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IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,052

THIRD DISTRICT COURT OF APPEAL CASE NO. 90-812

TRAVELERS INDEMNITY COMPANY

Petitioner,

vs.

JULIO CEASAR SUAZO, etc. et al.

Respondent.

RESPONDENTS' ANSWER BRIEF ON THE MERITS

LAW OFFICES OF DAVID C. ARNOLD
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INTRODUCTION

Respondents will use the same references and abbreviations as set forth in Petitioner's Introduction. Reference to Petitioner's brief will be made by the symbol "P" followed by the page number.

STATEMENT OF THE CASE AND FACTS

Respondents concur with Petitioner's Statement of the Case and Facts.

CERTIFIED QUESTION

1

What is the minimum amount of insurance required on a per person basis for private school buses with more than twenty-four (24) seats which are within the class described by Section 316.615, Fla. Stat. (1989)?

SUMMARY OF THE ARGUMENT

1 It is clear that all non-public sector buses must carry liability insurance coverage in the amount of \$100,000.00 because of bodily injury to one person in any accident. It is also clear that all school buses defined under Fla. Stat. 234 must have a minimum of \$100,000.00 liability insurance. The Department of Transportation and the Department of Highway Safety and Motor Vehicles have each established rules reiterating that minimum insurance requirement. Florida Statute 234.03 references Fla. Stat. 768.28 which also specifies minimum single limit coverage of \$100,000.00. To construe the applicable Florida Statutes to require \$100,000.00 minimum coverage in every instance except for private school buses would be both illogical and would avoid the obvious intent of the legislature. Since the policy issued by Travelers does not provide the minimum insurance mandated by statute, it must be construed and applied as if it were in full compliance.

The finding by the Third District Court of Appeal that the legislature intended buses carrying more than twenty-four students to maintain tort liability coverage of not less than \$100,000.00 per person and that the policy of insurance issued by Travelers to the Del Bustos must be construed accordingly, should be affirmed. Alternatively, the Court should decline its discretionary review on the basis that the issues presented are not of great public importance because 627.742 Fla. Stat. will be repealed and reviewed by the legislature on October 1, 1992 under the Regulatory Sunset Act.

ARGUMENT

The Minimum Amount Of Insurance Required On A Per Person Basis For Private School Buses With More Than Twenty-Four Seats Which Are Within The Class Described By Section 316.615 Fla. Stat. (1989) Is \$100,000.00 Per Person.

There are three pertinent Florida Statutes which apply to mandated insurance coverage for buses: 627.742, 316.615 and 234.03.

627.742(1)(a)1. Fla. Stat. (1981) requires a non-public sector bus to carry (a) proof of ability to respond to damages for liability for bodily injury in the amount of \$100,000.00 for one person and \$300,000.00 for two or more persons; or (b) an insurance policy for liability "in a sum not less than \$300,000.00." The DEL BUSTO bus, by stipulation, was both a non-public sector bus and a school bus (R-1-3). Some confusion arises because 627.742(2) states that "School buses subject to the provisions of chapter 234 or S.316.615 are exempt from the provisions of this section."

We therefore look to see if the DEL BUSTO bus was subject to the provisions of chapter 234 or 316.615 of the Florida Statutes. In first looking at chapter 234, we note that 234.051 Fla. Stat. (1989) defines a school bus only as those buses owned, operated, rented, contracted or leased by any school board. The DEL BUSTO bus would therefore not come within the definition of a school bus under chapter 234.

We next look to 316.615(1)(a) Fla. Stat. (1986). That section requires all motor vehicles with a seating capacity of 24 or more

pupils which are used primarily for the transportation of pupils to school but which are not operated by or under the purview of the state or political subdivision thereof, or a franchise operated by a municipality or public service commission to comply with the requirements of school buses of chapter 234. The DEL BUSTO bus comes within the definition of a motor vehicle as set forth in 316.615(1)(b) and therefore, pursuant to that statute, must comply with the requirements of Chapter 234.

Subsection 316.615(6) also requires **the** Department of Highway Safety **and** Motor Vehicles to promulgate such rules and regulations as are necessary to effect the purposes of this section. Our search for appropriate insurance coverage is, therefore, directed back to chapter 234 and to the rules promulgated by the Department of Highway Safety and Motor Vehicles.

Florida Statute 234.03 entitled "**Tort Liability; Liability Insurance**" requires each school board to be liable for tort claims as set forth under 768.28 Fla. Stat. **with** total liability being in "**an** amount equal to \$5,000.00 multiplied by **the** rated seating capacity of the bus..., or **\$100,000.00** whichever is greater." (Emphasis supplied.)

If we look to 768.28(5) Fla. Stat. (1987) that subsection requires liability for any claim by any one person in the amount of \$100,000.00 and liability for total claims arising **out** of one incident, in the amount of \$200,000.00.

The Department of Transportation, in its amicus curiae brief filed with the Third District Court of Appeal stated that its

Administrative Code Rule 14-82-009 is applicable and requires \$100,000.00 of liability insurance for bodily injury to one person. (App. 3, pg. 3, 4, 9). The Department of Insurance, in its amicus curiae brief, concurred with the Department of Transportation. (App. 4). The Department of Highway safety and Motor Vehicles in its amicus curiae brief, on the other hand, maintained that pursuant to 316.615(6) it promulgated Florida Administrative Code Rule 15B-4.001(1)(o) (1981) and the School Bus Inspection and Student Transportation Manual and require minimum liability insurance equal to \$5,000.00 multiplied by the rated seating capacity of the bus or \$100,000.00 whichever is greater. (App. 5, pg. 1,2). This is required as a minimum coverage.

In either case, by any of the statutes referred to above, or by the rules and regulations promulgated by the various departments, the minimum insurance requirements applicable to a private sector school bus is \$100,000.00.

TRAVELERS claims the Florida Highway Patrol only requires \$10,000.00 single limits insurance and their interpretation should be given great deference. (P. 6) TRAVELERS cites Section 324.021(7) Fla. Stat. (1986) as authority. That section, however, only defines proof of financial responsibility and does not require anything. In fact, the Florida Highway Patrol requires a minimum of \$100,000.00 for school buses as set forth in the amicus curiae brief of the Department of Highway Safety and Motor Vehicles (App. 5, pg. 1, 2).

TRAVELERS also cites as authority, Section 30-371(g)(c) of the

Code of Metropolitan Dade County which is antiquated. Section 30-372(1)(a) of the Code of Metropolitan Dade County restates Chapter 316.615 and requires all motor vehicles with a seating capacity of 24 or more pupils used primarily for the transportation of pupils to school, to comply with the requirements for school buses of Chapter 234, F.S. In fact, Dade County Transportation Administration requires liability and insurance in the amount of \$100,000.00 per person and \$5,000.00 times the rated seating capacity of the bus per occurrence. TRAVELERS' argument in this regard is not supported by statute or the facts.

Alternatively, TRAVELERS argues that the most reasonable interpretation to be given to the statutes is that the \$100,000.00 minimum insurance requirement is per occurrence and not per person and that only \$10,000.00 per person insurance coverage is required. (P. 9) If that were so, every bus in the state of Florida would require \$100,000.00 minimum insurance coverage per person except private school buses carrying children to school and to after-school activities. None of the statutes or rules pertaining to insurance requirements for buses require or even mention \$10,000.00 per person insurance coverage. They all require a minimum of \$100,000.00 of insurance.

If we followed TRAVELERS' argument to conclusion, TRAVELERS would ask the Court to declare that for private school buses there is no required insurance coverage on a per person basis and \$100,000.00 on a per occurrence basis. How would TRAVELERS purport to pay those claims: i.e., When their total zero dollar liability

per person adds up to \$100,000.00, they would then pay the claim? TRAVELERS' reasoning in this regard is both unreasonable and illogical.

It would be unreasonable to believe that the legislature intended to leave the only unprotected bus passengers in this state to be minor children on private buses while requiring all other bus passengers to have insurance protection of a minimum of \$100,000.00. It is a "....long-established principle that when statutes are susceptible of and in need of interpretation or construction, they will be construed so as to avoid illogical results. Tampa-Hillsborough County v. K.E. Morris Alignment Serv., Inc., 444 So.2d 926, 929 (Fla. 1983). Moreover, statutes should be construed to effect the obvious intent of the legislature. Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693 (1918); Curry v. Lehman, 55 Fla. 847, 47 So. 18 (1908)." (R. 6).

