

1308

1. "BUSES" OR "TRACKLESS MOTOR TROLLEY BUSES"
SECTION 1008-1 G. C.—DOES NOT PROHIBIT EMPLOY-
MENT OF FEMALES AS DRIVERS OF EITHER.
2. FEMALE OWNERS OF TAXICABS NOT PROHIBITED
FROM OPERATING SUCH TAXICABS—JITNEY BUS—
DRIVERS.

SYLLABUS:

1. Section 1008-1, General Code, does not prohibit the employment of females as drivers of either "buses" or "trackless motor trolley buses."
2. Section 1008-1, General Code, does not prohibit female owners of taxicabs from operating such taxicabs.

Columbus, Ohio, December 19, 1949

Hon. Albert A. Woldman, Director of Department of
Industrial Relations
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"We respectfully request the legal opinion of your office on the following questions:

"(1) Does the phrase 'jitney driver' listed (in Section 1008-1 of the Ohio General Code as amended) among the 'occupations or capacities' wherein the employment of females is prohibited, include the 'occupations or capacities' of:

- a. Bus driver,
- b. Driver of trackless motor trolley busses?

"Section 1008-1 of the Ohio General Code as amended in 1947, and reading:

'The employment of females in the following occupations or capacities is hereby prohibited, to-wit: as crossing watchman, section hand, express driver, metal moulder, bell hop, taxi driver, jitney driver, gas or electric meter reader as workers in blast furnaces, smelters, mines, quarries, except in the offices thereof, shoe shining parlors, bowling alleys as pin setters, pool rooms bar rooms and saloons or public

drinking places which cater to male customers exclusively and in which substitutes for intoxicating liquors are sold or advertised for sale, in delivery service on wagons or automobiles, in operating freight or baggage elevators in baggage handling, freight handling and trucking of any kind, or in employments requiring frequent or repeated lifting of weights over twenty-five pounds. Any violations of the provisions of this section shall be punished as provided in section 1011 of the General Code,'

specifically prohibits the employment of females as 'taxi driver, jitney driver, * * *.'

"I note that Black's Law Dictionary defines 'jitney' as:

'A self propelled vehicle, other than a street car, traversing the public streets between certain definite points or termini, and, as a common carrier, conveying passengers at a five cent piece or some small fare between such termini and intermediate points, and so held out, advertised, or announced. A motor vehicle carrying passengers for fare, also called "jitney bus".'

"Does this, in your opinion, prohibit the employment of females as bus drivers and/or drivers of trackless motor trolley busses such as are being operated in many towns and cities of Ohio?

"(2) Does the prohibition against the employment of females as 'taxi driver, jitney driver * * *' preclude the operation of taxi-cabs and/or jitneys by female owners thereof, or by wives or female members of the family of a male owner thereof?

"Specific inquiries have been submitted to this department: (1) by a woman owner of a taxi-cab who has been operating same for a number of years; (2) by a male owner of a taxi-cab who has been operating same around the clock with the assistance of his wife and daughter—in each instance asking whether or not they may continue said operations in view of the prohibition contained in Section 1008-1, G. C., against the employment of females as taxi drivers and jitney drivers, etc."

The "jitney" once played a prominent part in the history of American transportation. Today, however, the word is seldom used. Research has shown that the jitney came into existence originally to compete with the street car and taxi. It was usually considered to be a motor vehicle in the class between a taxi and a bus. It is described in the case of *Willis v. City of Fort Smith*, 121 Ark. 606, 182 SW 275, as follows:

"The jitney bus business, transporting people for hire, for

a uniform five cent fare, in low priced or second hand automobiles, over definite routes in cities or towns is of recent origin." In Section 614-88, General Code, it states in part as follows:

"Except as provided in section 614-84, no corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall operate any automobile, jitney, bus, truck, stage, auto stage, * * *"

Thus, it can be seen that the legislature of Ohio recognized that the bus and the jitney were not the identical types of vehicle; the distinction may be further shown by referring to 152 A. L. R. 1160, under the topic:

"Care required of carrier by motorbus, taxi, or jitney as regards passenger's baggage."
It states there as follows:

"The question of the degree of care owed by a carrier by motorbus, taxi, or jitney as to a passenger's baggage depends upon whether there has been a complete, exclusive delivery of the baggage to the carrier. * * *"

Thus, it can be seen that there is a recognized difference between a bus and a jitney.

Section 1008-1, General Code, is a penal statute. See the case of *The State of Ohio v. Conley*, 147 O. S. 351. Since it is a penal statute, it must be strictly construed. See 37 O. Jur., 744, Section 420.

Section 1008-1, General Code, prohibits the employment of females as "jitney drivers." The statute means exactly what it says. It does not prohibit the employment of women as drivers of "trackless motor trolley busses" of the type of motor vehicles commonly known as "busses." It must be assumed that the legislature was cognizant of the meaning of the word "jitney." Further, that they did intend to restrict the statute to "jitney drivers" and not to drivers of busses or trackless motor trolley busses. If their intent was to prohibit women from driving all types of busses or motor vehicles, they could have done this easily by the use of such all inclusive terms as "all vehicles" or "all vehicles used for the transportation of paid passengers." They did not do this. They specifically stated that this law prohibited women from driving "jitney busses." Thus, I believe that Section 1008-1, General Code, does not prohibit the employment of females as drivers of buses or trackless motor trolley busses.

Section 1008-1, General Code, provides that the *employment* of females as taxi drivers is prohibited. This aspect of the statute has been decided by my predecessors. In Opinion No. 3804, Opinions of the Attorney General for 1935, it was held that a woman may be employed in a coal mine in which she is part owner without violating the statute. Thus, if a woman owns a taxicab she would not be prevented from operating it by Section 1008-1, General Code. However, this result would not go so far as to allow the female members of a family to operate a taxicab owned by the male member of the family.

I am not unaware of the case of the State, *ex rel. v. McCune*, Director of Public Safety, 27 O. N. P. (NS) 77, which held that Section 1008-1, General Code, in so far as it prohibits employment of women as drivers of taxicabs, was unconstitutional. This case dealt with Section 1008-1, General Code, as it was prior to its amendment in 1947. It held that a statute could not prevent a woman from driving a taxicab except between the hours of 6 o'clock, a. m. and 10 o'clock, p. m. The amended statute merely omitted the time limit and prohibits a woman from driving a taxicab at all. However, since there has been no judicial determination of the constitutionality of the amended statute, it will be presumed to be constitutional.

In conclusion, therefore, it is my opinion that Section 1008-1, General Code does not prohibit the employment of females as drivers of either "busses" or "trackless motor trolley busses." I further believe that Section 1008-1, General Code, does not prohibit female owners of taxicabs from operating same. It would, however, prohibit female members of a family from operating a taxi owned by the male member.

Respectfully,

HERBERT S. DUFFY,
Attorney General.