



City of Madison

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Title

PRELIMINARY REPORT AND FINDINGS OF THE TRANSIT AND PARKING COMMISSION, REGARDING THE CITY'S ABILITY TO REGULATE INTER-CITY COMMERCIAL BUSES - 08.10.10

Body

At the August 10, 2010 meeting of the Transit and Parking Commission, Carolyn Hogg of the City Attorney's Office provided the following information.

Background and History of Federal and State Law related to Regulation of Common Carriers

- Under Section 62.11(5), Wis. Stats., the City can exercise its general police power in areas related to traffic safety and the use of the streets.

- However, the City is a creature of the State, so that it does not have inherent powers to regulate streets and common carriers
- The City must work within the State delegation particularly with respect to traffic regulation, which needs to be in strict conformity with State traffic code (though the City has some latitude with regard to stopping, parking and standing, where it is allowed to have additional requirements).
- The primary purpose for streets is for travel for the general public, intended to be open for all on an equal basis (subject to valid regulations within the City's police power or as otherwise delegated to the City by the State).
- The same is true with regard to common carrier regulations: The City has no inherent authority, and needs to look to State law to see the scope of its regulatory authority.
- Historically, common carrier regulations both for passengers and property have been an area of state and federal regulation not an area of municipal regulation (with some exceptions).
- Early in the 20th century, this was a heavily regulated area, treated almost like a public utility, as reflected by the creation of the ICC at the federal level and by the state's first jitney law; people felt extensive regulation was appropriate for common carriers, for the sake of consumer protection, public safety and streets issues.
- That framework held until the mid-20th century, when a deregulation movement occurred across all the modes, inc. interstate commerce, involving interstate carriage of property and movement of passengers.
- The 1982 Bus Deregulatory Reform Act ushered in tremendous deregulation on both federal and state levels, based on the idea that economic regulation of this industry (transport of passengers) was killing the industry, by creating substantial and undue burden.
- Whereas the State had previously been very active in regulating routes, facilities, fares, and exit/entry into the business, it now stepped back.
- However, neither the feds nor the state vacated the field (to give more leeway to municipalities): Their intent was to maintain jurisdiction, but to forebear from economic regulation; to allow market forces to decide the kinds of amenities and facilities available to the consumer, while reserving the potential to regulate safety.

Questions related to Municipal Regulation

[Please see the attached outline entitled "Local/State/Federal Regulatory Framework - Common Carrier of Passengers" distributed by Hogg.]

- As a matter of federal law, the City needs to be concerned about preemption in the area of economic regulations; its strongest ability to regulate is in the area of safety.
- Looking at state law, the State largely retains control in the area of common carriers, and does not delegate much authority to municipalities.
- The City's strongest area of authority lies in traffic safety and convenience in relation to streets, roads and routes in the municipality.
- Within the parameters of traffic safety, the City can determine where to locate bus stops for intercity buses, with the focus being on public safety (vs. economics), esp. as it relates to traffic safety, availability of parking for passengers, and traffic congestion issues.

Question 1: If a bus company loses its facility, can the City allocate a street lane as an on-street "mini" facility and issue a permit to use the street for staging buses (vs. simply loading/unloading), which basically creates an on-street terminal? No; streets are open to the public for travel available equally, and cannot be used for a private purpose.

- The City once created a taxi and bus lane, and was sued by someone operating an

automobile in violation of the restriction. The Court ruled that state law at that time did not delegate such authority to the City, i.e., to create a private use of the street and restrict the street for travel.

- Subsequently state law was changed, and now consistent with our delegation under state law, the City can allow a bus and bike lane. However, the City could not dedicate a lane for private, commercial use.