Lastly, TRAVELERS maintains that the courts are without right to add or take away from their insurance policy (P. 8-10). The Third District Court of Appeal did not add or take anything away from TRAVELERS' policy, it merely enforced Section 627.412(1) Fla. Stat. (1989) and 627.418 Fla. Stat. (1989) by construing and applying TRAVELERS' policies as though it were in full compliance with Florida Statutes.

TRAVELERS attached a school bus inspection form as Appendix 11 to its Brief on the Merits. Respondents have moved to strike that appendix by a separate Motion to Strike. TRAVELERS attached Appendix 11 in support of its argument that, "The Third District's

ruling is to the great detriment of all carriers who have been issuing policies in reliance on approval by the Highway Patrol." That is clearly erroneous and is not substantiated by the record for the reasons set forth in the Motion to Strike. Both the Florida Highway Patrol and Dade County Transportation Administration enforce state statutes and both require private school buses to maintain a minimum of \$100,000.00 liability insurance **per** person.

CONCLUSION

The Third District Court of Appeal made a thoughtful and well reasoned analysis of the insurance requirements to be applied on a **per** person basis for a privately owned school bus upon the facts as stipulated by the parties. They took into consideration the position of the Department of Highway Safety and Motor Vehicles, Department of Transportation, and the Department of Insurance. For the reasons set forth above, and as opined by the unanimous opinion of the Third District Court of Appeal, the Third District's ruling should be affirmed and the answer to the certified question should be **\$100,000.00**.

Alternatively, the Court should decline its discretionary review on the basis that the issues presented are not of great public importance because 627.742 Fla. Stat. will be repealed and reviewed by the legislature on October 1, 1992 under the Regulatory Sunset Act.

Respectfully Submitted,

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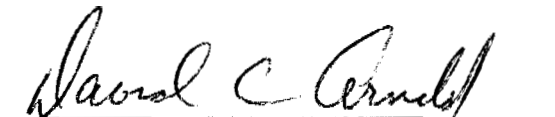


David C. Arnold

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondents' Answer Brief and the Merits has been furnished by U.S. Mail to: Christopher Lynch, Esq. 9th Floor Concord Building, 66 W. Flagler Street, Miami, Florida 33130 and Loren E. Levy, Esq., P.O. Box 2720, Ocala, Florida 32678-2720 this 28 day of January, 1992.

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NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1991

JULIO CEASAR SUAZO, by and
through his mother and next
friend, ZOILA SUAZO, and ZOILA
SUAZO, individually,

Appellants,

vs.

BARBARA M. DEL BUSTO and
DELIA DEL BUSTO,

Appellees.

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CASE NO. 90-812

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Opinion filed August 13, 1991.

An Appeal from the Circuit Court for Dade County,
John Gale, Judge.

David C. Arnold, for Appellants.

Adams, Hunter, Angones, Adams & McClure and Christopher
Lynch, for Appellees.

Before NESBITT, FERGUSON and COPE, JJ.

FERGUSON, Judge.

The Suazos appeal from an order which finds that only
\$10,000 in coverage is provided under a school bus liability

insurance policy. In deciding whether the policy provides the minimum coverage required by law we are called upon to wade through a series of vague and conflicting statutes in search of legislative intent.¹

Seven-year-old Julio Suazo was injured when struck by a nonpublic-sector bus owned and operated by Del Busto. The bus, with a seating capacity in excess of twenty-four students, was used to transport pupils from a public elementary school to a private after-school care facility. Following a mediation hearing, Suazo and Del Busto entered into a settlement agreement stipulating that Suazo sustained \$25,000 in damages.

Del Busto argues that under its policy with Travelers Insurance Company liability is limited to \$10,000 per person or \$300,000 per occurrence, therefore, the Suazo's recovery under the policy can be only \$10,000. The Suazos contend that section 627.412(1), Florida statutes (1989), requires all insurance contracts to contain provisions mandated by the insurance code and that an insurance policy not in compliance with the insurance code must be construed and applied as if it were in full compliance. § 627.418, Fla. Stat. (1989). According to the Suazos, the \$10,000 per person policy limit covering the bus which struck Julio was not in accordance with the code and thus

¹ At our invitation amici briefs were filed by the Department of Highway Safety and Motor Vehicles, the State Board of Education and the Department of Transportation. While we appreciate the responses of those agencies to the troubling questions presented, it is obvious that they were unable to show us a well-lit route out of the quandary.

requires that the policy be construed or reformed to comply with statutorily mandated levels.

The difficulty in determining the appropriate amount of coverage in this case is caused by the awkward wording of the statutes pertaining to insurance coverage on nonpublic-sector buses.² In deciding the appropriate coverage for the bus in question, we are guided by the long-established principle that when statutes are susceptible of and in need of interpretation or construction, they will be construed so as to avoid illogical results. ~~Tampa-Hillsborough County v. K.E. Morris Alignment Serv., Inc.~~, 444 So.2d 926, 929 (Fla. 1983). Moreover, statutes should be construed to effect the obvious intent of the legislature. Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693 (1918); Curry v. Lehman, 55 Fla. 847, 47 So. 18 (1908).

section 324.021 (7), Florida Statutes (1989), which establishes the general minimum liability coverage for motor vehicles, provides in subsection (d) that nonpublic-sector buses³ must have coverage in the amount specified in section 627.742.

² See General Accident Ins. Co. v. Southern Ins. Co., 563 So.2d 186 (Fla. DCA 1990), where the court, referring to section 324.021(7), coverage commercial motor vehicles and nonpublic-sector buses, lamented the "confu barrage of possibly applicable statutes" and held that the trial cou finding of only \$10,000 coverage pursuant to section 324.021(7) was errone In reaching this result the court wrote "[i]f we err here, it is on the of requiring more, rather than less, insurance coverage, in order to carry Florida's public policy of protecting the motoring public on our pu

§ 324.021 (7) PROOF OF FINANCIAL RESPONSIBILITY. . .

- (a) In the amount of \$10,000 because of bodily injury to, or death of, one person in any one accident; * * *

- (d) With respect to commercial motor vehicles and

Section 627.742 requires a nonpublic-sector bus to carry (a) proof of ability to respond to damages for liability for body injury in the amount of \$100,000 for one person and \$300,000 for two or more persons, or (b) an insurance policy for liability "in a sum not less than \$300,000."

The Suazos conclude, therefore, that section 627.742 requires coverage greater than the \$10,000 limit set generally by section 324.021(7) for automobiles. Del Busto replies that section 627.742 does not apply because subsection (2) of that statute provides that "school buses subject to the provisions of chapter 234 or section 316.635 are exempt from the provisions of this section."

Section 234.051 defines a school bus as a vehicle used to transport children to school or school activities "which is owned, operated, rented, contracted, or leased by any school board." As to the amount of tort liability, section 234.03 sets the amount at \$5,000 per seat or \$100,000, whichever is greater. Thus, even if chapter 234 applied to the bus in question, minimum tort liability has been set at \$100,000 by this chapter. The other section referred to in 627.742(2), is section 316.615, entitled "Inspection of School Buses: Physical Requirements." The only provision in that statute referring to motor vehicles with

non-public-sector buses, in the amounts specified in §§ 627.7415 and 627.742, respectively.

(8) MOTOR VEHICLE LIABILITY POLICY -
Any . . . policy of liability insurance furnished as proof of financial responsibility. . . in not less than the limits described in subsection (7).

seating for more than twenty-four pupils, mandates that such vehicles comply with the requirements of chapter 234 and §§ 316.615 (1)(a).⁴

Our reading of all of the cited statutes supports the Suazo's position that the legislature intended buses carrying more than twenty-four students to maintain tort liability coverage of not less than \$100,000 per person. The policy issued to the Del Bustos was not in compliance with that minimum limit thus, must be construed and applied as if in full compliance with the code. § 627.418, Fla. Stat. (1989); Excelsior Ins. Co. v. Pomona Park Bar & Package Store, 369 So.2d 938 (Fla. 1979).

