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November 14, 2007

Sheriff Tim Guider
Loudon County Sheriff
Lenoir City, Tennessee

Re: Brenda Cook, school bus driver incident

Dear Sheriff:

I have reviewed your office's investigative file in the above referenced matter and spoke at length with Detectives Patrick Upton and Jason Smith. I met with Gil Luttrell of Loudon County Schools and discussed the matter with him. Also, ADA Lee Ledbetter and I drove the bus route and the several roads between where the students were discharged on Loudon Ridge Road and Hatley Road. General Ledbetter also researched the issue. I will summarize what we have concluded.

Brenda Cook has been a school bus driver for one of Loudon County Schools' independent bus contractors for approximately two years. There have been only minor complaints about her job performance. On Wednesday, November 7th she was driving her regular route carrying students from Eaton School and North Middle School along Loudon Ridge Road. Several of the students were misbehaving and throwing items – perhaps beads from a necklace and 'hornets' (which are hardened *origami* type paper wads with points) – which actually hit Cook while she was driving. The video tape that was in the bus was at the end of the tape and does not automatically rewind; therefore, there is no footage of this bus trip.

After trying to control the situation without success, Ms. Cook stopped the bus near the intersection of Davis Road and Loudon Ridge Road and demanded that the two most disruptive students leave the bus. Apparently, several other students (as many as six) left the bus voluntarily as well. Ms. Cook's explanation is that she had recently been letting these two students off near this intersection anyway at their request, *although in violation of school policy that requires written permission from the parents in order to deviate from a student's normal bus stop.*

The weather was clear and of average temperature, certainly not cold or inclement. These students lived at various locations – Loudon Ridge Road, Crock Road and Hatley Road, with Hatley Road being the farthest from the point of discharge or about one mile – and on the other side of Highway 11. This group of students,

November 14, 2007

after leaving the bus, went to the nearby house of one of their number whose mother was at home and called their parents. Obviously, the situation caused concern for the three sets of parents involved and calls were made to your office and, evidently, the news media.

According to Gil Luttrell if a school bus driver has a discipline situation that he or she cannot control the policy is for the driver to call the transportation supervisor, the school resource officer or the LCSO. Luttrell advised me that the policy demands that the driver, in the situation at hand, had a cell phone and should have called one of these three entities, although she did call her the independent contractor/bus owner, Vonnie Myers. According to Luttrell these policies are not in a handbook or any written form that is disseminated to the bus drivers, but that they are explained to all bus drivers at the Department of Safety Annual training for school bus drivers in August. Ms. Cook did attend the training session according to Luttrell.

After meeting with Ms. Cook on Thursday, Luttrell suspended Cook and planned to notify Cook on Wednesday (November 14th) that, although she is an employee of Mr. Myers, she could no longer operate a school bus for Loudon County Schools and would be removed from the approved list of drivers. I verified with Luttrell again today that he will deliver Cook the letter of termination tomorrow.

There are only two possible criminal charges that we can even consider in a situation such as this: a) *child neglect and endangerment* and b) *reckless endangerment*, both of which as might apply to our case are misdemeanors.

TCA 39-15-401 [Child Neglect and Endangerment] in pertinent part provides that "(b) [a]ny person who knowingly abuses or neglects a child under eighteen (18) years of age, so as to *adversely affect the child's health and welfare*, commits a Class A misdemeanor...". In our case we, fortunately, do not have any adverse affect to a child's health or welfare and cannot prove this charge.

TCA 39-13-103 [Reckless Endangerment] in pertinent part provides that "(a) [a] person commits an offense who recklessly engages in conduct that places or may place another person in *imminent danger of death or serious bodily injury*". Black's Law Dictionary defines imminent as:

Near at hand; mediate rather than immediate; close rather than touching; impending; on the point of happening; threatening; menacing; perilous. Something which is threatening to happen at once, something close at hand, something to happen upon the instant, close although not yet touching, and on the point of happening.

The Tennessee Courts have concluded that in order for the threat of death or serious bodily injury to be "imminent," the person[s] must be placed in a *reasonable probability of danger as opposed to a mere possibility of danger*. State v. Payne, 7S.W.3d 25, 1999 Tenn. LEXIS 584.

Although Loudon Ridge Road and the arteries such as Davis Road and Crock Road are narrow and potentially dangerous, most of these students walk some portion of these roads each day. The area in which they were let off was a residential area and near a friend's house where everyone who did not live close by was able to call their parents. Therefore, there was no real *probability* of danger, only the mere *possibility* of danger. Absent the real likelihood of a judge or jury finding that Cook's actions created a reasonable probability of danger beyond a reasonable doubt, there can be no basis for a criminal charge of reckless endangerment.

November 14, 2007

It is my opinion that we cannot prove a charge of reckless endangerment nor child neglect and endangerment. Therefore, I recommend that you do not seek to have a warrant[s] issued on Ms. Cook for either of these charges. I am sure that you have received or will receive inquiries about this case and potential charges. Please feel free to share this letter with anyone and/or have them call my office.

Once again, thank you for the service that you and your deputies perform. Sergeant Jeff Russell, the other deputies who worked on this case and Investigators Upton and Smith were most attentive and helpful. Their work was in the best interest of the children involved in this case.

Sincerely,

Russell Johnson
District Attorney General

cc: Gil Luttrell, Loudon County Schools