

① 1079

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*Writ of Certiorari.*

**WRIT OF CERTIORARI.**

Filed June 21, 1927.

NEW JERSEY, to wit:

State of New Jersey to Board of  
Public Utility Commissioners, of New  
(L. s.) Jersey, GREETING: We being willing, 10  
for certain reasons, to be certified of  
an order made by the Board of Public  
Utility Commissioners of the State of New Jer-  
sey on May 24, 1927, reading as follows:

“The Board of Public Utility Commis-  
sioners having on the 4th day of March, 1926,  
filed its decision approving municipal con-  
sents granted to the Motor Transport Com-  
pany to operate two auto buses between and 20  
including Trenton and Hightstown, New Jer-  
sey, and one auto bus between and including  
Hightstown and New Brunswick, New Jer-  
sey, and having imposed certain restrictions  
applying to the operation of said buses, and  
application having been made to the Board  
for rehearing and said rehearing having  
been had and the Board on the 22nd day of  
April, 1927, having filed a supplemental de-  
cision which by reference thereto herein is 30  
made part hereof, the Board

HEREBY ORDERS restriction number one as  
contained in its decision of March 4, 1926,  
amended so that the same shall read ‘That  
the operators of the buses shall not accept  
passengers who begin and end their trips  
between the bus terminal in Trenton and the  
intersection of Burtus avenue and Notting-  
ham Way in Hamilton Township’; the re-  
strictions in other respects to remain as pre-  
scribed in the Board’s decision of March 4, 40  
1926, heretofore referred to.

*Writ of Certiorari.*

This Order shall become effective May 28, 1927''

10 do command you, that the said order so made by the Board of Public Utility Commissioners, together with all things touching and concerning the same, as fully and entirely as before you they remain, to our Justices of our Supreme Court of Judicature at Trenton on the thirtieth day of June instant, you certify and send, together with this writ, that therein may be done what of right and according to the laws of this State should be done.

WITNESS, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court at Trenton, this tenth day of June, nineteen hundred and twenty-seven.

20 EDWARD J. KELLEHER,  
Clerk.

GERAGHTY & WEELANS,  
OSBORNE, CORNISH & SCHECK,  
Attorneys.

This writ is allowed. Let it be sealed.

30 THOMAS W. TRENCHARD,  
Justice Supreme Court,  
June 10, 1927.

*Return to Writ.*

**RETURN OF WRIT.**

Filed June 21, 1927.

**New Jersey Supreme Court**

10 MOTOR TRANSPORT COMPANY, }  
Prosecutor, } *On*  
vs. } *Certiorari.*  
BOARD OF PUBLIC UTILITY COM- } *Writ on*  
MISSIONERS, } *Return.*  
Respondent. }

To the Honorable the Justices of the Supreme Court of Judicature of New Jersey: 20

The Board of Public Utility Commissioners herewith sends to the Supreme Court of Judicature of the State of New Jersey a certain order made by said Board the 24th day of May, 1927, together with all things touching and concerning the same, as fully and entirely as before said Board they remain, as it is within commanded.

In witness whereof the seal of said Board is hereto affixed and certified by the subscriber. 30

ALFRED N. BARBER,  
Secretary of the Board of Public Utility  
Commissioners of New Jersey.

*Application for Removal of Restriction.*

**APPLICATION FOR REMOVAL OF RESTRICTION.**

Filed October 14, 1926.

STATE OF NEW JERSEY.

10 BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the Matter of the Application of MOTOR TRANSPORT COMPANY for removal of restriction between Trenton, New Jersey, and a point one mile east of Hamilton Square, New Jersey.

*Application for Removal of Restriction.*

20 The petition of Motor Transport Company, a corporation, respectfully shows:

1. That it is incorporated under the laws of the State of New Jersey.

30 2. That petitioner has been operating auto buses between Trenton, N. J., and Hightstown, N. J., for some time past under the jurisdiction of this Board, subject to the condition that the operators of said buses should "not pick up passengers who begin and end their trips between the bus terminal in Trenton and a point one mile east of Hamilton Square."

3. Said condition seriously interferes with the service rendered by said buses and is not in the public interest.

Wherefore, petitioner requests that the Board of Public Utility Commissioners of the State of New Jersey rescind said condition.

40

*Answer.*

Dated at Newark this 14th day of October, 1926.

MOTOR TRANSPORT COMPANY,

By Geraghty & Weelans and Osborne, Cornish & Scheck, Attorneys.

10

**ANSWER.**

Filed October 27, 1926.

STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the Matter of the Application of MOTOR TRANSPORT COMPANY for removal of restriction between Trenton, New Jersey, and a point one mile east of Hamilton Square, New Jersey.

*In Application for Removal of Restriction. Answer.*

20

30 Trenton & Mercer County Traction Corporation and Central Transportation Co., corporations organized under the laws of the State of New Jersey and having their principal offices in the City of Trenton in said State, in answer to the above petition, respectfully show:

1. It is admitted that said petitioner is incorporated under the laws of the State of New Jersey, and that it has been operating auto buses between Trenton, New Jersey, and Hightstown, New Jersey, for some time past subject to the restriction mentioned in paragraph 2 of the petition.

40

Answer.

2. Paragraph 3 of the petition is denied, and respondents further say that previous requests for the removal of said restriction have been denied on applications made by Israel Weisberg, one of the incorporators of the Motor Transport Company, the petitioner herein, and that said  
 10 petition states no facts indicating the necessity for the removal of said restriction.

3. The said Motor Transport Company was incorporated on or about April 28, 1925, and said company took over and acquired from said Israel Weisberg the control of the auto bus service and equipment then being operated by him between Trenton and Hightstown. The said Weisberg was granted a permit from the City of Trenton to operate said bus service subject to  
 20 the restriction that he should not accept passengers whose entire journeys might lie between the terminus in Trenton and a point one mile east of Hamilton Square. The said restriction was also inserted in the approval of said permit by this Board. Prior to, and at the time of said approval, and at all times since the said restricted area has been furnished with transportation service by the trolley car service of the Trenton & Mercer County Traction Corporation, one of  
 30 the respondents herein, and that subsequent to the approval by this Board of the "Allentown Route" and "Route A" of the Central Transportation Co., a subsidiary of the said Trenton & Mercer County Traction Corporation, the Central Transportation Co., by the operation of motor buses has supplemented the service rendered by the trolley cars of the Trenton & Mercer County Traction Corporation in the said restricted area. The service of said Trenton &  
 40 Mercer County Traction Corporation as supple-

Answer.

mented by the Central Transportation Co., is adequate for the needs of said restricted area.

Therefore the respondents insist that a hearing of said petition should be denied, and that the said petition should be dismissed.

TRENTON & MERCER COUNTY 10  
TRACTION CORPORATION

and

CENTRAL TRANSPORTATION CO.

By Edward L. Katzenbach,  
Attorney.

20

30

40

*Application for Approval of Local Permission, &c.*

**APPLICATION FOR APPROVAL OF LOCAL PERMISSION TO OPERATE.**

Filed December 2, 1926.

STATE OF NEW JERSEY.

10

BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the Matter of the Application of MOTOR TRANSPORT COMPANY for approval of local permission to operate two buses (state number) between line of City of Trenton and Hamilton Township limit.

*Application for Approval of Local Permission to Operate.*

20

(1) The petition of Motor Transport Company, with offices in the City of Trenton. Respectfully shows that it is a corporation of the State of New Jersey.

(2) That applicant requests approval of local permission to operate auto buses between line of City of Trenton and Hamilton Township limit and intermediate points and along the following route: From the line of the City of Trenton on Greenwood avenue to Nottingham Way, Nottingham Way to Mercerville, Nottingham Way from Mercerville to Hamilton Square, and continuing on towards Robbinsville on Nottingham Way to the Township limit; returning over the same route.

(Names of streets or roads must be stated)

(2a) Length of route: 5.7 miles.

40

*Application for Approval of Local Permission, &c.*

(2b) That the names of motor bus lines, electric railways, or steam railroads now operating in the territory to be served are as follows:

Trenton & Mercer County Traction Company.

Central Transportation Company.

Public Service Company (private right-of-way). 10

(3) Have you purchased the bus or buses? Yes.

If so, state nature of contract.

(3a) Liability insurance. Yes

Nature of policy.

Name of Company Hudson Casualty Ins. Co.

Amount of Policy \$5,000 per bus.

Dated Nov. 10, 1926. Expires Nov. 10, 1927. 20

(3b) That the names, titles and addresses of the various officials of the company or owners, or partners, and their interests are as follows:

Name, Israel Weisberg; Title, President and Treasurer; Address, 585 N. Clinton Ave., Trenton, N. J.

Name, Samuel Rothschild; Title, Secretary; Address, Hightstown, N. J.

(4) That a detailed description of equipment to be operated in the proposed service is as submitted: 30

This information should be submitted on a separate form.

Already filed with Board Trenton-Hightstown Line of Motor Transport Company.

(5) That the proposed time schedule and running time between the points to be served is as follows: Filed with Board. Layover time filed with Board. 40

*Application for Approval of Local Permission, &c.*

(5a) That the number of buses operating on the particular route on which the applicant proposes to operate is 2.

10 (6) That the proposed fares or rates to be assessed for this service, and rules and regulations governing same, are set forth in Exhibit "A" attached hereto.

(7) The following municipalities are located along the route as proposed:

Names of Municipalities: Hamilton Township.

6. Exhibit "A" Schedule of Rates.

Trenton to Fair Grounds	....\$0.05
Trenton to Mercerville	..... .10
Trenton to Hamilton Square	.15
20 Trenton to Robbinsville.....	.20
Trenton to Windsor.....	.30
Trenton to Hightstown.....	.50

- 30 trip Commutation ticket 50% off.
- 30 trip ticket good until used 25% off.
- No fare for children under 5 years of age.

RESOLUTION.

30 RESOLUTION granting permission to the Motor Transport Company to operate passenger carrying motor buses in and through certain streets of the Township of Hamilton for revenue, and to use the surface of said streets for that purpose;

RESOLVED by the Township Committee of the Township of Hamilton County of Mercer and State of New Jersey:

40 1. That consent and permission be and the same are hereby granted to the Motor Transport Company to operate passenger carrying

*Application for Approval of Local Permission, &c.*

motor buses for revenue, and to use the surface of the streets hereinafter named in the Township of Hamilton for the purpose, over the following routes, namely:

From the line of the City of Trenton on Greenwood avenue to Nottingham Way, Nottingham Way to Mercerville, Nottingham Way from Mercerville to Hamilton Square, and continuing on towards Robbinsville on Nottingham Way to the Township Limit; returning over the same route. 10

2. All laws, rules and ordinances affecting the operation of motor buses now in force or which may hereafter be enacted during the term of this consent shall be complied with by the licensee. It shall also comply with, enforce and carry out any orders or regulations which may be adopted by the Township of Hamilton designed for the protection of persons or property for the health and comfort of the public. 20

3. This consent is granted subject to the terms and conditions imposed by Chapter 136 of the Laws of 1916 which is entitled an "Act concerning Auto Buses Commonly called Jitneys" approved April 17, 1916, and the amendments thereof and supplements thereto. 30

4. That the said passenger carrying motor buses shall be operated on the schedule of time set forth in said application filed herein dated August 4, 1926, and such schedule shall not be reduced without the consent of the Township Committee.

5. No greater rate of fare shall be charged or received by the said Motor Transport Company for carrying passengers over five years of age, 40

*Application for Approval of Local Permission, &c.*

as the rate specified in the application filed by the licensee dated August 4, 1926. And furthermore said licensee shall operate as many buses as the traffic requires.

10 6. The franchise hereby granted shall expire twenty-five years from the date of the passing of this resolution.

7. Said licensee shall make application to the Board of Utility Commission for approval of this permit within six months from the passage of this resolution, otherwise the said right hereby granted shall be considered null and void.

20 I, W. C. ROCKHILL HART, Clerk of the Township of Hamilton in the County of Mercer, New Jersey, hereby certify that the foregoing is a true copy of a resolution duly passed by the Township Committee of said Township on August 17, 1926.

Given under my hand and the seal of said Township Aug. 17, 1926.

(signed) W. C. ROCKHILL HART,  
Township Clerk.

30 (7a) The following municipalities have granted licenses or permits to operate said bus (buses) over the route specified, subject to the approval of the Public Utility Commission:

Names of Municipalities: Hamilton Township.

(Applicants must attach certified copy of the resolution of governing body or of consent of municipal officer having jurisdiction.)

40 (8) That the registration license is No. , issued by the Commissioner of Motor Vehicles. Filed with Board.

*Application for Approval of Local Permission, &c.*

(8a) Has the Commissioner of Motor Vehicles ever suspended or revoked your driver's license?

(9) That the following conditions exist which are relied upon by applicant as justification for approval of the local consents granted.

State briefly several reasons. Public convenience and necessity. 10

Wherefore, applicant requests that the Board of Public Utility Commissioners of the State of New Jersey approve the said local consents.

Dated at Newark this 2nd day of December, 1926.

MOTOR TRANSPORT CO.,  
(Signature of Applicant) 20

By Geraghty & Weelans and  
Osborne, Cornish & Scheck.  
Attorneys.

Note: Applicants shall prepare at least five copies of all exhibits to be presented at hearings.

30

40

*Opening.*

**TESTIMONY.**

**BOARD OF PUBLIC UTILITY  
COMMISSIONERS.**

Trenton, N. J., Tuesday, Dec. 7, 1926.

10

MOTOR TRANSPORT Co.—Applica-  
tion for removal of restric-  
tions between Trenton, N. J.,  
and a point one mile east of  
Hamilton Square.

20

Application of MOTOR TRANSPORT  
Co., for approval of local  
permission to operate two  
auto buses between Trenton  
City line and Hamilton  
Township limits.

Before the following Commissioners: Presi-  
dent, Jos. F. Autenreith, Esq., F. W. Gnichtel,  
Esq., Charles Browne, Esq., A. N. Barber, Esq.,  
Sec'y; P. Betts, Esq., Chief Inspector; Frank J.  
Daly, Esq., Sr., Inspector.

30

For petitioner appear: Harry V. Osborne, Esq.,  
C. H. Weelans, Esq.

For objectors, Trenton and Mercer County  
Traction Corporation and Central Transporta-  
tion Company appears: Edw. L. Katzenbach,  
Esq.

Mr. Osborne: This is an application to remove  
restrictions which were laid on the operation of  
this line between Hamilton Square and Trenton.  
I would like to hand the Board a blue print of the  
40 situation so that as I discuss it he will have, per-

*Opening.*

haps, a clear understanding. (Presents Commis-  
sion blue print.)

Commissioner Autenreith: Have you copies  
for counsel?

Mr. Katzenbach: I understand the blue print  
doesn't represent the facts. 10

Commissioner Autenreith: If it doesn't we will  
take it for what it is worth.

Mr. Katzenbach: I haven't seen it before, but  
Mr. Johnson says—

Mr. Osborne: I conferred with Mr. Johnson,  
and in fact it was made from lines Mr. Johnson  
put on. If there are errors in it I will be glad  
to have it corrected; all we want is the exact  
situation.

The situation is this— 20

Commissioner Gnichtel: The Motor Transport  
Company and Weisberg are the same parties?

Mr. Weelans: Weisberg organized the com-  
pany and six months ago it was transferred.

Commissioner Gnichtel: It is the same opera-  
tion?

Mr. Osborne: Yes; only it has been incor-  
porated. This is an old line which has been  
operating for a long time through Hamilton  
to Trenton. 30

After Mr. Weisberg's operation which is  
now the Motor Transport Company, was inaugu-  
rated the Central Transportation Company got  
permission to operate a line. Inasmuch as the  
Motor Transport Company line had been operat-  
ing under a restriction laid down to protect the  
trolley company, when the Central Transporta-  
tion Company's operation was approved it natu-  
rally and properly was subject to the same  
restrictions and I have the record here of the 40

*Opening.*

Board to show that situation. Later the Central Transportation Company applied for the lifting of those restrictions as to it and I have here the Board's consent to that application, with the reservations, however, as to the Motor Transport Company, in which the Board said  
10 that "The operation of his bus line however is not affected by the removal of the restrictions and he will not be prejudiced if and when that condition arises on any application which he may then desire to make."

Our allegation is we are affected by it and under that reservation we come here by virtue of that reservation and ask the Board to lift the restriction as to our line, on the ground that the lifting of it as to the Central Transportation Company was a discrimination against us.  
20 We are entitled to the same consideration that they received and that in view of its having been lifted as to them it should be lifted as to our company.

That is practically the complaint we desire to present. I will call Mr. Weisberg.

ISRAEL WEISBERG, sworn on behalf of petitioner:  
30

Mr. Katzenbach: May I speak to the Commission before any testimony is taken? I have listened to what Judge Osborne said with a great deal of interest. I am frank to say I have not heard yet stated any change in the circumstances which it is designed to prove which would make this application proper under the order of this Board.  
40

*Opening.*

The restriction was lifted as to the Central Transportation Company. The Central Transportation Company and the Trenton and Mercer County Traction Corporation are, in fact, the same interests, and it was for that reason that the restriction was raised as to the Central Transportation Company. If any change took place then reservation was made for Mr. Weisberg and his interests, which seem now to have been incorporated in the Motor Transport Company, to make an application before this Board. 10

It would seem to me, frankly, that the orderly method of procedure would be to know what change in the situation has occurred which under the reservation in the order makes proper an application to this Court. I think that is actually the narrowness of the issue. 20

Commissioner Autenreith: I haven't a copy of the Board's decision before me.

Mr. Osborne: I have a copy here (handing Commission paper).

Commissioner Autenreith: I assume that the basis of the removing of this restriction, independent of the Board's determination, will be public necessity and convenience. I take it they intend to make proof of such facts. 30

Mr. Osborne. That is one ground. Of course the other ground it is prejudicial to us and a discrimination against us relating to this one company and leaving us, a prior operator, with a restriction against us. The mere fact that the same set of people 40

*Opening.*

own the stock in the two companies is no reason why a preference should be given to Central Transportation Company over our company.

10 Commissioner Autenreith: We won't pass on the discrimination theory at the moment. That probably is a legal discussion. You can make out your case as to necessity and convenience; that is the point, I believe; setting forth what new circumstances have arisen.

20 Mr. Osborne: There is also on the calendar this morning, Mr. Barber, another application for approval of the Hamilton Township permit, which I suggest, as a matter of convenience, should be heard at the same time. I don't know whether that affects you.

Mr. Katzenbach: Yes.

Commissioner Autenreith: It affects them, as you operate over the entire route, I take it, in the City of Trenton.

30 Mr. Weelans: If these restrictions are removed then our operation will be in Hamilton Township. As it stands we do no business in Hamilton, due to this restriction. If the restrictions are removed then we will have to do business in Hamilton. That is why we got permission in Hamilton. If the restrictions are removed we would like to have it approved.

Commissioner Autenreith: The second case is of not much consequence unless the first is tried and decided in your favor.

40 Mr. Weelans: Yes.

*Israel Weisberg, direct.*

Commissioner Autenreith: You don't desire to press that unless you get a decision in your favor?

Mr. Weelans: No.

Mr. Katzenbach: I think the matters are really severable. I think we should first 10 determine whether the restrictions should be removed and the matters, as you have suggested, as to the approval of the Hamilton Township permit is of no moment unless the restrictions are removed. I think they ought not to be together; they are two severable issues.

Mr. Osborne: We assume the Board will be able to keep them separate in its own mind while the witnesses are on the stand. 20

Commissioner Autenreith: It is customary to take testimony in matters related to the matter at hand. If one falls by the wayside they will both fall.

*Direct examination by Mr. Osborne.*

Q Are you an officer of the Motor Transport Company? A Yes, sir.

Q What office do you hold? A President 30 and treasurer.

Q Where does the Motor Transport Company operate? A It operates between Trenton and Hightstown, and Hightstown and New Brunswick.

Q What was its predecessor company or owner? Who did the Motor Transport Company acquire the bus line from between Hightstown and Trenton? A From the Hightstown and Trenton Bus Line. 40

*Israel Weisberg, direct.*

Q Who was that? Is that a corporation?

A Yes, sir, a company.

Q A partnership? Who owned it? A Owned by me and a fellow by the name of Gordon.

Q You and Mr. Gordon first established this line when? A Yes; we first established  
10 this line February 2nd.

