STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2016-005

March 31, 2016

The Honorable Joe Farrer
State Representative
199 Lewisburg Road
Austin, AR 72007-9455

Dear Representative Farrer:

You have requested my opinion on several questions concerning Ark. Code Ann. § 27-51-212, which establishes a 25-mph speed limit for motor vehicles passing through a school zone. Your main question is: When does the school-zone speed limit law apply? As follow up, you have posed the following event-specific questions:

1. During school hours while the speed limit is 25 [mph], do children have to be present or is the law triggered by school being in session?

2. Is the school-zone speed law in effect during school events, such as ball games, where children are also present?

3. Does an officer actually have to see children in close proximity to the speed-zone area?

4. In other words, is the law triggered by the presence of children or an event at which children might be present, e.g., school in session, ballgames, after-school events, etc.?

RESPONSE

In my opinion, the school-zone speed limit law applies when a motorist is passing a school building or school zone during school hours when children are present

and are outside of the school building. While State law does not provide a definition of "school hours," the term likely includes student arrival time, instructional time, and departure time. The term also may be flexible enough to encompass time for some before-school or after-school extracurricular events, but I cannot define the precise boundaries of "school hours." I must decline to answer Question 3 as that presents a fact-specific, evidentiary question for the attorney prosecuting an alleged violation to consider.

DISCUSSION

In considering your questions, I am guided by the reasonable rules of statutory interpretation, the primary rule being to read a statute as it is written:

> The first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary meaning and usually accepted meaning in common language. [Courts] construe the statute so that no word is left void, superfluous, or insignificant; and meaning and effect are given to every word in the statute if possible. When the language of the statute is plain and unambiguous, there is no need to resort to rules of statutory construction. When the meaning is not clear, we look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served ... and other appropriate means that shed light on the subject.[1]

Additionally, "the meaning of a statute must be determined from the natural and obvious import of the language used by the legislature without resorting to subtle and forced construction for the purpose of limiting or extending the meaning."[2] Finally, penal statutes, including the statute at issue here,[3] are strictly construed, and nothing is taken as intended that is not clearly expressed.[4] "In civil law, [the

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[1] *MacSteel Div. of Quanex v. Arkansas Oklahoma Gas Corp.*, 363 Ark. 22, 30, 210 S.W.3d 878, 882-83 (2005) (internal citations omitted).

[2] *City of N. Little Rock v. Montgomery*, 261 Ark. 16, 18, 546 S.W.2d 154, 155 (1977).

[3] The penalties for speeding in a school zone, which include fines, jail time, or both, are found at Ark. Code Ann. § 27-51-214 (Repl. 2010).

[4] *See State ex rel. Sargent v. Lewis*, 335 Ark. 188, 191, 979 S.W.2d 894, 896 (1998).

courts] inquire into what the legislature meant but in criminal law we inquire into only what the statute means."[5]

The school-zone speed limit law provides:

> No person shall operate a motor vehicle in excess of twenty-five miles per hour (25 m.p.h.) when passing a school building or school zone during school hours when children are present and outside the building.[6]

The plain language of the statute clearly makes it unlawful for a motorist to exceed 25 miles per hour when passing a school building or in a school zone[7] under three express circumstances: 1) during school hours; 2) when children are present; and, 3) when the children are outside of the school building. The statute's language and conjunctive structure (its use of the word "and") make it clear that all three circumstances must be in place for a violation to occur.

The statute does contain an ambiguity that cannot be resolved by the text alone. Specifically, the term "school hours" is not defined. Neither the legislature nor the courts have ever defined the term "school hours;" accordingly, I cannot provide a controlling definition of the term.[8] The term "school hours" is clearly different from the term "school day," which the legislature has defined.[9]

Because the term "school hours" is ambiguous, we can look to the statute's purpose and objective to try to help us interpret it. However, as we use such

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[5] *Trice v. City of Pine Bluff*, 279 Ark. 125, 129, 649 S.W.2d 179, 181 (1983).

[6] Ark. Code Ann. § 27-51-212(a) (Repl. 2010).

[7] State law defines a "school zone" as the distance of 300 feet on either side of a school building or school grounds. *See* Ark. Code Ann. § 27-51-213(a)(1) (Repl. 2010).

[8] It is a long-standing policy of the Attorney General's office, and one to which my office adheres, that "in the absence of a legislatively[] or judicially formulated definition of a [statutory] term, it is inappropriate for the Attorney General, being a member of the executive branch of government, to formulate a controlling definition." Op. Att'y Gen. 1998-05. *See also* Ops. Att'y Gen. 2013-139, 2010-002, 2005-294, 2000-338 (and opinions cited therein).

