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CURTIS T. HILL, JR.  
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June 27, 2019

**OFFICIAL OPINION 2019-4**

Mr. Michael Mentzel, Chair  
Indiana State School Bus Committee  
Indiana State House  
200 West Washington Street, Room 229  
Indianapolis, Indiana 46204

Mr. Michael A. LaRocco  
Director of Transportation  
Indiana Department of Education  
South Tower, Suite 600  
115 W. Washington Street  
Indianapolis, IN 46204-3420

**RE: Liability for Extended School Bus Arm Signal Devices**

Dear Chairman Mentzel and Mr. LaRocco:

You have requested an opinion on liability issues arising from the use of extended school bus arm signal devices.

**QUESTION PRESENTED**

To whom does liability attach should the State School Bus Committee approve an extended stop arm or arm signal device for a school bus and a driver of a motor vehicle, in violation of Ind. Code § 9-21-12-1, hits the arm signal device?

**BRIEF ANSWER**

Indiana law prohibits the driver of a motor vehicle from passing a school bus in either direction when a school bus arm signal device is in use. A driver of a motor vehicle who passes a school bus when an arm signal device is in use would be liable for any resulting property damage or personal injury.

**BACKGROUND**

Each school day thousands of Hoosier students take the bus to school. "We know that students are far safer in school buses, but cars passing school buses is one of the most troubling

problems we face, because it is so common and can lead to injury or death.”<sup>1</sup> One solution already being used in several states—and gaining interest in Indiana—is the extended stop arm. “The mechanism replaces the regular stop sign attached to a school bus, which is typically 18 inches from the bus. The extended arm is anywhere from 4-1/2 to 6-1/2 feet from the bus.”<sup>2</sup> Use of the extended stop arm has reduced the number of illegally passing vehicles anywhere from 50% to 100% depending on the school district.<sup>3</sup>

## ANALYSIS

### **Indiana State School Bus Committee**

The Indiana State School Bus Committee (“Committee”) is established by Ind. Code § 20-27-3-1 and is required to “adopt and enforce rules...to govern the design and operation of all school buses used for the transportation of school children,” whether owned by a school corporation or privately owned but under contract with a school corporation. Ind. Code § 9-21-12-4(a). *See also* Ind. Code § 20-27-3-4(a)(2), authorizing the Committee to adopt rules “establishing standards for the equipment of school buses and special purpose buses.” The Committee’s rules appear at Title 575 of the Indiana Administrative Code. The Committee is authorized to establish standards for the equipment of school buses, which could include requiring an extended school bus arm for a school bus.<sup>4</sup>

### **School Bus Arm Signal Devices**

In Indiana, “whenever a school bus is stopped on a roadway to load or unload a student, the driver shall use an arm signal device, which must be extended while the bus is stopped.”<sup>5</sup> The arm signal device must meet various specifications established by state rule and federal regulation.<sup>6</sup> However, neither authority limits the length of the arm signal device.<sup>7</sup> Thus, it is permissible to install and use an “extended” (or longer than usual) arm signal device.

Ind. Code § 9-21-12-1(a) states, in pertinent part:

A person who drives a vehicle that:

- (1) meets or overtakes from any direction a school bus stopped on a roadway and is not stopped before reaching the school bus

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<sup>1</sup> National Association of State Directors of Pupil Transportation Services, “Annual NASDPTS Survey Highlights Danger of Passing School Buses” (Press Release of August 21, 2018), available at <http://www.nasdpts.org/stoparm/2018/NASDPTS%20Stop%20Arm%20Press%20Release-2018-8-21-18.pdf> (last visited June 12, 2019).

<sup>2</sup> WISH TV, “Extended stop arms on schools buses gain interest after 3 die in crash,” November 6, 2018, <https://www.wishtv.com/news/indiana-news/extended-stop-arms-on-schools-buses-gain-interest-after-3-die-in-crash/1576641053> (last visited June 12, 2019).

<sup>3</sup> *Id.*

<sup>4</sup> *See also* 575 IAC 1-9 *et seq.*

<sup>5</sup> Ind. Code § 9-21-12-13(a).

<sup>6</sup> 575 IAC 1-9-51; *see also* 49 C.F.R. § 571.131.

<sup>7</sup> *Id.*

when the arm signal device specified in IC 9-21-12-13 is in the device's extended position; or  
(2) proceeds before the arm signal device is no longer extended; commits a Class A infraction.

