

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

BILL LOCKYER
Attorney General

OPINION	:	No. 00-902
	:	
of	:	February 1, 2001
	:	
BILL LOCKYER	:	
Attorney General	:	
	:	
JONATHAN R. DAVIS	:	
Deputy Attorney General	:	
	:	

THE HONORABLE DEBORAH V. ORTIZ, MEMBER OF THE STATE SENATE, has requested an opinion on the following questions:

1. May a school district contract for taxi cab services to transport children to and from school?
2. If so, are any criminal background check procedures applicable with respect to the taxi cab drivers?

CONCLUSIONS

1. A school district may contract for taxi cab services to transport children to and from school.

2. A criminal background check procedure involving fingerprint clearance by the Department of Justice is applicable for any person engaged in pupil transportation under contract with a school district, including taxi cab drivers transporting children to or from school.

ANALYSIS

We are informed that a number of school districts within the state contract for taxi cab services to transport children to and from school. We are asked whether this practice is lawful, and if so, whether any criminal background check procedures are applicable with respect to the drivers. We conclude that taxi cab drivers may transport the students after satisfying criminal background check procedures established by the Legislature.

1. Contracting For Taxi Cab Services

Education Code section 39800, subdivision (a), ¹ states:

“The governing board of any school district may provide for the transportation of pupils to and from school whenever in the judgment of the board the transportation is advisable and good reasons exist therefor. The governing board may purchase or rent and provide for the upkeep, care, and operation of vehicles, or may contract and pay for the transportation of pupils to and from school by common carrier or municipally owned transit system, or may contract with and pay responsible private parties for the transportation. These contracts may be made with the parent or guardian of the pupil being transported. . . .”

This statutory language authorizes contracts between school districts and taxi cab companies for the transportation of the district’s pupils. In *Hopkins v. Yellow Cab Co.* (1952) 114 Cal.App.2d 394, the court examined a contract between the Long Beach Unified School District and a taxi cab company “to furnish an automobile and driver for the transportation of [disabled] children from their home to school . . . and back to their homes . . .” (*Id.* at p.

¹ All references hereafter to the Education Code are by section number only.

395.) At that time, former section 16251 contained identical language to the current statute as relevant here. The court concluded that the taxi cab company was properly considered a “private carrier” while transporting the children under contract with the school district. (*Id.* at p. 398.)

Section 39800 expressly authorizes a school district to “contract and pay for the transportation of pupils to and from school by common carrier or municipally owned transit system, or may contract with and pay responsible private parties for the transportation.” In answer to the first question, therefore, we conclude that under the terms of section 39800, a school district may contract for taxi cab services to transport children to and from school.

2. Criminal Background Check Procedures

Section 45125.1 provides:

“(a) Except as provided in subdivisions (b) and (c), if the employees of any entity that has a contract with a school district, as defined in Section 41302.5, to provide any of the following services may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice to be sufficient to reimburse the department for its costs incurred in processing the application:

“(1) School and classroom janitorial.

“(2) Schoolsite administrative.

“(3) Schoolsite grounds and landscape maintenance.

“(4) Pupil transportation.

“(5) Schoolsite food-related.

“(b) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a school district in an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable.

“(c) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a school district when the school district determines that the employees of the entity will have limited contact with pupils. In determining whether a contract employee has limited contact with pupils, the school district shall consider the totality of the circumstances, including factors such as the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. If a school district has made this determination, the school district shall take appropriate steps to protect the safety of any pupils that may come in contact with these employees.

“(d) A school district may determine, on a case-by-case basis, to require an entity providing schoolsite services other than those listed in subdivision (a) or those described in Section 45125.2 and the entity’s employees to comply with the requirements of this section, unless the school district determines that the employees of the entity will have limited contact with pupils. . . .

“(e) (1) The Department of Justice shall ascertain whether the individual whose fingerprints were submitted to it pursuant to subdivision (a) has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department. Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the department shall ascertain the information required pursuant to this section within three working days. When the Department of Justice ascertains that an individual whose fingerprints were submitted to it pursuant to subdivision (a) has a pending criminal proceeding for a felony as defined in Section 45122.1 or has been convicted of a felony as defined in Section 45122.1, the department shall notify the employer designated by the individual of that fact. The notification shall be delivered by telephone or electronic mail to the employer.

“(2) The Department of Justice, at its discretion, may notify the school district in instances when the employee is defined as having a pending criminal proceeding described in Section 45122.1 or has been convicted of a felony as defined in Section 45122.1.

“(3) The Department of Justice may forward one copy of the fingerprints to the Federal Bureau of Investigation to verify any record of previous arrests or convictions of the applicant. The Department of Justice shall review the

criminal record summary it obtains from the Federal Bureau of Investigation and shall notify the employer only as to whether or not an applicant has any convictions or arrests pending adjudication for offenses which, if committed in California, would have been punishable as a violent or serious felony. The Department of Justice shall not provide any specific offense information received from the Federal Bureau of Investigation. The Department of Justice shall provide written notification to the contract employer only concerning whether an applicant for employment has any conviction or arrest pending final adjudication for any of those crimes, as specified in Section 45122.1, but shall not provide any information identifying any offense for which an existing employee was convicted or has an arrest pending final adjudication.

“(f) An entity having a contract as specified in subdivision (a) and an entity required to comply with this section pursuant to subdivision (d) shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Section 45122.1.

“(1) This prohibition does not apply to an employee solely on the basis that the employee has been convicted of a felony if the employee has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

“(2) This prohibition does not apply to an employee solely on the basis that the employee has been convicted of a serious felony that is not also a violent felony if that employee can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of schoolsite employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is resident.

“(g) An entity having a contract as specified in subdivision (a) and an entity required to comply with this section pursuant to subdivision (d) shall

certify in writing to the school district that neither the employer nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Section 45122.1

“.....”

“(i) For purposes of this section, a charter school shall be deemed to be a school district.

“(j) Where reasonable access to the statewide electronic fingerprinting network is available, the Department of Justice may mandate electronic submission of the fingerprint cards and other information required by this section.”

Section 45122.1 defines a felony by reference to Penal Code section 667.5, subdivision (c), and Penal Code section 1192.7, subdivision (c), including such specific crimes as murder, arson, kidnaping, robbery, and first degree burglary.

As directed by the Legislature in section 45125.1, a school district with a contract for the transportation of its pupils by a taxi cab company must receive written certification from the company that the drivers who transport the district’s pupils have not been convicted of a felony as defined in section 45122.1. The certification is based upon the fingerprint records of the drivers as submitted to the Department of Justice, which must notify the company of an employee’s disqualification.

We conclude in answer to the second question that a criminal background check procedure involving fingerprint clearance by the Department of Justice is applicable for any person engaged in pupil transportation under contract with a school district including taxi cab drivers transporting children to or from school.