[9] *See* Ark. Code Ann. § 6-16-102(a)(1) (Repl. 2013) (defining a "school day" as "a day in which classes are in session and students receive at least six (6) hours of instructional time.").

interpretive tools, we must bear in mind that this is a penal statute. Under constitutional due-process grounds, a penal statute must have ascertainable standards of guilt such that "persons of average intelligence" need not have to guess at the statute's meaning and differ as to its application.[10] Moreover, the law must give fair warning in definite language of the prohibited act, and cannot be so broad that it becomes susceptible to arbitrary and discriminatory enforcement.[11] Of course, as explained by the Arkansas Supreme Court in *State v. Torres*, even criminal statutes can be pliant at times without running afoul of the Constitution; statutes need not expressly identify or list every possible set of circumstances where a violation may occur:

> [F]lexibility, rather than meticulous specificity or great exactitude, in a statute is permissible as long as its reach is clearly delineated in words of common understanding. Moreover, impossible standards of specificity are not constitutionally required, even in criminal statutes. A statute will meet constitutional muster if the language conveys sufficient warning *when measured by common understanding and practice*. Additionally, it is not necessary that all kinds of conduct falling within the reach of the statute be particularized and the statute will not be struck down as vague only because marginal cases could be put where doubts might arise.[12]

The statute's primary purpose and objective is to protect school children from being struck by motorists who are speeding in a school zone. Thus, it seems reasonable, for the purposes of this statute, that the term "school hours" would encompass more of the school day than just instructional time (when the children are most likely to be *inside* the school building). It seems likely the term would also include the hours when children are arriving and departing from school (when they are most likely to be *outside* the school building). In my opinion and as a general matter, most people would commonly understand that school hours

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[10] *State v. Torres*, 309 Ark. 422, 424-25, 831 S.W.2d 903, 904 (1992) (internal citations omitted).

[11] *See id.* at 425, 831 S.W.2d at 904. *See also Holloway v. Arkansas State Bd. of Architects*, 352 Ark. 427, 436-37, 101 S.W.3d 805, 811-12 (2003) (stating that a statute cannot be "so vague and standardless that it leaves judges free to decide, without any legally fixed standards, what is prohibited and what is not on a case-by-case basis.").

[12] 309 Ark. at 425, 831 S.W.2d at 904-05 (citing *Davis v. Smith*, 266 Ark. 112, 583 S.W.2d 37 (1979)) (emphasis added).

include those parts of the day before and after instructional time. That is, they would know that "school hours" essentially means when the school is open for its students, both in the mornings as students begin arriving and in the afternoons when they are dismissing.

But given the purpose and objective of the statute, and the flexibility referenced in the *Torres* analysis, the term "school hours" could likely also include time before arrival and after dismissal to account for students being at school for extracurricular activities. But the earlier in the morning or later in the evening that a school speed limit is enforced, the more susceptible it will be to an as-applied due process challenge. With this in mind, regarding after-school activities, as the afternoon gets later and later, it is possible that a court faced with this question could find that a reasonable person would not understand that "school hours" are still occurring. In fact, your fourth question seems to acknowledge that some school-related events occur "after school." But because neither the legislature nor the courts have defined "school hours," I cannot say when "school hours" definitively begin or end for the purposes of this statute.[13]

Question 1: During school hours while the speed limit is 25 [mph], do children have to be present or is the law triggered by school being in session?

As explained above, the statute applies when a motorist is passing a school building or school zone during school hours when children are present *and* are outside of the school building.

Question 2: Is the school-zone speed law in effect during school events, such as ballgames, where children are also present?

Please see the analysis above regarding the likely parameters of "school hours." If school events, such as ballgames you reference, are being held during what are considered "school hours," then the statute would apply. As I have stated, the term may be flexible enough to encompass some time for before-school or after-school events. But, again, I cannot opine on where those lines are drawn. Of course, while the specific statute at issue may not apply in specific cases, motorists in Arkansas are generally on notice to avoid careless driving[14] and to exercise the

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[13] *See* note 8 and accompanying text, *supra*.

[14] *See* Ark. Code Ann. § 27-51-104 (Repl. 2010).

care "commensurate with the danger reasonably to be anticipated."[15]

Question 3: Does an officer actually have to see children in close proximity to the speed-zone area?

I must respectfully decline to answer this question, as it is beyond the scope of an Attorney General's opinion. This is a fact-specific, evidentiary question that a local prosecuting or city attorney will have to consider, on a case-by-case basis, in determining whether the charging jurisdiction is able to meet its burden of proof.

Question 4: In other words, is the law triggered by the presence of children or an event at which children might be present, e.g., school in session, ballgames, after-school events, etc.?

Please review my responses above.

Sincerely,

LESLIE RUTLEDGE
Attorney General

[15] *Thomas v. Newman*, 262 Ark. 42, 49, 553 S.W.2d 459, 463 (1977) (stating further that "[a] motorist must keep a constant lookout to avoid injury to pedestrians, and should anticipate their presence..." and that "[a] person operating an automobile and seeing children ahead must exercise such care as a man of ordinary prudence would exercise under the circumstances").