When a driver of a motor vehicle fails to stop before reaching a school bus when the arm signal device is extended, or proceeds before it is no longer extended, he or she commits a Class A infraction.<sup>8</sup> The area in which the arm signal device extends is a restricted area for all traffic. No one may pass a school bus in either direction when the arm signal device is extended.<sup>9</sup>

### **Liability for Use of "Extended" School Bus Arm Signal Devices**

Indiana has a detailed statutory scheme regarding school transportation.<sup>10</sup> The statutes differentiate between "employment contracts" and "transportation contracts." An "employment contract" is "a contract: (1) between: (A) a school corporation that owns all necessary school bus equipment; and (B) a school bus driver; and (2) that provides that the school bus driver is employed in the same manner as other noninstructional personnel are employed by the school corporation."<sup>11</sup> A "transportation contract" is "a contract between a school corporation and a school bus driver in which the school bus driver promises to provide, in addition to driving services, a school bus, school bus chassis, or school bus body."<sup>12</sup> A school bus driver who works under an employment contract is an employee of the school corporation, while a school bus driver who works under a transportation contract is an independent contractor.<sup>13</sup>

Indiana's financial responsibility act requires all motor vehicles to be insured, secured by a bond, or self-insured by the owner or operator.<sup>14</sup> "[S]chool bus drivers with a transportation contract must provide their own liability insurance, whereas the school corporation insures school bus drivers with employment contracts."<sup>15</sup> In short, all registered motor vehicles operated on Indiana roadways must demonstrate financial responsibility through purchase of insurance by the owner or operator.

Under the Indiana Tort Claims Act, "[a] governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from . . . the act or

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<sup>8</sup> Public Law 144-2019 (Senate Enrolled Act No. 2) amends the Indiana Code to increase the penalties a driver may face if the driver violates Ind. Code § 9-21-12-1. Increased penalties may include suspension of driving privileges for ninety (90) days, or up to one (1) year in certain instances. See P.L. 144-2019, Sec. 3, amending Ind. Code §9-21-12-1. The amendments become effective July 1, 2019, but will not change the analysis or ultimate conclusion of this opinion.

<sup>9</sup> As of July 1, 2019, a person who operates a vehicle that recklessly passes a school bus that is stopped with the arm signal device extended commits a Class A misdemeanor. The offense is a Level 6 felony if such reckless action causes bodily injury to a person, and it will be a Level 5 felony if it causes the death of a person. Ind. Code §9-21-8-52(b) as amended by P.L. 144-2019, Sec. 2.

<sup>10</sup> See Ind. Code Art. 20-27.

<sup>11</sup> Ind. Code § 20-27-2-4.

<sup>12</sup> Ind. Code § 20-27-2-12.

<sup>13</sup> *Jacks by Jacks v. Tipton Cmty. Sch. Corp.*, 94 N.E.3d 712, 718 (Ind. Ct. App. 2018).

<sup>14</sup> Ind. Code § 9-25-4-4(a).

<sup>15</sup> *Jacks*, 94 N.E.3d at 718 (restating Ind. Code § 20-27-5-4).

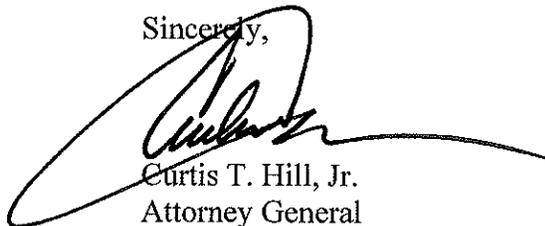
omission of anyone other than the governmental entity or the governmental entity's employee."<sup>16</sup> Governmental entities include school corporations.<sup>17</sup> Thus, a school bus driver working under an employment contract would be covered by the Tort Claims Act and immune from liability for the acts or omission of others, but a school bus driver working under a transportation contract would not be so covered.

If a the driver of a motor vehicle passes a school bus in either direction when the "extended" school bus arm signal device is in use, then the vehicle driver has violated Ind. Code § 9-21-12-1. If the violation results in property damage or personal injury of any kind, the vehicle driver would be the liable party. But for the driver of a motor vehicle's violation of the law, no property damage or personal injury would have occurred. Indiana's financial responsibility act "provides the ability to respond in damages for liability arising out of ownership, maintenance, or use of" a motor vehicle.<sup>18</sup>

### CONCLUSION

The Indiana School Bus Committee has the statutory authority to regulate with regard to the required equipment of a school bus. This authority would extend to the establishment as to when or whether a school bus is to have an extended arm signal device.<sup>19</sup> Permitting or requiring such an extended school bus arm signal device does not raise any additional liability issues. Indiana law prohibits the driver of a motor vehicle from passing a school bus in either direction when an arm signal device is in use. A driver of a motor vehicle who passes a school bus when an arm signal device is in use would be liable for any resulting property damage or personal injury.

Sincerely,



Curtis T. Hill, Jr.  
Attorney General

David P. Johnson, Chief Counsel  
Kevin C. McDowell, Assistant Chief Counsel  
Donald L. Hannah, Deputy Attorney General

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<sup>16</sup> Ind. Code § 34-13-3-3(10).

<sup>17</sup> See Ind. Code § 34-6-2-49 (defining "governmental entity" to include "a political subdivision of the state") and Ind. Code § 34-6-2-110(9) (defining "political subdivision" to include "school corporation").

<sup>18</sup> Ind. Code § 9-25-4-4(a).

<sup>19</sup> Neither State nor federal law presently requires the use of an extended stop bar or establish any specifications for such an extension, as is presently required for a stop signal device. The Committee's rules currently permit "[a]n additional stop arm device" to be installed, but restricts this to a "Type A school bus," as defined at 575 IAC 1-1-1(e). See 575 IAC 1-9-51(c)(5).