Q It has been in continuous operation—  
A I want to say that the—

Q Wait a minute. It has been in continuous operation since February 2, 1921? A Since April 2, sixty days after the approval. The Board approved February 2, 1921, and sixty days after the approval of the Board we started to operate, April 2, 1921.

Q Are you operating there under any re-  
20 strictions? A We are operating under a re-  
striction between the City of Trenton—

Mr. Katzenbach: I think the documents speak for themselves. I don't know exactly how much your Honors are governed by the real rules of evidence. The documents state the restrictions.

Commissioner Autenreith: As far as the accuracy of the restrictions is concerned there is no harm in asking the witness to  
30 state what it is. I will allow him to answer.

A Not to take any passengers who begin and end their trips in the City of Trenton, Montgomery street, and one mile east of Hamilton Square.

Q What line do you parallel in that territory?

A Run parallel to the Mercer County Traction Corporation.

Q From where to where? A In Trenton and  
40 Hamilton Township. Hamilton Township be-

*Israel Weisberg, direct.*

ginning from Johnson avenue to the Fair Grounds for about, less than a quarter of a mile, and then we have about, I would say about a mile and a quarter between Mercerville and Hamilton Square.

Q Are there any other bus lines operating in this territory? A The Central Transportation  
10 Company. They started in 1924.

Q How long after your operation started?  
A Three years and about five months.

Q Where do they operate from? A They operate from Perry street in the City of Trenton to Allentown by way of Robbinsville.

Q Do they operate over the same route you operate over from Trenton to Robbinsville? A Beginning at our terminal at Montgomery street  
20 to Robbinsville.

Q At Robbinsville they branch off and go to Allentown? A Yes, sir.

Mr. Osborne: I desire to offer in evidence the record of the Board, including these orders, its decisions, showing that the Central Transportation Company was given permission to operate in this territory between Robbinsville and Trenton with a re-  
30 striction that it should pick up and discharge no passengers between one mile east of Hamilton Square and the terminus in Trenton. It is the same restriction that had been imposed upon the applicant line.

And the records of the Board showing that the application was made by the Central Transportation Company for the purpose of having the restriction imposed upon it lifted, and that it was lifted.  
40

*Israel Weisberg, direct.*

Mr. Katzenbach: May I ask, is it your desire to put in the entire record of this whole matter?

Mr. Osborne: Yes.

10 Mr. Katzenbach: Concerning all Mr. Weisberg's applications?

Mr. Osborne: Yes, because I think it all should go in. Of course, the Board would have access to it in any event. In reading the testimony I find the testimony relates, perhaps, somewhat to the decisions of the Board, and they should be taken together.

Mr. Katzenbach: That is quite all right, if they all go in, the entire record.

20 Mr. Osborne: It shows Mr. Weisberg protested at that time against this, and perhaps that protest was the reason for this restriction.

Q Does the trolley continue to operate between Trenton and Hamilton Square? A Between Trenton and Hamilton Square, yes, sir.

Q Did the listing of the restriction of the Central Transportation Company adversely affect your operation? A Yes.

30 Mr. Katzenbach: That is objected to. It is purely a question of opinion.

Commissioner Autenreith: It is an expression of opinion and by itself won't mean anything unless it is amplified by a statement of the facts that indicate that.

Q You say "yes"? A Yes.

40 Q In what respect; how? A I have a zone, which is one mile east of Hamilton Square, at Whites, it is one mile to walk to the trolley

*Israel Weisberg, direct.*

car; people living along the road were compelled to walk to the trolley car because they couldn't get on the bus. In between the mills and there, if it was convenient they used to walk toward our zone and get on the bus, if there wasn't a trolley there or the trolley was tied up.

10

Commissioner Gnitchel: Speak a little slower and more distinctly.

The Witness: The trolley was off, the trolley wasn't operating, or otherwise, or storm, and the trolley wasn't on time. The Hamilton Square trolley line is almost always delayed and the people find it convenient to walk to our zone and get on our buses because our bus was there.

20 Since the Hamilton bus has arranged to pick up they don't walk to our bus and the fares are eliminated from that zone. The people used to walk out.

Commissioner Gnitchel: You talk so fast it is hard to understand you. What I understand you to say is this: When people came into Hamilton Square to take the trolley and they found the trolley late they would walk east about a mile and catch your bus and then ride in, is that right?

30

The Witness: That is right. Now, it is nearest to them to walk to that zone. It is one mile. People find it more convenient to walk there; they get those passengers; now they go there; there is no use to walk when the Allentown bus stops in front of their house.

I would like you to know this; I would like the Board to know; since 1924 the Central Transportation Company has been

40

*Israel Weisberg, direct.*

allowed to operate buses to Princeton by way of Edinburg and Dutch Neck. That takes away our revenue, too.

Another thing, the Central Transportation Company is allowed to operate a bus to Asbury Park—

10 Commissioner Gnichtel: They are restricted against you?

The Witness: They are restricted against us, but the place where they are restricted at, the border is only about two or three minutes' walk. Outside of that they are restricted, the cement road, which takes in entirely Monmouth street, which takes in that section.

20 Commissioner Gnichtel: I can't understand you.

The Witness: It takes in part of Hightstown which is thickly populated. The Borough of Hightstown is so near to our terminal it only takes a couple of minutes.

Commissioner Gnichtel: That is another question.

The Witness: I was showing the loss of revenue to the Motor Transport Company.

30 Q Were you heard on those other cases, the other restrictions? Were you permitted to come here? Did you get a notice of that application and come here and were you heard? A We protested at the time, yes.

Q Let me see if I can clarify this. One mile east of Hamilton Square is where your restriction begins? A Yes.

40 Q So that everyone in Hamilton Square desiring to take your bus, before the lifting of the

*Israel Weisberg, direct.*

restrictions on either bus, they would have to walk down Hamilton Square to the east for a mile and get on the bus there? A Yes.

Q If they wanted to leave anywhere east of the center of Trenton? A Yes.

Q Since the lifting of those restrictions on the Central Transportation Company, if they wanted to take a bus it is no longer necessary for them to do that? A No, sir. 10

Q Because the Central Transportation Company is now permitted to stop anywhere? A Yes, sir.

Q And does stop anywhere? A Yes, sir.

Q Have you any statistics or any data which will give us the extent to which that has been prejudicial to your interests has injured you, has taken business from you? A About three 20 dollars a day.

Q Representing how many passengers, approximately? A An average of between fifteen to eighteen passengers a day.

Q Do you know whether, as the situation now stands, there is sufficient service on that line; or whether it is necessary for them to put on extra buses to take care of the service? A We do on our line and, of course, when we go over the line people want to go on and we can't take them on. 30

Q Perhaps I didn't make myself clear. Is there sufficient service with the regular operation of the Central Transportation Company?

Mr. Osborne: I must admit, while I asked this question in deference to the Board's suggestion, I don't think that is the real gist of this case but I will ask it because the Board may differ with me. 40

*Israel Weisberg, direct.*

Q Is it necessary for the Central Transportation Company in order to take care of the business between Hamilton Square and Trenton to put on extra service, to put on extra buses? A Do you mean outside of the buses that are operating now?

10 Q Yes. A More buses to be put on for the Central?

Q Do you ever have to put on extra buses to handle the business? A I haven't asked for any extra buses but if there is a necessity for it, I would say, yes.

Mr. Osborne: I read in the evidence some testimony in regard to calling for extra buses when there is now enough service rendered. The testimony is in evidence and as it relates to that point I would call the Board's attention to it.

Q Did you have any other check made? Have you had any checks made as to the amount of service between Hamilton Square and Trenton that the bus line is rendering? Do you know what the extent of that business is? A How many? How many buses there is in one mile?

30 Q Are your buses filled? A Between one mile east of Hamilton Square and Trenton.

Q Yes. Are your buses filled? A No, not all the time.

Commissioner Gnichtel: He didn't say he made a check, but he gave the amount three dollars.

The Witness: About.

40 Q How did you reach the conclusion the amount was \$3? A We have a check on every

*Israel Weisberg, direct.*

trip we make. It used to run, in general we used to pick up—

Commissioner Gnichtel: How did you compare it with the other?

The Witness: I checked my receipts, how much business—there is a separate charge for the twenty cent zone. That twenty cent zone used to average, I would get three to every trip I made, three, through the week we would make twelve trips and Saturdays fourteen single trips, on an average of three passengers each time. From that I figured about \$3 a day I got before that, which we are not getting now.

Commissioner Gnichtel: At Trenton by paying twenty cents you would take me to this zone one mile east of Hamilton Square?

The Witness: Yes.

Commissioner Gnichtel: You lost eighteen of those?

The Witness: Through the week eighteen and on Saturdays I lost better than twenty-five.

Commissioner Browne: How do you know those passengers were coming to Hamilton Square?

The Witness: I used to have them.

Commissioner Browne: There may be farm houses near that zone. You implied they all walk from Hamilton Square a mile to get on your bus.

The Witness: We made a practice of stopping to take them out. We made a regular dead stop.

*Israel Weisberg, direct.*

Q What the Commissioner wants to know is how do you know those were Hamilton Square passengers? A Coming from that direction, walking toward us.

10 Q From your observation? A Yes. We were getting ready to buy a piece of land and put up a waiting room for the people because on rainy days they had no place to stop.

Commissioner Browne: You don't mean eighteen people walked from Hamilton Square one mile?

The Witness: No; that is three passengers each trip; sometimes six; sometimes nothing.

20 Commissioner Browne: Wasn't the trolley running?

The Witness: One mile the people walked.

Commissioner Browne: To the trolley?

The Witness: Yes.

Commissioner Gnichtel: Walked a mile to the trolley?

The Witness: Yes. One mile east of Hamilton Square, one mile.

30 Commissioner Gnichtel: You said they walked one mile east to get your bus.

The Witness: In between; it was convenient for them; instead of walking to the trolley car they walked to our bus because they would be nearer to us. As I said before, we were even trying to put up a little station, build up a station in order to make it convenient when it was raining and snowing. When the Central started it wasn't necessary to do that.

40

*Israel Weisberg, direct.*

Q I understand the trolley stops at the middle of Hamilton Square; about? A Yes.

Q Your last stop is a mile east of Hamilton Square? A One mile from that point where the trolley stops.

Q So between the terminus of the trolley and where the people can take your line there are a whole lot of people? A Yes. 10

Q Those are the people that walk, some of them, out to your line? A Yes.

Q Because you can't stop at a more convenient place for them? A Yes.

Q You have noticed this falling off and this difference in the traffic since the lifting of the Central Transportation Company's restriction, is that right? A Yes, sir. 20

Q You have a permit from Hamilton Square, recently granted? A Yes.

Q Hamilton Township. You have an application here for its approval? A Yes, sir.

Q In order to do that business in Hamilton Square which you are now asking permission to do through the lifting of these restrictions? A Yes, sir.

Q From Hamilton Square into Trenton? A Yes. 30

Q You only need to have this permit? A Yes, sir.

Q And you have secured such a permit? A Yes, sir.

Q It is that permit you now ask the approval of this Board for? A Yes, sir.

Q In the event of your request for these restrictions being raised being granted? A Yes.

Q Is that the reason for the necessity of the approval of that permit? A Yes, sir. 40

*Israel Weisberg, direct.*

Q Because you are doing the business? A Yes, sir.

Q Which is there to be done and which you are entitled to? A Yes.

Q Because of your being in the territory first? A Yes.

10 Q And because of the prejudicial effect of the lifting of these restrictions on the other company makes it necessary for you to have this permit? A Yes, sir.

Mr. Daly: This application you have here, do I understand it is to operate only from the city line of Trenton into Hamilton Township; it is not to go into Trenton?

20 Mr. Osborne: They have already the Trenton permit.

Mr. Daly: It isn't attached to this application?

Mr. Osborne: No, it isn't.

30 Mr. Daly: The situation is this: You are not now operating in Hamilton Township because of the restriction, therefore you don't need a permit, but if they are operating in Trenton and they need a permit and have one, if this restriction is lifted and they operate in Hamilton Township they will need a Hamilton Township permit.

Mr. Osborne: Here it is (indicating).

Commissioner Gnichtel: I think that is perfectly plain.

Mr. Osborne: I think so.

Commissioner Gnichtel: They have no permit to operate in Hamilton Township?

40 Mr. Weelans: At the present time, due to these restrictions; but we went about a

*Israel Weisberg, cross.*

month ago and got a permit from Hamilton Township to do business in Hamilton Township.

Commissioner Gnichtel: You don't want that approved now unless you have the other lifted?

10 Mr. Osborne: It won't do any good to have it approved if there is a restriction against it.

*Cross examination by Mr. Katzenbach.*

Q Originally, when you started this line, you started it as a partnership with another person? A Yes, sir.

Q You purchased the interest of that other person? A Yes, sir. 20

Q And operated the line for some time yourself? A Yes, sir.

Q Alone? A Yes, sir.

Q Then the Central Transportation Company was formed and procured a permit? A Yes, sir.

Q To operate; and after that you incorporated a company, the Motor Transport Company, of which you are vice-president and treasurer? A President and treasurer? 30

Q Yes, president and treasurer. The joint applications presently made are by the Motor Transport Company? A Both applications?

Q Yes, the one for the approval and the license for Hamilton Township, the permit from Hamilton Township, and the one lifting the restrictions which were imposed upon you by this Board? A At the present time?

Q Yes. A Yes. 40

*Israel Weisberg, cross.*

Q The Trenton and Mercer County Traction Corporation has always maintained a regular service to Hamilton Square, hasn't it? A No, sir.

Q Since it has been established it has, has it not? A No, sir.

10 Q You mean the trolley cars are not running to Hamilton Square? A Never on time.

Q I beg pardon? A Never on time.

Q When you speak of regular operation you mean sometimes they don't keep up to their schedule, that they are supposed to keep up to, is that it? A Not sometimes. I don't know of any time the Hamilton Square trolley line has been on time at Hamilton Square.

20 Q I assume you have been in constant attendance to watch the operation of the trolley cars, as to whether they arrived on time? A Positively; ever since they have been operating, not once.

Q You had always had someone there to keep track of them, their arrival and departure? A Not only someone but myself, and people in that section, too.

30 Q Have you a record of that, the time of their arrival? A I have no record. I don't think a record is necessary.

Q You are only testifying from such memory as you have? A Mine and evidence I can produce. If it is necessary I can produce evidence; as many as you possibly want that Hamilton Square line never was on time since its operation, all these years. I will produce every man in Hamilton Township.

40 Commissioner Gnichtel: I used to walk over from Yardville to take the car, and I

*Israel Weisberg, cross.*

know they are sometimes on time because I have missed them.

The Witness: That is the people's opinion, public opinion.

Q That has been the operating record? A All these years. 10

Q The cars do run to Hamilton Square? A Yes.

Q And since the Central Transportation Company has been in existence and has been operating a line of buses, do they run to Hamilton Square? A Run to Hamilton Square since they have been operating, yes.

Q The trolley cars really run to the end of Hamilton Square, do they not? A No, sir.

Q Well, practically? A No, sir, not practically. I don't believe half to Hamilton Square. 20

Q You don't think half to Hamilton Square? A Of course, I didn't measure the town.

Q I realize you didn't measure the town. Has the town establish limits, Hamilton Square? A Hamilton Square, yes, sir, it has established limits.

Q Hamilton Square is not a borough? A Hamilton Square is a township.

30 Q So when you are speaking of the center of Hamilton Square you are speaking of the center of the township line? A I don't know what you call the Hamilton Square, but it is all known as the township, entirely. If it is the township it is a different thing; the township is big. Hamilton Square itself, the street car company reaches about half of Hamilton Square, about half it reaches.

40 Q It runs to the same limits it has for a long time past and has ever since you have

*Israel Weisberg, cross.*

been running the bus line? A The Square extends itself to a lot of buildings, houses. Maybe at that time that was the end; not now. Now, the Square is about a mile and a half bigger than ever before, but the trolley line was never established—I mean, never lengthened the line; the line is the same line as it was years ago.

Q The country beyond where the trolley stops and one mile east of Hamilton Square is pretty largely open country, farm country? A All developed, all houses there. I would judge there has been built since we have been operating, built better than three or four hundred houses.

Q When you say you have lost \$3 a day—  
A About.

Q You are basing that on your returns and judge from what period? A What do you mean “period”?

Q I mean to say, when you compare your receipts with those you had in order to determine what you lost? A We compared the actual receipts we received previous to that; we don't get now, as I explained to the Board, we don't get that twenty cents any more.

Q You don't know, as a matter of fact, what it is that those numerous people who used to take your bus line now take, do you? A They tell me, people tell me.

Q It is hearsay. Many of these people who live in that vicinity own their own automobiles now? A Not all of them.

Q A good many of them? A It doesn't hardly pay to operate their own machine.

Q There has been quite an increase in the operation of automobiles and in their use in

*Israel Weisberg, cross.*

the township, whether it pays the people or not?

A No. Our receipts show—

Q I am asking you whether there hasn't been a great deal of additional use of private automobiles going into Trenton and coming out?

A I can't tell you that. I am not in the automobile game. I don't sell automobiles.

Commissioner Gnichtel: I don't understand you to say you lost \$3 because the buses came in, but merely you lost \$3 since the bus has been put in.

The Witness: Yes; about \$3 a day; that is in that zone. I don't get any more of the twenty cent zone, and people tell me that.

Q You run the same number of buses you did before the lifting of the restriction of the Central Transportation Company? A Yes, sir.

Q There has been no different extension of the trolley line than there was before? A No, sir.

Q So that conditions are exactly the same as on the day the Board lifted the restrictions on the Central Transportation Company? A The conditions are the same?

Q Yes. A No; not the same conditions.

Q You are giving the same service you did? A I am giving the same service.

Q They are giving the same service they did? A Yes, but the public is not riding on our buses any more in that zone.

*By Mr. Osborne.*

Q I understand you to say because of the fact that this drop in your receipts from traffic

*F. G. Davidson, direct.*

originating one mile east of Hamilton Square happened at the same time as the lifting of their restrictions, that it is a fair deduction it was a result of the lifting of those restrictions, is that so? A Yes. We used to get it, and they get it now.

10

Commissioner Gnichtel: That is argumentative.

Mr. Osborne: It is argumentative, yes.

Commissioner Gnichtel: Anything further?

Mr. Osborne: I think not.

20 F. G. DAVISON, sworn on behalf of petitioner.

*Direct examination by Mr. Osborne.*

Q Do you hold any public position? A Yes, sir.

Q What position do you occupy? A I am Chief of Police of Hightstown.

Q Are you familiar with the operation of this bus line? A Yes, sir.

30 Q How many bus lines run through Hightstown? A How many?

Q Yes. A Two.

Q One operated by the Central Transportation Company and one operated by the Motor Transport Company? A Yes, sir.

40 Q Are you familiar with the fact that people formerly took the Motor Transport buses one mile east of Hightstown and went for that purpose easterly from Hightstown; people went out to get it; are you familiar with that or are you not?

*F. G. Davidson, direct.*

Mr. Katzenbach: I object to his testimony as being really irrelevant to the issue.

Commissioner Gnichtel: You mean one mile east of Hightstown or Allentown?

Mr. Osborne: I beg pardon; Hamilton Square.

10

Q Do you know anything about that? Have you seen the people taking these buses or not?

A No, sir, I have not.

Q Have you ridden on this bus? A Yes, sir.

Q Where did you take it? A Hightstown.

Q Whereabouts in Hightstown? A Right in front of Cunningham's drug store.

Q Is that point one mile east of Hamilton Square?

20

Mr. Katzenbach: It is not.

Commissioner Gnichtel: That is five miles away.

Commissioner Browne: That is in Hightstown; that is five or six miles beyond.

Q Have you ridden through Hamilton Square? A Yes, sir.

Q Have you observed people taking the bus one mile east of Hamilton Square? A Yes, sir.

30

Q Have you made any observations since the lifting of the restriction of the Central Transportation Company? A I don't think I have. I haven't been on it many times lately.

Q You say you have observed people getting on the bus one mile east of Hamilton Square? A Yes.

Mr. Katzenbach: I beg pardon; he didn't say that.

40

*F. G. Davidson, direct.*

Commissioner Gnichtel: He said that, but he didn't answer your other question; he hadn't observed whether there were fewer or more.

Mr. Katzenbach: We admit there are some people get off.

