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January 31, 2014

Superintendent Timothy Glasspool
Plum Borough School District
200 School Road
Plum, PA 15239

RE: School Bus Audiotaping

Dear Superintendent Glasspool,

I write in connection to the above referenced subject.

In April of 2006, I was asked by the Pennsylvania State Police to take a position concerning a possible violation of the state's wiretap act by using audio and video recordings on school buses. In this regard, I have enclosed a correspondence dated April 11, 2006 to the two school districts of interest to the Pennsylvania State Police. Although the correspondence is self explanatory, I felt that if the appropriate steps were taken, the use was lawful.

The Pennsylvania Senate recently forwarded Senate Bill number 57 (attached) to Governor Corbett for his approval for passage. Page three (3) of the bill specifically addresses the conditions under which audio taping is permissible.

I write because I believe the use of this mechanism does better ensure the safety of your students as well as that of your employees. Also, I believe having objective evidence is always preferable if there is dispute over the circumstances leading to an incident.

If you have any questions on this matter, please do not hesitate to contact my assistant Laurie Delaney at (412) 350-4198.

Very truly yours,

Stephen A. Zappala, Jr.
District Attorney

Enclosures

April 11, 2006

Via Facsimile & US Mail

Superintendent Frank Prazenica
West Mifflin Area School District
515 Camp Hallow Road
West Mifflin, PA 15122

Via Facsimile & US Mail

Superintendent Patrick A. Risha
McKeesport Area School District
2225 5th Avenue
McKeesport, PA 15132

In Re: School Bus Audio Taping

Gentlemen:

As you are aware, The Pennsylvania State Police (Police) have referred certain potential criminal matters that arise under the Pennsylvania Wiretapping and Electronic Surveillance Control Act (Act). Specifically, the Police have developed evidence dealing with audiotaping that is being done in conjunction with videotaping on school buses transporting students in your school districts.¹

I preface this correspondence in that I do not question the legitimate safety concerns of both the school districts and the transportation company involved in attempting to ensure that the children are transported in a manner that protects them, as well as the school bus operator from physical injury, verbal abuse, or threats thereof. At the same time, the thorough investigation and good faith actions of the Pennsylvania State Police in enforcing the provisions of the Act cannot be questioned. In this age of wireless communication where individual privacy rights are being continually redefined, the State Police have sought my counsel in this unsettled area of the law.

Neither the Act nor the Pennsylvania Appellate Courts have addressed the particular circumstances communicated by the Police. The courts have, however, consistently directed that "oral communications" which are surreptitiously obtained, absent a specific exception, violate the Act.

Having reviewed the evidence provided, as well as relevant Pennsylvania cases governing "oral communications" within the meaning of the Act, I do not believe that the questioned activity falls within the definition of "oral communication". Assuming for the sake of argument that this conduct falls within that definition, I do not find an intent to violate the Act by your school districts and/or this transportation company.

Laidlaw has communicated that it will cease utilizing the audio aspect of the cameras in their buses across Pennsylvania. I believe that that would be prudent at this time.

¹ Videotaping is not prohibited by the Act.

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April 11, 2006

Until the Legislature and/or the Appellate Courts have spoken to this issue, the use of audio equipment on school buses within Allegheny County will not be considered a criminal matter if the following measures are taken:

1. The adoption of a school board policy that authorizes audio interception on school buses for disciplinary purposes;
2. Advance communication of that policy to both students and their parents/guardians by letter; and,
3. Clearly visible notice on the buses which are equipped with audio interception, with unequivocal language that audio as well as video interception is occurring on the school bus.

Being mindful that this opinion addresses criminal prosecutions within the boundaries of Allegheny County, and this is in no way intended to undermine civil remedies set forth within the Act, an issue that should be reviewed by your solicitors, or any future court or administrative opinions that may further clarify this issue.

Kindly note that a copy of this Opinion has been forwarded to members of the Legislature with a request that they take up this matter at their earliest convenience.

Very truly yours,

Stephen A. Zappala, Jr.
District Attorney

SAZ/hc

CC: Major Frank Monaco, Pennsylvania State Police (Via Facsimile & US Mail)
Fred Theiman, Legal Counsel, Laidlaw Corporation (Via Facsimile & US Mail)
Representative Frank Dermody (Via Facsimile & US Mail)
Representative Don Walko (Via Facsimile & US Mail)

HOUSE AMENDED

PRIOR PRINTER'S NOS. 26, 1590, 1657

PRINTER'S NO. 1660

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. **57** Session of
2013

INTRODUCED BY ALLOWAY, BREWSTER, ERICKSON, VULAKOVICH, WASHINGTON,
SOLOBAY, RAFFERTY, COSTA, DINNIMAN, BROWNE AND SCHWANK,
JANUARY 4, 2013

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
DECEMBER 16, 2013

AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania
Consolidated Statutes, IN WIRE TAPPING AND ELECTRONIC
SURVEILLANCE, further providing for exceptions to prohibition
of interception and disclosure of communications.

