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"TROLLEY COACHES" OR "TRACKLESS TROLLEYS" — PROPELLED BY ELECTRIC MOTORS, POWER SUPPLIED THROUGH OVERHEAD RAILS — "STREET OR SUBURBAN RAILROAD COMPANY" — SECTION 614-2 G.C. — ANY PERSON OR PERSONS * * * COMPANY OR CORPORATION, ENGAGED IN BUSINESS, OPERATING AS A COMMON CARRIER.

SYLLABUS:

Any person or persons, firm or firms, copartnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated, when engaged in the business of operating, as a common carrier, "trolley coaches," or "trackless trolleys," which are propelled by electric motors supplied with power through overhead rails, is a street or suburban railroad company, as the case may be, within the definitions thereof in section 614-2 *of the General Code.*

Columbus, Ohio, April 1, 1941.

Hon. George McConnaughey,
Chairman, The Public Utilities Commission of Ohio,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your recent communication, which reads as follows:

> "The Commission has before it the matter of the Peoples Railway Company, Dayton, substitution of trackless trolleys for street cars. This Company proposes to operate a trackless trolley beyond the corporate city limits of Dayton and in unincorporated territory. It is, therefore, necessary for this Commission to determine whether or not a trackless trolley is a motor propelled vehicle so as to make the operation subject to the jurisdiction of this Commission under either the Motor Transportation Act or the Contract Carrier Act (Sections 614-84 et seq., and 614-103, et seq., General Code).
>
> I am enclosing copy of letter from attorney for the Peoples Railway Company setting forth in detail this particular situation. Will you please consider this matter and give the Commission your opinion as to whether or not a trackless trolley is a motor propelled vehicle."

Section 614-2 of the General Code, which inter alia defines a motor transportation company and a motor propelled vehicle, reads, in so far as said definition is concerned, as follows:

> "Any person or persons, firm or firms, copartnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated; * * *
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> When engaged in the business of carrying and transporting persons or property, or both, or of providing or furnishing such transportation service, for hire, in or by motor propelled vehicles of any kind whatsoever, including trailers for the public in general, over any public street, road or highway in this state, except otherwise provided in section 614-84, is a motor transportation company;
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> The term 'motor propelled vehicle' when used in this chapter means any automobile, automobile truck, motor bus, or any other self-propelled vehicle not operated or driven upon fixed rails or track."

Under the express terms of the above statute, a "motor propelled vehicle" is one which is self-propelled. It is common knowledge that trackless trolleys, also termed trolley coaches, are propelled by electric motors supplied with power which is generated at a central power plant and transmitted through overhead wires.

In holding that a trolley coach is not a self-propelled vehicle and does not fall within the statute requiring registration of automobiles, the Supreme Court of Tennessee, in the case of Memphis Street Railway Company v. Crenshaw, 165 Tenn., 536, 55 S. W. 758, stated:

> "Now with this in mind looking further to the code sections it is apparent that vehicles propelled by trolley, that is, by a vital connection with a fixed central general generating power, absolutely dependent thereon for propulsion are not in terms included. On the contrary, in apparent recognition of the underlying principle of identification above noted the descriptve terms used appear to be limited to self-propelled, that is, independent unit operated vehicles, free to follow devious ways, to go and come here and there at the will of the drivers, here today and there tomorrow, free to hit and run and live to kill or maim another day. Consistently with this view the code names electric 'automobiles' only — not electric trolley cars or coaches. 'Auto' has a clear distinctive meaning coming from the Greek 'autos', self. Automobile, self moving, autograph, self indited, autobiography, self told."

In the case of City of Dayton v. DeBrosse, 62 O. App., 232 (decided February 2, 1939), it was held by the Court of Appeals for Montgomery County that:

> "A 'trolley bus' is not a 'motor vehicle' within the meaning of Section 307 of the Traffic Code of the city of Dayton, regulating the operation of motor vehicles."

It is also significant to note that under the definition set out in section 614-2, supra, a motor propelled vehicle is one "not operated or driven upon fixed rails or track." While trolley coaches are certainly not operated upon fixed rails, it appears to me that it might be logically contended that such vehicles are in fact operated along fixed tracks. They can only be driven or operated over and along streets where poles are erected and trolley wires strung through which the motive power by which they are propelled is transmitted.

The word "tracks," when used in connection with the operation of a railroad, is sometimes regarded as meaning the fixed steel rails upon which a railroad car or train moves. Such meaning is incomplete. Correctly stated, the track of a railroad is not only the rail or rails which guide the course of a train, but also the area or path over which the train travels, within the limitations circumscribed by the rails.

A "track" is defined in Webster's New International Dictionary as

"a course; a path in which anything moves or has moved." It is a fundamental rule that words of a statute should be given their full meaning, unless such an interpretation would be repugnant to the intention of the Legislature, as plainly appears from a construction of the entire statute. Too narrow a construction of terms is not favored by the courts.

I might also point out that in the said definition, the word "track" is used in connection with the word "rails." It is important to note that the former is in the singular, while the latter is used in the plural sense. The fact that the Legislature used both of the above words, one in the singular and the other in the plural, would certainly seem to indicate that a different meaning should be ascribed to each. In fact, it is a familiar rule of construction that no word used in a statute should be regarded as superfluous, for the reason that every word is designed to have some effect.

It would therefore seem to me that it could be tenably argued that a trolley wire suspended overhead through which a vehicle derives its power of locomotion and along which it moves, marks the course, definitely fixes a track and circumscribes the area over which such vehicle can be operated.

