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OFFICIAL OPINION 2007-3

The Honorable Thomas J. Wyss
Senator, State of Indiana
12133 Harvest Bay Drive
Fort Wayne, Indiana 46845-8982

Re: Passenger Restraint Laws under Indiana Code Chapter 9-19-10

Dear Senator Wyss:

You have requested our opinion on the applicability of Indiana's seat belt laws under the following circumstances:

1. An adult is riding in the cargo bed of a pickup truck in which the manufacturer has not installed safety belts as standard equipment.
2. An adult is riding in the passenger area of a motor vehicle in which safety belts have been installed as standard equipment, but the number of occupants exceeds the number of safety belts installed in the motor vehicle.

Subject to certain explicit exemptions, Indiana's safety belt requirement set forth at Indiana Code section 9-19-10-2 is applicable to each occupant of a motor vehicle and the violation of this statute is a Class D infraction. Pursuant to Indiana Code section 33-39-1-5(1), county prosecuting attorneys are responsible for the prosecution of infractions. It is not the function of an advisory opinion to determine if a penal statute has been violated, or to instruct on how a penal statute should be enforced. This office will provide an opinion on the applicable law and legal principles that might be useful in analyzing the situations you have described.

Brief Answer

Indiana passenger restraint laws at Indiana Code chapter 9-19-10 require each occupant of a motor vehicle to wear a properly fastened safety belt unless an individual is exempt under section 9-19-10-1. The law does not make an exception for occupants in the cargo bed of a pickup truck, nor does it provide an exception for occupants in the passenger area of a motor

vehicle when the number of riders exceeds the number of available safety belts installed by the manufacturer.

Background

Indiana Code chapter 9-19-10 sets out the state law for passenger restraint systems and safety belt enforcement. Public Law Number 214-2007 significantly amended section 9-19-10-2. Prior to July 1, 2007, only "front seat" occupants of a "passenger" motor vehicle were required to wear a safety belt. However, as of July 1, 2007, section 9-19-10-2 states:

Each occupant of a *motor vehicle* equipped with a safety belt that:

(1) meets the standards stated in the Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208); and

(2) is standard equipment installed by the manufacturer;

shall have a safety belt properly fastened about the occupant's body at all times when the vehicle is in forward motion.

(emphasis added).

Therefore, the mandatory use of safety belts has been extended to *each* occupant, with no limitation as to the location of the occupant in the vehicle. In addition, mandatory safety belt usage is no longer limited only to "passenger" motor vehicles.

For purposes of 9-19-10-2, "motor vehicle" is broadly defined as any vehicle that is self-propelled, and excludes only "a farm tractor, an implement of agriculture designed to be operated primarily in a farm field or on farm premises, or an electric personal assistive mobility device." Ind. Code § 9-13-2-105.

Thus, as of July 1, 2007, all occupants, regardless of their location in a motor vehicle, must wear a safety belt unless exempted under section 9-19-10-1. Under section 9-19-10-1, individuals exempt from the passenger restraint requirements at 9-19-10-2 generally include:

- Individuals who, for medical reasons, should not wear safety belts;
- Children covered under the passenger restraint law for children at chapter 9-19-11;
- Occupants traveling in a commercial or United State Postal Service vehicle delivering goods and services;
- Rural mail carriers on a rural postal route;
- Newspaper motor route carriers or newspaper bundle haulers making deliveries;
- Driver examiners appointed under section 9-14-2-3 who are conducting an examination of an applicant for permit or license;
- Farm truck occupants where the vehicle is being used for farming operations;
- Parade vehicle occupants;
- Occupants in the living quarters of a recreational vehicle;
- Occupants in the treatment area of an ambulance;
- Occupants in the sleeping area of a tractor;
- Occupants, but not operators, of garbage trucks, trucks on construction sites, tow

trucks, and certain vehicles used by a public utility in an emergency.

See Ind. Code § 9-19-10-1.

Analysis

When interpreting a statute, the “goals of the statute and the reasons and policy underlying the statute’s enactment” should be considered. *Town of Merrillville v. Merrillville Conservancy Dist.*, 649 N.E.2d 645, 649 (Ind. Ct. App. 1995). Social legislation should be liberally construed in favor of those intended to benefit from it. *State v. Kokomo Tube Co.*, 426 N.E.2d 1338, 1345 (Ind. Ct. App. 1981). “The Indiana seatbelt statute, I.C. § 9-19-10-2, was enacted to promote highway safety and to protect Indiana citizens.” *Kelver v. State*, 808 N.E.2d 154, 159 (Ind. Ct. App. 2004).