10

Mr. Osborne: Very well; that is all.

Commissioner Gnichtel; Call your next.

Mr. Osborne: That is all.

Commissioner Gnichtel: You rest?

Mr. Osborne: We rest.

Mr. Katzenbach: Does the Board desire to hear argument on this matter?

Commissioner Gnichtel: Have you any testimony?

20

Mr. Osborne: We will offer in evidence the permit of Hamilton Township attached to the files.

Mr. Katzenbach: The permit of the City of Trenton is that included in the record of that case? I presume it would be.

Mr. Osborne: Yes. I would like to ask Mr. Johnson a question: Have you a permit to operate in Hamilton Township?

30

Mr. Johnson: We have a permit to operate in Hamilton Township.

Mr. Osborne: Was that approved by the Board?

Mr. Johnson: It has not been approved by the Board.

Mr. Osborne: Nor submitted?

Mr. Johnson: No.

40

Mr. Osborne: If they are willing to take that statement as made on the record I am satisfied, otherwise I would like to have

*Rankin Johnson, direct.*

Mr. Johnson take the stand. I would believe him whether he is under oath or not.

Mr. Johnson: We should be glad to submit, as part of the record, the permit from Hamilton Township, if you wish.

Mr. Osborne: No, I want the facts.

10

Mr. Johnson: That is it.

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**RANKIN JOHNSON**, sworn on behalf of Objector, Trenton and Mercer County Traction Corporation and Central Transportation Company.

*Direct examination by Mr. Katzenbach.*

20

Q You are President of the Trenton and Mercer County Traction Corporation? A Yes, sir.

Q What is your relation to the Central Transportation Company? A President.

Q You were asked a few moments ago some questions by Judge Osborne? A Yes.

Q Now you are under oath, do you affirm that your answers to those questions were in fact true? A I do. May I clarify or enlarge on that statement in regard to the permit from Hamilton Township. Under the prior statute of New Jersey, prior to 1926, a municipality or township which had no ordinance taking control of bus operation didn't issue permits for bus operation. So Hamilton Township, having no such ordinance, all buses operating through Hamilton Township were operating without permits, the authorities of Hamilton Township verbally consented to such operation. That was true of each of the routes through Hamilton Township

30

40

*Rankin Johnson, direct.*

over which the Central Transportation Company operated, with the approval of the Board of Public Utility Commission.

Subsequent to the passing of the 1926 statute by the Legislature which requires, as I understand it, the bus operating companies to apply to each township, whether they previously had ordinances taking control of bus operation or not, for a resolution in each case authorizing such bus operation, we therefore, in the summer of 1926 submitted to each of the municipalities through which we operate a petition for such a resolution granting consent to the operation then in effect in each case, and submitting a draft of a resolution. Hamilton Township has granted such a resolution for each of the routes, and there are a number of them, where the Central Transportation Company operate a bus line with the approval of the Board of Public Utility Commission. That resolution for each of the lines passed by Hamilton Township has been submitted to the Board of Public Utility Commissioners and is now in their records.

Mr. Katzenbach: We will offer that as part of the record in this case.

Q Mr. Johnson, the Trenton and Mercer County Traction Corporation has maintained at all times during the last few years a regular trolley service to Hamilton Square, has it not?  
A They have.

Q By regular trolley service to Hamilton Square I mean that the line has been established and the cars have been running at a certain established schedule? A They have.

*Rankin Johnson, direct.*

Q Whether or not they are always on time?  
A Yes.

Q That line has not been in anywise extended during the past six years, has it? A It has not.

Q It begins and ends at exactly the same place that it did? A Yes.

Q Six years ago? A There was a—when the pavement was laid in Hamilton Square the line passed a street intersection, which I would say is very near the easterly limits, if there is one, of the village of Hamilton Square. In order that the cars shouldn't stand at that street intersection, about 150 feet of track were removed at their request.

Q (By Mr. Osborne.) Didn't we have a hearing on that when I was on the Board? A Yes. That isn't important but to answer your question correctly I had to say it.

Commissioner Gnichtel: You used to stop at Chamber's store; you don't stop there any more?

The Witness: About a hundred or a hundred and fifty feet of track were taken up so that our cars wouldn't interfere with the automobiles passing over that street.

*By Mr. Katzenbach.*

Q The Central Transportation Company is also operating motor buses which pass through Hamilton Square? A Yes, sir.

Q From Trenton through Hamilton Square?  
A The Allentown is the bus operation which is had in mind at this hearing. We also operate some other buses through Hamilton Square.

*Rankin Johnson, direct.*

Commissioner Gnichtel: Give the names.

The Witness: Trenton-Asbury Park and one to Trenton-Freehold—I mean Trenton-Lakewood through Freehold.

10 Commissioner Gnichtel: Two bus routes of yours run through Hamilton Square?

The Witness: Beside the Allentown route.

Q Between Trenton and Hamilton Square do the buses run by Central Transportation Company in anywise parallel the line of the Trenton and Mercer County Traction Corporation? A They do.

20 Q The Central Transportation Company is a corporation the capital of stock of which is furnished by whom? A By—

Mr. Osborne: I object to that. Is that material? Apparently it was material in the other case and the case decided on that ground, without any justification. I don't think it is material. I don't think it ought to be in this case as a reason against this applicant.

30 Mr. Katzenbach: It is in this case, as a matter of fact, by the incorporation of the other record it is in here.

Commissioner Gnichtel: I don't catch the objection. Do you object to their showing that the buses and trolley are run by the same interest?

Mr. Osborne: Yes, because it is immaterial.

40 Commissioner Gnichtel: I think it is very material.

*Rankin Johnson, direct.*

A Yes; it is controlled by the Traction Company.

Q What is the percentage of the control? A More than ninety-five per cent of the stock—

Mr. Osborne: The same objection.

Commissioner Gnichtel: I have ruled on that. 10

Mr. Osborne: On the same grounds. It is a different question, or a different aspect of the same question. I assume your ruling will be the same, to be consistent.

Mr. Weelans: I object. I don't see what he means by "controlled". You mean, owns the stock?

Mr. Katzenbach: I will develop that if you want me to. 20

Mr. Osborne: We don't want you to.

Q The Central Transportation Company and the Traction Corporation have the same officers and general management? A They do.

Mr. Weelans: It don't make any difference whether they have the same officers. That doesn't show it is the same company or a subsidiary or anything else. A man 30 may be a director in two banks but the banks aren't connected. That is the argument I made before, that they are separate and distinct companies.

Q Of course, some of the stock is owned by persons qualified to act as directors of the company? A They are.

Q Who are the persons? A Officers of the Traction Company and the Bus Company. 40

*Rankin Johnson, direct.*

Q No stock of the Central Transportation Company is owned outside of the Trenton and Mercer County Traction Corporation and its officers? A No. May I make a statement—

10 Mr. Osborne: I object. I don't know what he is going to say. It may or may not be material.

Commissioner Gnichtel: What line do you want to speak on? Anything that will throw light on this?

The Witness: Yes; it will throw light on this, I think.

Commissioner Gnichtel: You may make the statement. You may object if you find it is immaterial.

20 The Witness: One of the questions whether a particular bus company is a subsidiary operating in co-ordination with the street railway company and as to whether the traction company in question objected to the granting of a permit to the bus company.

Commissioner Gnichtel: That is argument.

30 The Witness: All right. The traction company does not object to the granting, it hasn't objected.

Mr. Osborne: We would be glad to leave that in the record because it illustrates exactly what I was going to say when I argued this case.

Mr. Katzenbach: I am glad to have it in the record, too, Judge.

40 Mr. Osborne: That is the reason you gave before.

*Rankin Johnson, cross.*

Commissioner Gnichtel: Anything further?

Mr. Katzenbach: No. You may cross examine.

*Cross examination by Mr. Osborne.*

10

Q What is the date of your permit from Hamilton Township? A It is in the record. May I ask—

Mr. Katzenbach: November 2nd, 1926, is the date; it is in the record.

Q So that, from June 4th, 1925, when the Board lifted these restrictions and permitted you to take this business which you and this other company had been restricted against prior to that date, from June 4th, 1925, until the present time you have been operating illegally there? A No. 20

Q You have been operating without the consent of the Board? A Under the old statute we weren't required to get the consent of the municipality not taking control of such a situation by ordinance.

Q That ordinance was passed in 1926? A The ordinance— 30

Q When was that ordinance passed that you spoke of? A The statute or the ordinance?

Q No; the ordinance you got the permission under.

Commissioner Gnichtel: They never passed any ordinance?

The Witness: Not that I know of. 40

*Rankin Johnson, cross.*

Q When was the resolution passed? A That resolution you just said was November 2nd, 1926.

Q You have been operating since that time?  
A We have several times spoken to members of the Hamilton Township Committee about securing a resolution under the new statute and they have said some time the time would come when they would grant us the resolution, they had always been in favor of our operation. And we had to prepare a resolution, first, after the statute was passed, it took some time to understand what the meanings of the provisions were, what we had to do under it; not that we understand it all now.

Q What schedule do you operate on out there to Hamilton Square? A By trolley or by which bus route?

Q All of them. A The schedules are in the record.

Q You don't remember? A I don't remember all these times, no. I should be glad to give you a copy of each schedule.

Mr. Osborne: Very well, as long as they are in the record.

Commissioner Gnichtel: Any further testimony?

Q You advanced the same reason when you asked that this restriction be lifted that you advance just now upon the witness stand, to the effect—

Mr. Katzenbach: I think the record speaks for itself.

*Rankin Johnson, cross.*

Mr. Osborne: I want his recollection. Yes, the record does speak for itself, I think very clearly.

Commissioner Gnichtel: Anything else?

Mr. Osborne: That is all.

Commissioner Gnichtel: Any further witnesses?

Mr. Katzenbach: No.

Commissioner Gnichtel: Both sides rest?

Mr. Katzenbach: I rest.

Commissioner Gnichtel: Do you wish to have verbal argument or will you write a letter stating your point and then get it before the whole Board?

Mr. Osborne: I don't think it makes any difference. Perhaps it is more satisfactory, in order to get our complete argument before the Board, to file a memoranda.

Commissioner Gnichtel: Give us a short memoranda.

Mr. Osborne: If you will give me a reasonable time to produce it.

(Discussion as to submission of briefs.)

Testimony closed. Briefs to be submitted.

*Petition for Re-hearing.*

**PETITION FOR RE-HEARING.**

Filed December 15, 1926.

STATE OF NEW JERSEY.

10 BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the Matter of the Application of MOTOR TRANSPORT COMPANY for removal of restriction between Trenton, New Jersey, and a point one mile east of Hamilton Square, New Jersey.

*Petition for Re-hearing.*

20 Petitioner, Motor Transport Company, respectfully shows:

- 1. That it is incorporated under the laws of the State of New Jersey;
- 2. That it operates auto buses between Hightstown and Trenton under the jurisdiction of this Board, and under certain restrictions;
- 30 3. That on October 14, 1926, it filed an application for the removal of said restrictions;
- 4. That hearing was held on said application in Trenton on December 7, 1926;
- 5. That at the conclusion of said hearing said matter was closed and counsel directed to file memorandum;
- 40 6. That since that time petitioner has learned of several witnesses who can testify as to certain material aspects of said application;

*Petition for Re-hearing.*

7. That although petitioner had exercised due diligence before said hearing it was unable to secure said witnesses and procure their attendance.

Petitioner alleges that no one will be prejudiced through the re-opening of this application for further hearing as the said restrictions are still in force and being adhered to by petitioner. 10

Petitioner, therefore, prays that the said matter may be re-opened and that petitioner be given an opportunity to produce said witnesses at a date to be fixed therefor.

MOTOR TRANSPORT COMPANY,

By OSBORNE, CORNISH & SCHECK,  
and GERAGHTY & WEELANS,  
Attorneys. 20

30

40

Thomas Keegan, direct.

Testimony.

BOARD OF PUBLIC UTILITY COMMISSIONS.

Trenton, N. J., Tuesday, January 11, 1927.

10

MOTOR TRANSPORT COMPANY: Application for rehearing, removal of restrictions.

Before Commissioners Autenreith, Browne and Gnichtel.

Appearances:

20

Harry V. Osborne, Esq., for the applicant.

Edward L. Katzenbach, Esq., for the Central Transportation Company.

Mr. Osborne: I would like to call Mr. Keegan.

THOMAS KEEGAN, sworn for petitioner.

Direct examination by Mr. Osborne.

30

Q Mr. Keegan, where do you live? A 1522 Jefferson street.

Q Did you ever work for the Motor Transport Company? A Yes, sir.

Q When? A About three years ago, I guess it was.

Q In what capacity? A As driver.

40

Q Are you familiar with the restrictions on that line, on the line operating between Trenton and Hightstown—the restriction between Trenton and Hamilton Square? A Yes, sir.

Thomas Keegan, direct.

Q Do you know whether or not from your observation and experience operating on the line, there is any demand for service on the buses operating in that territory? A Yes, sir.

Q Will you state what facts you base that conclusion on? A How is that?

10

Q What facts compel you to answer yes to my question? A Why, when I was working for Mr. Weisberg, at the time when we were picking up and discharging passengers along there, we used to pick up two or three from Robbinsville into Trenton, to that zone, one mile east of Hamilton Square, and when I left Mr. Weisberg and I went with the Central Transportation Company on that line from Trenton to Allentown, I also carried those same passengers on that bus.

20

Q When you worked for the Central Transportation Company? A Yes, sir.

Q They operated to Allentown? A Yes, sir.

Mr. Osborne: If your Honor has not a map—if it is not entirely satisfactory, I can lend you a blue print which I think is perhaps accurate.

Mr. Authenreith: This is the same one, I guess.

30

Q Did you operate to Asbury Park when you operated for the Central Transportation Company? A Not to Asbury Park, Bay Head.

Mr. Osborne: —

Q Did you pick up and discharge passengers for Hamilton Square? A Not for Hamilton Square? No, sir.

40

*Thomas Keegan, cross.*

Q For Hightstown? A Hightstown.

Q Was that within the restricted area? A We punched their ticket for Smith's Corner.

Q That is you collected for a point outside of the restricted area, but discharged them within the restricted area, they having paid the higher rate of fare? A Yes.

Q And was there much of that kind of business? A Well, no, not so much of that there.

Q Was that going, or coming, or both ways? A Well, the passengers I took down I always brought back with me.

Q And discharged them within the restricted zone? A Yes.

Q That was before the restrictions were lifted—why did you do that? A That was my instructions.

Mr. Osborne: Take the witness.

*Cross examination by Mr. Katzenbach.*

Q You say that up until three years ago you worked for Weisberg? A I said I worked three years for Mr. Weisberg.

Q You worked three years? A About three years.

Q When was the last you worked for Mr. Weisberg? A The exact date I can't recall.

Q Well, no, but you might be able to give us the month or the year? A About 1923—am I right, Mr. Weisberg?

Q You worked for Mr. Weisberg in 1923, do you know whether it was warm weather or cold weather? A Why it was in the spring of the year I quit.

*Thomas Keegan, cross.*

Q Now you never worked for the Motor Transport Company at all, did you? A I never worked for who?

Q The Motor Transport Company? A Mercer?

Q The Motor Transport Company? A I worked for Mr. Weisberg. Whether that is considered that or not, I don't know.

Q And then when you worked for Mr. Weisberg you ran a bus from Hightstown to Trenton? A Trenton to Hightstown and Hightstown to Trenton.

Q Hightstown to Trenton—now you say that during that time you picked up certain passengers in a restricted area, as I understood you? A No.

Q What did you mean by that? A I said those passengers were picked up while I worked for the Central, running from Trenton to Bay Head. I was told to take on passengers from Trenton to Hightstown, provided I collected sixty cents and punched their ticket from Trenton to Smith's Corner and I could discharge them in Hightstown.

Q Now when did you work for the Central Transportation Company? A Why about a year ago, a little over a year, I guess it is.

Q When were you discharged? A I was not discharged.

Q Well, when did you quit the Central Transportation Company? A About the same time, a little over a year ago.

Q How long did you work for the Central Transportation Company? A About a year.

Q Did you go to work for them immediately after leaving Mr. Weisberg? A Not imme-

*Thomas Keegan, cross.*

diately, a little while after, I guess it was a couple of months.

Q And you then ran the bus of the Central Transportation Company down to Bay Head?

A Not right away, no, later on.

10 Q What line were you first on? A When you first work for them you must go on a list, there, and when it comes to a run, you pick your run. It was in the summer that I picked the Trenton to Bay Head run.

Q Now you said that instructions were given to you about charging fares and punching tickets when you took on passengers for Hightstown, and you said you were to punch the ticket and collect the fare to Smith's Corner, but you might let them off at Hightstown? A If you 20 took a passenger on at Trenton, you could let him off at Hightstown, providing you charged him sixty cents and punched the ticket to Smith's Corner.

Mr. Autenreith: Who gave you those instructions?

The Witness: Mr. Weller, and I had the argument over it, and Mr. Peartree said it would be all right if we charged them the fare to Smith's Corner, sixty cents and punched their ticket to Smith's Corner, to let them off at Hightstown. 30

Q You say it was Mr. Weller you first talked to? A Mr. Weller at first, and Mr. Peartree came in while we were talking.

Q What is Mr. Weller? A The superintendent of the bus line.

Q And Mr. Peartree is the manager of the Traction Company? A Yes, sir. 40

*Thomas Keegan, cross.*

Q And the bus company? A Yes, sir.

Q Now you say there was a third man there, who made similar statements to you? A Oh, no.

Q Do you recall that? A No, sir, I did not.

Q You don't?

10

Mr. Osborne: May I inquire whether you mean there was a third man there, or whether he recalls that he said there was—

Mr. Autenreith: I think there is some confusion about that. I did not understand him to say there was.

The Witness: I didn't say that.

Mr. Katzenbach: It is all right.

Q Now you knew that there was a restricted area at the time you were working for the Central Transportation Company, did you not? A I do. 20

Q And were you not instructed by printed bulletins not to pick up or discharge passengers within the restricted area? A A printed bulletin?

Q A printed or typewritten bulletin containing instructions? A No, sir; Mr. Weller and I had an argument over that, on account of Mr. Weisberg running to Hightstown. He said he would take it up with Mr. Peartree. 30

Q —

Mr. Autenreith: Was there a printed bulletin of instructions given to you?

The Witness: Given to me? No.

Q Weren't there signs on the buses stating that passengers would not be carried within this 40

*Thomas Keegan, cross.*

restricted area? A There is signs on the buses, we carried them on the side, but if a passenger wanted to go to Hightstown we were told to take him on, charge him sixty cents, punch his ticket to Smith's Corner and let him off at Hightstown.

10 Q Well, you knew that there were these restrictions carried on the side of the bus? A Yes, sir.

Q You knew that didn't you? A Yes.

Q And when you took on passengers for the restricted area, as you did, you know you were violating the order, don't you? A I took a passenger on in the restricted area?

20 Q No, if you took them on in Trenton to be discharged in the restricted area you knew you were disregarding the instructions printed on the bus? A Not when Mr. Peartree told me it was all right. He was the man we took our orders from.

Q That is, you disregarded your printed instructions?

Mr. Osborne: He did not say he had any.

30 Mr. Autenreith: On the side of the bus?

Mr. Osborne: Those were for the public.

Q You disregarded the instructions on the side of the bus? A I did not disregard the instructions on the side of the bus, but that is not what Mr. Peartree told me, he told me it was all right to take them down there.

40 Q And you say that you never did receive printed or typewritten instructions? A Not to my knowledge, no.

*Thomas Keegan, cross.*

Q Now will you specify just exactly when it was that you held this interview at which Mr. Peartree or Mr. Weller was present? A At what time?

Q Yes, at what time. A I couldn't specify that, that is while I was running the shore line, that was told me at the garage. 10

Q Well, can you tell—you only worked for one year for the Central Transportation Company? A A year, or a little over a year, I won't say just how long, because I don't remember.

Q Do you know between what dates you worked for the Central Transportation Company? A No, sir, I don't.

Q And do you know whether this was cold weather or warm weather that you had this conversation? A This was in the summer-time. 20

Q When did you go to work for them, in the summer or in the winter? A I cannot recall when I went to work.

Q Is there any way you have got of finding out the date you were employed? A I could if I went down to the car barn and found out when I got hired and when I quit.