Reversed and remanded for further consistent proceedings.

Nesbitt, J., concurs.

⁴ Pursuant to section 316.615(6), the Department of Highway Safety and Motor Vehicles has promulgated Florida Administrative Code Rule 15B-4 which requires all nonpublic school buses to have liability insurance. The minimum limits are set forth in the Department regulations entitled "School Bus Inspection and Transportation Manual." The provision of the regulation governing buses with seating in excess of twenty-four students reads as follows:

Every school bus will carry liability insurance in the minimum amount as required in § 234.03, Fla. Stat., to protect the pupils it is transporting. The amount shall be equal to \$5,000 multiplied by the rated seating capacity of the bus, or \$100,000, whichever is greater.

COPE, Judge (specially concurring).

That the issue presented by this **case** deserves legislative attention is shown by the fact that two **state** agencies--the Department of Highway Safety and Motor Vehicles, and the Department of Transportation--have submitted amicus briefs contending **(a)** that each has jurisdiction to regulate the insurance levels for **private school buses**; **(b)** that each has promulgated a rule which is applicable to the school bus involved in this **case**; and **(c)** disagreeing on the applicable level of insurance coverage.

As a preliminary matter, the plaintiffs' original contention in this **case was** that the applicable level of insurance **coverage** is that specified in section 627.742, **Florida Statutes** (1989). That statute applies to nonpublic-sector buses, a term which essentially encompasses all buses carrying **persons** for compensation, other than those **owned** or operated by governmental units or certain governmentally related nonprofit corporations. § 316.003(78), Fla. stat. (1989).¹ Section 627.742 prescribes the required insurance levels for a nonpublic-sector bus.

¹ The definition is:

(78) NONPUBLIC-SECTOR BUS.--Any **bus** which is used for the transportation of **persons** for compensation and which is not owned, leased, operated, or controlled by a municipal, county, or state government or a governmentally owned or managed nonprofit corporation.

Id.

Section 627.742 has an **express** exclusion which states: "(s)chool buses **subject** to the provisions of chapter 234 or s. 316.615 are exempt from the provisions of this **section.**" ~~Id.~~ § 627.742(2). This language facially **appears** to eliminate school buses from the **coverage** of section 627.742, since chapter 234 **addresses** the responsibilities of school **boards for** the transportation of **school** children, while section 316.615 pertains to the inspection of school buses,

The Florida Department of Transportation argues, however, that the exclusion is not so broad **as** at first **appears.**² The Department **says** that the term "**school bus**" is specifically defined as "[a]ny motor **vehicle** that complies with the color and identification requirements of **chapter 234 and is used to** transport children to or from school or in connection with school activities, but not including buses operated by common carriers in urban transportation of school children." § 316.003(45), Fla. Stat. (1989) (emphasis **added**). The Department **arguers** that a privately owned school bus used for the transportation of school children in an urban setting like Dada County is a common carrier, **and is therefore** excluded from the statutory definition of "**school bus.**" The Department goes on to point out that **under** section 316.70, Florida Statutes (1989), **it is** authorized to promulgate insurance regulations for nonpublic-sector buses, **While** section 316.70 also contains the same "**school bus**" exclusion as is **found** in section 627,742, **the** Department takes the position that the

² The Department of Insurance has adopted the position of the Department of Transportation,

"school bus" exclusion does not apply to a privately operated school bus under either statute. Reasoning from that premise, the Department of Transportation argues that its own Rule 14-82.009, Florida Administrative Code, is the applicable rule. That Rule is substantially identical to the statutory requirements set forth in section 627.742.

The difficulty with the Department of Transportation argument is that the school bus in question here is not a common carrier. As the defendants point out, a common carrier is "[a]ny carrier required by law to convey passengers or freight without refusal if the approved fare or charge is paid ~~in contrast to [a] private or contract carrier,~~" Black's Law Dictionary 249 (5th ed.) (emphasis added); see Riley v. Lawson, 106 Fla. 521, 537-39, 143 So. 619, 625-26 (1932). The school bus involved here is a private or contract carrier. It is therefore within the definition of "school bus" under the statute. It follows that the school bus at issue here is excluded from the coverage of section 627.742, as well as section 316.70 and the rule promulgated thereunder.

Turning next to the position of the Department of Highway Safety and Motor Vehicles, the school bus at issue in the present case fits within the class described by subsection 316.615(1), Florida Statutes (1989). The Department has interpreted the statute to require insurance having coverage equivalent to that contemplated by the statutory school board tort liability set forth in section 234.03, Florida Statutes (1989).³ See Rule 15B-

³ The Florida Department of Education's amicus brief takes the position that chapter 234, standing alone, applies only to school

4.001(1)(o), Fla. Admin. Code; Florida Highway Patrol School Bus Inspection and Student Transportation Manual § 3.28.00. I concur that neither the Manual nor the Rule contemplate a limitation of coverage per person less than that specified by the formula.

boards. The Department of Education did not address the extent to which chapter 234 might be made applicable to privately operated school buses by virtue of section 316.615.

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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1991

JULIO CEASAR SUAZO, by and
through his mother and next
friend, ZOILA SUAZO, and ZOILA
SUAZO, individually,

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**
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Appellants,

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vs,

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CASE NO. 90-812

BARBARA M. DEL BUSTO, DELIA
DEL BUSTO, and TRAVELERS
INDEMNITY COMPANY,

**
**

Appellees.

**

An Appeal from the Circuit Court for Dade County,
John Gale, Judge.

David C. Arnold, for appellants.

Adams, Hunter, Angones, Adams & McClure and Christopher
Lynch, for appellees.

On Motion for Rehearing
and Suggestion for Certification

Before NESBITT, FERGUSON and COPE, JJ.

PER CURIAM.

We grant the request of Travelers Indemnity Company for
certification insofar as it requests certification of the

following question of great public importance:

What is the minimum amount of insurance required on a per-person basis for private school buses with more than twenty-four seats which are within the class described by section 316.615, Florida Statutes (1989)?

See Fla. R. App. P. 9.030(a)(2)(A)(v). We deny Travelers' request for certification under Florida Rule of Appellate Procedure 9.125 and Travelers' motion for rehearing.

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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

JULIO CEASAR SUAZO, etc.,

Appellant,

vs.

Case No. 90-00812

TRAVELERS INSURANCE,

Appellee.

BRIEF OF AMICUS CURIAE,
FLORIDA DEPARTMENT OF TRANSPORTATION

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PRELIMINARY STATEMENT

The Florida Department of Transportation will be referred to herein as the Department. All factual matters will be drawn from the parties' Stipulated Statement,

STATEMENT OF THE CASE AND FACTS

1
By Order dated December 18, 1990, this Court requested the Department to submit an amicus brief setting forth its position "regarding the amount of liability insurance which must be carried by privately owned school buses, and in particular, (1) whether chapter 234, section 316.615, or section 627.742, Florida Statutes (1989), have any bearing on this issue, and (2) if not, what is the applicable statute or rule which sets forth the amount of insurance which must be carried for privately owned school buses."

The motor vehicle at issue is a nonpublic-sector bus, having a seating capacity in excess of twenty four students, and is used principally to transport students to and from a public school, to an after-school care facility, and then to their homes, pursuant to an agreement between the carrier and the students' parents. (Stipulated Statement, paragraphs 1 and 2) Accordingly, the statutory analysis requested by the Court will be conducted in terms of the statutes' application to said motor vehicle. The Department's brief follows.

SUMMARY OF ARGUMENT

The motor vehicle in question does not satisfy the statutory definition of the term "school bus" and, as a result, the motor vehicle is not exempt from the provisions of Section 316.70, Florida Statutes, and must comply with the insurance coverage requirements set out in Fla. Admin. Code Rule 14-82.009.

1

ARGUMENT

ISSUE

INSURANCE COVERAGE FOR THE
MOTOR VEHICLE IN QUESTION IS
GOVERNED BY THE REQUIREMENTS
SET OUT IN FLA. ADMIN. CODE
RULE 14-82.009.

