



June 25, 2012

## **MADISON AVE. MEETS MAIN STREET, PART II: BUS ADVERTISING REGULATIONS HAVE ARRIVED**

In January of 2011 we reported that Governor Christie signed legislation that allows school districts to enter into contracts for the sale of advertisements on the exterior of school buses. However, shortly after the law was passed, schools were prohibited from entering into contracts for the sale of such advertising until the Department of Education issued regulations defining the parameters and requirements for same. Now, one and a half years later, those regulations have finally arrived.

Codified at *N.J.A.C. 6A:27-7.10-12*, the regulations emphasize that the Public School Contracts Law applies to any agreement entered into by a board of education for placement of advertising on school buses. Any contract which a board seeks to enter into for school bus advertising will therefore require analysis under public contracts law and related regulations, including requirements for the award of bids or concessions under *N.J.A.C. 5:34-9.4*.

The regulations also impose broad hold harmless protection for schools. Specifically, they require any bus advertiser to “protect, defend and save harmless the board of education from any suits or actions of every nature and description brought against it by reason of the advertisement.” Moreover, the regulations specify that 50% of any revenue that the district receives under an advertising contract must be used by the board of education to offset the fuel costs of pupil transportation. The remaining 50% of revenue must be used to support any programs or services which the board deems appropriate.

Not surprisingly, the regulations place restrictions on the content of the advertisements. For instance, the board cannot accept for display any advertising that is false, misleading, profane, obscene or “reasonably determined not to be in good taste.” In addition, the advertising cannot promote unlawful or illegal goods or services, promote the sale or use of alcohol or tobacco related products, or products designed for use in connection with sexual activity, such as condoms. The regulations also prohibit advertising that is religious, political or controversial in nature, so we will not be seeing 2012 Presidential Election advertising on the side of school buses. Finally, the regulations state that a board “shall not allow any of its school buses to become a public forum for dissemination, debate, or discussion of public issues.” The regulations also give the board the final authority to reject any advertisement it deems inappropriate or contrary to the best interest of the district.

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By June 30<sup>th</sup> of each year, boards of education which permit advertisements are required to report to the Commissioner of Education: (1) the number of buses upon which advertising has been placed; (2) the length of time the advertisements have been on the school buses; and (3) the total revenue earned by the District from the advertisements.

If your district is considering school bus advertising and you have further questions about the laws and regulations that impact upon this decision, please do not hesitate to contact the school board attorneys at Schenck, Price, Smith & King, LLP.

DISCLAIMER: This Legal Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client. If someone you know would like to receive this Legal Alert, please send a message to Marc H. Zitomer, Esq. at [mhz@spsk.com](mailto:mhz@spsk.com). Mr. Zitomer is co-chair of the School Law Practice Group as well as a member of the Labor and Employment Practice Group at Schenck, Price, Smith & King, LLP.

**FLORHAM PARK**

220 Park Avenue  
PO Box 991  
Florham Park, NJ 07932  
Tel: 973-539-1000  
[www.spsk.com](http://www.spsk.com)

**NEW YORK**

116 West 23<sup>rd</sup> Street  
Suite 500  
New York, NY 10011  
Tel: 212-386-7628

**PARAMUS**

Country Club Plaza  
115 West Century Road Suite 100  
Paramus, NJ 07652  
Tel: 201-262-1600