
MEMORANDUM

To: David Trowbridge

From: John Strange, Assistant City Attorney

Re: Regulation of inter-city bus stops

Date: November 12, 2013

You asked for my opinion regarding the extent of the City's authority to regulate the location of inter-state motor bus stops. You also asked whether the City could compel a private bus company to enter into an agreement to use an off-street bus facility. As detailed below, the City can regulate the location of bus stops as long as the regulations are related to safety. However, the City probably cannot compel an inter-city bus to use an off-street bus facility.

I. The City can regulate the location of inter-city common carrier stops for reasons of health, safety, and public welfare.

Courts have long held that the traveling public has a right to freely use all highways without restriction. Wisconsin statutory law echoes those court rulings. See Wis. § 349.03(2)(stating that no local authority may enact or enforce any traffic regulation prohibiting a motor vehicle from the free use of all highways). Furthermore, courts have acknowledged that the right to freely travel includes the right to stop at a curb for the purpose of loading and unloading passengers. See, e.g., *Village of Wonewoc v. Taubert*, 203 Wis. 73 (1930).¹

While motor vehicles like inter-city buses have a right to freely use highways, they are still subject to certain federal, state, and local regulations. *Id.* at 78. For example, most relevant to this memorandum, the state has delegated to local governments the authority to manage and control highways within its political boundaries for the health, safety, and welfare of the public. See Wis. Stat. § 62.11(5). Local street regulations related to safety are often upheld. See *City of Milwaukee v. Hoffmann*, 29 Wis.2d 193, 198-199 (1965); *City of Janesville v. Garthwaite*, 83 Wis.2d 866, 868-69 (1978).

Where regulations are not related to safety or some other specific exception, courts usually invalidate them. For example, in *City of Madison v.*

¹ The right to freely travel does not include the right to stand, stop, or park a motor vehicle for purposes other than loading and unloading passengers. This is why the City can regulate parking, stopping, or standing, and why those regulations often include exceptions for loading and unloading passengers.

Reynolds, Madison enacted an ordinance restricting one lane of traffic on University Avenue to motor bus and taxicab use only in order to meet the demands of the public.” See 48 Wis.2d 156, 157-161 (1970). When the ordinance was challenged on the basis that it exceeded the city’s general police authority, the City argued the ordinance fell within the powers delegated by Wis. Stat. § 62.11(5). *Id.* at 161.² The Wisconsin Supreme Court disagreed, stating that its authority over the streets was not without limits, and that it certainly didn’t permit the City to “discriminate against the general public’s use of [streets]...to the benefit of only buses and taxicabs.” *Id.* at 160. The difficulty with the City’s ordinance in *Reynolds* was that its purpose was unrelated to safety.³

Thus, if the City wishes to regulate where inter-city buses load and unload passengers, it must do so for safety reasons. It is my understanding that in the years that buses have used downtown streets (e.g., Langdon Street) as bus stops, numerous safety concerns have been raised by citizens and the Madison Police Department. Given the unique nature of the isthmus and its surrounding areas, including numerous streets, proximity to the University, and the area’s many pedestrians and bicyclists, this is certainly not surprising. It is also true that given the recent and ongoing major renovations to the University’s main campus, these safety concerns will remain for years to come. Therefore, I believe that given an appropriate showing of safety concerns, the City can reasonably regulate where inter-city buses may stop for the purpose of loading or unloading passengers. For example, based on what I know so far, I believe the City could prohibit bus stops on Langdon Street. In conceiving such regulations, policy makers should make sure the regulations:

1. Relate to a legitimate local interest (safety);
2. Are non-discriminatory;
3. Are enforced consistently; and
4. Are no more burdensome on the right to freely use roads than necessary.

They should also consult a variety of city staff, including Planning, Traffic Engineering, the Madison Police Department, and the City Attorney’s Office.

² After *Reynolds*, the state legislature passed a law allowing such lane designation. However, it is important to note that only the state – not the local authority – had the inherent authority to do this with respect to public highways.

³ Potential challenges to regulations are not limited to Wisconsin law and whether the local regulation exceeds the state’s delegation of police power. Inter-city buses often travel over state lines. Any time a regulation creates a burden on interstate commerce, it raises potential constitutional challenges. While a detailed discussion of constitutional commerce clause claims is beyond the scope of this memorandum, it is worth noting that even with respect to commerce clause challenges the courts have recognized the propriety of legislation related to the field of safety. This reinforces the notion that any local regulation must be related to safety reasons.

II. The City cannot compel a bus company to use an off-street facility.

As a practical matter, there is nothing the City can do to force a private entity to enter into an agreement with the City to use an off-street bus facility. Assuming the City is unable to cite safety concerns on all city streets, buses will always at least have an option to use a city street. Accordingly, whether they use a street or an off-street facility is a voluntary decision.

Additionally, over the last several decades the motor carrier industry has undergone massive deregulation at both the federal and state level in favor of letting market forces determine the most efficient and effective transportation system. The Wisconsin legislature adopted this logic in Wis. Stats. § 194.02, which states:

It is the intent of the legislature to remove the economic regulations which limit motor carrier operations in this state. The legislature intends to let *the market promote* competitive and efficient transportation services, while maintaining the safety regulations necessary to protect the welfare of the traveling and shipping public. It is the intent of the legislature that this chapter be interpreted in a manner which gives the most liberal construction to achieve the aim of a safe, competitive transportation industry.

Accordingly, any ordinance or regulation attempting to compel the use of an off street bus facility would likely be pre-empted by state law. As a result, the best way to convince bus companies to use an off-street facility is to make it the most attractive option in the city. Indeed, it may turn out that the most attractive option is also the safest option.