As the parties' briefs demonstrate, Chapter 234 and Sections 316.615 and 627.742, Florida Statutes, do far more to confuse than clarify the insurance coverage owners of nonpublic-sector buses, used to transport school children, must carry. However, this confusion is readily dispelled by reference to Fla. Admin. Code Rule 14-82.009, which applies to the subject motor vehicle and sets forth the required insurance coverage. Rule 14-82.009 provides:

(1) Nonpublic-sector buses shall carry all insurance required by Section 627.742, F. S. and shall maintain proof of compliance with said statute aboard each bus. The proof of compliance shall name the insurance carrier, policy number, effective date and name and address of insured and shall be displayed upon request by any authorized representative of the Florida Department of Transportation.

In the event an operator of a nonpublic-sector bus is self insured a letter documenting that the insurance is at or above the level required by Section 627.742, F. S., shall be filed with the Chief, Bureau of Weights, Florida Department of Transportation, 2540 Executive Center Circle, Suite 208, Tallahassee, Florida 32301.

(2) In addition to any other insurance requirements, nonpublic-sector buses shall maintain the ability to respond in damages for liability on

account of accidents arising out of the use of nonpublic-sector buses:

(a) In the amount of \$100,000 because of bodily injury to, or death of, one person in any accident;

(b) Subject to said limits for one person, in the amount of \$300,000 because of bodily injury to, or death of, two or more persons in any one accident; and

(c) In the amount of \$50,000 because of injury to, or destruction of, property or [sic] others in any one accident.

(d) In place of the foregoing, the operators of nonpublic-sector buses may maintain for each bus a policy of insurance providing for bodily liability insurance and property damage liability for a sum not less than \$300,000.

Rule 14-82.009 implemented, and was promulgated pursuant to, Section 316.70, Florida Statutes, which provides, in pertinent part:

(1) The Department of Transportation shall establish and revise standards to assure the safe operation of nonpublic-sector buses. Such standards shall be consistent with the regulations contained in 49 C.F.R. Parts 390-397 and shall be directed towards assuring that:

(a) Nonpublic-sector buses are safely maintained, equipped, and operated.

(b) Nonpublic-sector buses are carrying the insurance required by law... *

(3) School buses subject to the provisions of chapter 234 or s. 316.615 are exempt from the provisions of this section.

Initially, it would appear that the motor vehicle in question is exempt from the provisions of Section 316.70, as well as Section 627.742, Florida Statutes which contains the same exemption, This is not the case. Section 316.003(45), Florida Statutes defines the

term "school bus" for Chapter 316 purposes as "[a]ny motor vehicle that complies with the color and identification requirements of chapter 234 and is used to transport children to or from school or in connection with school activities, but not including buses operated by common carriers in urban transportation of school children." (Emphasis added)

Here, the parties' stipulated statement indicates that the subject motor vehicle is a nonpublic-sector bus, operated by a common carrier in urban transportation of school children. Said motor vehicle therefore, is not a "school bus" and is not exempt from the provisions of Section 316.70. Moreover, the subject vehicle does not satisfy the definition of "school bus" set out in Section 234.051(1), Florida Statutes since it was not owned, operated, rented, contracted, or leased by any school board. See also Section 320.01(15)(b) where the term "for hire vehicle" does not include a motor vehicle used for transporting children to and from school under contract with school officials.

Inasmuch as the Legislature employed the same exempting language in Section 627.742(2) and did not specifically define the term "school bus" for Section 627,742 purposes, the reasoning set out above applies to preclude the exemption of the subject motor vehicle from the provisions of Section 627.742 as well.

As a final point, the Department notes that Section 316.615(1)(a), Florida Statutes provides that:

All motor vehicles, other than private passenger automobiles and school buses with a seating capacity of less than 24 pupils, which are used primarily

for the transportation of pupils to school, but which are not **operated** by or **under** the purview of the state or a political subdivision thereof or under a franchise issued by a municipality or the **Public Service Commission**, shall **comply** with the requirements for school buses of chapter 234.

Pursuant to this section, the **subject motor vehicle** must **comply** with the requirements of Chapter 234 and is subject to **inspection** under Section 316.615(4), Florida Statutes. See Attorney General Opinion 082-70 (copy attached as an appendix hereto). **However, this state of affairs does not render the subject motor vehicle exempt from the provisions of Section 316.70 nor does it place said motor vehicle within the purview of the insurance requirements set out in Section 234.03.**

First of all, as stated above, the Legislature created a narrow **exemption** from the provisions of **Section 316.70** by its employment of the term "school bus". The fact that the subject vehicle, under Section 316.615(1)(a), is a motor vehicle which must **comply** with the requirements of Chapter 234, **does not make said vehicle a "school bus" as the term is used in Section 316.70(3).**

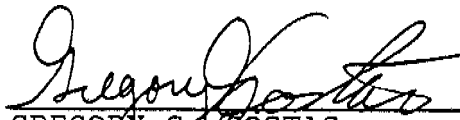
Secondly, the insurance requirements **set** out in Section 234.03 are only applicable in two clearly defined **circumstances which do not encompass the operation of the subject motor vehicle.** Sections 234.03(1) and (2) speak to required insurance coverage that a school board must carry when it is engaged in the ownership or operation of a school bus or other motor vehicle used by the board to transport persons. Section 234.03(4) speaks to those instances

where a school board does not own the motor vehicle and authorizes the board to require the owner of the vehicle to show evidence of adequate insurance during the time that such vehicles are in the services of the school board. Here, the subject motor vehicle is not owned or operated by a school board nor are the vehicle's services provided to a school board. Rather, the services of the subject motor vehicle are provided through a contractual arrangement with the students' parents.

CONCLUSION

The motor vehicle in question in this proceeding is subject to the provisions of Section 316.70, Florida Statutes and must comply with the insurance coverage requirements set out in Fla. Admin. Code Rule 14-82.009.

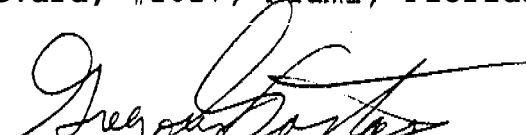
Respectfully submitted,



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FLORIDA BAR NO. 210285
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail on this 30th day of January 1990 to CHRISTOPHER LYNCH, ESQUIRE, Adams Hunter Angones Adams and McClure, 66 West Flagler Street, Ninth Floor, Concord Building, Miami, Florida 33130, and DAVID C. ARNOLD, ESQUIRE, 9130 South Dadeland Boulevard, #1617, Miami, Florida 33156.



Gregory G. Costas



JIM SMITH
Attorney General
State of Florida

DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA 32301

RECEIVED
SEP 23 1982
DEPT. OF HIGHWAY SAFETY
AND MOTOR VEHICLES

- September 21, 1982

Mr. James W. York
Executive Director
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building
Tallahassee, Florida 32301

182-70

Re: DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES--
SCHOOL BUSES -- Inspection of school buses; meaning
of terms; applicability of statute. §316.615, F.S.

Dear Mr. York:

This is in response to your request for an opinion on the following questions:

1. WHAT VEHICLES IS THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES REQUIRED UNDER SECTION 316.615(4), F.S., TO INSPECT?
2. DOES THE WORD "BUS" IN SECTION 316.615(2)(a), F.S., REFER TO ANY "BUS" AS THAT TERM IS DEFINED IN SECTION 316.003(3), F.S., OR ONLY TO A "SCHOOL" BUS AS THE QUOTED TERM IS DEFINED IN SECTION 316.615(1)(b), FLORIDA STATUTES?
3. ARE THE MINIMUM REQUIREMENTS FOR A BUS SPECIFIED IN SECTION 316.615(2)(a), (b) AND (c), F.S., THE ONLY REQUIREMENTS TO BE APPLIED IN THE INSPECTION OF SUCH VEHICLES PURSUANT TO SECTION 316.615(4), F.S., OR IS THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES AUTHORIZED TO PROMULGATE ADDITIONAL VEHICLE EQUIPMENT REQUIREMENTS UNDER SECTION 316.615(5), F.S.?

4. DOES THE TERM "SCHOOL BUS DRIVERS" AS USED IN SECTION 316.615(3)(b), F.S., REFER ONLY TO DRIVERS OF NON-PUBLIC SCHOOL BUSES?