Q You can't find out when it was without the records of the corporation? A No, sir. 30

Q And you can't fix the date when this conversation was? A No, it was during the summer when I ran the buses, that I had the talk.

Q How many times did you take passengers to Hightstown, who paid the fare to Smith's Corner? A I used to have two regularly, who used to get off beyond Mount and Sullivan's Garage. They used to come down twice weekly. 40

*Thomas Keegan, cross.*

Q I suppose you knew who they were? A I know where they got off, I don't know who they were.

Q Do you know where they got on? A They always got on at the Perry Street Terminal. There is where I used to look for them and  
10 pick them up.

Q Do you know Mr. Keegan, whether there were any other restricted zones on the line that you were running? A Did I know whether there were any other restricted zones?

Q Did you know whether there were any other restricted zones on the line that you were running? A Why we had a restricted zone, if I remember, somewhere to the side, I think it was from Asbury to Manasquan, down along  
20 the shore. We had a restriction down there somewhere.

Q Were you careful to keep the terms of the restrictions on that zone? A Beg pardon?

Q Did you observe the restrictions on that zone? A I never had occasion to not observe them.

Mr. Autenreith: Did you have any instructions about accepting a fare beyond that zone to some other place?  
30

The Witness: Yes, that was also printed on the side of the bus.

Mr. Autenreith: Did you get any instructions from Mr. Peartree or Mr. Weller on that subject?

The Witness: I think it was from Asbury to Manasquan.

Mr. Autenreith: As to charging them beyond the zone but letting them off in the  
40 zone?

*Thomas Keegan, cross.*

The Witness: If I remember right we were not allowed to pick them up in that zone, but if any one got on outside that zone we could discharge them there.

Mr. Autenreith: That was within the restriction?  
10

The Witness: Yes, sir, that was within the restriction.

Q Would you be able to recognize these people that you say travelled with you two or three times a week, and paid for an additional fare? A That is something I couldn't say, I don't think I could. I come in contact with so many faces every day, especially in the bus business and the business I am in now, that it would be hard to recognize two faces.  
20

Q What business are you in now? A Castina Dairy.

Q You drive a car for them? A Drive a wagon.

Q In Trenton? A In Trenton.

Q These two passengers that you say you discharged within the restricted zone there, at so very frequent intervals, one being a man and one being a woman, were they elderly people or young people? A I think if I went to the trouble of going down to Hightstown I could find out who they were.  
30

Q Well, I think that might be a good idea, can you tell me whether they were old or young? A Middle aged, as I say, middle aged, not that old, I imagine around 30, somewhere around there.

Q Around thirty, both of them the same age, about? A Well, I wouldn't say if both were  
40

*Thomas Keegan, cross.*

the same age, or what they were, but I think if I went to Hightstown, I could find out.

Q Let me ask you— A (interrupting) Well, they ran about 30 or 35, somewheres around there.

Q Were they tall or short? A I can recall  
10 the man better than I would the woman.

Q Suppose you take the man, was he tall or short? A He was a man neither tall nor short, five and one half feet somewhere around there, but his face I couldn't remember very well?

Q Did he have whiskers, or a mustache or a smooth face? A You have got me, I couldn't say.

Q Now, what point of Hightstown did you discharge them? A Just the other side of  
20 Mount and Sullivan's Garage.

Q Could you give any more accurate description of the woman than you do of the man?

A No, sir, I cannot.

Q Now Mount and Sullivan's Garage is on the outer limits of Hightstown, isn't it? A Oh, no, that is in the restricted area.

Q How far is it within the restricted area? That is, how far out of Hightstown? A I couldn't say exactly, it is about two blocks from  
30 the center of town,—no, wait a minute, one, two, about three blocks.

Q You say you let these people off the other side of Mount and Sullivan's Garage, how far the other side of Mount and Sullivan's Garage did you let them off? A If I am not mistaken, it was about four or five houses to the right of the road, I imagine about two or three hundred feet, two hundred feet at the most.

Q But you can't tell exactly the time of the year, or exactly the year in which it was? A  
40 It was during the summer months.

*John Furman, direct.*

Q Of what year? A Of that year that I worked for the Central Transportation. Mr. Johnson there should be able to tell that.

*Re-direct examination by Mr. Osborne.*

Q Did you ever pick up any passengers while  
10 you were operating for Mr. Weisberg and discharge them in the prohibited zone? A Pick up passengers?

Q In the restricted zone did you pick up and discharge passengers between Trenton and Hamilton Square, while you were working for Mr. Weisberg? A No, sir.

Q Did you have any instructions on the subject? A When I worked for Mr. Weisberg, I was always instructed not to discharge passen-  
20 gers until I got beyond Hamilton Square, one mile, and coming in, not to pick them up within that zone.

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JOHN FURMAN, sworn for the applicant.

*Direct examination by Mr. Osborne.*

Q Mr. Furman, where do you live? A  
30 Hightstown.

Q Are you familiar with this route of the Motor Transportation Company? A Yes, sir.

Q You used to work for them? A Yes, sir.

Q Can you say from your familiarity with the route whether or not there is any public necessity for lifting the restriction between Trenton and Hamilton Square, any public necessity or demand for the lifting of that restriction so that they could carry passengers—  
40

*John Furman, direct.*

Mr. Katzenbach: I object to that, it is a pure conclusion as to any fact.

Mr. Autenreith: By itself it would not be worth anything, without any facts.

10 Q Can you state any facts which would lead you to the conclusion that there was some public necessity for this line doing business between Trenton and Hamilton Square? A Well, when I worked for Motor Transportation Company, we used to do quite a little business in that restricted area, and since this Allentown bus has been picking up all the way through, I found out it dropped off quite considerable.

Q The Allentown bus formerly was subjected to the same restriction? A Yes, sir.

20 Q And they had their restriction lifted? A Yes, sir.

Q Did that make any difference in your business? A It made a great difference, so that they could pick them up going from Trenton all the way through, when they were restricted, we done quite a little business between Robbinsville and that restricted point.

30 Q Where did the passengers go after they left your car at the restricted point, one mile east of Hamilton Square? A Well, they would go to various points, wherever they lived.

Q Could they take any other line of transportation in from there? A Only the Allentown.

Q How many other lines are there? A The trolley stop in Hamilton Square, and this restricted point is one mile east.

40 Q So that they would have to walk to get to their destination? A Yes, sir.

*John Furman, direct.*

Q And do the people sometimes do that? A Yes, they have to.

Q Did you ever hear any complaints about your inability to take them into this area? A Yes, I often heard them say, "Why can't this here line pick them up, the same as the other?" Maybe it was because their buses did not come along, and ours did, and that is the only thing I could say. 10

Q Have you observed any demand—any people ask you if you could take them into that area, and you had to refuse business? A I even suggested to Mr. Weisberg about putting a shanty there, a waiting station in the restricted area, it has been a couple of years ago. I asked him to build a shanty or waiting room and I told him it would be worth while. 20

Q How long have you been in the transportation business of any kind? A Four years.

Q And from these facts which you have testified it is your conclusion that there is a public necessity for lifting these restrictions?

Mr. Katzenbach: I object to the question.

Mr. Osborne: He has been in the transportation business for four years. 30

Mr. Autenreith: I think that question is all right. It is the witness' conclusion, whatever that may be, it is based upon the facts that he has given?

The Witness: Yes.

Q Did you ever see the Central Transportation Company's buses discharge people in Hightstown, the Borough? A I have saw four or five, who they were, or their names, I don't 40

*John Furman, cross.*

know anything about. I saw them get off the bus and go away from there. I called Mr. Weisberg's attention to it four or five times.

Q Did you ever see them pick them up? A I saw them pick a couple up, down at the railroad. I happened to be down there, coming by there one night in the car. I saw some people get on, but I don't know who they were.

Q In the restricted area? A Yes, sir.

*Cross examination by Mr. Katzenbach.*

Q About how long is it since you have seen those people picked up? A Last summer.

Q And how long since you have seen the people discharged? A When I was coming in on my route from New Brunswick.

Q Yes, but was it last summer you saw that? A Last summer.

Q And last summer you saw them picked up and discharged? A Yes sir, I used to meet the shore bus every day coming from New Brunswick.

Q That is four people? A I didn't say four, I saw four or five, I don't know which.

Q These four or five people that you saw either picked up or discharged, was last summer? A Yes, sir.

Q Do you know whether the people were going—can you say in which direction the people were traveling, whether they were coming from Trenton, that is between Hightstown and Trenton or between Hightstown and the shore? A Well, the bus was headed towards the shore, stopping point is right at the bridge.

Q How about the people that got on the bus? A At the U. T. Railroad crossing, going to Trenton.

*Elmer Fouratt, direct.*

Q That bus was headed towards Trenton? A Yes, sir.

Q You say that you have worked for Mr. Weisberg? A Four years.

Q And you are working for him yet? A No, sir.

Q When did you cease? A Three months.

Q Are you working for the Motor Transportation Company now? A No, sir.

Q You are not in the bus business at all? A No, sir.

Q And when Mr. Weisberg sold out to the Motor Transportation Company you did not work for him any more? A I don't know anything about him selling out.

Q The Motor Transportation Company? A I was working for him before the Motor Transportation Company, I guess that is what you call it.

Q That is, did you ever work for the Motor Transportation Company? A Yes, sir.

Q And up until what time, three months ago? A Two months ago.

Mr. Katzenbach: All right, thank you.

30

ELMER FOURATT, sworn for applicant.

*Direct examination by Mr. Osborne.*

Q Where do you live? A I now live at 317 Chambers street, Trenton.

Q And you are in business in Trenton? A 227 East State street.

Q Did you formerly live—where did you live before that? A Nottingham Way and Crest

40

*Elmer Fouratt, direct.*

avenue, one-quarter of a mile past Hamilton Square.

Mr. Autenreith: That is east of it?

The Witness: That is towards Robbinsville.

10 Mr. Katzenbach: East of Hamilton Square?

The Witness: I think it is a quarter of a mile and a half mile.

Q Just before you reach the end of the restricted zone, going out? A It is about halfway between.

Q Did you have occasion to take the bus from there? A Several times, yes.

20 Q Do you know whether the Motor Transportation Company was restricted—if their bus is restricted? A I know that the first stop was about halfway below our house. Our house is between Hamilton Square and the bus stop, and of course if we wanted to take the bus we would have to walk up the road I should judge a quarter of a mile, to the bus zone.

30 Q Then you could get on the bus? A Then we could get on the bus.

Q To go to Trenton? A Yes.

Q Could you get off the bus anywhere between there and Trenton? A I never had any occasion to get off on account of coming right to the bus stop where my business is, I am right near the bus stop.

40 Q And you used the bus regularly? A I didn't use it as much as my wife, no, because I have a truck. My wife used it regularly.

*Elmer Fouratt, direct.*

Q Do you know other people who used the bus? A Well, I imagine everybody out there used the bus.

Q How long did you live out there? And use that bus? A Four years next May.

Q Do you still own your place out there? 10  
A Yes, I moved three weeks ago to the city, I still own the place, yes.

Q Can you tell us whether there is any public necessity for the lifting of this restriction from that area, so that people can get on and off the bus between one mile east of Hamilton Square and Trenton? A Yes, I really think that they should be lifted, for the simple reason that my wife had to leave the store and go home and come back at night. She leaves in the winter, gets off at the zone and has to walk a quarter 20  
of a mile back to our house. The bus goes past our house, past several other streets, and she would have to walk this quarter of a mile back to the house. Very often times there are automobiles on the road, it is snowing and raining, and she is very apt to get hit or held up, and I, myself, didn't like it, and therefore I thought it best to move back to Trenton. I was afraid she would get hit. I think it is a good thing to have 30  
this bus stop.

Q You moved back to Trenton because of the restrictions on this bus line? A Well, I did in one sense of the word. I was afraid my wife would get held up or hit with a trolley car. She stood out there about a month ago, and it was foggy, and she told me she could hardly see to get up the road.

Mr. Browne: There is not any trolley there, is there? 40

*Elmer Fouratt, direct.*

The Witness: No, sir, there is not any trolley.

Mr. Browne: How could she get hit with a trolley?

The Witness: I mean with an automobile. 10

Q There is another line there, isn't there?

A There is only the Trenton line and this new line. There is a lot of excursions that go back and forth.

Q What about the Central Transportation Company? A That comes by.

Q They were restricted, too, weren't they?

A I never rode on that line much, but from what I understand, it is said the fare zone was 20 quarter of a mile from our house, and we always had to walk to that zone to get that bus.

Q Your understanding was that they had the same restrictions? A My understanding was that they had to stop at that line.

Q Did you know they had been released from that restriction? A No, I didn't know that.

Q And that they are now operating without that restriction? A I had no occasion to learn that, on account of my wife having to get out 30 to the house and get back, and she got this particular bus.

Q Do you know how their service compares with the Motor Transportation Company Service? A No, I don't, but all the time I rode on the bus it was right on time, and I thought it was very, very good. I suppose the service is about the same.

Q Which one did you say was on time? A 40 The Motor Transportation. The one that used to come in from Hightstown.

*Elmer Fouratt, cross.*

*Cross examination by Mr. Katzenbach.*

Q Well, you say the service was about the same? A I guess the service is good but the idea of the thing is that the walking was bad on stormy nights.

Q Let me find out just exactly where it was you lived? A Nottingham way, corner of Crest 10 avenue.

Q Was that off the line of trolley cars— A (interrupting) The trolley cars—we are just in between, it is the same if we walk to the trolley cars, practically, or if we walk to the bus zone.

Q And the trolley cars ran within about the same distance as the bus zone? A I imagine yes, I never measured it, but it is about the same.

Q Now, do you know—do you call it Nottingham Way from Hamilton Square to Robbinsville? 20 A My search calls for Nottingham Way and Crest avenue.

Q Do you live beyond Hightstown? A No, sir, I live beyond Hamilton Square.

Q You live between Hamilton Square and Robbinsville? A To be accurate, it is about, I should imagine, it is a quarter of a mile from where the trolley track ends to our house.

Judge Gnichtel: You live about a quarter 30 of a mile east of Hamilton Square?

The Witness: Yes, sir.

Q On the road from Hamilton Square to Robbinsville? A Yes, sir.

Q Now, you know the Allentown bus of the Central Transportation Company? A I know the bus going by the house, yes.

Q That does pass your house? A Yes, both buses passes our house, we are on the main road. 40

*Elmer Fouratt, cross.*

Q Now, the Allentown bus, the Central Transportation bus, stops near your house? A It stops down at the fare zone, from what I understand.

10 Mr. Osborne: They both have the same restrictions.

Mr. Katzenbach: They did have, they haven't that now.

Mr. Osborne: That is what we are kicking about.

20 The Witness: I didn't know any restrictions were lowered or raised, because I say I could not get the traction company's bus at the time I had to go to employment, therefore I would have to ride on this man's bus. We couldn't make connections unless we got either his bus or the trolley car. It was just the same to walk either way, but both of them are a nasty walk, especially if you had to walk it in a snowstorm, or in winter weather. There is no sidewalks in the place, and last summer or last winter an old man got hit.

30 Q Now, you say there was a fare zone that was located about half way between—about as far from your house as the trolley tracks, where the bus did stop? A Yes, the fare zone was up at what I call the old Toll Gate.

Q Now, you say you did not know there were any restrictions lifted on the Central Transportation Company's Allentown bus at all? A No, because I did not have occasion to ride on them, it was not the right time.

40 Q Did they all maintain schedules there? A Yes, so far as I know, you could nearly depend

*Elmer Fouratt, cross.*

on the buses as well as you could on the trolley cars. If it was snowing they may be five or ten minutes late, you could not help that.

Q Do you know how often Mr. Weisberg was running a bus at that time, had a bus passing your place? A Yes, I know he was pretty 10 much on time.

Q One every hour? A That I don't know, because I was not home all day long.

Q But you wanted to take it at a certain time? A Yes.

Q And the Weisberg bus and the trolley car would go at approximately the same time? A Yes.

Q And you had to walk about the same distance to get either one of them? A Yes, each 20 way—as I say I had no occasion to ride on the other buses because it was not the right time.

Q What was the right time that you speak about, that you wanted to get home? A I don't remember any right time—if a show was out and I did not have my truck down, I would go home on the bus.

Q Well, was there a definite time you expected to arrive home or leave home? A No, there 30 was no particular time, I know there was lots of times I have walked around half an hour waiting for a bus.

Q Now, you have said that the Weisberg bus left at the time that met your convenience, can you tell us what that time was? A No, it depended on when I wanted to ride, if you see what I mean.

Q You did not have a definite time when you wanted to go? A I went to work with my truck 40 in the morning. If I went to a show at night,

*Elmer Fouratt, cross.*

the bus left at half-past 11, I couldn't have made him go at quarter after.

Q Did you have a definite time? A No, I did not have a definite time to ride on any of the buses.

10 Q You didn't? A No, sir.

Q Did you ever make any inquiry as to the time of leaving of the Central Transportation Company's buses? A I had a schedule in the house, of both the buses, yes, sir.

Q And you found that whatever the time was that you wished to leave or arrive, that it was the Weisberg bus that satisfied your convenience of that time? A No, not necessarily, I have ridden on the Central Transportation buses sometimes, lots of times, but the whole thing of 20 it is that I am riding on the bus that suited my time best, not the Motor Transportation, nor the Weisberg, either one, and lots of times I have gone out on the cars. Supposing I miss a bus, I have to take a car.

Q Let me ask you this, since you have ridden on all the three, did you find any one of the three generally overcrowded, or were you able to get a seat most of the time? A I could get a seat, maybe once in a while have to stand up a couple of blocks or a mile or so, but you have to do that in the street cars. 30

Q In general the buses were not overcrowded? A No.

Q Were the street car lines overcrowded? A Well, I have stood up as many times in the street car lines as I have in the bus. I am not remembering—you can't remember when you rode on a car last.

Q I just want the general picture? A I can 40 only try to picture the thing right. I would

*Edna Fouratt, direct.*

like to see them both stop. If you were living out there and had to do the walking, and we are often sometimes until half-past nine at the store, and we have to go to a show to make the scheduled time to get a bus.

Q To make the schedule and have it fit the show? A Yes, sir, I have waited down town 10 lots of times, both for their bus and his bus, too.

*Re-direct examination by Mr. Osborne.*

Q There have been times when all these conveyances—when different ones of the conveyances you testified about have carried standing loads—you have had to stand up? A You had to stand up until somebody gets off. I am not fully in favor of either one. 20

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EDNA FOURATT, sworn for applicant.

*Direct examination by Mr. Osborne.*

Q You are the wife of the last witness, are you not? A Yes, sir.

Q And lived—whereabouts was this place? 30 A Nottingham Way.

Q Right near the end of the fare zone, the other side? A The other side of the car stop.

Q Hamilton Square? A Yes, sir.

Q You have had occasion to use this line of Mr. Weisberg? A Every day. I have occasion to use it every day, because it was the time I wanted to go.

Q Did you know it was restricted between one mile west of Hamilton Square and Trenton? A I had to go to the toll house. 40

*Edna Fouratt, direct.*

Q Did that subject you to any inconvenience?

A I had to pass my door.

Q How far? A I am not such a judge of distance.

Q What did it seem to you? A Quite a long way.

10 Q Did it inconvenience others? A Why yes, every one who lived near had to walk.

Q Were there others who had to do the same thing? A Anyone who wants to make that bus had to.

Q Were there others? A They had to walk from our street down.

Q Have you ever come in contact with people who wanted to go somewhere within this restricted area and couldn't take this bus on that account? A Lots of time.

Mr. Autenreith: If she has made these observations personally it is all right.

Q There were numerous people then living in this area between Trenton and a mile the other side of Hamilton Square who could not use this bus? A Well, they could use it if they wanted to walk back a distance. They were not allowed to get off.

30 Q How far is that between Hamilton Square and Trenton? A Trenton to Hamilton Square?

Q Or the other way, you can state it either way you like? A I don't know, I imagine—I think our speedometer usually reads about six miles to the house.

Q So that people living within that six miles could only use this bus? A They could use it from Trenton to Hamilton Square, if they rode to the Toll House and walked a mile back.

40

*Edna Fouratt, cross.*

Q Did anybody talk to you about it? A Lots of people.

Q Then there are a considerable number of people who would be inconvenienced by the lifting of these restrictions? A Yes, sir.

