



Department of Motor Vehicles

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DATE: 11/23/12

TO: Alex

FROM: Ida Traschen

FAX: 718-854-5090

RE: Cell phones/rades

PAGES, including cover sheet: 3

COMMENTS:



STATE OF NEW YORK DEPARTMENT OF MOTOR VEHICLES

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September 27, 2012

[REDACTED]
Executive Director
NYAPT
266 Hudson Avenue
Albany, NY 12210

Re: The legality of two way radios and cell phone technology use by school bus drivers

Dear Mr. **[REDACTED]**:

This is in response to your question regarding the application of Vehicle and Traffic Law Section 1225-c to the use of two-way radios and/or cell phone technology by school bus drivers to communicate with their dispatchers. You indicate that NYAPT believes such use to be illegal, inappropriate and unsafe when school bus drivers use their personal cell phones for personal reasons. However, you express the importance of school bus drivers to be able to communicate to "base" when needed via dispatcher monitored communications. You seek clarification relative to the law on these issues. For purposes of this response, we presume that such radios are being used by the drivers while the bus is in operation.

It is the opinion of this Department that VTL Section 1225-c (the cell phone law) does not apply to the use of "two-way radios", meaning a radio with a two-way dispatch function that does not use a telephone network, functions like a walkie-talkie (the user pushes a button to talk) and is typically used with the speakerphone embedded in the device. Such devices are not "mobile telephones", as such term is defined in VTL Section 1225-c(1)(a), because the device is not used to access a "wireless telephone service." "Wireless telephone service" is, in turn, defined as "...two-way real time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F. R. Section 20.3..." Therefore, the use of such devices does not violate the cell phone law.

On the other hand, if the two-way radio is *the same device* that can also be used to access wireless telephone service, then the device itself meets the definition of a "mobile telephone" regardless of the particular mode of usage, i.e. two-way communication mode or mobile telephone use. If this is the case, then the use of the device, even in the two-way radio mode, constitutes "...using a telephone to engage in a call..." if the user has to keep the button depressed all the time that he/she is talking and if this is done while the phone is held "...to, or in

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the immediate proximity of, the user's ear..." (see VTL Section 1225-c(2)(a) and (b)) Such action would constitute a violation of the cell phone law unless the device was used with a speakerphone or headphone, since this would be use in "hands-free" mode and such use is protected by the exemption contained Section 1225-c(3)(c). However, if the user does not have to keep the button depressed to talk, then he/she has not violated the cell phone law because activating, deactivating or initiating a function is excluded from the definition of engaged in a call. (see VTL Section 1225-c(2)(a))

It is a violation of the cell phone law for drivers to engage in calls using cell phones for personal reasons while operating the bus. The law provides no exemptions for such usage. Please keep in mind that although the use of certain communication devices while driving a school bus may be legal as described herein, it is not recommended because it contributes to the dangers of distracted driving.

The legal opinions expressed herein are those of this Department and are not binding upon prosecutors, law enforcement or the judiciary.

I hope that this response has adequately answered your questions.

Very truly yours,

CHRISTINE M. LEGORIUS
Assistant Counsel

CML/mjs