Question One

Subsection (4) of §316.635, F.S., provides: "All school buses and all motor vehicles covered by subsection (1) shall be inspected annually by the department, and when found satisfactory for safe operation shall display on the vehicle a current certificate of inspection." (e.s.) The department referred to herein is the Department of Highway Safety and Motor Vehicles. See, §316.003(8), F.S. You question what vehicles this annual inspection requirement is applicable to and state that the department has historically construed this subsection to be applicable to non-public school buses. Subsection (4) is clear in its language that it is applicable to "[a]ll school buses and all motor vehicles covered by subsection (1)[.]" Subsection (1)(a) of §316.615, F.S., provides:

All motor vehicles, other than private passenger automobiles and school buses with a seating capacity of less than 24 pupils, which are used primarily for the transportation of pupils to school, but which are not operated by or under the purview of the state or a political subdivision thereof or under a franchise issued by a municipality or the Public Service Commission, shall comply with the requirements for school buses of chapter 234, (e.s.)

The language of this statute is plain and where the language of a statute is clear and unambiguous and conveys a clear and definite meaning, there is no need to resort to rules of statutory interpretation and construction and the statute must be given its plain and obvious meaning. See, *Thayer v. State*, 335 So.2d 815 (Fla. 1976); *Ross v. Gore*, 48 So.2d 412 (Fla. 1950); *Vocelle v. Knight Brothers Paper Company*, 118 So.2d 664 (1 D.C.A. Fla., 1960). Section 316.615(1)(a), F.S., clearly excepts from its application and operation "private passenger automobiles and school buses with a seating capacity of less than 24 pupils," (e.s.); such automobiles and school buses thereby are not required to

comply with the requirements for school buses of Ch. 234, F.S. School buses with a seating capacity of less than 24 pupils are required to be equipped as specified in subsection (2)(a) of §316.615. [The annual inspection requirement of subsection (4) is applicable to all school buses (public and non-public) and all motor vehicles (other than private passenger automobiles) which are used primarily for the transportation of pupils to school but which are not operated by or under the purview of the state or a political subdivision thereof or under a franchise issued by a municipality or the Public Service Commission. Thus, the statute imposes on the department the duty to annually inspect all public as well as non-public school buses, and all motor vehicles (other than private passenger automobiles) which are used primarily for the transportation of pupils to school but which are not operated by or under the purview of the state or a political subdivision thereof or under a franchise issued by a municipality or the Public Service Commission.]

Question Two

Subsection (2) of §316.615, F.S., in pertinent part, provides: "Every bus with a seating capacity of less than 24 pupils shall be equipped with the following[.]" subsection (2)(a) then sets forth a list of equipment required for such vehicles. Subsection (1)(b) for the purpose of §316.615 defines "school" to include "all public and private nursery, pre-elementary, elementary, secondary, and college level schools." "School bus" is generally defined for the purpose of Ch. 316, except where the context otherwise requires, to mean "[a]ny motor vehicle that complies with the color and identification requirements of chapter 234 and is used to transport children to or from school or in connection with school activities, but not including buses operated by common carriers in urban transportation of school children." Section 316.003(46), F.S. It is apparent upon a reading of 5316.615 as a whole that subsection (2)(a) in the context in which it is used relates back or refers to subsection (1) and provides equipment requirements for school buses with a seating capacity of less than 24 pupils; all other motor vehicles (except for private passenger automobiles, which are excepted from the operation of 5316.615 [1][a], F.S.) used primarily for transportation of pupils to school but not operated by or under the purview of the state or a political subdivision thereof or under a franchise issued by a municipality or the Public Service Commission must comply with the requirements for school buses contained in Ch. 234, F.S. Chapter 234 requires that school buses meet the standards and

specifications of the State Board of Education. Section 234:051, F.S. The definition of "bus" in subsection (3) of §316.003, F.S., a general provision for "[a]ny motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation," (e. Cf., §316.003(46), F.S., defining "school bus" to mean any motor vehicle which complies with the color and identification requirements of Ch. 234 and is used to transport children to or from school (school buses with a seating capacity of less than 24 pupils are excepted from compliance with the requirements for school buses of Ch. 234 by §316.615 [1][a], F.S.). Therefore, I conclude that subsection (2)(a) refers to school buses as that term is described and used in §316.615(1)(a); the term does not apply to any "bus," defined in §316.003(3) as motor vehicles used for the transportation of persons for compensation.

Question Three

Subsection (4) of §316.615, F.S., provides: "All school buses and all motor vehicles covered by subsection (1) shall be inspected annually by the department [of highway safety and motor vehicles], and when found satisfactory for safe operation shall display on the vehicle a current certificate of inspection." As hereinbefore noted, this provision applies to all school buses and all motor vehicles covered by subsection (1) from which private passenger automobiles are excepted, and the requirements of subsection (2)(a), (b) and (c) are applicable to school buses with a seating capacity of less than 24 pupils.

There is no authority in §316.615, F.S., for the Department of Highway Safety and Motor Vehicles to promulgate additional vehicle equipment requirements. Subsection (5) of §316.615, F.S., gives the department the rulemaking authority to effect the purposes of §316.615; it does not delegate to the department the power to require additional equipment on school buses with a seating capacity of less than 24 pupils as it may see fit,

Question Four

Paragraph (b) of subsection (3), §316.615, provides: "All school bus drivers shall pass an annual physical examination, and have

posted in the bus a certificate to drive same." This is a general provision and applies to all "school bus drivers" and is not limited to drivers of non-public buses. See subsection (3)(a) providing that no person shall operate or cause to be operated a motor vehicle covered by subsection (1) unless the operator has met the physical examination requirements of §234.16, F.S. (repealed by omission by §106 of Ch. 72-221, Laws of Florida; see also, Ch. 234, F.S. 1972 Supp.). Persons employed as school bus drivers must further meet any requirements adopted by the State Board of Education prior to employment by district school boards. See, §234.101, F.S. This office is without authority to read into a statute language that is not contained therein. You state in your letter that historically the Department of Highway Safety and Motor Vehicles has construed the term "school bus driver" contained in subsection (3)(b) of §316.615, F.S., as applicable only to non-public school buses and their drivers. The requirement contained in subsection (3)(b) however, clearly applies to all school bus drivers.

In summary I conclude:

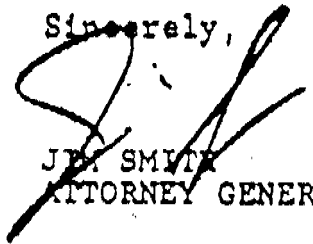
1. The Department of Highway Safety and Motor Vehicles is required pursuant to §316.615, F.S., to annually inspect all public and non-public school buses, and all motor vehicles (other than private passenger automobiles) which are used primarily for the transporting of pupils to school but which are not operated by or under the purview of the state or a political subdivision thereof or under a franchise issued by a municipality or the Public Service Commission.
2. The word "bus" used in subsection (2)(a) of §316.615, F.S., refers to school buses as that term is described and used in §316.615(1)(a); the term does not apply to any "bus" as defined in §316.003(3), F.S., which applies to motor vehicles used for the transportation of persons for compensation.
3. There is no authority contained in §316.615, F.S., for the Department of Highway Safety and Motor Vehicles to promulgate additional vehicle equipment requirements beyond those specified in subsection (2)(a) of §316.615, F.S.

Mr. James W. York
Page Six

082-70

4. The requirement contained in subsection (3)(b) of §316.615, F.S., that "[a]ll school bus drivers shall pass an annual physical examination," applies to all school bus drivers, both public and non-public.

Sincerely,



J.P. SMITH
ATTORNEY GENERAL

Prepared By



Craig Willis
Assistant Attorney General

JS/CWd

_____ APPENDIX 1

_____ APPENDIX 2

APPENDIX 3

APPENDIX 4

_____ APPENDIX 5

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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1991

JULIO CEASAR SUAZO, etc.,
et al.,
Appellant(s),

vs.

