[2] Section 322.01(8), F.S.

[3] Section 316.003(66)(b), F.S.

[4] Section 316.003(3), F.S.

[5] Section 316.615(1)(b), F.S.

[6] Section 316.615(2)(a), F.S., requires every bus with a seating capacity of less than 24 pupils to be equipped with specific safety equipment.

[7] See *Samara Development Corp. v. Marlow*, 556 So.2d 1097 (Fla. 1990).

[8] See *Florida Department of Law Enforcement v. Hinson*, 429 So.2d 723, 724 (1 D.C.A. Fla., 1983) (where agency lacked statutory authority to require the relinquishment of documents,

agency could not promulgate rule requiring individual to turn over documents to the agency).