

3947.

MUNICIPALITY—BUS LINE OWNED BY MUNICIPALITY NEED NOT BE OPERATED BY BOARD OF TRUSTEES OF PUBLIC AFFAIRS.

SYLLABUS:

The provisions of sections 4357 and 4361, General Code, do not require that a municipally owned bus line be managed, controlled and conducted by a board of trustees of public affairs.

COLUMBUS, OHIO, February 15, 1935.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your recent letter requesting my opinion reads as follows:

“The Village of North Olmsted is the only municipality in the state operating a municipal bus line, and in the past it has been operated by the mayor and council of the Village.

The officials have asked this Department to make a ruling as to whether this is the legal manner of operation, or whether, in view of the provisions of section 4357, General Code, a board of trustees of public affairs should be provided.

Having no precedent to follow, we are requesting that you kindly render us an opinion on this matter, so that the officials of the Village may be properly advised.”

The power of the village of North Olmsted to own and operate this transportation service is derived from Section 4, Article XVIII of the Ohio Constitution. Such section reads as follows:

“Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the products or service of which is or is to be supplied to the municipality or its inhabitants and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility.”

In the case of *Southwestern Bus Co. vs. North Olmsted*, 41 O. App., 525, the Court of Appeals of Cuyahoga County decided, May 2, 1932, that the village of North Olmsted had not then exceeded its constitutional power, either in the establishment of the transportation service or in the manner of operating the same. The court in that case had before it the question as to whether or not the village of North Olmsted could lawfully extend its service to include trips to and from Cleveland and adjoining villages enroute. It was noted in the decision of the court that the bus operation has been carried on under the direction of the mayor, in conjunction with the council of said village. However, the propriety of operating the transportation service in such manner was not in issue and therefore no comment thereon was made by the court. It is sufficient to say that by virtue of the *Southwestern Bus Company* case, supra, we have it upon well established authority that the village of North Olmsted has the constitutional authority to own and operate the bus line in question.

It is necessary to determine whether the mayor and council are authorized to operate said bus line or whether the village must create a board of trustees of public affairs for that purpose. The provisions of Article XVIII, Section 4 and 5, are silent as to that question. Section 4 is quoted, *supra*. The first sentence of Section 5 is:

“Any municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract with any person or company therefor, shall act by ordinance and no such ordinance shall take effect until after thirty days from its passage.”

It was held by the Supreme Court of Ohio in *State ex rel. Diehl vs. Abele*, 119 O. S., 210, and in *James vs. Ketterer*, 125 O. S., 165, that sections 4 and 5 of Article XVIII of the Ohio Constitution relate solely to the acquisition of a public utility by the municipality.

Section 4357, General Code, reads as follows:

“In each village in which water works, an electric light plant, artificial or natural gas plant, *or other similar public utility is situated*, or when council orders water works, an electric light plant, natural or artificial gas plant, *or other similar public utility*, to be constructed, or to be leased or purchased from any individual, company or corporation, or when the council shall have determined to establish a schedule of rates or charges of rents for use of the sewerage system and sewage pumping, treatment and disposal works of the village, council *shall* establish at such time a board of trustees of public affairs for the village, which shall consist of three members, residents of the village, who shall be each elected for a term of two years.” (Italics the writer’s.)

Section 4361, General Code, stating the general powers and duties of a board of trustees of public affairs, reads in part as follows:

“The board of trustees of public affairs *shall* manage, conduct and control the water works, electric light plants, artificial or natural gas plants, *or other similar public utilities*, furnish supplies of water, electricity or gas, collect all water, electrical and gas rents, and appoint necessary officers, employees and agents. * * * The board of trustees of public affairs shall have the same powers and perform the same duties as are possessed by, and are incumbent upon, the director of public service as provided in sections 3955, 3959, 3960, 3961, 3964, 3965, 3974, 3981, 4328, 4329, 4330, 4331, 4332, 4333 and 4334 of the General Code, and all powers and duties relating to water works in any of these sections shall extend to and include electric light, power and gas plants and *such other similar public utilities*, and such boards shall have such other duties as may be prescribed by law or ordinance not inconsistent herewith.” (Italics the writer’s.)

The sections referred to in section 4361, General Code, *supra*, pertain solely to the authority of the Director of Public Service with respect to water works, the awarding of contracts and the supervision thereof. The italicized portions of sections 4357 and 4361, General Code, emphasize the necessity of determining whether a municipally owned bus service comes within the provision “or other similar public utility.” If so, then the

village of North Olmsted is required by general law to establish a board of trustees of public affairs to manage, conduct and control said bus service.

The language of a statute is its most natural expositor. Therefore, in interpreting a statute the attention of a court is always directed to the terminology employed. In the interpretation or construction of statutes, the primary and paramount rule is to ascertain, declare and give effect to the intention of the legislature, as gathered from the provisions enacted. It is presumed that the legislature intends to give effect to every word used in a statute. It is fundamental that it is not the function of a court to set forth what it thinks the statute under consideration should provide, and a statute may not, under the guise of interpretation, be modified, altered, amended or disregarded. There is no authority under any rule of statutory construction, to add to, supply or improve the provisions of a statute to meet a situation not provided for or contemplated thereby. *Sipe vs. State*, 86 O. S. 80.

The use of the phrase "or other *similar* public utility" may not be ignored or omitted. Neither may it be enlarged or magnified. The principal similarity between a municipally owned bus service on the one hand and on the other a water works, electric light plant, and an artificial or natural gas plant is that they are all known as public utilities. However, studied as two different types of public utilities it is easily apparent that there is little similarity between the types. The first type is as dissimilar as a public utility could be from the second type. It is only reasonable to ask: If the legislature intended that a municipal bus line should be a "similar" utility within the meaning of sections 4357 and 4361, what could it have regarded as a dissimilar utility? Why in fact did it use the word "similar" if it meant to include a municipal bus service, when to include such public utility would, in effect, exclude none.

It was held in *Watterson vs. Halliday*, 77 O. S. 150, that a word or phrase repeatedly used in the same statute indicates that special consideration was intended to be given to it.

I am therefore of the view that effect must be given to the word "similar" as used in the phrase "or other similar public utility" and that as used in such phrase as contained in sections 4357 and 4361, General Code, it does not include within its meaning a municipal bus line.

It must be remembered that the question here under consideration is not one of municipal policy. It is simply one of municipal power. The wisdom or unwisdom of the policy of the municipality in placing responsibility for the operation of the municipal bus line directly upon the mayor and council is for the municipality's determination.

Specifically answering your inquiry, I am of the opinion that the provisions of sections 4357 and 4361, General Code, do not require that a municipally owned bus line be managed, controlled and conducted by a board of trustees of public affairs.

Respectfully,
JOHN W. BRICKER,
Attorney General.