Q Did you know that the other bus line had been subjected to the same restrictions? A 10 Well, I don't know if they stopped or not. I never tried very often for their bus, because the other bus came the time I wanted to go. I had to go home on the quarter to four bus.

Q Your household duties required that you go home at that time? A I had to go home, because I had to come back to work at night.

Q You worked with your husband? A Yes, sir.

Q You have to use the bus at a certain set 20 time? A Yes.

Q That was the time the Motor Transportation Company's bus line ran? A Yes, sir.

Q And you were familiar with that operation? A Yes, sir.

Q Did you know that the restrictions had been lifted on the Central Transportation Company's bus? A I know that they stopped, I don't know if their restrictions have been lifted.

Q You know that they stop? A Yes, sir. 30

Q And the other one does not? A No.

*Cross examination by Mr. Katzenbach.*

Q The Motor Transportation Company bus you say always left Trenton at quarter to four? A Yes, sir.

Q And what time did you arrive home? A Oh, I don't know, I didn't look at the clock to see what time it was.

40

*Edna Fouratt, cross.*

Q You had, of course, a definite hour to arrive home? A No, I had a definite time I wanted to go back, and that was some time around 5 o'clock, I think.

Q Now the territory between Trenton and Hamilton Square is served by the Traction Company, is it not? A It is. 10

Q Now you could have had, if you wished, to go into Hamilton Square, the trolley car to Trenton? A Yes, but I had to walk quite a little further.

Mr. Osborne: To get to the trolley you would have had to walk further?

The Witness: Yes, sir.

Q You mean to say that at the bus station that you got on and off, was nearer to the house than the trolley car was? A Oh, it was a little nearer, yes. 20

Q Do you know about how much nearer? A No, I don't know how much nearer.

Q Now is the territory—are there very many people living in the territory between Hamilton Square and a mile beyond the restricted area? A Are there many people living there?

Q Yes, is it a very heavily populated district? A Yes, quite heavy. 30

Q Houses built closely together? A Oh, well, yes, there are quite a lot of houses—the lots in the outlying district are not as close as in the city.

Q They are pretty far apart, aren't they? A Not so far, it is all built up—there are a lot of new side streets that are being built up, too.

Q You don't live out in that part of the country any more, do you? A No, we moved in on account of that. 40

*Edna Fouratt, cross.*

Q You moved in Trenton—

Mr. Osborne: Will you finish?

The Witness: We moved in because it was too far to walk for the bus. Another reason, because it is dangerous. I want to live a little longer. 10

Mr. Autenreith: You mean it is dangerous to ride on a bus?

The Witness: Dangerous to walk in the road. The bus has to pass my house, and I had to walk back.

Q Did you use the automobile in the winter, very much? A In the morning.

Q And then at night, did you use it then? A Oh, we had to come back in it surely. 20

Mr. Osborne: Is that your truck?

The Witness: Yes, but for coming home for my supper I could not use it, because I did not drive it.

Q The Central Transportation Company bus stopped in front of your house? A It did stop, yes, but it did not go at the time I wanted it. I don't believe they run a bus at that time, quarter to four. 30

Q You wanted to be certain to start at quarter to four? A I wanted to get on a quarter to four bus.

Q And that was the time the Weisberg bus happened to run? A Yes.

Mr. Osborne: Do you know the schedule of your line, Mr. Attorney General?

Mr. Katzenbach: Yes, we will put that in. 40

*F. G. Davison, direct.*

Mr. Osborne: How often do you run?

Mr. Katzenbach: Every couple of hours, the bus leaves at 3:40 Mr. Johnson says.

Mr. Osborne: Haven't you a printed schedule you can furnish for the record?

10 Mr. Katzenbach: Yes, we will get that, we haven't got it here.

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MR. F. G. DAVISON, sworn for applicant.

*Direct examination by Mr. Osborne.*

Q Mr. Davison, where do you live? A Hightstown.

20 Q Do you have occasion to come back and forth to Trenton? A Occasionally, yes.

Q Are you familiar with the transportation facilities to Hightstown? A Well, yes.

Q Well, you know of the conveyances?

Mr. Katzenbach: Judge, do you know this witness was on before and testified the same way he is testifying now?

Mr. Osborne: Not the same way.

30 Mr. Katzenbach: Is he going to change his testimony?

Mr. Osborne: No.

Q Have you testified in this case before? A I don't think so.

Q In this room? A In this room, yes, that was in the Hamilton Square and Allentown case.

40 Mr. Katzenbach: He may not remember he was, but he was.

*F. G. Davison, direct.*

Mr. Osborne: I don't want to repeat, your Honor, so I am just trying to find out how far he went.

Mr. Katzenbach: I am perfectly willing to stipulate that he will testify the same way.

Mr. Osborne: I don't want to do that, I don't think it is good form. 10

Q Have you observed the violation of restrictions by the Central Transportation Company in the Borough of Hightstown?

Mr. Katzenbach: I object to that.

Mr. Autenreith: How can he determine whether the restrictions were violated?

Mr. Osborne: They say they were printed on the bus. 20

Mr. Autenreith: I suppose he can construe the restrictions were violated, I think it calls for a conclusion.

Q Will you state what you have observed with the Central Transportation Company picking up and discharging passengers within the area between Trenton and one mile east of Hamilton Square, Hightstown? A Well, as far as the one mile east of Hightstown, I can't say, but I can say that I have seen them discharge passengers at the corner, at the post office, that is Mercer and Rogers avenue, and I have seen them discharge passengers down in front of the park. 30

Mr. Katzenbach: Is this Hightstown or Hamilton Square?

The Witness: Hightstown.

Mr. Osborne: On their bus it was Hightstown. He says they discharge passengers in 40

*F. G. Davison, cross.*

Hightstown, your shore line. Not your Allentown line, the other line that goes through Hightstown, and that conflicts with our operation.

10 Mr. Katzenbach: I don't know what the purpose of this is, but it seems to me to be wholly irrelevant.

Judge Gnichtel: Which way were the buses going?

The Witness: Towards the shore.

Q Did you see them receiving passengers there? A Yes, sir.

Q For Trenton? A Yes, sir, and on the opposite side of the street.

20 Q And that is in the restricted area? A Yes, sir.

Mr. Osborne: Take the witness.

Mr. Katzenbach: Have you finished with this witness?

Mr. Osborne: Yes.

*Cross examination by Mr. Katzenbach.*

30 Q Did you see them discharge the passengers that you saw them discharge, coming from the shore or coming from Trenton? A Coming from Trenton.

Q And going towards the shore? A Yes, sir.

Q Now, did you ever see them discharge any passengers coming from the shore and going towards Trenton? A Yes, sir.

Q At the same place? A Well, on the opposite side of the street.

40 Q But at the same point, on the opposite side of the street? A Yes, sir.

*F. G. Davison, cross.*

Q Now when did you see it? A Well, it has been different periods, the last I saw it was about two and one-half months ago.

Q You mean this fall? A This fall, along in the fall, yes, sir.

Q Now, when did you see it before that? A 10 Oh, different times, all through the summer.

Q What were you doing there? A What was I doing? Sometimes on duty and sometimes walking up the street in citizen's clothes.

Mr. Autenreith: Isn't the application in this matter solely to modify the restrictions between Hamilton Square and one mile east of Trenton. It is not in issue whether the Central Transportation Company violated its restrictions. 20

Mr. Katzenbach: Oh, indeed not. I think this is wholly irrelevant. It is not making any impression on me, sir. I don't see any reason why we should bother with it.

Mr. Autenreith: Supposing you violated everything in Hamilton Square?

Mr. Osborne: It very seriously affects our revenue.

Mr. Autenreith: That might be a proper point— 30

Mr. Osborne: That is a lateral reason for lifting the restrictions, because they have been guilty of violation which has deprived us of revenue.

Mr. Katzenbach: I won't ask any more questions because I believe it is wholly irrelevant. It is just consuming time.

*William Nolan, direct.*

WILLIAM NOLAN, sworn for applicant.

*Direct examination by Mr. Osborne.*

Q Where do you live? A Hightstown.

Q And are you familiar with this line operated by the Motor Transportation Company?

A Yes, sir.

Q Are you familiar with the fact that there are certain restrictions on it from Hamilton Square to Trenton? A Yes, sir.

Q And how long have you been over that line?

A Ever since Mr. Weisberg has had it.

Q From your observation is there any public necessity for the lifting of those restrictions? A I should think so.

20

Mr. Autenreith: Why do you say that?

Q Have you ridden on the other line as well?

A Yes, sir.

Q Have they restrictions, too? A I have never seen any, I suppose they have.

Q Have you gotten off and on their line between Hightstown and Trenton? A I got off in Hightstown?

30 Q In Hightstown. A Yes, sir.

Q From Trenton? A Yes, sir.

Mr. Katzenbach: All right, go ahead.

Mr. Osborne: We rest.

Mr. Katzenbach: If it please the Court, if the Board is, in this matter, going to consider the testimony that has been given, that the Central Transportation Company has not been observing restrictions, then we would like to ask for an adjournment, in which we

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*Discussion.*

can put on the testimony to the effect that we have been observing the restrictions. As I say, I believe the observation of the restrictions is irrelevant to this issue.

Mr. Autenreith: Restrictions at what point, Hightstown? Or east of Hamilton Square?

10

Mr. Katzenbach: Well, my impression is that it should be a matter of Hightstown.

Mr. Autenreith: You have no more restrictions a mile east of Hamilton Square. There was some evidence you did violate those at the time you had them—

Mr. Katzenbach: But in this issue, if that will be regarded by the Board as a material thing which the Board wants to take in—wants to take any testimony on, then we would like to put testimony in to show we have never violated any restrictions.

20

Mr. Autenreith: Hightstown is not in this issue at all. As I understand it the application—the applicant wants his restriction lifted to a point one mile east of Hamilton Square. That will make his operation to that extent practically the same as the Central Transportation Company.

30

Mr. Katzenbach: That is the present application.

Mr. Autenreith: Any evidence that you violated the restrictions some time before they were lifted might be evidential, or it may not, but that is several years back and it is not important as to conditions existing at the present time. I don't know that what you do in Hightstown has any relation to the lifting of restrictions to a point half

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*Discussion.*

way. You are not charged with illegal operation in this proceeding.

Mr. Katzenbach: Then we would not proceed to put on any further testimony.

10 Mr. Autenreith: If public convenience requires that this applicant's restrictions be lifted, it will be granted and your violation in Hightstown does not amount to Public Necessity and Convenience. That is the way it appeals to me. I don't know if there is anything else in this issue.

Mr. Osborne: Are you through, Mr. Attorney General?

Mr. Katzenbach: Yes.

20 Mr. Osborne: Can we arrange now about submitting memoranda, rather than arguing the case?

30 Mr. Katzenbach: I am perfectly agreeable to do that, sir. It was understood before that briefs should be submitted. I do feel that the other side ought to perhaps submit a brief to us, in order that we may know exactly what is being claimed, and what we have to meet. If we could have that in a few days before our brief is filed we could limit ourselves to such time as the Board would like.

Mr. Osborne: I would like to have this testimony, and I also want to have a chance to utilize and prepare the testimony, and may I offer at this time, as part of our case the testimony taken on the application of the Central Transportation Company application for the lifting of restrictions.

40 Mr. Katzenbach: I think you have had all that testimony.

*Discussion.*

Mr. Osborne: I would like to offer that record. Now, after we get the record, if I could have a couple of weeks to fit it in with whatever might be pressing at that time, I will then submit my brief.

Mr. Katzenbach: We will submit to whatever time after that the Board may see fit. 10

Mr. Osborne: Whatever time you say now you would desire, we would agree to? We can't fix an arbitrary date, because we can't tell when we will get the testimony.

Mr. Katzenbach: If Judge Osborne takes a couple of weeks after he gets the testimony, I think we ought to have a week or ten days after that?

Mr. Autenreith: Suppose you serve your brief two weeks after Judge Osborne serves his. 20

Mr. Katzenbach: If I might detain the Board just one moment. The Board has, of course, available the traffic checks from the Traction Company operation, the bus line operation of the Central Transportation Company and the Weisberg, or Motor Transportation Line buses, and the time-tables with respect to each of those services. I presume we may assume that the Board in arriving at its decision will avail itself of such of that matter as it feels to be necessarily relevant, and will use those records in that regard. 30

Mr. Autenreith: The Supreme Court says that is what we can't do, unless it is offered in evidence. We can't take cognizance of matters in our files.

Mr. Katzenbach: That is matter for certiorari, that is true. We will make a 40

*Discussion.*

formal offer of the records which are at present in the Board, showing the traffic checks upon our lines, and if you have no objection upon your part—

Mr. Osborne: May I inspect them?

10 Mr. Autenreith: You may supply copies to counsel.

Mr. Katzenbach: And schedules.

Mr. Osborne: They may be too ancient to be of any value. If they are submitted to me first I will tell you whether or not we will agree to them.

Mr. Autenreith: I think the best way to settle this is for the Attorney General to serve upon you copies of the things he desires.

20 Mr. Katzenbach: I have no desire to ask the Board to review ancient documents. If Judge Osborne objects that any of it is not relevant, we will then offer testimony. Our check and schedules, then we will submit to Judge Osborne first.

(Case reserved for the submission of Briefs.)

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*Decision.*

**DECISION.**

Filed April 21, 1927.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

10

In the Matter of the Application of the MOTOR TRANSPORT COMPANY for approval of resolution of the Township of Hamilton granting permission to operate auto buses on the Trenton - Hightstown bus route.

*Decision.*

H. V. Osborne and C. H. Weelans for the petitioner.

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Edward L. Katzenbach for the Trenton & Mercer County Traction Corporation and the Central Transportation Company.

Application has been received from the Motor Transport Company for approval of a resolution of the Township of Hamilton granting municipal consent to the petitioner to operate auto buses on the Trenton-Hightstown Route in said municipalities. This application is made in accordance with the statutes of 1926, Chapter No. 144.

30

As to the operation of auto buses on this route, the Board has previously approved of municipal consent granted by the City of Trenton for said operation wherein public convenience and necessity was established.

Upon consideration of the evidence, the Board finds and determines that the operation of auto

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*Decision.*

buses on this route in the Township of Hamilton is necessary and proper for the public convenience and properly conserves the public interest and approves of the municipal consent.

Dated, April 21st, 1927.

10 BOARD OF PUBLIC UTILITY COMMISSIONERS,

(SEAL) (Signed) By Jos. F. AUTENREITH,  
President.

Attest:

(Signed) ALFRED N. BARBER,  
Secretary.

20 I HEREBY CERTIFY the foregoing to be a true copy of a decision rendered by the Board of Public Utility Commissioners and ordered filed by said Board.

ALFRED N. BARBER,  
Secretary.

30

40

*Supplementary Decision.*

**SUPPLEMENTARY DECISION.**

Filed April 22, 1927.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS. 10

In the Matter of the Application of the MOTOR TRANSPORT COMPANY for approval of municipal consents to operate two auto buses between and including Trenton and Hightstown, New Jersey. } *Supplementary Decision.*

H. V. Osborne and C. H. Weelans for the petitioner. 20

Edward L. Katzenbach for the Trenton & Mercer County Traction Corporation and the Central Transportation Company.

This is an application for rehearing of the application of the Motor Transport Company for approval of municipal consents to operate two auto buses between and including Trenton and Hightstown, New Jersey. 30

The Board in its decision of March 4, 1926, approved of the transfer of municipal consents from Israel Weisberg to the petitioner with the following conditions: "That the operators of the buses shall not accept passengers who begin and end their trips between the bus terminal in Trenton and a point on the route one mile east of Hamilton Square." The petitioner in the instant matter seeks permission to remove this restriction. 40

*Supplementary Decision.*

The petitioner offered evidence of public convenience and necessity.

The Trenton & Mercer County Traction Corporation and the Central Transportation Company objected to the removal of said restriction. It appears from the testimony that the Trenton-  
 10 Hightstown bus route was established on or about March 27, 1922, by Israel Weisberg and Hyman Gordan. The Board in its decision in this application stated that "the petitioners signified their willingness to agree not to take on passengers who begin and end their trips between the bus terminal in Trenton and a point on the route one mile east of Hamilton Square." The Board, therefore, at that time in order to avoid any unreasonable competition with the Trenton  
 20 & Mercer County Traction Corporation restricted the buses as heretofore mentioned. In a subsequent decision the Board approved of a transfer of municipal consents from Israel Weisberg and Hyman Gordon to Israel Weisberg and thence to the Motor Transport Company (the petitioner in this matter) with the same restriction. It further appears that the Central Transportation Company, a subsidiary of the Trenton & Mercer County Traction Corporation, established a bus  
 30 route between Trenton and Allentown during April, 1924. This bus route operated over the same route as the Motor Transport Company between Trenton and Robbinsville which included Hamilton Square.

The Board in its decision of April 8, 1924, approved of the permits granted to the Central Transportation Company to operate auto buses on this route with the following restriction:  
 40 "That said operators shall not pick up passengers who begin and end their trips between the bus

*Supplementary Decision.*

terminal in Trenton and a point one mile east of Hamilton Square." Subsequent to the date of this decision, the Central Transportation Company requested the Board, in a petition, to remove this restriction and after a hearing in this matter, the Board determined that public convenience necessitated the removal of this restriction.  
 10

From the testimony the Board finds that the population has greatly increased in Hamilton Township along Nottingham Way and its vicinity and that traffic conditions, since March 27, 1922, have changed materially. Many of the passengers carried by the petitioner's buses are now using the buses operated by the Central Transportation Company because of the unrestricted operation.  
 20

Upon consideration of the evidence, the Board will therefore rescind its restriction (No. 1) in its decision of March 4, 1926, and in place and instead thereof will amend as follows: "That the operators of the buses shall not accept passengers who begin and end their trips between the bus terminal in Trenton and the interesection of Burtus avenue and Nottingham Way in Hamilton Township." All other conditions mentioned in the foregoing decision will remain in full force and effect.  
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Dated, April 22nd, 1927.

BOARD OF PUBLIC UTILITY  
 COMMISSIONERS,

(SEAL) (Signed) By Jos. F. AUTENREITH,  
 President.

Attest:

(Signed) ALFRED N. BARBER,  
 Secretary.

*Supplementary Decision.*

I HEREBY CERTIFY the foregoing to be a true copy of a decision rendered by the Board of Public Utility Commissioners and ordered filed by said Board.

ALFRED N. BARBER,  
Secretary.

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*Order.*

**ORDER.**

Filed May 24, 1927.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

10

In the Matter of the Application of the MOTOR TRANSPORT COMPANY for approval of local consents to operate two auto buses between and including Trenton and Hightstown, New Jersey.

*Order.*

The Board of Public Utility Commissioners having on the 4th day of March, 1926, filed its decision approving municipal consents granted to the Motor Transport Company to operate two auto buses between and including Trenton and Hightstown, New Jersey, and one auto bus between and including Hightstown and New Brunswick, New Jersey, and having imposed certain restrictions applying to the operation of said buses, and application having been made to the Board for rehearing and said rehearing having been had and the Board on the 22nd day of April, 1927, having filed a supplemental decision which by reference thereto herein is made part hereof, the Board

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HEREBY ORDERS restriction number one as contained in its decision of March 4, 1926, amended so that the same shall read "That the operators of the buses shall not accept passengers who begin and end their trips between the bus terminal in Trenton and the intersection of Burtus

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Order.

avenue and Nottingham Way in Hamilton Township"; the restrictions in other respects to remain as prescribed in the Board's decision of March 4, 1926, heretofore referred to.

This order shall become effective May 28, 1927.

10 Dated, May 24, 1927.

BOARD OF PUBLIC UTILITY COMMISSIONERS,

(SEAL) (Signed) By JOS. F. AUTENREITH, President.

Attest:

(Signed) ALFRED N. BARBER, Secretary.

20 I HEREBY CERTIFY the foregoing to be a true copy of an order adopted by the Board of Public Utility Commissioners at its meeting held Tuesday, May 24, 1927, and recorded in the minutes of said meeting.

ALFRED N. BARBER, Secretary.

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Exhibits—Decision April 8, 1924.

EXHIBITS.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the Matter of the Application of the CENTRAL TRANSPORTATION COMPANY for approval of local permits to operate one auto bus between Trenton and Allentown, N. J.

Decision.

10

Filed April 8, 1924.