“Occupant” is not defined under Title 9. Words used in a statute should be taken in their plain and usual sense. Ind. Code § 1-1-4-1(1). The dictionary definition of “occupant” is “one who occupies a particular place” Webster’s Dictionary 817 (1989). See *Doe v. Donahue*, 829 N.E.2d 99, 107 (Ind. Ct. App. 2005) (noting that English language dictionaries may be used when determining the plain and ordinary meaning of a statutory term).

In regard to “occupants” of a vehicle who must comply with safety belt requirements, the Georgia Court of Appeals rejected the argument that an “occupant” of a pickup truck includes only those persons riding in the cab. *State v. McDuff*, 555 S.E.2d 213, 214 (Ga. Ct. App. 2001). The court noted that a minor child riding in the open bed of a pickup truck is “no less an ‘occupant’ of the vehicle than the child who is riding in the cab.” *Id.* at 215. Where the law requires that “each occupant of a passenger vehicle . . . be restrained by a seat safety belt,” the court held that the driver could be stopped and ticketed when the driver allowed a minor to ride in the bed of a pickup truck without a restraining device. *Id.* The court stated:

[T]he legislature made it clear that its intent was ‘that minors in pickup trucks shall be required to use seatbelts.’ The ‘cab’ of a pickup truck was not specified, although it could have been. And indeed, it makes little sense for the seat belt law to apply only to children who ride in the cab, making it possible for a driver to avoid the law altogether by causing a child to ride in the more dangerous open bed of a pickup truck

Id.

Indiana Code section 9-19-10-2 clearly requires that “each occupant” of a motor vehicle wear a safety belt. While certain expressly identified individuals are exempt from the safety belt requirements under subsections 9-19-10-1, there are only three explicit exemptions for those individuals occupying an area of a vehicle where typically no safety belt is available. The legislature provided express exemptions for occupants of the treatment area of an ambulance, sleeping area of a tractor, and the living quarters of a recreational vehicle. Ind. Code § 9-19-10-1(9) to (11). The law also recognizes and specifically exempts those who may occupy a vehicle outside of the vehicle’s interior passenger compartment -- occupants of garbage trucks, trucks on construction sites, or certain public utility vehicles are exempt from safety belt requirements.

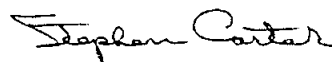
Ind. Code § 9-19-10-1(12), (13), (15). The rules of statutory construction provide that "the enumeration of certain things in a statute necessarily imply the exclusion of all others." *Brandmaier v. Metro. Dev. Comm'n of Marion Co.*, 714 N.E.2d 179, 180 (Ind. Ct. App. 1999). Thus, individuals who are not expressly exempted by law from the safety belt requirement may not avoid the requirement by riding in an area of a vehicle where no safety belt is available, such as in the bed of a pickup truck or in the cargo area of an SUV. By the same token, drivers should ensure that all child passengers are properly fastened and restrained pursuant to the passenger restraint laws for children at chapter 9-19-11.

Additionally, the legislature did not intend for individuals to be considered exempt from the safety belt requirements under section 9-19-10-2 when the number of occupants outnumber the safety belts installed in a vehicle. In determining legislative intent, we consider other statutes on the same subject matter. *Hinshaw v. Bd. Of Com'rs of Jay Co.*, 611 N.E.2d 637, 639 (Ind. 1993). The General Assembly could have addressed a safety belt shortage under chapter 9-19-10 as it did under the passenger restraint laws for children at section 9-19-11-3.7. Under the child passenger restraint laws, the statute provides it is not a violation to operate a vehicle with a child wearing only a lap belt when "all the lap and shoulder safety belts are being used to properly restrain other children who are less than sixteen (16) years of age." Ind. Code § 9-19-11-3.7(2)(B). The legislature did not provide a similar alternative under chapter 9-19-10 when adult occupants outnumber available safety belts. Therefore, we presume that the legislature intended for all occupants to wear a safety belt "properly fastened about" them when a vehicle is in motion.

Conclusion

Indiana passenger restraint laws at Indiana Code chapter 9-19-10 require each occupant of a motor vehicle to wear a properly fastened safety belt unless an individual is exempt under section 9-19-10-1. The law does not make an exception for occupants in the cargo bed of a pickup truck, nor does it provide an exception for occupants in the passenger area of a motor vehicle when the number of riders exceeds the number of available safety belts installed by the manufacturer.

Very truly yours,



Stephen Carter
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