TRAVELERS INSURANCE,

Appellee (s),

) CASE NO. 90-00812
)
)
)
)
) LOWER TRIBUNAL NO. 88-29012
)
)

The Florida Department of Insurance, as its response to the
Court's Order of December 18, 1990, adopts the Amicus-Curiae brief
filed by the Florida Department of Transportation,

Respectfully submitted,

Daniel Y. Sumner
Daniel Y. Sumner 202819
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Plaza Level 11, The Capitol
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served by U.S. Mail to
David C. Arnold, Esq., Suite 1617 Two Datan Center, 9130 South
Dadeland Boulevard, Miami, FL, 33156, and Christopher Lynch, Esq.,
Ninth Floor, Concord Building, 66 West Flagler Street, Miami, FL,
33130, this 31 day of January 1991.

Daniel Y. Sumner
Daniel Y. Sumner

____ APPENDIX 1

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APPENDIX 5

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____ APPENDIX N

IN THE DISTRICT COURT OF
APPEAL OF FLORIDA
THIRD DISTRICT

JULIO CEASAR SUAZO, etc.,
et al.,

Appellant(s),

vs.

TRAVELERS INSURANCE,

Appellee(s).

Case No.: 90-00812

Lower
Tribunal No.: 88-29012

AMICUS BRIEF

ENOCH J. WHITNEY
General Counsel

R.W. EVANS
Assistant General Counsel

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IMINARY STATEMENT

The Florida Department of Highway Safety and Motor Vehicles, will *be* referred to herein as the Department or as Highway Safety. References to the Appendix will be denoted as A-__.

STATEMENT OF THE CASE AND FACTS

On December 18, 1990, the Court requested **the** submission of an amicus brief by Highway Safety setting **forth** its "views regarding the amount of liability insurance which must be carried by privately owned school buses, and in particular, (1) whether chapter 234, section 316.615, or section **627.742**, Florida Statutes (1987), have any bearing on this issue, and **(2)** if not, what **is** the applicable statute or rule which sets forth **the** amount of insurance which must be carried for privately owned school buses."

While the facts have been stipulated by the parties, the Department would like to bring special attention to **the** fact that the motor **vehicle** at issue is a non-public **sector** bus, with a seating capacity in excess of **24** students, **which** was used principally to transport pupils to school. (Stipulated Statement paragraphs 1 and **2**) The analysis requested by the Court will **conducted** in terms of the statutes **and** rules **as** they relate to **the** facts.

SUMMARY OF ARGUMENT

Pursuant to section 316.615, Florida Statutes, **the** Department of **Highway Safety** and Motor **Vehicles** conducts annual inspections of school buses and motor vehicles which transport pupils to **school**. As **a** result of Attorney General Opinion, 82-70 the Department inspects private sector and public sector motor vehicles, regardless of seating capacity, which are transporting pupils to school, except for private passenger automobiles.

Florida Administrative Code Rule **15B-4.001(1)(o)**, provides that all buses inspected by the Department must have liability insurance. Following the express provisions of section 316.615(1)(a), the Department imposes the minimum liability insurance requirements of section 234.03. The Department uniformly requires minimum liability **coverage** of \$100,000 or an amount equal to \$5,000 multiplied by the rated seating capacity of the **bus**, whichever is greater. In the present case, therefore, the minimum amount of insurance that would have been **required** for the bus, if **inspected** by the Department, would have been \$125,000,

ARGUMENT

ISSUE

WHETHER SECTION 316.615, FLORIDA STATUTES, REQUIRES LIABILITY INSURANCE FOR NON-PUBLIC SECTOR VEHICLES WHICH ARE USED PRIMARILY TO TRANSPORT CHILDREN TO SCHOOL.

Section 316.615, Florida Statutes, (1987) **estab** lished the minimum standards for the inspection of school buses. **The statute** is entitled "Inspection of school buses...." Section 316.615(1)(a) provides:

All motor vehicles, other than private passenger automobiles and school buses with a seating capacity of less than **24** pupils, which are used primarily for the transportation of pupils to school, but which are not operated by or under the purview of the state or **a political** subdivision thereof **or** under **a** franchise issued by a municipality or the Public Service Commission, shall comply with the requirements for school buses of **chapter 234**.

The Department is charged with **the** responsibility of conducting annual inspections of all school buses and motor vehicles addressed in section 316.615(1). Section 316.615(4), Fla. Stat. (1987).

At first blush, the statute appears to draw a distinction between public sector and **private sector** vehicles. However, the Attorney General issued an opinion in 1982 concerning motor vehicles to be inspected **pursuant** to section 316.615(4). According to **the Attorney General**, the Department **was** required to "inspect all public as well as non-public school buses, and all motor vehicles (other than **private** passenger automobiles) which are used primarily **for** the transportation of pupils to school." 1982 Op. Atty. Gen. Fla. 082-70 (Sept. 21, 1982). (A-1 - A-3). Based on this opinion, Highway Safety construed section 316.615(4), to mean that it was required to inspect all motor vehicles, regardless of seating capacity, which are transporting pupils to school, except for **private** passenger automobiles.

Under the authority of **section 316.615(6)**, the Department promulgated Florida Administrative Code Rule 15B-4, (1981), which establishes the specifications **and** rules for all non-public school buses. In particular, Rule **15B-4.001(1)(o)** requires that **all** buses "shall have liability **insurance** to protect pupils being **transported**." (A-4).

The Department has imposed similar liability insurance coverage requirements **for** each vehicle inspected. In its "School

Bus Inspection and Student Transportation Manual" the minimum liability insurance requirements **are set forth:**

Every school bus will carry liability insurance in the minimum amount as required in section 234.03, Florida Statutes, to protect the pupils it is transporting. The amount shall be equal to \$5,000 multiplied by the rated seating capacity of the bus, or \$100,000.00, whichever is greater.
(A-5 - A-6).

This minimum coverage required by the Department is **supported** by the express wording of section 316.615(1)(a) **which provides** that all vehicles with a seating capacity of **24 pupils or more** "shall comply with the requirements **for** school buses of chapter 234." Vehicles with a lesser **seating** capacity, other than private passenger automobiles, are generally required **by section 316.615(2)(b) to be covered by "liability insurance to protect pupils being transported."** By uniformly **applying** the insurance requirements of section 234.03, the Department has complied with the **apparent intent of the legislature to protect pupils transported by public or private sector vehicles, regardless of seating capacity.**

In light of the above, the school bus insured by Appellee, **if it had been inspected by Highway Safety, should have been covered by liability insurance in the amount of \$5,000 multiplied by the rated seating capacity of the bus the parties have stipulated that the bus could seat more than 24 students. Thus, if the seating capacity of the bus in question totalled 25 pupils, the Department would have required proof of insurance coverage in the amount of \$125,000. Obviously, as the seating capacity increased**

the minimum coverage required by the Department would also increase. Thus, the minimum liability insurance that would have been required for this vehicle would have been \$125,000.

CONCLUSION

Rule 15B-4.001(1)(o) requires a non-public sector vehicle which transports students to school to be insured. In view of the provisions of this rule and sections 316.615(1)(a) and 234.03, Florida Statutes, the minimum amount of coverage required for a vehicle with a seating capacity of more than 24 pupils would have amounted to \$125,000.

Respectfully submitted,

ENOCH J. WHITNEY
General Counsel



R.W. EVANS
Assistant General Counsel




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Telephone: (904) 488-1606

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing and the Appendix to Amicus Brief has been furnished by regular United States mail to Christopher Lynch, Esquire, ADAMS,

HUNTER, ARCONNES, et al., 66 W. Flagler St. 9th Floor, Miami, Florida, 33130, David C. Arnold, Esquire, LAW OFFICES OF DAVID C. ARNOLD, 9130 S. Dadeland Boulevard #1617, Miami, Florida, 33156, Greg Costas, Esquire, Department of Transportation, 605 Suwannee Street, Mail Station 58; Tallahassee, Florida, 32399-0458, Carl Zahner, Esquire, Department of Education, 325 W. Gaines Street, Suite 1701, The Capitol, Tallahassee, Florida, 32399, Dan Sumner, Esquire, Department of Insurance, The Capitol, Plaza Level 11, Tallahassee, Florida, 32399-0300, this 31st day of January, 1991.