Question 2: Can the City require interstate carriers of passengers to have off-street facilities; to buy, rent, or build, and require a terminal no matter what their business model is? *Very likely, no.*

- State law [items C. & D. in the outline] gives the State primary authority to regulate interstate carriers. Looking further at “legislative intent” to determine if the state would delegate authority to municipalities to allow them to require terminals, Chapter 194.02 says the intent of State law is to “let the market promote competitive and efficient transportation services, while maintaining safety”.
- For the City to require an interstate carrier to have an off-street terminal would not be consistent with State law.
- Looking at how State law evolved also helps to better understand its intent: In the move towards deregulation, earlier language in Chapter 194 that gave the State authority over routes, fares, facilities, was removed. It’s unlikely that the State removed its own strong regulatory presence in order to allow municipalities to move in and control these facilities.
- Chapter 194.38 [item E. in the outline] speaks to municipal authority and says that carriers (of passengers) must “operate in compliance with action taken by the municipality in relation to streets, roads and routes”. In the unlikely event the City would have so many interstate carriers and tremendous congestion, and the only way to handle this would be to require off-street facilities, then perhaps the issue could be revisited. But since this is not currently the case, it is unlikely the City would be allowed to do this.
- Federal law preempts state and local authority [item A.(a)(1) & (2) in the outline]. Though restricting states and political subdivisions from enacting laws related to scheduling (inc. discontinuance or reduction in the levels of service) and rates, notably it does not “restrict the safety regulatory authority of a State with respect to motor vehicles” [item A.(a)(5) in the outline].
- While this particular provision has not had a lot of litigation around it, a parallel provision related to interstate carriers of property has. From this, the Court has liberally construed what is meant to say that states can’t regulate in the areas of scheduling/rates, to include anything that even indirectly relates to these areas; and has narrowly construed the area of safety.
- The City is preempted by State law, regardless of whether it’s preempted by federal law. Notably however, federal regulations [item B. in the outline] do not require a terminal or off-site facilities for interstate carriers of passengers.
- The industry itself has evolved, in which certain carriers provide curbside service and an online presence (vs. a physical presence), while other carriers follow the facilities model where people can go, possibly offering a Western Union and/or package service.

Question 3: Can the City require carriers to provide bus shelters for passengers to wait or cement pads for easier access? *It depends on whether this is viewed as an economic regulation vs. a safety regulation: if economic, no; if safety, possibly.*

- This is problematic, given the state code. Without all the details about traffic and street safety to show this is a safety issue, such a requirement might be viewed as economic

regulation. Some might say this is an issue for the customers to decide.

- In addition, it creates a further burden because building a bus stop would require a “privilege in streets”. The cost of the bus stop is one factor; and the fact the stop is not on an adjacent property would require getting a bond, substantially increasing the cost of the regulation, which could become problematic.
- Though federal law was changed recently to require to Federal Motor Carrier Safety Administration to enforce the ADA against intercity carriers, the ADA doesn’t require bus pads.
- Each of these items drifts into economic regulation, which is problematic.

Question 4: Can the City require intercity bus stops to be in certain locations? Without more details, it is hard to say.

- The City doesn’t have authority over their routes. If for example the City were to require carriers to make a stop at a Transfer Point (along with all their other stops), it would be getting into an area of regulation over which it had no authority.
- The City can create reasonable regulations that deal with orderly flow of traffic and parking. Perhaps Traffic Engineering or the TPC might want to explore what the safety or traffic goal and purpose would be, in order to answer this question.
- In some cases, the Court sustained certain restrictions as to where intercity buses can stop. But because those were fact-specific, more background info would be needed to determine whether the City could regulate in this fashion.

Question 5: Can intercity bus companies be required to pay for damage and can they be required to be licensed by the City and pay a fee? No.

- In Chapter 194, the State takes away any potential authority that the City would have had in this area.
- Back in the 1930’s when the State enacted the statute re: municipal consent, there was a provision that allowed cities to seek fees to reasonably compensate them for damage to the roadway. However, that provision was deleted.
- In its regulatory scheme, the State does exact compensation from these interstate carriers for the highways; and part of the highway funds gets passed through to cities, perhaps representing their compensation.
- Also, Section 76.54, Wis. Stats. [item II.B in the outline], states specifically that cities may not impose a license tax on common carriers. When this was enacted, most municipalities simply deleted their license requirement because there was no fee attached to it.