The General Assembly of the Commonwealth of Pennsylvania
hereby enacts as follows:

~~Section 1. Section 5704 of Title 18 of the Pennsylvania
Consolidated Statutes is amended by adding a paragraph to read:~~

SECTION 1. SECTION 5704(16) OF TITLE 18 OF THE PENNSYLVANIA
CONSOLIDATED STATUTES IS AMENDED AND THE SECTION IS AMENDED BY
ADDING A PARAGRAPH TO READ:

§ 5704. Exceptions to prohibition of interception and
disclosure of communications.

It shall not be unlawful and no prior court approval shall be
required under this chapter for:

* * *

(16) A LAW ENFORCEMENT OFFICER, WHETHER OR NOT CERTIFIED

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UNDER SECTION 5724 (RELATING TO TRAINING), ACTING IN THE PERFORMANCE OF HIS OFFICIAL DUTIES TO INTERCEPT AND RECORD AN ORAL COMMUNICATION BETWEEN INDIVIDUALS IN ACCORDANCE WITH THE FOLLOWING:

(I) AT THE TIME OF THE INTERCEPTION, THE ORAL COMMUNICATION DOES NOT OCCUR INSIDE THE RESIDENCE ~~OF ANY OF THE INDIVIDUALS~~.

(II) AT THE TIME OF THE INTERCEPTION, THE LAW ENFORCEMENT OFFICER:

(A) IS [OPERATING THE VISUAL OR AUDIBLE WARNING SYSTEM OF THE LAW ENFORCEMENT OFFICER'S VEHICLE AUTHORIZED BY 75 PA.C.S. § 4571 (RELATING TO VISUAL AND AUDIBLE SIGNALS ON EMERGENCY VEHICLES) OR IS CLEARLY IDENTIFIABLE AS A LAW ENFORCEMENT OFFICER] IN UNIFORM OR OTHERWISE CLEARLY IDENTIFIABLE AS A LAW ENFORCEMENT OFFICER;

(B) IS IN CLOSE PROXIMITY TO THE INDIVIDUALS' ORAL COMMUNICATION;

(C) IS USING AN ELECTRONIC, MECHANICAL OR OTHER DEVICE WHICH HAS BEEN APPROVED UNDER SECTION 5706(B)

(4) (RELATING TO EXCEPTIONS TO PROHIBITIONS IN POSSESSION, SALE, DISTRIBUTION, MANUFACTURE OR ADVERTISEMENT OF ELECTRONIC, MECHANICAL OR OTHER DEVICES) TO INTERCEPT THE ORAL COMMUNICATION[, THE RECORDER OF WHICH IS MOUNTED IN THE LAW ENFORCEMENT OFFICER'S VEHICLE]; AND

(D) INFORMS, AS SOON AS REASONABLY PRACTICABLE, THE INDIVIDUALS IDENTIFIABLY PRESENT THAT HE HAS INTERCEPTED AND RECORDED THE ORAL COMMUNICATION.

(III) AS USED IN THIS PARAGRAPH, [THE FOLLOWING

WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM
IN THIS SUBPARAGRAPH:

"LAW ENFORCEMENT OFFICER." A] THE TERM "LAW
ENFORCEMENT OFFICER" MEANS A MEMBER OF THE PENNSYLVANIA
STATE POLICE OR AN INDIVIDUAL EMPLOYED AS A POLICE
OFFICER WHO HOLDS A CURRENT CERTIFICATE UNDER 53 PA.C.S.
CH. 21 SUBCH. D (RELATING TO MUNICIPAL POLICE EDUCATION
AND TRAINING).

["RECORDER." AN ELECTRONIC, MECHANICAL OR OTHER
DEVICE USED TO STORE AN ORAL COMMUNICATION ON TAPE OR ON
SOME OTHER COMPARABLE MEDIUM.]

* * *

(18) A person to intercept oral communications for
disciplinary or security purposes on a school bus or school
vehicle, as those terms are defined in 75 Pa.C.S. § 102
(relating to definitions), if all of the following conditions
are met:

(i) The school board has adopted a policy that
authorizes audio interception on school buses or school
vehicles for disciplinary or security purposes.

(ii) Each school year, the school board notifies
students and their parents or guardians of the policy, by
letter mailed to the students' home addresses.

(iii) The school board posts a notice that students
may be audiotaped, which notice is clearly visible on
each school bus or school vehicle that is furnished with
audio-recording equipment.

This paragraph shall not apply when a school bus or school
vehicle is used for a purpose that is not school related.

Section 2. This act shall take effect ~~immediately.~~ AS

1 FOLLOWS:

Σ=

2 (1) THE AMENDMENT OF 18 PA.C.S. § 5704(16) SHALL TAKE
3 EFFECT IN 60 DAYS.

4 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT
5 IMMEDIATELY.

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