

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

45 Fremont Street, Suite 3220
San Francisco, CA 94105
(415) 975-2060MILES E. LOCKER, *Chief Counsel*

November 4, 1998

Donna Boris
Attorney at Law
Boris & Associates
P. O. Box 910424
San Diego, CA 92191-0424

RE: Airport Shuttle Drivers

Dear Ms. Boris:

This is in response to your letter of June 3, 1998, asking for a revision of Division policy as set forth in the Opinion Letter of former Chief Counsel H. Thomas Cadell on May 16, 1997, insofar as that letter states that for-hire airport shuttle service drivers are not exempt from the overtime provisions of Wage Order 9-90.¹ I must respectfully decline to do so. As Mr. Cadell stated, the exemption now contained at paragraph 3 (F) of the Wage Order applies only to drivers of vehicles whose hours of service are subject to regulation either by the United States Department of Transportation Code of Federal Regulations, Title 49, Sections 395.1 to 395.13 (Hours and Service of Drivers), or whose hours of service are regulated by Title 13, California Code of Regulations, Subchapter 6.5, Section 1200 and following sections, regulating hours of drivers. Section 1200 of Title 13, entitled "Scope" sets forth the type of vehicles whose drivers are regulated by subsequent sections within the sub-chapter. By its terms, Section 1200 only covers 1) farm labor vehicles, 2) vehicles listed in Vehicle Code Sections 34500 and 34500.1, and 3) two-axle trucks weighing 26,000 pounds or less which transport hazardous materials.

Airport shuttle vehicles are not farm labor vehicles and are not two-axle trucks (of any weight) which transport hazardous materials. This leaves us with the question as to whether the shuttle vehicles are within the scope of vehicles listed in Vehicle Code Sections 34500 and 34500.1.

¹ Order 9-90 has since been replaced by Order 9-98. Although the new Wage Order brought about certain changes in overtime requirements, the only change in the so-called "driver exemption" is that it has been renumbered for paragraph 3 (H) to paragraph 3 (F).

Opinion/Airport Shuttle Drivers

106 (1/21/98) 2127
Miles E. Locker, Chief Counsel

The vehicles listed in Section 34500 are:

- 1) Motor trucks of 3 or more axles weighing over 10,000 lbs.
- 2) Truck tractors
- 3) Buses, school buses, school pupil activity buses, youth buses, and general public paratransit vehicles
- 4) Trailers and semitrailers
- 5) Pole or pipe logging dolly trailers and semitrailers
- 6) Any combination of motortruck and vehicles described above
- 7) Trucks transporting hazardous materials
- 8) Manufactured homes
- 9) Park trailers
- 10) Any other motortruck regulated by the PUC or ICC
- 11) Any commercial motor vehicle with a gross weight exceeding 26,001 lbs. or which tows another vehicle which has a gross weight exceeding 10,000 lbs.

The term "motor truck" is defined by Vehicle Code Section 410 as "a motor vehicle designed, used, or maintained primarily for the transportation of property." Airport shuttle vehicles are designed primarily for the transportation of passengers. Transportation of property such as luggage is a secondary usage. Thus airport shuttle vans are not motor trucks. A "bus" is defined by Vehicle Code Section 668 as a vehicle designed for the transportation of passengers, and designed for carrying more than 10 passengers. Any airport shuttle van that was not originally designed to carry more than 10 passengers is not a bus within the meaning of the Vehicle Code.

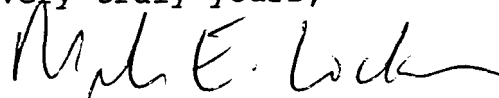
The only types of vehicle listed by Vehicle Code Section 34500.1 are "tour buses", which are defined at Section 612 as buses "designed for carrying more than 16 passengers" and which are "operated by or for a charter-party carrier of passengers, as defined in Section 5360 of the Public Utilities Code." While an airport shuttle van may constitute a "charter-party carrier of passengers" within the meaning of the Public Utilities Code, I very much doubt that any such vans are designed for carrying more than 16 passengers, and hence, are not "tour buses" within the meaning of Vehicle Code Section 34500.1.

Thus even if the Public Utilities Commission does regulate the hours of service of shuttle drivers, that fact, in itself, is insufficient to trigger the exemption. Accordingly, no revision of the Division policy is required or warranted, nor shall I request any deputy to dismiss claims by drivers of such vehicles, inasmuch as the weight, capacity and design and/or use of any vehicle driven would present questions of fact to be determined pursuant to the statutory scheme set forth at Labor Code Section 98. If you have

Donna Boris
November 4, 1998
Page 3

any further questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Miles E. Locker". The signature is fluid and cursive, with a long horizontal stroke at the end.

Miles E. Locker
Chief Counsel

cc: Jose Millan
Tom Grogan
Greg Rupp
Nance Steffen
Lucille Ferrell