Edgar W. Hunt for the petitioner, Central Transportation Company.

20

C. H. Weelans for the objector, Israel Weisberg, other bus operator.

This is an application by the Central Transportation Company for approval of local consents to operate an auto bus between Trenton and Allentown, N. J.

The petitioner presented the necessary ordinances or consents from the municipalities through which the route passes.

30

The route over which the petitioner proposes to operate is as follows: from Allentown through Robbinsville, through Hamilton Square and along Nottingham Way to its intersection with Hamilton avenue in Trenton, down Hamilton avenue to its junction with Logan avenue, through Logan avenue to its junction with Greenwood avenue, down Greenwood avenue to Lewis street, through Lewis street to Clay street, through Clay street to Stockton street, along Stockton street to Front street, and along Front street to Montgomery

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*Exhibits—Decision April 8, 1924.*

street and through Montgomery street to the terminus on said street between Front and State streets.

10 The route parallels on the same streets and highways the trolley line operated by the Trenton & Mercer County Traction Corporation between Mercerville and Hamilton Square.

The fare schedule as set out in the application will have to be made to conform to the restrictions herein imposed.

20 The objector desired to have the Central Transportation Company restricted from doing local business between Robbinsville and the City of Trenton, alleging that the service furnished by the Trenton-Hightstown busses which pass through Robbinsville and Hamilton Square was sufficient to take care of the business between Robbinsville and Trenton. It appears that the objector was given approval of municipal permits to operate two busses between Trenton and Hightstown by this Board in a decision dated March 27, 1922. In the opinion of the Board the evidence produced by the objector is not sufficient for the Board to impose such a restriction.

30 Evidence was produced by the petitioner to show public necessity and convenience for the operation of the bus between Trenton and Allentown.

40 After consideration of the evidence the Board finds and determines that the petitioner's bus is necessary and proper for the public convenience and will properly conserve the public interest and will grant approval of the local ordinances or consents for the operation of one bus upon the following conditions:

*Exhibits—Decision April 8, 1924.*

1. That the operators of said busses shall not pick up passengers who begin and end their trips between the bus terminal in Trenton and a point one mile east of Hamilton Square.

2. That the busses conspicuously display a sign to that effect. 10

3. That said approval shall be subject to such rules, regulation or conditions as the Board may hereafter impose.

4. That said approval shall be revocable for violation of the Board's rules, regulations or conditions or for other good cause.

5. That all State laws and municipal regulations must be fully complied with before this permit becomes effective.

6. That the rates of fare charged by this applicant shall not be changed without the approval of the Board. 20

Dated, April 8, 1924.

BOARD OF PUBLIC UTILITY  
COMMISSIONERS,

(SEAL)

(Signed) By H. V. OSBORNE,  
President.

Attest:

(Signed) ALFRED N. BARBER,  
Secretary. 30

*Exhibits—Application, March 5, 1925.*

**Application.**

Filed March 5, 1925.

March 3rd, 1925.

10 Mr. A. N. Barber, Secretary,  
Board of Public Utility Commissioners,  
State House,  
Trenton, N. J.

Dear Sir:

Under date of April 29th, 1924, an ordinance  
was approved by the Mayor of the City of Tren-  
ton, after having been passed by the Board of  
Commissioners of the City of Trenton, granting  
permission to Central Transportation Co. to op-  
20 erate a motor coach service between a specified  
terminus in the City of Trenton and the Borough  
of Allentown, in the County of Monmouth, New  
Jersey.

Under date of July 12th, 1924, an ordinance  
was approved by the Mayor of the City of Tren-  
ton, after having been passed by the Board of  
Commissioners of the City, amending the ordi-  
nance of April 29th, 1924, with respect to the  
streets over which the motor bus route was to  
pass.

30 Under date of April 8th, 1924, the Board of  
Public Utility Commissioners handed down a  
Decision, IN THE MATTER OF THE APPLI-  
CATION OF THE CENTRAL TRANSPOR-  
TATION CO. FOR APPROVAL OF LOCAL  
PERMITS TO OPERATE ONE AUTO BUS  
BETWEEN TRENTON AND ALLENTOWN,  
N. J.

40 Under date of September 30th, 1924, the Board  
of Public Utility Commissioners handed down  
a Change of Route, Supplemental Decision, IN

*Exhibits—Application, March 5, 1925.*

THE MATTER OF THE APPLICATION OF  
THE CENTRAL TRANSPORTATION CO.  
FOR APPROVAL OF MUNICIPAL PERMITS  
TO OPERATE ONE AUTO BUS BETWEEN  
TRENTON AND ALLENTOWN, N. J.

The above indicated motor coach route parallels  
on the same street over a portion of its route the  
street railway tracks controlled by the Trenton  
and Mercer County Traction Corporation. 10

The Central Transportation Co. is a subsidiary  
company of the Trenton and Mercer County Trac-  
tion Corporation and operates its motor coaches  
as supplements to and in coordination with the  
street railway service controlled by the Trenton  
and Mercer County Traction Corporation.

In the above indicated ordinances passed by the  
Board of Commissioners of the City of Trenton, 20  
no restrictions were laid on Central Transpor-  
tation Co. in connection with the operation of its  
motor coach route between Trenton and Allen-  
town where such operation might compete with  
the street railway cars of the Trenton and Mer-  
cer County Traction Corporation, nor was any  
such restriction requested by either of the above  
two parties.

In the above indicated Decision by the Board  
of Public Utility Commissioners dated April 8th, 30  
1924, there appears the following restriction in  
paragraph numbered 1—

“That the operators of said busses shall not  
pick up passengers who begin and end their trips  
between the bus terminal in Trenton and a point  
one mile east of Hamilton Square.”

In the above indicated Change of Route, Sup-  
plemental Decision by the Board of Public  
Utility Commissioners, dated September 30th, 40  
1924, rates of fare are specified as follows:

*Exhibits—Application, March 5, 1925.*

- 1st zone—Perry Street terminal to City line near intersection Hamilton Ave. and Logan Ave. .... 8c
- 2nd zone City line to Rosemont ..... 8c
- 3rd zone Rosemont to Toll Gate, east of Hamilton Square .....10c
- 10 4th zone Toll Gate to Rainor's Farm, east of Robbinsville .....10c
- 5th zone Rainor's Farm to terminus in Allentown .....10c
- Through trip Trenton to Robbinsville ...20c
- Through trip Trenton to Allentown .....40c

The above specified rates of fare are also approved in the ordinances above indicated, passed by the Board of Commissioners of the City of Trenton.

The above specified rates of fare provide for the transportation by Central Transportation Co., in its busses, of passengers along that part of the route included in the restricted zone, namely: between the terminus in Trenton and a point one mile east of Hamilton Square.

The last clause in the Decision by the Board of Public Utility Commissioners above indicated, and dated September 30th, 1924, reads as follows:

“After consideration of the evidence the Board finds and determines that the proposed change in the route is necessary and proper for the public convenience and will properly conserve the public interest and approves of the application with the same conditions as set forth in the Board's decision of April 8th, 1924.”

The above indicated restriction imposed by the Board's decision is hampering Central Transportation Co. in rendering its supplemental and co-

*Exhibits—Application, March 5, 1925.*

ordinated service with respect to the street cars of Trenton and Mercer County Traction Corporation.

The bus operated between Trenton and Allentown passes for a portion of its route over the same streets as those covered by route “A,” also operated by Central Transportation Co. Under the present apparent restriction, intending passengers are refused admission to one bus operated by Central Transportation Co. and are permitted to ride on another bus also operated by Central Transportation Co. and between the same points.

We respectfully request that this restriction be eliminated in the interest of improved service.

Very respectfully,

CENTRAL TRANSPORTATION CO.

sgd—RANKIN JOHNSON,  
President.

J—H

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*Exhibits—Supplemental Application, Mar. 7, 1925.*

**Supplemental Application.**

Filed March 7, 1925.

March 6, 1925.

10 Mr. A. N. Barber, Secretary,  
Board of Public Utility Comm.,  
State House,  
Trenton, N. J.

Dear Sir:

In the belief that I did not make my point clear in submitting to the Board my letter of March 3rd, I respectfully ask consideration for this supplement.

20 In order to simplify the argument, I am substituting a letter for the name of each Company involved.

"A" provides street railway service for a specified territory.

"B" applies for authority to operate a bus route from a point within the territory served by "A" to an external point.

"A" files an objection.

30 The application made by "B" is approved conditional on a restriction which forbids "B" to transport local passengers within the territory served by "A." This restriction is based on the theory that the public interest is best conserved under a policy which declines to approve any application by a competing utility to provide service within a specified area already adequately served.

40 "C," a utility subsidiary to "A," applies for authority to operate a bus route from a point within the territory served by "A" to an external point.

*Exhibits—Supplemental Application, Mar. 7, 1925.*

"A" offers no objection, because "A" and "C" are in fact the one utility providing transportation service of two kinds (viz: by street cars and busses) under the only legal method.

The application made by "C" should be approved without restriction forbidding transportation of local passengers within territory served by "A" for the reason that such restriction will prevent coordination of trolley and bus service by "A" and "C." The omission of such restriction on "C" will not injure "B" because "B," under the adopted policy, will not be permitted to introduce competition into territory already adequately served by "A."

I submit that the above reasoning is applied in the decision by the Board, dated February 26, 1925, IN THE MATTER OF THE APPLICATION OF CENTRAL TRANSPORTATION CO. FOR APPROVAL OF MUNICIPAL PERMITS TO OPERATE TWO AUTO BUSES BETWEEN AND INCLUDING TRENTON, ASBURY PARK AND BAYHEAD, N. J.

I submit that the above reasoning is reversed with respect to the clause complained of in the decision by the Board, dated September 30, 1924, IN THE MATTER OF THE APPLICATION OF CENTRAL TRANSPORTATION CO. FOR APPROVAL OF MUNICIPAL PERMITS TO OPERATE ONE AUTO BUS BETWEEN TRENTON AND ALLENTOWN, N. J.

Furthermore, in both of these decisions Central Transportation Co. is the sufferer.

Yours very truly,

sgd—RANKIN JOHNSON,  
President.

J-H

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**Testimony.**

**BOARD OF PUBLIC UTILITY  
COMMISSIONERS.**

Trenton, N. J., Tuesday, May 19, 1925.

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<p>CENTRAL TRANSPORTATION COMPANY. Application for modification of restrictions imposed on the operation of buses by it on the Allentown-Trenton Route.</p>
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20 Before the following Commissioners: Frederick W. Gnichtel, Esq., Charles Browne, Esq.

For the petitioner appears Rankin Johnson, Esq.

For Israel Weisberg appears C. H. Weelans, Esq.

RANKIN JOHNSON, sworn on behalf of petitioner.

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I am president of the Central Transportation Company. This concerns an application by Central Transportation Company for the removal of the restriction introduced in the decision by the Board approving the municipal permit which authorized the operation of our bus route designated as route E.

Commissioner Gnichtel: Which is that?

The Witness: The route from Perry Street Terminal to Allentown, Perry Street Terminal at Trenton to Allentown.

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I will recite some of the facts in the case as to dates. Under date of April 29, 1924, an ordinance was approved by the Mayor of the City of Trenton, after having been passed by the Board of Commissioners of the City of Trenton, granting permission to Central Transportation Company to operate a motor coach service between a specified terminus in the City of Trenton and the Borough of Allentown in the County of Monmouth.

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Under date of July 12, 1924, an ordinance was approved by the Mayor of the City of Trenton, after having been passed by the Board of Commissioners of the City, amending the ordinance of April 29th, with respect to the streets or some of the streets over which the motor bus route was to pass.

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Under date of April 8, 1924, the Board of Public Utility Commissioners handed down a decision entitled "In the matter of the application of Central Transportation Company for approval of local permits to operate one auto bus between Trenton and Allentown, New Jersey."

Under date of September 30, 1924, the Board of Public Utility Commissioners handed down a change of route supplemental decision entitled "In the Matter of the Application of Central Transportation Company for approval of municipal permits to operate one auto bus between Trenton and Allentown."

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The above indicated motor coach route parallels on the same street, over a portion of its route, street railway tracks controlled by the Trenton and Mercer County Traction

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*Exhibits—Testimony, May 19, 1925.*

Corporation, namely on Perry street about three hundred feet and between Mercerville and Hamilton Square, about 8,500 feet.

10 Central Transportation Company is a subsidiary company of the Trenton & Mercer County Traction Corporation, and operates its motor coaches as supplements and in coordination with the street railway service controlled by Trenton & Mercer County Traction Corporation.

20 In the above indicated ordinance passed by the Board of Commissioners of the City of Trenton, no restrictions were laid on Central Transportation Company in connection with the operation of its motor coach route between Trenton and a point a mile east of Hamilton Square where such operation might compete with the street railway service of Trenton & Mercer County Traction Corporation, nor was any such restriction requested by either the Traction Corporation or the Central Transportation Company.

30 In the above indicated decision by the Board of Public Utility Commissioners dated April 8, 1924, approving the local ordinance, there appears the following restriction in paragraph number one: That the operators of said buses shall not pick up passengers who begin and end their trips between the bus terminal in Trenton and a point one mile east Hamilton Square.

40 That zone had been set up in an approval of an ordinance granted by the City of Trenton to Mr. Weisberg, originally to Weisberg & Gordon in connection with the motor coach service operated by them between Trenton

*Exhibits—Testimony, May 19, 1925.*

and Hightstown. It was included in the ordinance of the City of Trenton as a restriction against the bus operation of Weisberg & Gordon in order to protect the traction service against that competition.

10 No such restriction as stated here was asked by the Traction Company with respect to the Central Transportation Company bus service, for obvious reasons, namely, because Central Transportation Company bus service was operated as a supplement to and in coordination with the street railway service controlled by Trenton & Mercer County Traction Company.

20 In the application to the City of Trenton for an ordinance permitting the operation of this bus route, and authorized in the ordinance, there were specified rates of fare as follows: First zone: Perry Street Terminal to City Line near intersection of Hamilton avenue and Olden avenue, eight cents; second zone: City line to Rosemont, eight cents; third zone: Westmont to Toll Gate east of Hamilton Square, ten cents; fourth zone: Toll Gate to Raynor's Farm east of Robbinsville, ten cents; Fifth zone: From Raynor's Farm east of Robbinsville to terminus in Allentown, ten cents. Through trip Trenton to Robbinsville, twenty cents. Through trip Trenton to Allentown forty cents.

30 In the supplemental decision covering the change of route, handed down by the Public Utility Commissioners, dated September 30, 1924, these rates of fare are included and specified, apparently authorizing us, for example, to carry passengers whose entire journey might lie within this first zone, for 40

*Exhibits—Testimony, May 19, 1925.*

eight cents, in accordance with a similar provision included in the ordinance passed by the City of Trenton and likewise the second zone and the third zone. But these three zones cover the zone which was restricted by the clause previously referred to, namely, clause one in the decision by the Board of Public Utility Commissioners providing that operators of said buses shall not pick up passengers who begin and end their trips between the bus terminal in Trenton and a point one mile east of Hamilton Square. It is that restriction which we are asking to have withdrawn.

This particular bus route operates over part of its length, namely, between the Perry Street Terminal, along Perry street to Montgomery, along Montgomery to Mercer, to Greenwood avenue, out Greenwood avenue to Logan avenue, along Logan avenue to Hamilton avenue, out Hamilton avenue to Nottingham Way over the same route as that specified for Central Transportation Company bus route designated as route A. It happens that during certain times of the day there are so many local passengers desiring to ride on those streets, that it is necessary for us to add, or to place in operation an additional bus to carry them, which would not be necessary if the Allentown bus operating over the same streets were permitted to handle those local passengers.

Furthermore, the fact that one of our buses is restricted from handling passengers, while another is permitted to handle passengers over what might be called this local zone, confuses the passengers and tends to

*Exhibits—Testimony, May 19, 1925.*

increase the cost of providing this service, and to confuse the passengers.

Commissioner Gnichtel: How far out does the local bus go?

The Witness: To the intersection of Hamilton avenue and Nottingham Way.

What we ask is that the service rendered by the Traction Company, which is not asking for a restriction in the case of Central Transportation Company, be not protected by this restriction so far as Central Transportation Company is concerned, and that the restriction be removed from the buses operated by Central Transportation Company between Perry Street Terminal and a point a mile east of Hamilton Square.

*By Mr. Daly.*

Q Mr. Johnson, the city line is route A, is it not, that goes out Greenwood avenue? A Yes, sir.

Q What is the headway on that line? A One hour during part of the day, and thirty minutes during part of the day.

Q How does the Allentown bus schedule compare with that schedule; does it split the headway or what? A The Allentown bus schedule is a two hour, generally speaking, although it varies to a slight extent. It to some extent splits that bus not exactly, owing to the extreme difference in the headway.

*Cross examination by Mr. Weelaus.*

Q This route you spoke about, the local route running from Trenton, operates out Hamilton avenue to the junction of Hamilton and Notting-

*Exhibits—Testimony, May 19, 1925.*

ham Way, you say. That is within two or three hundred yards of your Hamilton Square trolley line, is it not? A Well, the distances vary extremely; it is much farther than that in some places and much nearer to some of our other lines.

10 Q What I mean to say is your local bus goes within say a quarter of a mile of the point where a passenger could take your trolley car? A Yes.

Q On Nottingham Way at Mercerville? A Yes.

Q That trolley then parallels the route of the Allentown bus from that point until the center of Hamilton Square? A Yes.

20 Q So as it stands now a person can either get your trolley or the local bus route within that zone? A They could, if this restriction were removed.

Commissioner Gnichtel: What do you mean by that? The local bus route, I thought, stops at Nottingham Way.

30 Mr. Weelans: It does. What I point out is that is within a quarter of a mile of the trolley line. Their trolley line operates from Hamilton Square to Trenton. From Hamilton Square that trolley line goes right down the road to Mercerville, turns around at Mercerville, goes down the route about a half mile toward Trenton, then goes off in the country.

Commissioner Gnichtel: Comes into State street.

40 Mr. Weelans: Comes into State street. From the point where that trolley turns off of Nottingham Way to the point where this

*Exhibits—Testimony, May 19, 1925.*

local bus line is now in operation, is only about a quarter of a mile; so that anyone within that territory can either take the trolley car or the local bus, in other words, there is no territory in between that is not served.

Commissioner Gnichtel: That local bus is not restricted. 10

The Witness: That is unrestricted, yes.

Q Has there been any change of circumstances or facts with reference to the Allentown route since the former decision of this Board on the Allentown route? A None that I think of. In what respect?

Q Any respect. A None that I can think of.

20 Q This route that you suggest, if this restriction were taken off the Allentown bus, it would compete with the Trenton & Mercer County trolley company would it not? A Yes; it would supplement it, we could consider.

*By Commissioner Gnichtel.*

Q It would compete also? A Yes.

Q It might knock the trolley company out? A No, I think not. 30

Q The purpose of all these restrictions is to save one utility from the other? A Yes, but as these are practically the same company—

Q You say practically the same company; they are two different entities? A Yes.

Q And you might at any time dispose of one or the other? A The bus company is controlled by the traction company.

40 Q A different entity, though? A Yes; the bus company could not be disposed of without the traction company's consent.

*Exhibits—Testimony, May 19, 1925.*

Q You agree with the policy of the Board that one utility ought to be protected from another? A Yes.

Q But in this, the only exception you make is they are owned by the same parties? A Yes.

10 Q And for that reason you think it ought not to apply? A I think it ought not to apply because here are buses and trolley cars owned by the same company, in effect.

Q I just wanted to get your thought. You started to answer that. Don't you agree with the principle of the Board that a utility ought to be protected? A I do, that an existing utility should be protected against an entering utility of the same type, but in this case there is a difference.

20 Q When you say of the same type— A I mean transportation, gas, or electric light.

Commissioner Browne: He means for the same purpose.

The Witness: Yes; I mean the same purpose.

Q Do you think a trolley ought to be protected against a bus? A A foreign bus, yes.

30 Q Your only distinction is this: If somebody else owned that bus you think the restriction ought to prevail? A Yes, sir.