Question 6: Can the City restrict a bus stop to use by one company (at a time) if additional bus stop usage could cause a dangerous situation? Yes.

- This goes back to the issue of safety, and the City’s ability to create bus stops. If two bus companies converge at a bus stop at the same time, and extend beyond the bus stop thereby creating a traffic hazard, this would be something the City could regulate.

Summary

The City’s focus needs to be on its ability to reasonably regulate the traffic issues related to bus stops, and avoid moving into areas that implicate the business or economic regulation of the industry.

Other Questions & Comments

Hogg and Bill Knobeloch (former Transportation Operations Analyst for Traffic Engineering) responded to questions, as follows:

- 1) Schmidt-Q: **When considering regulations based on health and safety concerns, could the rules differentiate between Metro buses and intercity buses, or would the rules have to apply to both?**

Hogg-A: We could reasonably distinguish between them because the nature of their operations brings different concerns. For example, a lot of cars don't usually converge at a Metro bus stop to drop people off; thus reducing concern for a stop's location in terms of its ability to handle a sudden influx or movement of parking. Or for example, more time is needed to load/unload and more passengers accumulate at one intercity bus stop than at the many Metro stops.

- 2) Schmidt-Q: **What is happening at Milwaukee's multi-modal station?**

Hogg-A: She was told that MegaBus was required to participate in the multi-modal station, and was asked that if likewise Madison could require all of its buses to go to a Transfer Point. What she learned is the opposite: Milwaukee does not want MegaBus to participate because they didn't get in on the front end; so MegaBus has been moved across the street to a parking spot that is not part of the inter-modal facility.

She is reserving judgment about a requirement that carriers stop at a Transfer Point, because she wonders if the City would ever get to the point where it would conclude the only appropriate spot for a common carrier to stop in the City would be at a facility with off-street parking and connections to other modes. This is something to consider in the long term, though it is not clear how this might turn from a best practice to a requirement. It might require a change in the State law. Much discussion at the state/federal level relates to promoting intermodal spaces.

Also, Milwaukee does not license interstate carriers, although they do (like us) regulate the bus stops, and in fact have a Bus Stop Committee that talks about where the stops are.

Knobeloch-A: He recently toured the downtown Milwaukee station with someone from WisDOT. They noticed only one intercity bus company inside the (Amtrak) station and wondered where the rest were. Apparently the one company was given the authority to help lease the spaces to the other companies, which they have not done. St. Paul Avenue is the street in front of the downtown station, and the City bus stops there, as do any other buses that want to. There is paid parking on one side of St. Paul and free parking on the other. The train station depot is run by a private concessionaire.

- 3) Schmidt comment **re: Purpose of Leg. File 18305 and safety concerns related to intercity bus stops**: As one of the sponsors, he felt the impetus behind Leg. File 18305 was a concern about safety, because at a time when weather was bad, Greyhound was hop-scotching around the City and not advising people about where they were going to be. Schmidt thought there might be some leverage in the area of safety, based on the info provided by Hogg.

Hogg-A: She agreed. The City has ordinances that basically tell buses where they need to

stop; it would be appropriate to raise an issue with them if they are stopping in an area that is not safe, is outside a designated bus stop or has no available parking.

- 4) **Streit-Q: a) Given that Langdon Street is one of the highest risk areas for pedestrians in the city, if the City wanted to ban any parking along Langdon in front of the (Memorial) Union, would it have the authority to do so?**

Hogg-A: Yes, the City could ban parking there, or put in parking meters, etc.

Streit-Q: b) If the bus companies want to put a stop there, is the City obligated to facilitate this?

Hogg-A: Buses can't park in front of fire hydrants just because they want to. So if there isn't parking for them, they can't park there (understanding though there are many spaces in the city where parking is not prohibited and people can pull over and park.)