R.W. EVANS



PETER N. STOUMBELIS

APPENDIX TO AMICUS BRIEF

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ANNUAL REPORT OF THE ATTORNEY GENERAL 082-70

AGO 082-70—September 21, 1982

**DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
APPLICABILITY OF STATE LAW TO INSPECTION
OF SCHOOL BUSES**

To: *James W. York, Executive Director, Department of Highway Safety and Motor Vehicles*

Prepared by: *Craig Willis, Assistant Attorney General*

QUESTIONS:

1. What vehicles is the Department of Highway Safety and Motor Vehicles required under **s. 316.615(4), F.S.**, to inspect?
2. Does the word "bus" in **s. 316.615(2)(a), F.S.**, refer to any "bus" as that term is defined in **s. 316.003(3), F.S.**, or only to a "school" bus as the quoted term is defined in **s. 316.615(1)(b), F.S.**?
3. Are the minimum requirements for a bus specified in **s. 316.615(2)(a), (b) and (c), F.S.**, the only requirements to be applied in the inspection of such vehicles pursuant to **s. 316.615(4), F.S.**, or is the Department of Highway Safety and Motor Vehicles authorized to promulgate additional vehicle equipment requirements under **s. 316.615(5), F.S.**?
4. Does the term "school bus drivers" as used in **s. 316.615(3)(b), F.S.**, refer only to drivers of non-public school buses?

SUMMARY:

1. The Department of Highway Safety and Motor Vehicles is required pursuant to **s. 316.615, F.S.**, to annually inspect all public and non-public school buses, and all motor vehicles (other than private passenger automobiles) which are used primarily for the transporting of pupils to school but which are not operated by or under the purview of the state or a political subdivision thereof or under a franchise issued by a municipality or the Public Service Commission.
2. The word "bus" used in subsection (2)(a) of **s. 316.615, F.S.**, refers to school buses as that term is described and used in **s. 316.615(1)(a)**; the term does not apply to any "bus" as defined in **s. 316.003(3), F.S.**, which applies to motor vehicles used for the transportation of persons for compensation.
3. There is no authority contained in **s. 316.615, F.S.**, for the Department of Highway Safety and Motor Vehicles to promulgate additional vehicle equipment requirements beyond those specified in subsection (2)(a) of **s. 316.615, F.S.**
4. The requirement contained in subsection (3)(b) of **s. 316.615, F.S.**, that "all school bus drivers shall pass an annual physical examination," applies to all school bus drivers, both public and non-public.

082-70 ANNUAL REPORT OF THE ATTORNEY GENERAL

AS TO QUESTION 1:

Subsection (4) of s. 316.615, F.S., provides: "All **school buses and all motor vehicles covered by subsection (1)** shall be inspected annually by the department, and when found satisfactory for **safe** operation shall display on the vehicle a current certificate of inspection." (Emphasis supplied.) The department referred to herein is the Department of Highway Safety and Motor Vehicles. See s. 316.003(8), F.S. You question what vehicles this annual inspection requirement is applicable to and state that the department has historically construed this subsection to be applicable to non-public school buses. Subsection (4) is clear in its language that it is applicable to "[a]ll school buses and all motor vehicles covered by subsection (1)(a)." Subsection (1)(a) of s. 316.615, F.S., provides:

All motor vehicles, *other than* private passenger automobiles and *school buses* with a seating capacity of less than 24 pupils, which are used primarily for the transportation of pupils to school, but which are not operated by or under the purview of the state or a political subdivision thereof or under a franchise issued by a municipality or the Public Service Commission, shall comply with the requirements for school buses of chapter 234. (Emphasis supplied.)

The language of this statute is plain and where the language of a statute is clear and unambiguous and conveys a clear and definite meaning, there is no need to resort to rules of statutory interpretation and construction and the statute must be given its plain and obvious meaning. See *Thayer v. State*, 335 So.2d 815 (Fla. 1976); *Ross v. Core*, 48 So.2d 412 (Fla. 1950); *Vocelle v. Knight Brothers Paper Company*, 118 So.2d 664 (1 D.C.A. Fla., 1960). Section 316.615(1)(a), F.S., clearly excepts from its application and operation "private passenger automobiles and school buses with a seating capacity of less than 24 pupils;" (emphasis supplied); such automobiles and school buses thereby are not required to comply with the requirements for school buses of ch. 234, F.S. School buses with a seating capacity of less than 24 pupils are required to be equipped as specified in subsection (2)(a) of s. 316.615. The annual inspection requirement of subsection (4) is applicable to all school buses (public and non-public) and all motor vehicles (other than private passenger automobiles) which are used primarily for the transportation of pupils to school but which are not operated by or under the purview of the state or a political subdivision thereof or under a franchise issued by a municipality or the Public Service Commission. Thus, the statute imposes on the department the duty to annually inspect all public as well as non-public school buses, and all motor vehicles (other than private passenger automobiles) which are used primarily for the transportation of pupils to school but which are not operated by or under the purview of the state or a political subdivision thereof or under a franchise issued by a municipality or the Public Service Commission.

AS TO QUESTION 2:

Subsection (2) of s. 316.615, F.S., in pertinent part, provides: "Every bus with a seating capacity of less than 24 pupils shall be equipped with the following." Subsection (2)(a) then sets forth a list of equipment required for such vehicles. Subsection (1)(b) for the purpose of s. 316.615 defines "school" to include "all public and private nursery, pre-elementary, elementary, secondary, and college level schools." "School bus" is generally defined for the purpose of ch. 316, except where the context otherwise requires, to mean "[a]ny motor vehicle that complies with the color and identification requirements of ch. 234 and is used to transport children to or from school or in connection with school activities, but not including buses operated by common carriers in urban transportation of school children." Section 316.003(46), F.S. It is apparent upon a reading of s. 316.615 as a

as and all motor vehicles used for the department, on the vehicle a argument referred to. S. s. 316.003(8) is applicable to subsection to be language that it ed by subsection

as and school buses are used which are not a subdivision of Public Service of buses of

a statute is clear there is no need to the statute must 5 2d 818 (Fla. t. Brothers Paper (Xa), F.S., clearly automobiles and (b) is supplied); capacity applicable to the than private of pupils of the state or a municipality or the department the ol buses, and all ich are used pri- ot operated by or are or under a

every bus with a ch following.)" or ch vehicles. to include "all ary, and college of 316, except el that complies used to transport s, but not includ on of school chil- of s. 316.616 as a

whole that subsection (2)(a) in the context in which it is used relates back or refers to subsection (1) and provides equipment requirements for school buses with a seating capacity of less than 24 pupils: all other motor vehicles (except for private passenger automobiles, which are excepted from the operation of s. 316.615(1)(a), F.S.) used primarily for transportation of pupils to school but not operated by or under the purview of the state or a political subdivision thereof or under a franchise issued by a municipality or the Public Service Commission must comply with the requirements for school buses contained in ch. 234, F.S. Chapter 234 requires that school buses meet the standards and specifications of the State Board of Education. Section 234.051, F.S. The definition of "bus" in subsection (3) of s. 316.003, F.S., is a general provision for "(a)ny motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation" (Emphasis supplied.) Cf. s. 316.003(46), F.S., defining "school bus" to mean any motor vehicle which complies with the color and identification requirements of ch. 234 and is used to transport children to or from school (school buses with a seating capacity of less than 24 pupils are excepted from compliance with the requirements for school buses of ch. 234 by s. 316.615(1)(a), F.S.). Therefore, I conclude that subsection (2)(a) refers to school buses as that term is described and used in s. 316.615(1)(a); the term does not apply to any "bus," defined in s. 316.003(3) as motor vehicles used for the transportation of persons for compensation.

AS TO QUESTION 3:

Subsection (4) of s. 316.615, F.S., provides: "All school buses and all motor vehicles covered by subsection (1) shall be inspected annually by the department [of highway safety and motor vehicles], and when found satisfactory for safe operation shall display on the vehicle a current certificate of inspection." As hereinbefore noted, this provision applies to all school buses and all motor vehicles covered by subsection (1) from which private passenger automobiles are excepted, and the requirements of subsection (2)(a), (b) and (c) are applicable to school buses with a seating capacity of less than 24 pupils.

