

Opinion No. 57-235

September 20, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Mr. Robert H. Sprecher, Assistant District Attorney, Fifth Judicial District, Roswell, New Mexico

QUESTION

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1. May drivers of oncoming or overtaking vehicles pass school busses stopped for the purpose of receiving or discharging children in a residential or business district without stopping?
2. Is the use of flashing warning lights mandatory at all times by the school bus operator, when receiving or discharging children, or only when the bus is on a highway outside a residential or business district?

CONCLUSIONS

1. Yes.
2. The use of the warning system is restricted to when the bus is on a highway outside a residential or business district.

OPINION

ANALYSIS

Sections 64-18-46 and 64-18-47, N.M.S.A., 1953 Compilation, are as follows:

"64-18-46. (a) The driver of a vehicle upon a highway outside of a business or residence district upon approaching or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle at least 10 feet before reaching such school bus and shall not proceed until such school bus resumes motion, or until signaled by the driver to proceed.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words "School Bus" in letters not less than 8 inches in height.

(c) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway."

"64-18-47. (a) The commissioner of motor vehicles is authorized to adopt standards and specifications applicable to lighting equipment on and special warning devices to be carried by school busses consistent with the provisions of this act, but supplemental thereto, and except that such standards and specifications may designate and permit the use of flashing warning signal lights on school busses for the purpose of indicating when children are boarding or alighting from any said bus. Such standards and specifications shall correlate with and, so far as possible, conform to the specifications then current as approved by the Society of Automotive Engineers.

(b) It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is stopped on a highway for the purpose of permitting school children to board or alight from said school bus."

The prohibition against passing a stopped bus, set forth in Section 64-18-46, is clearly restricted to stops on a highway for purpose of discharging or receiving children, outside a business or residential area.

The answer to your second question entails some difficulty. Section 64-18-47 (b), as you will notice, does not contain the qualifying language, i.e., ". . . outside of a business or residence district, . . ." as does the prior section. Hence, it might well be argued that the Legislature intended a result different than that under such prior section. However, it is our opinion that both sections must be read together, and having done so we believe that Section 64-18-47 (b) is restricted to the same situation as Section 64-18-46. Viewing the matter in a practical light, we believe the Legislature intended these restrictions to only be operative outside residential and business districts, where vehicle speeds are apt to be greater and where the danger to children is accordingly greater.

Nor can we ignore the nature of the statute with which we are dealing. Section 64-18-47 (b) begins by saying; "it shall be unlawful. . . ." Turning to the session laws, we find that what is compiled as Section 64-18-47 (b) was first enacted as Laws 1953, Chapter 139, Section 109.6. Section 23 of said Chapter 139, provides that unless otherwise declared with respect to a particular offense, any violation of the act is a misdemeanor. This is compiled as Section 64-15-2, N.M.S.A., 1953 Compilation. Since we have found no specific declaration as to the penalty for violation of Section 64-18-47 (b), we conclude its violation would be a misdemeanor and as such is a criminal statute. Accordingly, it is to be strictly construed, and no situation can be included within its coverage unless both within the spirit and letter thereof. *Territory vs. Davenport*, 17 N.M. 214, 124 P. 795.