

Opinion No. 64-150

December 16, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Harley A. Lanning, Assistant City Attorney, P. O. Box 1293, Albuquerque, New Mexico

QUESTION

FACTS

The Albuquerque Bus Company has been losing money in its operation in recent years. Accordingly the Company has requested that the City cancel its franchise and the City has agreed to release the Company from its franchise to operate buses on scheduled routes within the City as of January 31, 1965.

The owner or owners of the Albuquerque Bus Company also operate Suburban Bus Lines, Inc. This line runs on scheduled routes between Albuquerque and Alameda and Albuquerque and Isleta, all of which points are within the County of Bernalillo.

The Albuquerque Bus Company also operates a charter service, incorporated as Suburban Chartered Coaches, Inc., holding State Corporation Commission authorization for statewide charter service.

Negotiations are now in progress between the City and the Company for the purchase by the City of all or part of the Company's rolling stock, shop equipment, land and buildings or for a lease with an agreement to purchase.

Unless the City is authorized to operate the charter service which involves the running of buses to various points in the State which are outside the limits of Bernalillo County, it does not desire to purchase the buses which are used for the charter service operation.

QUESTION

In order for the City of Albuquerque to operate the charter service to points outside Bernalillo County would State Corporation Commission authorization be necessary?

CONCLUSION

Under the Municipal Transit Law the City cannot operate a statewide charter service.

OPINION

ANALYSIS

We would first mention that there is no legal impediment to the City acquiring and operating the transit facilities in the City and in the County. Section 14-52-4 (F), N.M.S.A., 1953 Compilation (P.S.), a part of the Municipal Transit Law provides as follows:

"Any municipality may furnish transportation service to areas located outside the city limits and within the county in which it is located provided that prior contracts have been made with the county in which the areas are located covering the schedules, rates, service and other pertinent matters before initiation of such service."

The real question is under what conditions, if any, the City can operate the charter service to points outside Bernalillo County.

Two particular provisions of the 1963 Municipal Transit Law have been mentioned and studied by various parties interested in resolving this question expeditiously. First is Section 14-25-5(B), N.M.S.A., 1953 Compilation (P.S.) which provides that

"Transit service may not be extended to points outside the county in which the city is located unless prior approval is obtained from the New Mexico state corporation commission and other regulatory bodies having jurisdiction in the matter."

There are those who present a forceful argument that the phrase "transit service" as used above means transportation over regular routes under scheduled service and does not include charter service. For reasons that will subsequently appear it is not necessary in resolving the problem presented to decide this issue.

The other provision in the Municipal Transit Law that has been called to our attention by the interested parties is Section 14-52-4 (H), N.M.S.A., 1953 Compilation (P.S.) which provides as follows:

"The city as an operating entity may enter into contracts for special transportation service, **charter buses**. . . and any other function **which private enterprise, operating a public transit facility could do** or perform for revenue." (Emphasis added)

Private enterprise in order to operate the charter service here involved had to obtain a certificate of convenience and necessity from the State Corporation Commission. This is for the reason that a person who undertakes to transport passengers for the general public by motor vehicle for hire is a common motor carrier even though such transportation is over irregular routes under unscheduled service. Section 64-27-2, N.M.S.A., 1953 Compilation.

Thus for a city to operate the same charter service it would also have to obtain a certificate of convenience and necessity. However, it would acquire the certificate by transfer from the present owner. Section 64-27-11, N.M.S.A., 1953 Compilation. When

a certificate is transferred, the transferee does not have to make a new showing of public convenience and necessity in order to have the transfer approved by the State Corporation Commission. The certificate holder need only satisfy the Commission that all debts pertaining to the certificate have been paid. **Bekins Van and Storage Co. v. State Corporation Commission**, 65 N.M. 423, 338 P.2d 1055.

If the two provisions of the Municipal Transit Law discussed above were the only ones here involved, we would be inclined to the view that the State Corporation Commission would be required to approve the charter service authorization transfer to the City if all debts in connection with the certificate had been paid.

However, there is another provision in the Municipal Transit Law which we deem controlling in resolving the problem at hand. As we understand it, Suburban Bus Lines, Inc. received the certificate of public convenience and necessity for this statewide charter service by way of transfer in the 1950's. It was subsequently transferred to Suburban Chartered Coaches, Inc. Shortly after the transfer to Suburban Bus Lines, Inc. the State Corporation received an application from another common carrier seeking statewide charter service authorization. This application was denied by the Commission on the ground that existing charter services were adequate.

This brings us to Section 14-52-3, N.M.S.A., 1953 Compilation (P.S.) of the Municipal Transit Law. This section requires that in order for a municipality to invoke the authority of the Municipal Transit Law the governing body **must** make certain findings of fact. One of the required findings is that "privately owned public transportation facilities in operation are inadequate."

We do not believe that the governing body of any municipality would be warranted in making such a finding of fact **insofar as statewide charter service is involved**. It is in no position to so determine, and further, such determinations are for the State Corporation Commission to make.

We thus conclude that the City of Albuquerque cannot invoke the Municipal Transit Law in order to acquire the statewide charter service authorization now held by Suburban Chartered Coaches, Inc.