Streit-Q: c) What if the City were to say it doesn't want regular cars to park in front of the Union, but it's okay for intercity buses to stand there for 30 minutes; can a sign be placed there to say that? Where is the state law on saying that a spot is reserved for a private company but I can't park there? Does it give the City the opportunity to say "Taxi Stand", "Freight Loading", "Intercity Bus Stop"?

Hogg-A: Under state law, the City is allowed to reasonably regulate stopping, standing and parking of vehicles. If the sign says "Freight Loading Zone" and UPS parks there all day and I'm upset because I want to park there, it's (still) a valid regulation that I can't park there. We have signs that say "No Parking - Bus Stop", or "Loading/Unloading". Sometimes we see "no parking" in front of a school/day care, or parking is limited to "loading/unloading" of vehicles; based on a decision that it was in the interest of the public to do so. If I park there for two hours, I will get a ticket, because this is a no parking or loading zone.

Streit-Q: d) Then, does the City have the option either to put up a sign on Langdon Street that says "Intercity Bus Stop", allowing them but no one else to park there; or, even if bus companies want to stop there, to post a sign that says "No Parking/Stopping/Standing", which for safety reasons would prohibit all vehicles including the buses from parking there?

Hogg-A: Correct.

Knobeloch-A: There's a sign there now that allows bus loading and unloading.

Streit-Q: As long as safety issues are involved (and there is a big safety issue on Langdon in terms of traffic engineering and congestion), the City is not obligated to provide intercity stops wherever the bus companies want them, correct?

Hogg-A: Correct. The City cannot control the routes for these buses, but there are lots of places along the routes where these buses could choose to stop.

However, some years ago, objections were raised to high-density vending in this same area because of the heavy activity and pedestrian traffic there; vending tables were viewed as a hazard. But then people felt that other interests were being served - University students

were served by the vending sites and they created an ambience. So a balance was struck.

Probably the same balance is being made now (with the buses), not to further private business, but to further public interest. Is this a reasonable place because students are there? Or is it just too busy given how narrow the street is?

- 5) Bergamini-Q: She recalled that the current “No Stopping/Standing/Parking” zone in front of the Union was established for safety reasons; then asked, a) **Are we already violating the law by taking a public resource and dedicating it so clearly to private bus companies (intercity and charter)?**

Hogg-A: The City draws a reasonable line in regulating, as being generally in the public interest. When Traffic Engineering is asked for a spot for a loading zone, they make a determination as to whether the public interest is served by making this available in proximity to a particular business. Similarly, it’s fair for the City to make a reasonable determination as to whether one or another area is/is not appropriate for a bus loading/unloading zone. It’s commonplace for municipalities to provide bus stops for public and private buses, because it’s safer for the rest of the city if a stop is designated, rather than leaving it up to the bus lines. And though it might be chaotic, at least it’s predictable.

Bergamini-Comment/Q: She said she wasn’t suggesting that bus stops shouldn’t be designated; but rather that this particular spot (at the Union) is very congested, and having buses there causes problems with loading/unloading (for others) and traffic safety becomes an issue.

- b) **Given that we are often talking about pedestrians and people waiting for buses on public sidewalks, when the law refers to safety, does this include personal safety? We once had a bus wanting to stop in a place where people were quite uncomfortable because of lack of lighting, traffic and police presence. Is it permissible for the City to raise the issue of personal safety?**

Hogg-A: Without knowing if criteria currently exist, it would be probably be good to first look at a set of criteria as to where (in general) a bus stop should be. It wouldn’t be unreasonable to decide that a bus stop should be located in an area where people can safely go about their business, though it’s unclear how fine-tuned this would be without more specifics.

Knobeloch-A: The State requires a “No stopping/standing/parking” zone at least 15 feet before and after a crosswalk (though more distance is allowed). On Langdon Street, the Traffic Engineer put a little more because it’s a mid-block crossing, which is very challenging; even with flashers and signs, there are still issues at that crossing.

