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FILE NO. S-976

**MOTOR VEHICLES:**  
**Motor Vehicles Operated**  
**By Religious or Eleemosynary**  
**Institutions for Transportation**  
**of Persons**

Langhorne Bond  
Secretary  
Illinois Department of Transportation  
2300 South Dirksen Parkway  
Springfield, Illinois 62764

Dear Mr. Bond:

I have your letter wherein you state that pursuant to section 49.19a of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1973, ch. 127, par. 49.19a) the Illinois Department of Transportation is preparing to administer a program of capital grants to nonprofit corporations for the purchase of special equipment for transportation of handicapped and elderly persons, and that applications have been received from organizations which provide various types of rehabilitation

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services to adults and children, including physical therapy, vocational training, sheltered workshops teaching basic living skills, and preschool, primary and secondary level education classes.

You request an opinion as to whether motor vehicles operated by nonprofit or religious organizations for transportation of persons to any of the foregoing programs fall within the definition of "school buses" as defined by section 1-182 (Ill. Rev. Stat. 1974 Supp., ch. 95 1/2, par. 1-182) of the Illinois Vehicle Code and as to whether buses transporting adults for the purposes specified above would fall within the definition of "school buses".

Section 16(b) of the Federal Urban Mass Transportation Act (49 U.S.C. 1612(b)) authorizes the United States Secretary of Transportation to make grants to States and nonprofit corporations and associations for the specific purpose of providing transportation services meeting the special needs of the elderly and handicapped. This includes the authority to make grants to assist States in financing the acquisition or construction of "buses and other rolling stock". (49 U.S.C. 1602.) However, no Federal funds will be provided unless the applicant

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makes an express agreement with the United States Secretary of Transportation not to enter into, or by implication, use the funds for certain "schoolbus operations". Section 3(g) (49 U.S.C. 1602(g)) provides in part:

"(g) No Federal financial assistance shall be provided under this chapter for the construction or operation of facilities and equipment for use in providing public mass transportation service to any applicant for such assistance unless such applicant and the Secretary shall have first entered into an agreement that such applicant will not engage in schoolbus operations, exclusively for the transportation of students and school personnel, in competition with private schoolbus operators. This subsection shall not apply to an applicant with respect to operation of a schoolbus program if the applicant operates a school system in the area to be served and operates a separate and exclusive schoolbus program for this school system. This subsection shall not apply unless private schoolbus operators are able to provide adequate transportation, at reasonable rates, and in conformance with applicable safety standards; and this subsection shall not apply with respect to any State or local public body or agency thereof if it (or a direct predecessor in interest from which it acquired the function of so transporting schoolchildren and personnel along with facilities to be used therefor) was so engaged in schoolbus operations any time during the twelve-month period immediately prior to November 26, 1974. \* \* \* "

While this provision does not absolutely prohibit the purchase of school buses, I understand that the External Operating Manual of the Urban Mass Transportation Authority defines the term "urban mass transportation service" to exclude school buses and that Urban Mass Transportation Authority is unwilling to

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consider purchase of school bus type vehicles.

Clarification of the definition of "school bus" is therefore necessary. Section 1-182 of the Motor Vehicle Code, supra, defines "school bus" as:

"(a) Every motor vehicle, except as provided in paragraph (b), owned or operated by or for any of the following entities for the transportation of persons in connection with any activity of the entity: a school operated by a religious institution or a public or private nursery, primary, secondary or parental school.

(b) This definition does not include the following:

(1) A bus operated by a public utility, municipal corporation or common carrier authorized to conduct local or interurban transportation of passengers when such bus is on a regularly scheduled route for the transportation of other fare paying passengers or furnishing charter service for the transportation of groups on field trips or other special trips or in connection with special events or for shuttle service between attendance centers or other educational facilities and not over a regular or customary school bus route;

(2) a motor vehicle designed for carrying not more than 9 passengers which is not registered as a school bus under Section 3-808."

"School bus" is not defined in terms of a particular type of motor vehicle but rather in terms of the entity by or for which the motor vehicle is operated or owned. If an entity is a school operated by a religious institution or is a public or private nursery, primary, secondary, or parental school, then motor vehicles used for transportation of persons in connection

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with any activity of such entity are school buses.

In opinion No. S-871 I noted that there was no statutory definition for "school" in Illinois but that "school" has been defined by the Illinois Supreme Court in The People v. Deutsche Gemeinde, 249 Ill. 132, 137 at 372 as follows:

"A school, within the meaning of the constitutional provisions, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptation of the word. What are called schools are conducted for teaching dancing, writing, deportment, and other things, which are not schools in the ordinary sense."

That opinion dealt with the meaning of the phrase "a school operated by a religious institution" and in that opinion I advised that the term "school" did not include "Sunday school, bible school and other religious education programs". Your question concerns the phrase "public or private nursery, primary, secondary or parental school" and whether such phrase includes physical therapy, vocational training, sheltered work shop programs or preschool primary or secondary level educational classes provided by nonprofit corporations.

This part of the definition of "school bus" does not deal with "school" in general as did the part dealing with "schools operated by religious institutions". It includes only "nursery, primary, secondary and parental schools". It is thus more limited and specific. While none of these terms

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are defined in the Motor Vehicle Code, they all have an ascertainable meaning.

Nursery schools and parental schools are specifically defined in other statutes. "Nursery school" is defined in section 2.12 of the Child Care Act of 1969. (Ill. Rev. Stat. 1973, ch. 23, par. 2212.12.) It reads as follows:

"§ 2.12. 'Nursery schools' means day care centers which receive children between the ages of 2 and 6 years and which are established and professionally operated primarily for educational purposes to meet the developmental needs of the children served."

