



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

August 29, 2007

The Honorable John S. Reid
Member, House of Delegates
P.O. Box 29566
Richmond, Virginia 23242

Dear Delegate Reid:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether a local school board may charge a fee to transport students on a school bus to and from school.

Response

It is my opinion that local school boards may not charge for the transportation of students to and from school.

Background

You state that a local school board, in considering its budget, has asked whether it may charge a fee to transport students on a school bus to and from school. You note that the board would not charge a fee for students whose transportation is required by § 22.1-221.

Applicable Law and Discussion

Article VIII, § 1 of the Constitution of Virginia directs the General Assembly to “provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth.” In § 22.1-3(A), the General Assembly has responded and directs that “[t]he public schools in each school division shall be free to each person of school age who resides within the school division.”

With one exception, I find no provision of the Virginia Constitution or the *Virginia Code* that requires local school boards to provide transportation for the pupils it serves. Section 22.1-176(A) authorizes “[s]chool boards [to] provide for the transportation of pupils, but nothing herein contained shall be construed as requiring such transportation except as provided in § 22.1-221.” Section 22.1-221(A) requires school boards to provide free transportation to students with disabilities so they may obtain the “benefit of educational programs and opportunities.”

Section 22.1-176(B) is a single purpose statute that authorizes a school board to charge fees for the transportation of pupils in a *single* circumstance:

When a school board provides transportation to pupils for extracurricular activities, other than those covered by an activity fund, which are sponsored by the pupils' school apart from the regular instructional program and which the pupils are not required to attend or participate in, the school board may accept contributions for such transportation or *charge each pupil utilizing such transportation a reasonable fee not to exceed his pro rata share of the cost of providing such transportation.* [Emphasis added.]

Section 22.1-176(B) further authorizes a school board to waive such fees for pupils whose parents or guardians are unable to afford them.¹

It is a standard rule of statutory construction that when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.² In this matter, the General Assembly has authorized local school boards to charge fees for transportation only when it provides the transportation for optional extracurricular activities.

Local school boards are not permitted to levy fees or charge any pupil except as provided in Title 22.1 or by regulation of the Board of Education.³ Such regulation, 8 VAC § 20-370-10, provides that “[n]othing in this chapter shall be construed to prohibit [a local school board] from making supplies, services, or materials available to pupils at cost. Nor is it a violation to make a charge for a field trip or an educational related program that is not a required activity.” An argument could be advanced that transportation to and from school is a “service” for which school boards may charge. However, if that were correct, the additional statement in § 20-370-10 permitting a school board to charge for field trips or other educational-related programs would be unnecessary as they would be “services” for which fees could be charged. I note that the exception in § 20-370-10 for charging fees for field trips corresponds to the authority in § 22.1-176 to accept contributions for such transportation. Ultimately, the argument relating to an administrative regulation cannot overcome the clear rule of statutory construction regarding specific grants of authority.⁴ Therefore, for the reasons stated, bus transportation to and from school is not a “service” within the meaning of 8 VAC § 20-370-10.

Conclusion

Accordingly, it is my opinion that local school boards may not charge for the transportation of students to and from school.

¹I note that § 22.1-176(C) authorizes school divisions to accept contributions to transport pupils on field trips that are part of the school program or sponsored by the school. In my opinion, the authority to accept contributions does not confer the authority to charge fees.

²2006 Op. Va. Att’y Gen. Ann. 29, 30 and opinions cited therein.

³VA. CODE ANN. § 22.1-6 (2006). I note, however, that local school boards may enter into cost-sharing arrangements with nonpublic schools. See § 22.1-176.1 (Supp. 2007).

⁴See *supra* note 2 and accompanying text.

The Honorable John S. Reid
August 29, 2007
Page 3

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink that reads "Robert F. McDonnell". The signature is written in a cursive style with a large, prominent "R" at the beginning.

Robert F. McDonnell