In view of the above, I have no hesitation in concluding that a "trackless trolley" or "trolley coach" is not a self-propelled vehicle, and consequently the company in question is not a motor transportation company within the meaning of the Motor Transportation Act.

It should not, however, be inferred from the above conclusion that such company is not a public utility under the law of this state.

It cannot be disputed that such company is a common carrier. Neither can it be logically contended that it is not a public utility in fact. If one examines the statutes of Ohio defining public utility, he becomes immediately impressed with the thoroughness with which the Legislature has regulated the field.

A distinct legislative policy to include within the definition of a public utility every individual or corporation which must supply to the public indiscriminately some commodity or service, is manifested from the consistent legislation by the General Assembly on the subject. The Legislature having definitely established such policy, the same should be

taken into consideration and given great weight in construing the statutes defining and classifying public utilities. In this connection, it is stated in 37 O. Jur. 677:

> "Authority is not wanting to the effect that in the interpretation of ambiguous statutes the courts may, among other matters, take into consideration the settled policy of the state in so far as it may throw light on the legislative intention. That is to say, legislative policy clearly deducible from the consistent legislation of the general assembly is a legitimate factor in determining the meaning of subsequent acts open to construction. Accordingly, there are numerous instances in the reported cases in which the general public policy of the state has been taken into consideration in construing a particular statute. Indeed, it has even been presumed that the legislature did not intend, by its enactment, to modify or change a settled public policy except in so far as it has therein declared such intention either in express terms or by unmistakable implication. Technical rules of construction should not, it has been declared, be permitted to overthrow the manifest and settled policy of the state. Hence, a construction which is contrary to the previously established public policy should be avoided. If a statute may be construed in two ways, one in accord with the public policy of the state and the other in conflict therewith, the former construction is favored. These rules are of special force if the previous public policy has been stated through legislative enactment."

Street and suburban railroad companies are defined in sections 614-2 and 5416 of the General Code, as follows:

Section 614-2.

> "Any person or persons, firm or firms, copartnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated; * * *
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> When engaged in the business of operating, as a common carrier a railroad, wholly or partly within this state with one or more tracks upon, along, above or below any public road, street, alleyway or ground, within any municipal corporation, operated by any motive power other than steam, and not a part of an interurban railroad, whether such railroad be termed street, inclined plane, elevated or underground railroad is a street railroad company;
>
> When engaged in the business of operating as a common carrier, whether wholly or partially within this state, a part of a street railway constructed or extended beyond the limits of a municipal corporation, and not a part of an interurban railroad is a suburban railroad company."

Section 5416.

> "Any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated; * * *
>
> When engaged in the business of operating a street, suburban, or interurban railroad company, wholly or partially within this state, whether cars used in such business are propelled by animals, steam, cable, electricity, or other motive power, is a street, suburban or interurban railroad company."

The term "railroad" is likewise defined in section 614-2, supra, as follows:

> " * * * The term 'railroad,' when used in this act includes all railroads, interurban railroad companies, express companies, freight line companies, sleeping car companies, equipment companies, car companies, water transporting, and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state."

The application of the foregoing rule of statutory construction to the above definitions constrains me to the view that a company engaged in the business of operating as a common carrier, trolley coaches, is a street or suburban railroad company, as the case may be.

It seems to me that this conclusion is almost inescapable when it is borne in mind that these trolley coaches, even though sometimes termed "trackless trolleys," occupy the streets and highways in practically the same manner as street cars. The motive power or method of propulsion is the same. The track which they must follow and the route over which they are driven is marked by overhead wires in much the same manner as the track which street cars must follow, which is marked by both steel rails affixed to the street or highway and overhead wires. A street car operates within the limitations of rails on which it runs and overhead wires from which it derives its power, while a trolley coach operates within the limitations of wires from which its power of propulsion is derived. In other words, each type of vehicle runs over a well defined path or track; in the case of trolley coaches, a track traced or defined by overhead wires; and in the case of street cars, a track fixed or established by rails and overhead wires. As was stated in the case of Memphis Street Railway v. Crenshaw, supra, "a trolley coach is not an independent unit

free to follow devious ways, to go and come here and there at the will of the driver," but must follow the track which marks the route over which it operates.

It seems to me, therefore, that the final question presented is whether or not the substitution of trolley coaches running on rubber tires and propelled in the same manner and operated within substantially the same limitations as street cars equipped with metal wheels and operated on fixed rails is such a radical change as to require the conclusion that a company operating as a common carrier with such trolley coaches is not a street or suburban railroad company within the statutory definition? This question I am impelled to answer in the negative. An affirmative answer to said question would, in my opinion, impart to the language of the definition a meaning much narrower than that intended by the Legislature.

In the case of City of Columbia v. Tatum, 174 South Carolina, 366, 177 S.E. 541, the court in discussing the construction to be placed upon the terms "street cars" and "street railway," when considered in connection with the question of substituting trolley and motor buses for street cars, said:

> "A similar construction enforced in 1892 would have forbidden the change then made by the utility from horse to electricity as a motive power for street cars and would prevent any similar advance in the future."

Summarizing, it is therefore my opinion that any person or persons, firm or firms, copartnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated, when engaged in the business of operating, as a common carrier, "trolley coaches," or "trackless trolleys," which are propelled by electric motors supplied with power through overhead rails, is a street or suburban railroad company, as the case may be, within the definitions thereof in section 614-2 of the General Code.

Respectfully,

THOMAS J. HERBERT,

Attorney General.