Q But because you own it you think it would be better and more convenience for the public to have that lifted so you could run them both. Isn't there danger that some day you will knock out one or the other? A I don't think so. My belief is, for a radius approximately seven miles from the center of the City of Trenton our trolley lines will continue to operate or serve; that prob-

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*Exhibits—Testimony, May 19, 1925.*

ably for greater distances, between rural communities, bus service will substitute, if there are any existing trolley lines between rural communities, I think within that zone, say a seven mile radius, there is room for additional bus service, which we have installed; but we can serve the people better within that seven mile radius zone and more economically if we are not restricted in handling passengers within any zone in that area. 10

Q Your Allentown bus parallels this local bus, that is route A, up to Nottingham Way and Hamilton avenue, is that right? A Yes.

Q You follow it right on the same streets in the city? A Yes.

*By Mr. Weelans.* 20

Q Do you anticipate discontinuing the trolley to Hamilton Square, Mr. Johnson? A We do not.

Q If you are given this permission to pick up passengers with your Allentown bus, would you object if Mr. Weisberg were given the same permission with his Hightstown bus? A Yes.

Q Why? A Because he is a foreign corporation and he would draw passengers from us, from the traction company, which is supplemented by the Central Transportation Bus Company. 30

*By Commissioner Browne.*

Q What do you mean by "foreign corporation"? A I mean he is not the same concern. The traction company here is an existing utility.

Q What you mean is, he is competing but not supplementing? A Yes. 40

*Exhibits—Testimony, May 19, 1925.*

*By Mr. Weelans.*

Q Mr. Weisberg operated this bus from Trenton to Hightstown over this route before the Central Transportation Company operated any buses in that territory, did he not? A Yes, and he was restricted—

10 Q About three years before? A —by the City of Trenton in his ordinance permitting him to operate so that he was not to carry any passengers within this zone.

Q The reason he was restricted was to protect the Trenton & Mercer County Traction line to Hamilton Square? A Yes, sir.

Q You have spoken about these companies. The Central Transportation Company who makes this application is one corporation and the Trenton & Mercer County Traction Corporation is another corporation, isn't that right? A Yes.

*By Mr. Daly.*

Q Have you an application before the Board for additional service on route "A"? A Yes.

Commissioner Gnichtel: Which is route "A"?

30 Mr. Daly: That is the local route.

ISRAEL WEISBERG, sworn on behalf of objector.

*Direct examination by Mr. Weelans.*

Q Mr. Weisberg, you operate the Hightstown-Trenton Bus Line from Trenton to the Borough of Hightstown? A Yes, sir.

*Exhibits—Testimony, May 19, 1925.*

Q When did you commence operating that line? A April 22, 1922.

Q At that time there was no other bus service in that territory, was there? A There was no bus service until 1924.

Q Until 1924. But the Trenton & Mercer County Traction did operate a trolley between Hamilton Square and Trenton at that time? A Yes, sir.

Q You were restricted in picking up passengers? A Yes, sir.

Q Between a point one mile east of Hamilton Square and the terminus in Trenton? A Yes, sir.

Q In order to protect that Trenton & Mercer County Traction Company? A So we would not interfere with the existing transportation between Hamilton Square and Trenton.

Q You have not picked up any passengers between a point one mile east of Hamilton Square and Trenton, have you, at any time? A No, sir.

Q How many buses do you operate a day over that route? A How many trips, do you mean?

Q Yes. A Six during the week and seven on Saturday.

*By Commissioner Gnichtel.*

Q Mr. Weisberg, how would this interfere with this operation. Suppose the Board should decide to lift this restriction? A Your Honor, it is a matter of business.

Q I am trying to find out just how it would affect you. How would it affect you if they took passengers just as the trolley takes them? A It would interfere this way. The Allentown Road formerly was operated by us; the Allentown Road has been operated by us.

*Exhibits—Testimony, May 19, 1925.*

Q You gave it up? A We did not give it up. It was taken away by the Mercer Traction through influence.

Q Who took it away? A The Central Transportation Company.

10 Q You mean to say they went out there while you were running? A Yes, sir.

Q And put buses out? A And put buses out, by passing an ordinance above us and different promises which they never lived up to.

Q By passing an ordinance where? A In Allentown.

Q Allentown gave them permission and did not give you permission? A They haven't had any ordinance before and we have been operating.

20 Q But to go back to the original question, how would it interfere with the passengers that you take to Hightstown? You do not take any local passengers until you get a mile beyond Hamilton Square? A Yes.

Q How would you be interfered with if it was lifted? A It is not a paying proposition for them to operate. The consequence is they will be back to our territory.

30 Q I do not follow you? A It is not a paying proposition for them to operate to Allentown because the population is so small that an independent bus will never pay.

Q I don't see how you would lose by it. A We lose our future that we are looking for.

Q Do you lose anything at present? A No, but we lose our future that we are looking for.

40 Q So far as the present is concerned, you would not lose anything? A Provided they did not pick up any passengers in the City of Trenton, they may pick up passengers in the City of

*Exhibits—Testimony, May 19, 1925.*

Trenton that may interfere with us, who left the City of Trenton. We claim the restrictions on us are not legal. The City of Trenton had no right to restrict us.

Q That is another question. Suppose we lifted the restriction on their bus— A Then we will apply for it. 10

Q —then they could take local passengers. I want to get your idea. They lift the restriction, and they would carry passengers back and forth just as the trolley is doing now? A Yes.

Q How would that interfere with your income from the passengers that you take to Hightstown?

Commissioner Browne: Your present business. 20

Q I do not see it would interfere at all with you. A It would not interfere at the present time.

Q Taking up the future, how would it interfere? A The future, it will, because sooner or later they will have to do away with the trolley line or the Allentown bus. Both of them cannot operate as Mr. Johnson stated himself before the Board. It is not a paying proposition. 30

*By Commissioner Browne.*

Q You say they cannot run to Allentown. You ran to Allentown? A We did.

Q Why could you do it? A Because we only have two miles to go to Allentown. They have to go eleven miles.

Q Where will you turn off? A Robbinsville. Branch to Robbinsville, carry the people to Trenton on our bus line where they have to make eleven miles. 40

*Exhibits—Testimony, May 19, 1925.*

Q (By Mr. Weelans.) You go to Hightstown by way of Robbinsville? A Yes, sir.

Q Then your idea would be to put a shuttle bus there? A That is what we did.

Q And change cars? A And change cars. But even so, even if necessary, we can have a car there ready to bring them in like they used to.

*By Commissioner Gnichtel.*

Q If the car was there, it is the same proposition they have now? A We would not do that all the time. It is not a paying proposition.

Q Go back to something you said there that I think is important. You say if this is lifted, it will knock out either the trolley or the bus? A Yes; they both cannot live.

Q What do you base that on? A I base that on their report. Their report shows it is not a paying proposition.

Q The bus? A They lose money in the bus and lose money in the trolleys. They will have to give up one of the two sooner or later, but if they give up the trolleys and the bus is not restricted they would keep me restricted for the rest of my life.

Q They could not keep you restricted; this Board would keep you restricted. If they gave up the trolley it might be a free-for-all. A We parallel the trolley in the City of Trenton.

Q That is another question to be decided when that comes up. That is what you base it on, on their reports filed with the Board? A Right.

Mr. Weelans: As I mentioned in my question, there are just two or three words I

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*Exhibits—Testimony, May 19, 1925.*

want to say, two or three things to point out. The first thing is, there has been no change since the decision of the Board on the Allentown bus route. In other words, when the Central Transportation Company made this application to this Board, they were restricted from picking up passengers between the City of Trenton and a point one mile east of Hamilton Square and according to Mr. Johnson's own statement there has been no change in circumstances or conditions since that time, therefore, there would be no reason for changing the former ruling of the Board on that point.

Commissioner Gnichtel: This Board never hesitates to change an opinion if they find they have been wrong.

Mr. Weelans: As to the reason for that decision at that time, as I remember it, was, as has been pointed out here, the question of competing with the trolley between Hamilton Square and Trenton. To go into something that is not perhaps in evidence but nevertheless the fact, the reason that Mr. Weisberg was restricted by the Commission of the City of Trenton was because of the feeling of the City Commission that if the bus competed with that trolley, that would increase trolley fares in the City of Trenton.

I do not see what difference it makes to the people of the City of Trenton whether that competition comes from Weisberg or the Central Transportation Company. In other words, what difference does it make where the competition comes from, if there is competition with the trolley? Mr. Johnson

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*Exhibits—Testimony, May 19, 1925.*

10 tries to argue that as these corporations, the Central Transportation Company and the Trenton & Mercer County Traction Company are controlled or somewhat related, that therefor they should be considered as one. But it seems to me if this Board is going into that question, it will enter a field which will make the decision in a number of cases very difficult and would create a very bad precedent because it would be a very difficult matter to determine how far the Board was going to go in ruling that two corporations were the same. In other words, you might have one corporation with a certain number of stockholders and another corporation maybe one stockholder would hold stock in the two corporations, and varying amounts of stocks might be held by the same persons in the two corporations.

Commissioner Gnichtel: They are two different entities.

Mr. Weelans: Yes, they are two different entities. Of course, the general rule in courts of law is that they are separate entities. It seems to me that should be the same ruling of this Board for the same reason that the rule is made in other matters, in other words it is too intricate and difficult a question to determine.

Commissioner Gnichtel: As I understand it, Mr. Johnson does not deny that. He cannot deny they are two different entities. He says they are held practically by the same persons, as if one man owned them both, and their interests are so intertwined and identical that there can be no harm done. That is his position.

*Exhibits—Testimony, May 19, 1925.*

Mr. Weelans: As I say, my argument is that question is a question it would seem to me would not be good precedent for the Board to set the question of whether two corporations are related in that way, because as I say, the question might arise at some time where there would be a question of whether they are related, whether they were sufficiently related in order to be competing or non-competing corporations. Therefore, it seems to me the only safe policy to pursue is one of being separate corporations, as here, and they must be considered as any other corporations are, and as any other individuals operating that service would be. In other words, the Central Transportation Company is operating a bus line there and there is no reason why the Central Transportation Company should compete with the Trenton & Mercer County Traction Company, any more than Weisberg should be given permission to compete with the Trenton & Mercer County Traction Company. As I said before, this is not a question for the City of Trenton, but it certainly seems to me the reason for which the limitation was put on Weisberg in the first place would indicate the same limitation should be put on the Central Transportation Company, and that is, it would cause a change of fare, might cause a change in rates of fare for the local service in the City of Trenton.

I want to point out also the fact brought out in evidence, that Weisberg was the first one in this field, the first bus line here, two years; that he endeavored to open up this field and the only reason he was restricted

was to protect the Trenton & Mercer County, as he points out. If at any time the Trenton & Mercer County Traction Company should cease operation as it is now, if anyone were given permission to operate there, he certainly would be given that right.

10 Commissioner Gnichtel: You do not understand—assume this were granted—that it interferes in any of the business your client does not, do you?

Mr. Weelans: As it stands now it would not, no.

Commissioner Gnichtel: They do not ask for permission to take passengers that go to Hightstown or coming in.

20 Mr. Weelans: No; it would not interfere; his present business would not be interfered with at all. Our only argument is that the reasons for which he was limited equally apply to the Central Transportation Company and therefore both of them should be limited in the same way or both of them should be permitted to accept passengers in that territory.

30 Commissioner Gnichtel: Do you care to be heard, Mr. Johnson?

Mr. Johnson: No.

Commissioner Gnichtel: We will take the matter up in conference.

(Matter taken into conference.)

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the Matter of the Application of the CENTRAL TRANSPORTATION COMPANY for approval of municipal permits to operate one auto bus between Trenton and Allentown, New Jersey.	}	<i>Modification of the Board's Decision Eliminating Restriction Point.</i> <i>Supplemental Decision.</i>	10
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Filed June 4, 1925.

Rankin Johnson for the petitioner. 20  
Charles H. Weelans for Israel Weisberg.

This is an application by the Central Transportation Company, requesting the Board to modify its decision approving of municipal permits to operate an auto bus between Trenton and Allentown, New Jersey. The original application was approved on April 8, 1924, subject to the following condition:

30 "That the operators of said bus shall not pick up passengers who begin and end their trips between the bus terminal in Trenton and a point one mile east of Hamilton Square."

The petitioner is desirous of having this condition rescinded and offered evidence of public convenience and necessity for said modification.

It appears from the evidence that if this restriction was removed the petitioner would be able to furnish additional service by the use of this bus and further that such schedules could 40

*Exhibits—Supplemental Decision, June 4, 1925.*

be arranged as would co-ordinate the service furnished by the street railway system and the buses.

10 Israel Weisberg, who operates an auto bus line between Trenton and Hightstown over a portion of the route upon which the petitioner's buses operate, and upon permits which have been approved by the Board, with the same conditions as were cited in the Board's decision of April 8, 1924, approving of the applicant's consents, objected to the granting of this application. The operation of his bus line, however, is not affected at present by the removal of the restriction and he will not be prejudiced if and when that condition arrives on any application which he may then desire to make.

20 Upon consideration of the evidence the Board finds and determines that it is necessary and proper to modify its decision of April 8, 1924, and rescinds the first and second conditions upon which said application was approved, i. e.:

“That the operators of said bus shall not pick up passengers who begin and end their trips between the bus terminal in Trenton and a point one mile east of Hamilton Square.”

30 “That the bus conspicuously display a sign to that effect.” That in all other respects said previous decision shall remain in full force and effect.

Dated, June 4, 1925.

BOARD OF PUBLIC UTILITY  
COMMISSIONERS,

(SEAL) (Signed) By JOS. F. AUTENREITH,  
President.

Attest:

40 (Signed) ALFRED N. BARBER,  
Secretary.

*Exhibits for Objectors.*

I HEREBY CERTIFY the foregoing to be a true copy of a decision rendered by the Board of Public Utility Commissioners and ordered filed by said Board.

ALFRED N. BARBER,  
Secretary. 10

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the Matter of the Application of the MOTOR TRANSPORT COMPANY for removal of restrictions.	}	<i>Exhibits on Behalf of Trenton &amp; Mercer County Traction Corporation and Central Transportation Company.</i>	20
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The Trenton and Mercer County Traction Corporation and the Central Transportation Company, objectors to the said application, respectfully submit in evidence the following exhibits: 30

(1) Copy of the schedule of the Hamilton Square Trolley Line of the Trenton and Mercer County Traction Corporation, which copy is attached hereto and marked “Exhibit D. 1.”

(2) Copy of the schedule of the Allentown Route, also known at Route E, of the 40



Exhibits for Objectors, D. 2.

Exhibit D. 2.

CENTRAL TRANSPORTATION COMPANY

Time Table and Description  
and

10

Motor Coach Route E  
PERRY STREET TERMINAL  
to  
ALLENTOWN

Daylight Saving Time  
Standard Time

Commencing September 27, 1925

Coaches May Be Chartered for Special  
Trips at Reasonable Rates

20

Inquire for Prices. Call Trenton 7-6233  
or 7-6895 on holidays, Saturday after-  
noons and after office hours

SCHEDULE EFFECTIVE SEPT. 14, 1925

Subject to change without notice

IF the man or woman who receives the same  
salary as you and who has as many or more re-  
sponsibilities as you, can save money—you can  
too!

30

\$1.00 Opens a Savings Account

Begin to-day Make this Your Bank

THE BROAD STREET  
NATIONAL BANK

OF TRENTON

Savings Accounts Commercial Accounts  
Trust Department Safe Deposit Boxes

40

EAST STATE AT MONTGOMERY

Exhibits for Objectors, D. 2.

ROUTE "E"

TRENTON TO ALLENTOWN

Weekday and Sunday Schedule

INBOUND

Alentown	Robbinsville	Toll Gate	Public Service Station	Rosemont	Greenwood and Olden	Perry Street Terminal	10
A. M.							
6.00*	6.10*	6.15*	6.20*	6.25*	6.35*	6.45*	
8.00	8.10	8.15	8.20	8.25	8.35	8.45	
10.00	10.10	10.15	10.20	10.25	10.35	10.45	
P. M.							
12.00	12.10	12.15	12.20	12.25	12.35	12.45	
2.00	2.10	2.15	2.20	2.25	2.35	2.45	
4.00	4.10	4.15	4.20	4.25	4.35	4.45	
7.00	7.10	7.15	7.20	7.25	7.35	7.45	20
9.00	9.10	9.15	9.20	9.25	9.35	9.45	

\* Does not run Sundays.

OUTBOUND

Perry Street Terminal	Greenwood and Olden	Rosemont	Public Service Station	Toll Gate	Robbinsville	Alentown	30
A. M.							
7.00*	7.10*	7.20*	7.25*	7.30*	7.35*	7.45	
9.00	9.10	9.20	9.25	9.30	9.35	9.45	
11.00	11.10	11.20	11.25	11.30	11.35	11.45	
P. M.							
1.00	1.10	1.20	1.25	1.30	1.35	1.45	
3.00	3.10	3.20	3.25	3.30	3.35	3.45	
5.40	5.50	6.00	6.05	6.10	6.15	6.25	
8.00	8.10	8.20	8.25	8.30	8.35	8.45	
11.30	11.40	11.50	11.55	12.00	12.05	12.15	

\* Does not run Sundays.

40

Exhibits for Objectors, D. 2.

ROUTE "E"

TRENTON TO ALLENTOWN

10	Zone 1—From the Perry Street Terminal along Perry Street to Montgomery Street, through Montgomery Street and Mercer Street to Greenwood Ave., through Greenwood Ave. to Logan Avenue, through Logan Avenue to Hamilton Avenue, along Hamilton Avenue to the City Line.....	.08
	Zone 2—From the City line along Hamilton Avenue to its intersection with Nottingham Way at Rosemont.....	.10
	Zone 3—From Rosemont easterly along Nottingham Way through Hamilton Square to the Toll Gate.....	.10
20	Zone 4—From the Toll Gate through Robbinsville to Rainor's Farm.....	.10
	Zone 5—From Rainor's Farm to Allentown	.10
	Through trip between Trenton and Robbinsville .....	.20
	Through trip between Trenton & Allentown	.40

TRANSFER POINTS

30	Greenwood and Olden Aves.—Between bus and trolley.
	Greenwood and South Clinton Aves.—Between bus and trolley.

NOTE

Packages will be transported between points on suburban routes insofar as it can be done without interference with the convenience of passengers, at two cents per pounds with a minimum charge of twenty-five cents.

Exhibits for Objectors, D. 3.

Exhibit D. 3.

MOTOR TRANSPORT COMPANY, Inc.

Effective June 1, 1926.

	WEEK DAYS		SAT. SPL.		SUNDAY		P.M.
	A.M.	P.M.	P.M.	A.M.	A.M.	P.M.	
Leave New Brunswick							6.00
ed Lion Inn							6.15
ceans							6.30
ayton							6.40
ranbury							6.50
r. Hightstown							7.00
y. Hightstown							7.30
indsor							7.42
obbinsville							7.52
amilton Square							7.57
ercerville							8.07
r. Trenton							8.20
Leave Trenton							6.00
ercerville							6.15
amilton Square							6.30
obbinsville							6.40
indsor							6.50
r. Hightstown							7.00
y. Hightstown							7.30
indsor							7.42
obbinsville							7.52
amilton Square							7.57
ercerville							8.07
r. Trenton							8.20
Leave New Brunswick							6.00
ercerville							6.15
amilton Square							6.30
obbinsville							6.40
indsor							6.50
r. Hightstown							7.00
y. Hightstown							7.30
indsor							7.42
obbinsville							7.52
amilton Square							7.57
ercerville							8.07
r. Trenton							8.20

This bus is not responsible for errors in time tables, inconvenience or damage resulting from delayed buses or extra trips for special events. This bus is not responsible for errors in time tables, inconvenience or damage resulting from delayed buses or failure to make connections.

Leave New Brunswick from Penna. R. R. Station. Leave Trenton from South Montgomery Co. Terminal. Leave Hightstown from Motor Transport Co. Terminal. Leave New Brunswick from Penna. R. R. Station. Leave Trenton from South Montgomery Co. Terminal. Leave Hightstown from Motor Transport Co. Terminal.

Opposite Post Office, rear of Comfort Station. O. BOX 104, HIGHTSTOWN, N. J. Trip, School and Commutation Tickets. Phones—5741, Trenton. 128, Hightstown.

Reasons.

**REASONS.**

Filed July 11, 1927.

NEW JERSEY SUPREME COURT.

