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MOTOR TRANSPORTATION COMPANY—RENDERING INTERURBAN SERVICE, NO SERVICE TO PASSENGERS WHOSE RIDE IS WHOLLY WITHIN LIMITS OF MUNICIPALITY—NOT ENGAGED “IN THE RENDITION OF A PUBLIC MASS TRANSPORTATION SERVICE PRIMARILY IN A MUNICIPALITY OR MUNICIPALITIES” WITHIN MEANING OF §4503.04, RC—VEHICLE USED IN RENDERING SUCH SERVICE IS NOT “TRANSIT BUS”

SYLLABUS:

A motor transportation company which renders only interurban passenger service between two or more municipalities or between a municipality and a point beyond the corporate limits, and which renders no service to passengers whose ride is wholly within the limits of a municipality, is not engaged “in the rendition of a public mass transportation service primarily in a municipality or municipalities” within the meaning of Section 4503.04, Revised Code, and vehicles used in such service do not fall within the definition of “transit bus” as set out in that section.

Columbus, Ohio, November 19, 1957

Hon. George C. Braden, Registrar
Bureau of Motor Vehicles, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Your opinion is requested as to the definition of 'public mass transportation service,' as referred to in Section 4503.04 of the Revised Code.

"The 102nd General Assembly in its regular session, amended Section 4503.04 of the Revised Code, in that subsection (F) has been included. This section is as follows:

" '(F) * * * For each transit bus having motor power the license tax is ten dollars;

" 'Transit bus' means a motor vehicle having a seating capacity of more than seven persons which is operated and used by any person in the rendition of a public mass transportation service primarily in a municipality or municipalities and provided at least seventy-five percent of the annual mileage of such service and use shall be within such municipality or municipalities.

"The application for registration of such transit bus shall be accompanied by an affidavit prescribed by the registrar of motor vehicles and signed by the person or an agent of the firm or corporation operating such bus stating that the bus has a seating capacity of more than seven persons, that it is to be operated and used in the rendition of a public mass transportation service and that at least seventy-five percent of the annual mileage of such operation and use shall be within one or more municipalities.

"The form of the license plate, and the manner of its attachment to the vehicle, shall be prescribed by the registrar of motor vehicles.'

"Specifically, the Eastern Greyhound Lines, Cleveland, Ohio, are requesting a refund on payment of registration fees on certain buses. They feel that they should have paid only the \$10.00 transit bus fee and not the regular bus fee.

"The question is, do the following operations qualify as public mass transportation service and eligible for the \$10.00 license fee.

"I am attaching the following exhibits:

- "Exhibit 'A'. Sheet 1. Cleveland-Painesville Division
- Sheet 2. Cleveland-Lorain Division
- Sheet 3. Cleveland-Brunswick Division
- Sheet 4. Youngstown-Warren Division

"On each sheet is a map showing the certificated routes of applicant in color and the incorporated municipalities in shaded color. Also, each sheet shows the buses assigned to the route, run, run number, total miles, miles in unincorporated areas (Uninc. miles), miles in incorporated municipalities (Inc. miles) and percent of miles in incorporated municipalities (% Inc.).

"List of buses in question showing 1957 registration fee paid, fee under Section 4503.04 (F), and total refund which they claim is due them.

"I am also attaching copies of P.U.C.O. Intrastate Regular Certificate, Number 54-Bus, issued to the Greyhound Corporation, 2600 Hamilton Avenue, Cleveland, Ohio."

I find no definition, either in the statutes or in the judicial decisions, of the term "public mass transportation." Having regard, however, to the dictionary definition of "mass" as signifying magnitude or size, and to the usage of this expression in common parlance in recent years, we may conclude that it signifies the large scale transportation of numerous passengers in vehicles capable of carrying a considerable number of passengers, as distinguished from transportation of only a relatively few passengers in smaller vehicles such as taxicabs or passenger cars. It may be conceded, I think, that the busses involved in your inquiry are actually used in the rendition of a public mass transportation service in this meaning of the term.

Of more importance, however is the statutory language of qualification of this term, *i.e.* "primarily in a municipality or municipalities."

Because the taxpayer here in question holds a certificate of convenience and necessity as a motor transportation company, issued as provided in Chapter 4921., Revised Code, we may note the following provision in Section 4921.05, Revised Code:

"No motor transportation company operating under a certificate of convenience and necessity shall carry persons whose complete ride is wholly within the territorial limits of a municipal corporation, or within such limits of a municipal corporation, or within such limits and the territorial limits of municipal corpora-

tions immediately contiguous to it, except with the consent of such municipal corporations.”

Although you do not indicate whether the company here in question has obtained a franchise from any of the several municipal corporations involved, consenting to the carriage of passengers whose ride is wholly within the corporate limits, I assume for the purposes of this opinion that such is not the case, and that all passengers are carried on an interurban basis.

What is transportation service rendered primarily in a municipality? The word “in” is defined by Webster as follows:

“Primarily, in denotes situation or position with respect to a surrounding, encompassment, or enclosure. It may indicate either simple location or direction, the latter sense in modern English being generally distinguished by the use of into. In is specifically used as: 1. Indicating being *within*, as a bounded place * * *”
(Emphasis added)

It seems quite clear that where a passenger’s ride is wholly *within* a municipality the service, as to him, is rendered *in* such municipality. In the case of the interurban passenger, however, even though he is carried on a route which at no point extends into unincorporated areas it would seem that the service rendered could much more properly be described as being *between* municipalities than as being *in* municipalities.

It is quite certain that the General Assembly, in Section 4921.05, Revised Code, has separately classified motor transportation service into these two classes, *i.e.* interurban service, and service wholly within municipalities, and it seems likely that a similar classification was intended in Section 4503.04, Revised Code, as well.

Here it may be pointed out that there can be no legal objection, present municipal consent, to a company engaging in both types of service along a route extending through two or more municipalities, rendering interurban service *between* them and service *in* each of them. In such case, of course, vehicles so used would fall within the definition of “transit bus” so far as the test here involved is concerned.

Accordingly, in specific answer to your query, it is my opinion that a motor transportation company which renders only interurban passenger service between two or more municipalities or between a municipality and a point beyond the corporate limits, and which renders no service to

passengers whose ride is wholly within the limits of a municipality, is not engaged "in the rendition of a public mass transportation service primarily in a municipality or municipalities" within the meaning of Section 4503.04, Revised Code, and vehicles used in such service do not fall within the definition of "transit bus" as set out in that section.

Respectfully,

WILLIAM SAXBE

Attorney General