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FAPT POSITION PAPER Advertising on School Buses

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Over the past few years, a number of states and local school districts have considered allowing the placement of advertisements on the exterior of school buses. Only a few school districts have proceeded with such programs. Most states, including Florida, continue to prohibit advertising on school buses. There are a number of issues that are relevant to advertising on school buses, including potential safety consequences, the content of the advertising, and potential legal challenges to any content restrictions.

Why Advertising?

First, and foremost, it appears economics is the primary reason that school districts consider the use of advertising on school buses. Education and school transportation budgets have not been keeping pace with the cost of doing business and in some cases growth in student enrollment, forcing school transportation officials to do more with less funding. Thus, finding alternative sources of revenue is a significant issue in many Florida school districts. There are a wide variety of programs that have been initiated across Florida to reduce the cost of school transportation, such as extending student walking distances to bus stops, requiring students who live less than two miles from school to walk, staggering school opening and closing times to use buses for multiple runs per day, reducing field or activity trips, and curtailing other optional services.

If school transportation budgets were fully funded, these reductions in the level of service in order to maximize dollars flowing into the classroom would be unnecessary, and it is unlikely there would be further pressure to allow advertising on school buses as an additional source of revenue. On average, each school district spends approximately 4 to 6 percent of its district operating budget on transportation. The proportion of student transportation cost reimbursed by the state has dropped by 25 percent over the past 15 years.

Potential Safety Concerns

There has been considerable debate between those who believe advertising on school buses is a legitimate and reasonable means for obtaining additional revenue to maintain school bus

operations and those who believe advertising on school buses presents an inherent safety risk to students.

A significant claim by the advocates for advertising is that there are no data to show that advertising on school buses, or any other type of bus, is or would be distracting to passing motorists. They believe, there is no safety risk associated with advertising on school buses, or the risks are acceptable.

Opponents to advertising on school buses acknowledge that there are no statistics to show the potential safety consequences of advertising on the outside of school buses. They point to the features of school buses that contribute to their outstanding safety record -- large, uniquely-colored buses that are equipped with flashing warning lamps and stop signal arms to warn passing motorists that the bus has stopped to allow students to board or leave the school bus. The argument is that if you put advertising on the exterior of a school bus to catch the attention of passing motorists (since that is precisely what advertising is designed to do), then you run the inherent risk that passing motorists will focus their attention on the advertising and not notice, for example, that the school bus has stopped, or turned on its flashing lamps, or allowed students to exit the bus.

An average of 19 school age children dies in school transportation related crashes each year in the United States. Of these, 5 are occupants of school transportation vehicles and 14 are pedestrians (Traffic Safety Facts NHTSA 2008 data). During the past ten years in Florida (2001 to 2010), there were 3 pedestrian children in the vicinity of the bus who were killed by motorists passing legally stopped school buses.

There are a number of key facts that are pertinent to the issue:

- Advertising is designed to catch the attention of passing motorists.
- Advertising displaces the definite and identifiable physical features that make the school bus 'sacred': distinctive school bus yellow color; unique flashing warning lamp systems; stop signal arms; front safety crossing gate; and, yellow reflective tape around emergency exits and along the sides of the bus.
- These distinctive features send a message to motorists that children are present and extreme caution is required.
- Approximately 2 million dollars have been spent in the past three years to put additional safety equipment on school buses (school bus crossing arm and yellow reflective tape around emergency exits).
- Advertising will mar the distinctive safety features.
- Recent studies by the Virginia Tech Transportation Institute, the National Highway Traffic Safety Administration (NHTSA), and others verify that motorist inattention and distraction are a definitive causal factor in a significant percentage of crashes.
- In 2008, almost 20 percent of all crashes involved some type of distraction. (NHTSA).
- Nearly 6,000 people died in 2008 in crashes involving a distracted driver, and more than half a million were injured. (NHTSA)

- The younger, inexperienced drivers under 20 years old have the highest proportion of distraction-related fatal crashes.

It is important to understand that the reason there are no data to prove whether or not there is a safety risk associated with advertising on school buses is that no accident data has ever been collected to verify the effect that advertising on any type of vehicle (transit buses, taxi cabs, etc.) has on driver distraction and resulting accidents. However, there have been studies of the effects of various types of driver distraction and inattention on accidents.

The National Motor Vehicle Crash Causation Survey (NMVCCS) compiled a nationally representative database that consists of on-scene, in-depth multidisciplinary investigations of 6,949 crashes that occurred between 2005 and 2007. This in-depth, on-site approach provided more details than typical police reports about the driver, vehicle, and traffic characteristics associated with distraction-related crashes. These data indicated that distractions internal to the vehicle were a critical reason in about 11 percent of crashes studied. An analysis of the types of internal distractions found that about 0.2 percent of drivers were dialing or hanging up phones, about 0.9 percent were adjusting radios/CDs or other controls, and about 12 percent were conversing with passengers or on cell phones. Drivers 16 to 25 years old had the highest percentage of being engaged in at least one interior non-driving activity (6.6%).