Hogg-A: While the City could restrict the number of buses at a bus stop, it couldn’t say that a certain spot was dedicated to a single bus company. Instead, the City could say buses can’t go beyond the space provided for the bus stop, and the different companies might voluntarily route themselves to one stop or the other.

- 6) Schmidt-Q: **Does the City have a level of control over stops based on safety concerns about exposure to the elements (for example, buses can be several hours late in the winter)?**

Hogg-A: Though the City can't require facilities, can the City require that a stop be close to a place that was open (to the public), or that had access to taxis nearby? To answer that, it would be helpful to look at something more fleshed out, which people think is a reasonable regulation in this area. The concern is that this might get into the economic model: Is the carrier going to provide "Chevy" or "Cadillac" service; or will it be just a bus stop? Many people use Dutch Mill Park & Ride to good effect, which is really just a Park & Ride, where if buses are several hours late, there's not even a phone.

We have to think about what it is we want to do, because we have a model that has worked for years for some of our carriers.

- 7) Streit-Comment: The business model for intercity buses has evolved; bus companies used to have terminals, but now they say they are too costly. So now they stop at locations that are convenient for them, often close to heavily travelled, high-density areas, where a lot of things are already going on. The Council might say that, while this may be a good business model, it raises concerns about traffic and public safety. The carriers' first choice may not be the best choice for everyone else (even those not taking buses), who don't deserve to be impaired by their new business model.

Solomon-Q: **One of our biggest frustrations (with Greyhound last year) was the constant changing of locations for stops. Though we could delineate certain areas for stops, the carriers could still rotate every week if they wanted. Do we have any authority to prevent the constant shifting of stops?**

Hogg-A: This is not an avenue of regulation for the City. Buses want a predictable place for their stops, because they want to advertize on the website, and they want enough space for passengers to gather and maybe go buy a soda while waiting. Most of the time it works for them to be in an (stable) intercity bus stop.

Hogg-A (to Streit's comment): Related to the issue of free use of the streets and the right to travel, language in some earlier cases is a corollary: that while you can regulate parking, a piece of that use of the street and right to travel is the ability to stand and temporarily load and unload. Though when you are waiting for people to get on and loading luggage over a period of time, maybe that goes beyond the scope of that ability under state law. But, just stopping to temporarily load/unload, is probably something buses will be permitted to do. They can drop someone off just like she can let someone out of a car, so long as parking was not prohibited. The hope would be that they would see the benefit of stopping in designated bus stop (vs. other areas where parking regulations might stop them).

- 8) Bergamini-Q: Another new business model is the "Touch and Go" model, where buses don't go anywhere near downtown (i.e., Dutch Mill, and Gehrke's Corners in Milwaukee). We've had a long-standing relationship with Van Galder for maintenance at the Dutch Mill Park & Ride. Thinking about safety and liability issues, there is no shelter there. **Is Dutch Mill City property; do we have liability if a bus doesn't show up? (We have liability at our transfer points.) Who owns this?**

Hogg-A: It's the State's right-of-way, we lease it from the State and then we have an agreement with Coach USA, Van Galder and Badger to contribute to the maintenance, in exchange for them to advertise that people can park there. This agreement doesn't suggest that the City would be liable for what goes on there.

PLEASE NOTE: After completing Hogg's presentation and the Q&A, the Commission discussed various ways to proceed. (Please see Item F.1 of the attached TPC meeting Minutes for more detail about that discussion.) Afterwards, a motion passed by unanimous vote to submit two items to the Common Council to serve as the report requested in Leg. File 18305: an account of Hogg's presentation and subsequent discussion related to Agenda Item F.1. of the 08/08/10 meeting of the Transit and Parking Commission, prepared by the Recording Secretary (presented herein); and the Commission's Summary of Findings. The Summary of Findings will be finalized at the 09/02/10 meeting of the Transit and Parking Commission.