While a nursery school is a day care center, a day care center is not necessarily a nursery. See sections 2.09 - 2.19 of the Child Care Act of 1969 (Ill. Rev. Stat. 1973, ch. 23, pars. 2212.09 - 2212.19) for definitions of various types of child care facilities. In addition, a distinction between nursery schools and day care centers has been recognized by the courts. In Lakeside Day Care Center v. Board of Adjustment, 121 So. 2d 335 (1960), the Louisiana Court of Appeals distinguished between the two and based the distinction on various factors including the hours of operation, the education of the personnel, the programs offered, the commercial aspects and the purpose of its existence. Thus, all day care centers are not nurseries.

"Parental school" is defined in section 34-17 of The School Code (Ill. Rev. Stat. 1973, ch. 122, par. 34-17) as a

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truant school established "for the purpose of affording a place of confinement, discipline, instruction and maintenance of children, both boys and girls, of compulsory school age, who may be committed thereto".

Primary and secondary schools are commonly understood to mean schools which provide an education or course of study between kindergarten or first grade and twelfth grade. They are not simply institutions which provide classes in a particular subject which may be considered at a primary or secondary educational level. Thus, even though the Red Cross, YMCA, YWCA and other similar institutions may offer classes considered to be at the primary or secondary level, this does not make such institutions schools. For the purposes of this section a primary or secondary school can be defined as an institution or entity which offers a course of study which would fulfill the State compulsory educational requirement. See The People v. Levisen, 404 Ill. 574 and Nebraska District of Evang. Lutheran Synod. v. McKelvie, 175 N.W. 531 (Neb. 1919).

While it may be viewed as desirable by some to include within the definition of "school bus" any motor vehicle which carries groups of children so as to protect such children, this would be extending the definition of "school bus" beyond the

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terms of the statute. I do not see that the phrase "nursery, primary, secondary or parental schools" in its ordinary meaning, can mean any institution contributing to the general educational needs of the youth community.

The term "school bus" for purposes of the Illinois Vehicle Code, therefore, includes only motor vehicles (unless otherwise excepted) owned or operated by or for an entity which operates a public or private nursery, primary, secondary or parental school or by or for a school operated by a religious institution. However, any motor vehicles used for the transportation of persons in connection with any activity of such entity or school operated by a religious institution are school buses unless exempt by the statute. "Any activity" would include physical therapy and other programs of the type about which you inquire.

Subsection 1-182(b) of the Illinois Vehicle Code (Ill. Rev. Stat. 1974 Supp., ch. 95 1/2, par. 1-182(b)) provides two exceptions for the definition of school bus for a motor vehicle which would otherwise be defined by statute as a "school bus". The first exception is not applicable to your inquiry. The second exception provides that "a motor vehicle designed for carrying not more than 9 passengers which is not registered



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as a school bus under section 3-808" will not be defined as a school bus. The applicable provisions of section 3-808 (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 3-808) provide:

"§ 3-808. Governmental, religious and not for profit organization vehicles -- Registration fees.  
(a) A registration fee of \$5 per annum shall be paid by the owner in the following cases:

\* \* \*

2. Vehicles operated exclusively as a school bus for school purposes by any school district, or religious, or denominational institution.

\* \* \*

6. Vehicles used exclusively as a school bus for any school district, or religious, eleemosynary or denominational institution, which are neither owned nor operated by such district or institution.

\* \* \*

9. Vehicles owned and operated by organizations which are not for profit and which are religious or charitable in purpose."

Motor vehicles could be registered under item 9 even though they are used for school purposes. Thus, motor vehicles designed for carrying not more than 9 passengers, and registered under item (9) and not items (2) and (6) of subsection 3-808(a), are not defined as "school buses" even though the vehicles could be used for school purposes.

Whether the applicants for grants to purchase special

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equipment for transportation of handicapped and elderly persons are schools operated by a religious institution or are a public or private nursery, primary, secondary or parental schools, or are operating motor vehicles for any such entity, are questions of fact which you will have to determine. Entities offering physical therapy, vocational training, sheltered workshops, and preschool, primary and secondary level educational classes are not, however, for that reason alone, "nursery, primary, secondary or parental schools" or even "schools" as defined in opinion No. S-871. Physical therapy is commonly thought of as a medical treatment not an educational course. Secondary schools commonly referred to as vocational high schools would be included within the definition; however, all vocational schools or vocational training programs are not within the definition. Sheltered workshops is a broad term which includes many types of programs, some of which could be schools. As discussed previously, preschools are not necessarily nursery schools and an entity which offers classes at a primary or secondary level is not necessarily a primary or secondary school.

You additionally request my opinion as to whether buses transporting adults for the purpose of a physical therapy

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program in combination with (a) vocational training program (b) "sheltered workshops" (c) preschool, primary or secondary level education classes would fall within the Illinois Vehicle Code definition of "school buses". This question is substantially similar to your first question and the reasoning applied to the first question is applicable to this question. Age and the particular type of activity are not factors to be considered in determining whether a motor vehicle is a school bus. If the adults to which you refer are being transported in a motor vehicle owned or operated by or for an entity which is either a public or private nursery, primary, secondary or parental school, or a school operated by a religious institution, then the motor vehicle in which they are being transported is a school bus unless such vehicle is within the previously discussed exception.

Very truly yours,

A T T O R N E Y   G E N E R A L