There is no authority in s. 316.616, F.S., for the Department of Highway Safety and Motor Vehicles to promulgate additional vehicle equipment requirements. Subsection (5) of s. 316.615, F.S., gives the department the rulemaking authority to effect the purposes of s. 316.615, it does not delegate to the department the power to require additional equipment on school buses with a seating capacity of less than 24 pupils as it may see fit.

AS TO QUESTION 4:

Paragraph (b) of subsection (3), s. 316.015, provides: "All school bus drivers shall pass an annual physical examination, and have posted in the bus a certificate to drive same." This is a general provision and applies to all "school bus drivers" and is not limited to drivers of non-public buses. Cf. subsection (3)(a) providing that no person shall operate or cause to be operated a motor vehicle covered by subsection (1) unless the operator has met the physical examination requirements of s. 234.16, F.S. (repealed by omission by 8.106, ch. 72-221, Laws of Florida; see also ch. 234, F.S. 1972 Supp.). Persons employed as school bus drivers must further meet any requirements adopted by the State Board of Education prior to employment by district school boards. See s. 234.101, F.S. This office is without authority to read into a statute language that is not contained therein. You state in your letter that historically the Department of Highway Safety and Motor Vehicles has construed the term "school bus driver" contained in subsection (3)(b) of s. 318.615, F.S., as applicable only to non-public school buses and their drivers. The requirement contained in subsection (3)(b) however, clearly applies to all school bus drivers.

**CHAPTER 15B-4
PUPIL TRANSPORTATION**

- 15B-4.001 **Specifications and Regulations for All Nonpublic School Buses in Operation on, or Purchased Before, July 1, 1969, Twenty-four (24) Passenger Capacity and Up.**
- 15B-4.002 **Specifications and Regulations for All Nonpublic School Buses Purchased After July 1, 1969, 24 Passenger Capacity and Up.**

15B-4.001 Specifications and Regulations for All Nonpublic School Buses in Operation on, or Purchased Before, July 1, 1969, Twenty-four (24) Passenger Capacity and Up.

(l) All motor vehicles, other than private passenger automobiles and school buses with a seating capacity of less than twenty-four (24) pupils, which are used primarily for the transportation of pupils to school, but which are not operated by or under the purview of the state, a political subdivision thereof, or under franchise issued by a municipality or the public service commission, shall comply with the following regulations effective July 1, 1969.

(a) Shall be equipped with all equipment regularly required of a motor vehicle of that size and weight.

(b) Shall pass Florida's annual inspection by the Florida Highway Patrol.

(c) All school bus drivers shall pass an annual physical examination, and have posted in bus certificate to drive same.

(d) Shall be painted National School Bus chrome yellow with black trim. No other colors acceptable.

(e) Shall have semaphore extender stop arm painted red with the "STOP" in six (6) inch white letters.

(f) Each school bus shall be equipped with signal lamps mounted laterally as high as practicable, which shall be capable of displaying on the traffic side to the front two alternately flashing lights, one red and one-amber, located at the same level, and these lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight. Each such light shall be a minimum of five and one fourth (5 1/4) inches in diameter with black background of one and one fourth (1 1/4) inches to three (3) inches wide and with a minimum hood of two and one half (2 1/2) inches. Such lights shall meet or exceed the standards of the Society of Automotive Engineers of New York.

(g) Shall have non-leaking exhaust system.

(h) Shall be equipped with first aid kit.

(i) Shall be equipped with fire extinguisher.

(j) Shall have glass on all windows (not broken).

(k) Lettering: "Schml Bus" shall be painted in eight (8) inch letters on both front and rear and

correspond with series B, standard alphabet. Emergency exits shall be indicated by two (2) inch letters on inside and outside. Name of school shall be in six (6) inch letters on belt line.

(l) Shall have outside rear view mirror on left and right sides, and each mirror shall have not less than fifty (50) square inches overall viewing area.

(m) Shall have inside rear view mirror capable of giving driver a clear view of the bus interior.

(n) Seats shall be standard type of metal fully padded, or fiberglass securely anchored and in good repair with no rough or sharp edges.

(o) Shall have liability insurance to protect pupils being transported.

(p) Shall transport no more passengers than equipped to seat; not less than thirteen (13) inches seat area per passenger.

(q) Shall have adequate switches to operate semaphore stop arm and warning lights.

(r) All drivers will be required to have a chauffeurs license and abide by all the laws, rules and regulations pertaining to operating a school bus.

Specific Authority 316.288 FS. Law Implemented 316.288 FS. History—New 11-20-75, Transferred to 15C-6.01, 1-17-81. Transferred back to 15B-4.01, 11-6-81, Formerly 15B-4.01.

ANNOTATIONS

School bus

Department of Highway Safety and Motor Vehicles is required, pursuant to F. S. A. § 316.615, to annually inspect all public and nonpublic school buses, and all motor vehicles (other than private passenger automobiles) which are used primarily for transporting of pupils to school but which are not operated by or under purview of state or political subdivision thereof or under franchise issued by municipality or Public Service Commission. Op. Atty. Gen., 082-70, September, 1982.

Word "bus" used in F. S. A. § 316.615(2)(a) refers to school buses as that term is described and used in F. S. A. 316.615(1)(a); term does not apply to any "bus" as defined in F. S. A. § 316.003(3), which applies to motor vehicles used for transportation of persons for compensation. Id.

There is no authority contained in F. S. A. § 316.615 for Department of Highway Safety and Motor Vehicles to promulgate additional vehicle equipment requirements beyond those specified in F. S. A. § 316.615(2)(a). Id.

Requirement contained in F. S. A. § 316.615(3)(b) that "all school bus drivers shall pass annual physical examination" applies to all school bus drivers, both public and nonpublic. Id.

15B-4.002 Specifications and Regulations for All Nonpublic School Buses Purchased After July 1, 1969, 24 Passenger Capacity and Up.

(1) Adoption of all specifications and regulations in force by the State Department of Education for twenty-four (24) passenger and up school buses in the public school system.

Specific Authority 316.288 FS. Law Implemented 316.288, 234.02 FS. History—New 11-20-75, Transferred to 15C-6.02, 4-17-81. Transferred back to 15B-4.02, 11-6-81, Formerly 15B-4.02.

FLORIDA HIGHWAY PATROL
SCHOOL BUS INSPECTION AND STUDENT TRANSPORTATION MANUAL

FOREWORD

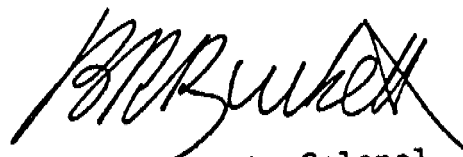
Effective January 1, 1987, this Manual will be in full force and effect for members of the Florida Highway Patrol Student Transportation Section.

Many directives have been issued referring to the inspection of school buses and the certification of non-public school bus drivers. By publication of this Manual, questions arising on the subject of student transportation may be quickly answered.

In order to assure uniformity and consistency of school bus inspections, members should follow the instructions in this Manual. Each member should be thoroughly familiar and conversant with the instructions contained herein.

All members of the Student Transportation Section are requested to make suggestions for changes in the School Bus Inspection Manual via the School Bus Inspection Coordinator whenever it is felt that such conditions or procedures merit change.

We are keenly aware that our members perform their duties and responsibilities to the best of their ability. With this in mind, we look to the future with a continuing sense of dedication to a safer pupil transportation system throughout Florida.



Bobby R. Burkett, Colonel
Director
Florida Highway Patrol

3.28.00 Liability Insurance - Inspect for:

Every school bus will carry liability insurance in the minimum amount as required in Section 234.03, Florida Statutes, to protect the pupils it is transporting. The amount shall be equal to \$5,000 multiplied by the rated seating capacity of the bus, or \$100,000.00, whichever is greater.

The following shall be checked while inspecting the liability insurance:

- A. The expiration date of the insurance policy,
- B. The amount of insurance.

3.28.01 Liability Insurance - Reject if:

- A. The school bus does not carry liability insurance.
- B. The school bus does not carry the required amount.

3.29.00 Unsafe Equipment

Any school bus with one or more of the following defects will be automatically declared as "unsafe" and the bus must be immediately discontinued from use,

A. Lights

1. Pupil warning lamps are inoperative or are not operating properly,
2. Both brake lights are inoperative.,
3. Both taillights are inoperative.