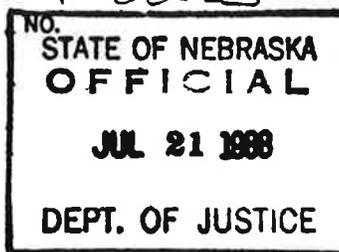


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

88033



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: July 21, 1988

SUBJECT: The authorized usage of school permits under
Neb.Rev.Stat. § 60-407(2)

REQUESTED BY: George Rhodes
Custer County Attorney

WRITTEN BY: Robert M. Spire, Attorney General
David Edward Cygan, Assistant Attorney General

You have asked whether Neb.Rev.Stat. § 60-407(2) authorizes the use of school permits by individuals attending classes for the sole purpose of religious instruction (e.g. catechism classes), fine art instruction (e.g. piano lessons), or instruction in other fields such as trade or business. It is our opinion that the Legislature did not anticipate nor would it now intend to encompass such usage.

Prior to 1931, it was unlawful for anyone under the age of 16 to drive (See Laws 1929, C.148 § 5 p. 514 § 60-405). In Laws 1931, C.104,--§ 2 (p. 277), the Legislature provided for the issuance of limited permits to minors under the age of 16 and over the age of 14 to operate motor vehicles. The words used by the Legislature in 1931 remain unchanged in the current statutory provision which provides "such limited permits shall be used for the sole purpose of transporting such person to attend school, . . ." Neb.Rev.Stat. § 60-407(2) (Supp. 87).

Although the Legislature used words of common usage and understanding in the construction of § 60-407(2), the word school found therein is one of variable meaning. There is no case law within Nebraska which directly addresses the interpretation of that phrase. Nevertheless, it is clear that the Legislature did not use the word in the same sense of a school designated for religious study or for fine arts study alone. To so construe it, would be to expand it beyond its obvious meaning.

L. Jay Bartel
Elaine A. Catlin
Dale A. Comer
David Edward Cygan
Lynne R. Fritz
Yvonne E. Gates

Royce N. Harper
William L. Howland
Marilyn B. Hutchinson
Donald E. Hyde
Vanessa L. Jones
Mel Kammerlohr

Charles E. Lowe
Lisa D. Martin-Price
Steven J. Moeller
Harold I. Mosher
Fredrick F. Neid

Bernard L. Packett
Marie C. Pawol
Douglas J. Peterson
Jill Gradwohl Schroeder
LeRoy W. Sievers

James H. Spears
Mark D. Starr
John R. Thompson
Susan M. Ugai
Linda L. Willard

George Rhodes
July 21, 1988
Page -2-

The Legislature has provided a clear definition for the word school in Neb.Rev.Stat. § 79-101(2) (Reissue 1984). Wherein it states in part that the term "school shall mean a school under the jurisdiction of a school board authorized by Chapter 79." "School" as used therein, "means a school which presents a course of studies such as those prescribed for the public schools and the attendance upon which would satisfy the requirements of the compulsory law." Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio and Other States et al. v. McKelvie, 104 Neb. 93, 175 N.W. 531, 534 (1919).

Catechism classes and piano lessons, etc. clearly do not fall within the province of the above legislative definition. There is no reference made to those studies as fulfilling the requirements set forth in Chapter 79 so as such to qualify a school for the purposes of § 60-407(2). "Sunday school" and "bible school" ordinarily mean a place for religious instruction operated in conjuncture with church, and such terms are not synonymous with "school. . ." State ex rel. Church of Nazarene v. Fogo, 150 Ohio St. 45, 79 N.E.2d 546, 547 (1948) (involving vehicle tax exemption from annual license tax for "school" buses). Trade and business instruction alone likewise would not qualify. However, any of these classes when offered as part of the curriculum in an institution operated to satisfy the Compulsory Education Law would qualify. A review of the stated purpose of the 1931 Law evidences that a legislative intent to restrict driving from minors under the age of 16 years to only that which is necessary, and to protect public safety and welfare through recognition of the dangers associated with operating motor vehicles; it stated:

An act to amend §§ 39-1101 and 60-405, Compiled Statutes of Nebraska 1929, relating to motor vehicles, to provide that limited permits to operate motor vehicles may be issued by the county treasurer to minors ~~under~~ under the age of 16 years and over the age of 14 years under certain conditions; and to repeal said original sections. (Under scoring supplied) Laws 1931, C.104 p. 276

It has long been accepted that the driving of automobiles is considered adult activity. See, State ex rel. Oleson v. Graunke, 119 Neb. 440, 442, 229 N.W.2d 329 (1930). A car being driven by a minor under 16 years and over 14 years of age, "for purposes other than attending school . . . is driven in violation of our statute as to age . . ." Gulizia v. Royal Indemnity Company, 139 Neb. 832, 837, 299 N.W. 220 (1941).

Turning now to the two previous Nebraska Attorney General Opinions issued which have addressed this subject, corrections

George Rhodes
July 21, 1988
Page -3-

must be made. The word "school" used in the statute was not meant to include any place of instruction nor does it apply to attendance "required by either moral, parental, or legal suasion" as indicated in the opinion issued June 18, 1945. Although it may apply to summer school, it cannot be interpreted to include bible or Sunday school.

Opinion No. 232 dated May 16, 1958, is correct to the extent it allows use of permits for extracurricular activities. Unlike catechism classes, interscholastic athletes have been included within the definition of "school." "[W]hile participation in interscholastic athletics ordinarily has significantly less important constitutional dimensions than does participation in traditional academic education, it is nevertheless a significant one." French v. Comwell, 202 Neb. 569, 276 N.W.2d 216 218 (1979). It is therefore distinguishable and can be included in the definition of "school" found within the meaning of the statute.

Opinion No. 232 is incorrect as to the disparate treatment of athletes and fans. Much has been said regarding the home team advantage when the crowd gets "into the game." Whether the advantage exists or not there is no doubt that good sportsmanship is a lesson that can be learned both on the field and in the bleachers. Whether student participation is as an athlete, cheerleader, band member, or fan has no bearing on the use of a school permit to attend the function.

We reemphasize that the school permit can only be used to transport the permit holder "to and from the school building where he or she attends school . . ." by the nearest route to or from the residence. It can not be used to go to other schools for whatever purpose.

Respectfully Submitted,

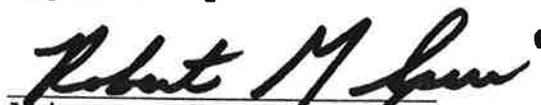
ROBERT M. SPIRE
Attorney General



David Edward Cygan
Assistant Attorney General

32-02-6

Approved By:



Attorney General