The NMVCCS confirmed that distraction is a common occurrence while driving; many distractions increase the relative risk of crashes and near-crashes, and distractions that require drivers to take their eyes off the road are potentially more of a safety problem than purely cognitive distractions. The researchers in that study used the data to determine the odds ratio or increased risk of engaging in various secondary tasks over “just driving.” The Table below shows some of the results (statistically significant results are in bold). A significant odds ratio indicates a reliable increase in risk associated with that activity.

Table on Odds ratio for secondary tasks in the 100-Car Study

Type of Secondary Task	Odds Ratio
Reaching for a moving object	8.82
Insect in vehicle	6.37
Looking at external object	3.70
Reading	3.38
Applying makeup	3.13
Dialing hand-held device	2.79
Inserting/retrieving CD	2.25
Eating	1.57

Type of Secondary Task	Odds Ratio
Reaching for non-moving object	1.38
Talking/listing to a hand-held device	1.29
Drinking from open container	1.03
Other personal hygiene	0.70
Adjusting the radio	0.50
Passenger in adjacent seat	0.50
Passenger in rear seat	0.39
Child in rear seat	0.33

The statistical analyses dealt with driver distraction from all types of sources, including those outside the vehicle, such as other persons, activities, and advertising on signs, buildings, and other motor vehicles. While it is not possible to estimate the risk of motor vehicle crashes attributed solely to drivers being distracted by advertising, it is evident that driver distraction is a definitive causal factor in a small but significant percentage of motor vehicle crashes.

Since advertising on the exterior of a school bus is a potential source of driver distraction, it is reasonable to assume that such advertisements will increase the likelihood of driver distraction, and potentially result in accidents that would not have otherwise occurred.

Advertising Content and Potential Legal Issues

In a Legal Opinion issued to the Indiana State School Bus Committee (April 25, 1996), the Indiana Department of Education General Counsel, Kevin McDowell said, “While safety concerns can be debated--although the safety record under current regulatory oversight cannot be--the permitting of commercial messages (advertising) on school buses will certainly implicate constitutional provisions, especially the First Amendment and attendant "equal access" claims. Although there are no reported cases in the United States involving a school bus and commercial speech, there is sufficient case law involving analogous situations where school districts created limited public forums for protected speech and nonpublic forums for certain speech which the school district's were unable to restrict or control despite the school district's opposition to the content and viewpoint being expressed.”

The First Amendment to the US Constitution states, “Congress shall make no law ... abridging the freedom of speech ...” Over the past few decades, there have been countless lawsuits and legal decisions concerning freedom of speech. While no lawsuits have been filed on the issue of advertising on school buses, there have been cases that may have applicability to the issue of controlling the content of advertising on school buses.

In December 1993, a US District Judge in Boston ruled that the Massachusetts Bay Transportation Authority's "G-rated" advertising policy violated the US Constitution. The advertisements in question dealt with the use of condoms to prevent the spread of AIDS. The federal judge stated that a transit service "cannot open its transit car door to public service advertising and hang only its favorite posters." The judge noted that the Massachusetts Bay Transportation Authority had concurrently accepted advertising for the R-rated movie, *Basic Instinct*. With respect to "protecting" children from inappropriate advertisements, the judge writes, "that concern evaporates on examination because shielding children from [the] advertisements is insufficiently compelling to justify the resulting limitation of speech."

Based on decisions by the United States Supreme Court, there are three types of fora: (1) a traditional public forum; (2) a public forum created by government designation; and (3) a nonpublic forum. In 1974, the United States Supreme Court held that advertising space on a city transit bus was not considered to be a public forum for purposes of the First Amendment. This decision allows a transit system to control, to an extent, the type and content of advertisements it will accept because the transit system is considered to be a "nonpublic forum." However, lawyers and legal experts have expressed concern that a nonpublic forum could become a public forum based on the acceptance of certain types of advertisements. This would eliminate the ability to establish advertising content criteria. As shown in the Massachusetts Bay Transportation Authority case, it may be difficult to establish and have individuals consistently apply reasonable advertising content criteria.

Supporters of advertising on school buses believe that committees should be formed to establish criteria for the appropriateness of advertising, and believe the criteria will protect them from legal action. The fact of the matter is that such criteria may be challenged in court, and it is impossible for anyone to predict the likelihood of success of any legal challenge to restricting the type of advertising on school buses. While legal challenges to state or local policies may or may not occur, the potential of a lawsuit is always present. The cost for a state or local school district to defend its advertising policy in court could conceivably exceed the revenue obtained from the advertising itself.

Conclusions

The Florida Association for Pupil Transportation opposes advertising on the exterior of school buses. The potential increase to motorist distraction, a known cause of motor vehicle accidents, presents a safety problem around school buses that cannot be ignored. Additionally, it may be difficult or impossible, and legally expensive, to control the types of advertising that could appear on school buses.

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