

LOCAL/STATE/FEDERAL REGULATORY FRAMEWORK – COMMON CARRIER OF PASSENGERS

I. Local/Municipal Authority

- A. Section 62.11(5), Stats. – General Police Power
- B. Traffic and parking code – state and city
- C. Section 194.33, Stats. – Municipal Consent
 - Safeway Motor Coach Co. v. City of Two Rivers, 256 Wis. 35, 39 N.W. 2d 847 (1949)
- D. MGO, Sec. 11.05 Motor Buses – Consent of Counsel to operate on street
- E. MGO, Sec. 3.14(3)(h) Establishment of bus stop for interstate and intra City buses

II. State Authority

- A. State has absolute control of street and highway; city has no inherent power over them.
- B. Section 76.54, Stats.

No city, village or town shall impose a license tax upon either of the following:

 - (1) Any common motor carrier of property or of passengers, any contract motor carrier or any private motor carrier on account of any operation of a motor vehicle which is subject to registration or taxation under ch. 341.
 - (2) Any corporation or other person engaged in urban mass transportation of passengers as defined in s. 71.38.
- C. Chapter 194 Motor Vehicle Transportation; Wis. Admin. Code 325 Motor Carrier Safety Regulations
 - Primarily the power of regulation of motor carriers is in the state. It may delegate such powers to its various agencies (including cities) to such extent as may seem to it to be likely to best serve the public interest. *Safeway Motor Coach Co. v. Two Rivers.*
- D. 194.02 Legislative intent.

It is the intent of the legislature to remove the economic regulations which limit motor carrier operations in the 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. (Italics added.)

- E. 194.33 Municipal consent. No common motor carrier of property or of passengers shall operate any motor vehicle within or through any municipality except in compliance with action taken by the municipality in relation to streets, roads and routes in the municipality. No action by any municipality under this section shall be subject to review by the department. (*Italics added.*)
- F. Section 194.38, Stats.
- (1) Its shall be the duty of the department:
- (b) To prescribe rules and regulations as to safety of operation and the hours of the labor or drivers of motor vehicles operated under the authority of this chapter.
- G. Preemption based on Anchor Savings and Loan Test (120 Wis. 2d 361 (1984))
- Whether the legislature has expressly withdrawn the power of municipalities to act;
 - Whether the ordinance logically conflicts with the state legislation;
 - Whether the ordinance defeats the purpose of the state legislation; or
 - Whether the ordinance goes against the spirit of the state legislation

III. Federal Authority/Statutes and Regulations

There are numerous federal laws and administrative regulations that directly or indirectly relate to intercity bus service. Key enactments in this area include the Bus Regulatory Reform Act of 1982 and the ICC Termination Act of 1995. Of particular relevance is the following language from the 1982 Act:

- A. 49 USC § 14501. Federal authority over intrastate transportation
- (a) Motor carriers of passengers –
- (1) Limitation of State law. – No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to –
- (2) *Scheduling of interstate or intrastate transportation (including discontinuance or reduction in the level of service) provided by motor carrier of passengers subject to jurisdiction under subchapter I of chapter 135 of this title on an interstate route;*

- (3) The implementation of any change in the rates for such transportation or for any charter transportation except to the extent that notice, not in excess of 30 days, of changes in schedule may be required; or
- (4) the authority to provide intrastate commuter bus operations, or to interstate bus transportation of any nature in the State of Hawaii.
- (5) Matters not covered. – Paragraph (1) *shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle, or the authority of a State to regulate carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.* (Italics added.)

B. Federal Regulations.

Applicable code of federal regulations provisions include the following:

- 1. 49CFR part 374 – Passenger Carrier Regulations, Subpart C - Adequacy of Intercity Motor Common Carrier Passenger Service.
§ 374.309 Terminal facilities
 - (a) Passenger security. All terminals and stations must provide adequate security for passengers and their attendants and be regularly patrolled.
 - (b) Outside facilities. At terminals and stations that are closed when buses are scheduled to arrive or department, there shall be available, to the extent possible, a public telephone, outside lighting, posted schedule information, overhead shelter, information on local accommodations, and telephone numbers for local taxi service and police.
 - (c) Maintenance. Terminals shall be clean.
- 2. 49 CFR Part 390 – Federal Motor Carrier Safety Regulations; General; Subpart B – General Requirements and Information.
§ 390.9 State and local laws, effect on.
 Except as otherwise specifically indicated, subchapter B of this chapter is not intended to preclude States or subdivisions thereof from establishing or enforcing State or local laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the person subject thereto.

C. Preemption may be expressed or implied

- Legislative History of 1982 act stated that existing state (economic) regulatory restrictions and practices presented a substantial burden on interstate commerce.
- In *City of Columbus v. Ours Garage and Wrecker Service*, 122 S.Ct. 2226 (2002), with respect to a parallel federal provision related to interstate transportation of property the Court stated:

§ 14501(c)(2)(A) evinces a clear purpose to ensure that the preemption of States' economic authority over motor carriers of property "not restrict" the preexisting and traditional state police power over safety, "a field which the States have traditionally occupied."

IV. Federal Authority – Constitution

A. Commerce Clause

"The Congress shall have power . . . (t)o regulate commerce with foreign nations and among the several states, and with the Indian tribes," (Article I, Section 8, Cl. 3)

- *Buck v. Kuykendall*, 265 U.S. 307 (1925). Carriers engaged in interstate commerce were removed from State regulatory control, excluding the setting of safety standards or regulations directed to the protection of highway conditions.
- The U.S. Supreme Court has held that users of highways, which are public property, are subject to regulation by the state to ensure safety and convenience. *Clark v. Poor*, 274 U.S. at 557 (citing *Morris v. Duby*, 274 U.S. 135 (1927)). This is true even if the user are engaged exclusively in interstate commerce. *Id.*

B. Supremacy Clause

"This constitution and the laws of the United States which shall be made in four thereof, . . . shall be the supreme law of the land" (Article VI, Cl. 2)

C. Undue burden on interstate commerce

1. Municipal ordinances which directly interfere with or constitute a direct regulation of or unduly burden interstate commerce violated the commerce clause.
 - The general rule that emerges can be phrased as follow:
Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate

commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relations to the putative local benefits.

- It is also true that the court has been most reluctant to invalidate under the commerce clause "state legislation in the field of safety where the propriety of local regulation has long been recognized."

2. Factors weighed in constitutional challenge

It is also true that the Court has been most reluctant to invalidate under the Commerce Clause "state legislation in the field of safety where the propriety of local regulation has long been recognized.

- Legitimate local interest (health; lives; safety)
- Effect of regulation
- Even handed
- Non-discriminatory
- Burdens no more than necessary
- Nature, importance of local interest
- Whether local interest could be served by less burdensome alternative
- Uniform (nationwide) vs. local treatment
- Excessive restriction in relation to local interest