10 MOTOR TRANSPORT COMPANY,  
*Prosecutor,*  
*vs.*  
 BOARD OF PUBLIC UTILITY COM-  
 MISSIONERS OF NEW JERSEY,  
 CENTRAL TRANSPORTATION  
 COMPANY AND TRENTON AND  
 MERCER COUNTY TRACTION  
 CORPORATION,  
 20 *Defendants.*

*On*  
*Certiorari.*  
*Reasons.*

Motor Transport Company, prosecutor of the above-entitled writ of certiorari by Geraghty & Weelans, and Osborne, Cornish & Scheck, its attorneys, comes and prays that the order of the Board of Public Utility Commissioners of New Jersey made on the 24th day of May, 1927, whereon, among other things, the said Board ordered that restriction number one as contained in the decision of the Board of March 4th, 1926, be amended so that the same shall read

30 "That the operators of the buses shall not accept passengers who begin and end their trips between the bus terminal in Trenton and the intersection of Burtis avenue and Nottingham Way in Hamilton Township; the restrictions in other respects to remain as prescribed in the Board's decision of March 4th, 1926, thereinbefore referred to,"  
 40

Reasons.

as by reference to the said order will more fully appear, may be declared null and void and for nothing holden insofar as the same applies to this prosecutor for the following reasons, namely:

1. The said order of the Board is contrary to the evidence before the Board. 10
2. The evidence before the Board does not reasonably support the said order.
3. The said order was without the jurisdiction of the Board.
4. The effect of said order is to deny to the prosecutor the equal protection of the laws.
5. The effect of said order is to unlawfully and unjustly discriminate against the prosecutor in the prosecution of a lawful business. 20
6. That the said action of the said Board of Public Utility Commissioners, as aforesaid, is in divers other respects illegal, unjust and oppressive and should be set aside and for nothing holden.

GERAGHTY & WEELANS,  
 OSBORNE, CORNISH & SCHECK,  
 Attorneys of Prosecutor. 30

*Supplemental State of Case.*

**SUPPLEMENTAL STATE OF CASE.**

NEW JERSEY SUPREME COURT.

MOTOR TRANSPORT COMPANY, <i>Prosecutor,</i>	}	<i>On Cer-</i>	10
<i>vs.</i>		<i>tiorari.</i>	
BOARD OF PUBLIC UTILITY COM- MISSIONERS and TRENTON AND MERCER COUNTY TRACTION COMPANY, <i>Defendants.</i>	}	<i>Supple-</i>	
		<i>mental</i>	
		<i>State of</i>	
		<i>Case.</i>	
		<i>Stipulation.</i>	

It is hereby stipulated by and between the parties hereto that the application of Israel Weissberg and Hyman Gordon to the Board of Public Utility Commissioners for approval of local permission to operate an auto bus between the City of Trenton and the Borough of Hightstown, filed January 17, 1922, contained the following: 20

“Petitioners will not accept or discharge passengers \* \* \* in Hamilton Township or at any point from Trenton to a point one mile east of Hamilton Square.” 30

That the Ordinance of the City of Trenton, dated January 2, 1922, contained the following authorizing Weissberg and Gordon to operate a jitney bus:

“No passenger or passengers shall be accepted for the City of Trenton from a point one mile east of Hamilton Square, or for or at intermediate points, and no passenger or passengers shall be accepted when going out of the City of Trenton for any point west of one mile east of Hamilton Square.” 40

*Supplemental State of Case.*

That the order of the Board of Public Utility Commissioners dated March 27, 1922, granting permission to Weissberg and Gordon to operate pursuant to the above-mentioned application contained the following condition:

10 "That the busses shall not take on passengers who begin and end their trip between the bus terminal in Trenton and a point one mile east of Hamilton Square."

That the testimony taken before the Board of Public Utility Commissioners on March 22, 1922, contained the following statement by Mr. Weelans, representing the applicants:

20 "In this Ordinance and on the application here we agreed not to take any people between Hamilton Square and Trenton."

To which Commissioner Osborne replied:

"That meets that situation. They will do no local business between Hamilton Square and the City of Trenton." (Page 4.)

Commissioner Osborne: "They have agreed to a restriction which will eliminate that competition. They won't do any local business for a mile the other side of the terminus of your line." (Page 11.)

30 The application of Weissberg for permission to operate as The Hightstown-Trenton Bus Line, filed with the board on May 21, 1924, and the Ordinance of the City of Trenton and the board's decision, repeated the same restriction.

The testimony of Mr. Weissberg taken on this application contained the following:

40 Question: In this application you have agreed not to pick up any passengers, to operate a jitney bus between a point one mile east of

*Supplemental State of Case.*

Hamilton Square and the terminus in the City of Trenton?

Answer: Yes, sir.

Question: In order not to compete with the Mercer County Traction Company?

Answer: In order not to compete with the Mercer County Traction Company. 10

Question: That limitation was also in the former limitation.

Answer: Yes, sir. (Page 6.)

Question: Then Central Transportation Company now operates to Allentown from Trenton?

Answer: Yes. They started two or three months ago from Allentown into Trenton and Robbinsville.

Question: That parallels your route from Robbinsville to Trenton? 20

Answer: Yes.

Question: They also have agreed not to pick up any passengers between a point one mile east of Hamilton Square and the City of Trenton?

Answer: Yes. (Page 7.)

Question by Mr. Conlon in Reference to the Central Transportation Company.

They do not interfere with your schedule? 30

Answer: Sometimes they do. They do in the morning. They have taken an average of \$3.00 a day of my gross income since they started.

Similarly, the board's decision in the matter of the application of the Motor Transport Company for approval of municipal permits to operate between Trenton and Hightstown contained the same condition. The testi-

*Supplemental State of Case.*

mony of Mr. Weissberg thereon contains the following:

Question: The routes over which these busses are to operate are the same as travelled by you in your former permit from this board, and the City of Trenton and the Borough of Hightstown?

Answer: Yes.

Question: Same rights involved?

Answer: Yes.

Question: Together with same restrictions?

Answer: Yes, sir.

In the proceedings by the Central Transportation Company before the board on March 4th, Rankin Johnson, appearing for the Central Transportation Company made the following statement:

“There has been a bus line operating from Allentown to Yardville, connecting with out trolley service from Yardville to Trenton. We have entered on a plan to endeavor to serve either by a street railway or busses the communities serving Trenton. The bus line is to be operated by the Central Transportation Company which is a subsidiary of the Trenton and Mercer County Traction Company, organized for the purpose of operating busses.

“In our application now before your board we have created a ‘dead-zone,’ as we call it, between Mercerville and Hamilton Square.”

Question by Commissioner Osborne: A non-competing zone?

Johnson: That is it, yes, sir.

Johnson: I think I should say this: that there is a bus operating between Trenton and Hightstown conducted by Weissberg and

*Supplemental State of Case.*

Gordon, and they oppose our right to operate between Trenton and Allentown. In fact, after we had made our application, Weissberg came in and made application himself. His application was refused and ours granted.

As a witness in the same matter he testified that he was president of the Central Transportation Company and also president of the Mercer County Traction Company and that the application by the Central Transportation Company meets with the approval of the Traction Company.

The decision of the board under date of April 8, 1924, approving the application of the Central Transportation Company contained the condition that he should not pick up passengers who begin and end their trips between the bus terminus in Trenton and a point one mile east of Hamilton Square.

This restriction was continued in the supplemental decision of the board under date of September 30, 1924 on the application of the Central Transportation Company in the same matter.

OSBORNE, CORNISH & SCHECK,  
Attorneys for Prosecutor.

EDWARD L. KATZENBACH,  
Attorney for Defendant.

JOHN O. BIGELOW,  
Attorney for Board of Public Utility  
Commissioners.

*Supreme Court Opinion.*

**SUPREME COURT OPINION.**

NEW JERSEY SUPREME COURT.

No. 238, October Term, 1927.

10 MOTOR TRANSPORT COMPANY,  
*Prosecutor,*

*vs.*

BOARD OF PUBLIC UTILITY COM-  
MISSIONERS OF NEW JERSEY,  
CENTRAL TRANSPORTATION COM-  
PANY and TRENTON AND MER-  
CER COUNTY TRACTION COM-  
PANY,

20 *Defendants.*

*On Certi-  
orari, etc.*

Argued October 6, 1927; decided February 25,  
1928.

*Syllabus.*

Under Section 24 of the Public Utility Act  
(P. L. 1911, p. 384), the Board of Public Utility  
Commissioners has power to impose upon an  
auto bus line such conditions as to service and  
30 operation as the public convenience and interests  
may reasonably require; and in pursuance of  
such power the Board may refuse to rescind a  
restriction originally imposed upon a bus line  
that its buses shall not take on passengers who  
begin and end their trips in a certain section  
of its route, even though it has rescinded a sim-  
ilar restriction as to such section originally im-  
posed upon another bus line running over a part  
of the same route, where such action is reason-  
ably required for the convenience and interests  
40 of the public concerned in the whole transporta-  
tion field of both lines.

*Supreme Court Opinion.*

On Certiorari, etc.

Before Justices Trenchard, Kalisch and Kat-  
zenbach.

For the prosecutor, Geraghty & Weelans and  
Osborne, Cornish & Scheck.

For the defendant Central Transportation 10  
Company and the Trenton and Mercer County  
Traction Company, Edward L. Katzenbach.

For the defendant Board of Public Utility  
Commissioners, John O. Bigelow.

The opinion of the Court was delivered by  
Trenchard, J.

The Motor Transport Company, the prosecutor  
herein, and its predecessors, Israel Weisberg and  
Hyman Gordon, for the past five years have 20  
operated a bus line between Trenton and Hights-  
town.

The prosecutor's buses, two in number, were  
operating under a restriction or condition that  
the buses "shall not take on passengers who  
begin and end their trips between the bus ter-  
minal in Trenton and a point one mile east of  
Hamilton Square," known as the old Toll Gate  
on Nottingham Way. Thereunder a bus travel-  
ing from Hightstown to Trenton takes on no 30  
passengers after it leaves the Toll Gate, although  
it discharges passengers between the Toll Gate  
and Trenton; and a bus going in the opposite  
direction cannot discharge passengers in Trenton  
or between Trenton and the Toll Gate, although  
it picks them up. In other words, in whichever  
way the bus is running, each passenger must  
either begin or end his trip between the Toll Gate  
and Hightstown, the buses doing no purely local  
business in Trenton or west of the Toll Gate. 40

*Supreme Court Opinion.*

This restrictions (which originated in the ordinance of the City of Trenton authorizing the operation of prosecutor's buses) was imposed upon the prosecutor's predecessors with their consent by the Public Utility Commission pursuant to Section 24 of the Public Utility Act, which reads " \* \* \* And the Board shall have power \* \* \* to impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interests may reasonably require" (P. L. 1911, p. 384).

On October 14, 1926, the prosecutor made application to the Board to rescind the restriction above mentioned, so that the company's two buses might do a local business in Trenton and west of the Toll Gate, in addition to their through business between Trenton and Hightstown and intermediate points.

On April 22, 1927, after hearing, the Board amended the restriction so as to substitute for "a point one mile east of Hamilton Square" the intersection of Burtus avenue and Nottingham Way in Hamilton Township. Burtus avenue is about two-thirds of a mile west of the Toll Gate, so that the result of this amendment was to grant the petition of the Motor Transport Company insofar as it related to the section of the route between the Toll Gate and Burtus avenue, and to deny the petition insofar as it related to that part of the route between Burtus avenue and the terminus in Trenton.

This is the order now brought up for review by this writ.

As we have pointed out, this bus line was established and operated primarily for the convenience of those living along, or having occasion

*Supreme Court Opinion.*

to journey to, that part of the route of the bus line east of the Toll Gate.

The first subject of consideration, therefore, is how would the removal of the restriction affect the convenience of that part of the public.

Obviously, their service would not be improved in the slightest. The prosecutor operates only two buses, has permits for two only, and does not appear to contemplate any more. On the contrary, local business in Trenton and west of the Toll Gate might seriously interfere with the service rendered the people for whom primarily this line was established. Intending passengers from Trenton to Hightstown at certain hours, if local business were permitted, would likely find the bus filled to capacity with local passengers bound for the easterly part of Trenton or the westerly part of Hamilton Township; and travelers from Robbinsville (six miles west of Hightstown) to Trenton would likely find the bus crowded west of the Toll Gate.

Since Trenton is the center of population in its vicinity, most of the passengers on the outbound trip board the bus in Trenton, and on the inbound trip most of them are there discharged. But outside of Trenton, the passengers enter the bus or alight from place to place between the Toll Gate and Hightstown, so that the peak load is carried between Trenton and the Toll Gate. It is on this part of the trip already carrying the peak load that the prosecutor wishes to be allowed to do more business.

On the examination of Mr. Weisberg, the president of the prosecutor, he was asked: "Are your buses filled? A Between one mile east of Hamilton Square and Trenton."

*Supreme Court Opinion.*

We therefore believe that the Board was quite justified in considering that the convenience of the public for whom this bus line was primarily established and now serves, would have been affected adversely by granting the petition of the prosecutor.

10 But, of course, the convenience of the public west of the Toll Gate must be considered. If there is not sufficient transportation service in this locality and the situation would be improved by allowing the prosecutor to accept local traffic, then possibly its petition might well have been granted.

Now, the Trenton and Mercer County Traction Corporation operates a trolley line between State and Broad streets in Trenton and Hamilton Square, one mile west of the Toll Gate. Numerous cars run on this line. The Central Transportation Company, a subsidiary of the Traction Corporation, operates a bus line known as Route A between Perry street, Trenton, and the intersection of Hamilton avenue and Nottingham Way. The intersection of Hamilton avenue and Nottingham Way is three miles west of the Toll Gate. These buses run every thirty minutes during the rush hours and every hour during the remainder of the day. The Central Transportation Company operates another bus line between Perry street, Trenton, and the hamlet of Allentown, via the Toll Gate, on a two-hour schedule.

In comparison with the above, it may be noted that the prosecutor's buses run on the average about every three hours.

In the face of these facts, the prosecutor did not even attempt to prove that public convenience in Trenton or west of Hamilton Square would be served by permitting it to do local business, but

*Supreme Court Opinion.*

confined its evidence, as we understand it, to the stretch of one mile between Hamilton Square and the Toll Gate.

Mr. and Mrs. Fouratt testifies that they lived at Nottingham Way and Great avenue, between Hamilton Square and the Toll Gate; that in order to get to Trenton they had to walk half a mile west to Hamilton Square to get a trolley car, a half a mile east to the Toll Gate for prosecutor's bus, or else take a Central Transportation bus in front of their house.

Obviously, people living on this stretch of one mile would have been inconvenienced by lifting the restriction as to that mile, but would not have been inconvenienced by granting the petition of the prosecutor *in toto*. The Board, in order to meet this situation, revoked the restriction between the Toll Gate and Burtus avenue. With this change, a person living in the middle of the sector between Burtus avenue and Hamilton Square is within 300 yards of the end of the trolley line and the same distance from prosecutor's bus stop at Burtus avenue, and can get a Central bus at his door.

Of course, if the route traveled by the prosecutor's buses were sparsely populated, so that increased revenue were necessary to make it worth while for prosecutor to continue its service, then the rescinding of the restrictions in question might well be necessary for the public convenience, in order that service be continued. However, no evidence at all was submitted by the prosecutor to this effect as we see it. We only know that its buses were well filled between Trenton and the Toll Gate.

At the hearing before the Board, the prosecutor seemingly gave little attention to public

*Supreme Court Opinion.*

convenience but relied primarily on this proposition: The prosecutor's line was established in 1922; two years later the Central Transportation Company inaugurated its service between Trenton and Allentown, paralleling the line of prosecutor from Trenton to Robbinsville; this line was originally subject to the same restriction as the prosecutor, against local service between its terminus in Trenton and the Toll Gate on Nottingham Way; in 1925 the Board revoked this restriction on the Allentown line. Prosecutor contends that the restriction should be revoked as to it, so as to put it on a parity with the Allentown line; but, obviously, this cannot be done regardless of public convenience.

There were, however, certain special circumstances applicable to the Allentown line and not applicable to prosecutor's line. Allentown is a small hamlet, much smaller than Hightstown. When the Board was considering the application of the Central Transportation Company to rescind this restriction, Mr. Weisberg, president of the present prosecutor, testified in effect that it is not a paying proposition for the Central Transportation Company to operate to Allentown because the population is so small that a "bus will never pay." Now, it is to be borne in mind that it is the duty of the Board to protect from unreasonable and destructive competition existing facilities which are actually serving the public, so that the public may continue to have the benefit of such service. *Hunter v. Board of Public Utility Commrs.*, 1 N. J. Mis. R. 408. It was necessary, then, to raise the restriction on the Allentown bus in order that it might obtain additional revenue and continue to serve the people of Allentown.

*Supreme Court Opinion.*

Furthermore, it appeared that the Central Transportation Company was operating a line in Trenton (Route A) over the same streets as their Allentown bus, as far as the intersection of Hamilton avenue and Nottingham Way, and that, during certain times of the day there are so many local passengers desiring to ride on these streets as to require an additional bus, which would not be necessary if the Allentown bus operating over the same streets were permitted to handle these local passengers.

These considerations do not apply to the prosecutor's bus line, and in all the circumstances the question properly before the Board was how to promote the service of the public. Since it appears from the evidence that the restriction which the Board refused to rescind was one reasonably required for the convenience and interests of the public concerned in the whole transportation field of both lines, the order of the Board under review will be affirmed, with costs.

*Order of Affirmance.*

**ORDER OF AFFIRMANCE.**

NEW JERSEY SUPREME COURT.

10 MOTOR TRANSPORT COMPANY,  
*Prosecutor,*

*vs.*

BOARD OF PUBLIC UTILITY COM-  
 MISSIONERS OF NEW JERSEY,  
 CENTRAL TRANSPORTATION  
 COMPANY and TRENTON AND  
 MERCER COUNTY TRACTION  
 CORPORATION,  
*Defendants.*

*On Cer-*  
*tiorari.*

*Order of*  
*Affirmance.*

20 This cause having been argued at the October  
 term 1927, of this court by Geraghty &  
 Weelans, Esqs., and Osborne, Cornish & Scheck,  
 Esqs., of counsel for the prosecutor, and John  
 O. Bigelow, Esq., of counsel for the defendant,  
 Board of Public Utility Commissioners, and Ed-  
 ward L. Katzenbach, Esq., of counsel for the de-  
 fendants, Central Transportation Company and  
 Trenton & Mercer County Traction Corporation,  
 30 and the Court having considered the same and  
 finding no error in the record, proceedings or  
 order of the Board of Public Utility Commis-  
 sioners:

It is thereupon ORDERED and ADJUDGED that the  
 order and proceedings of the Board of Public  
 Utility Commissioners, removed by writ of cer-

*Order of Affirmance.*

tiorari in this cause, be and the same are hereby  
affirmed with costs.

Dated March 8, 1928.

Entered March 8, 1928.

On motion of 10

EDWARD L. KATZENBACH,  
 Of Counsel with Defendants, Central  
 Transportation Company and Trenton  
 & Mercer County Traction Company.

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*Notice of Appeal.*

**NOTICE OF APPEAL.**

NEW JERSEY SUPREME COURT.

No. 238, October Term, 1927.

10 MOTOR TRANSPORT COMPANY,  
*Prosecutor,*

*vs.*

BOARD OF PUBLIC UTILITY COM-  
MISSIONERS OF NEW JERSEY,  
CENTRAL TRANSPORTATION COM-  
PANY AND TRENTON AND MER-  
CER COUNTY TRACTION COM-  
PANY,

*Defendants.*

*Notice of  
Appeal.*

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To John O. Bigelow, attorney for Board of Public  
Utility Commissioners, and Edward L. Kat-  
zenbach, attorney for Central Transportation  
Company and the Trenton and Mercer  
County Traction Company, defendants:

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TAKE NOTICE, that the Motor Transport Com-  
pany, a municipal corporation, prosecutor, ap-  
peals to the New Jersey Court of Errors and  
Appeals from the judgment entered in this cause  
upon the following ground:

That the New Jersey Supreme Court erred in  
giving judgment for the defendants instead of for  
the prosecutor.

OSBORNE, CORNISH & SCHECK,  
Attorneys for Motor Transport Company.

40

*Notice of Appeal.*

Service of a copy of the within is hereby ac-  
knowledged this 22nd day of March, 1928.

J. O. BIGELOW,

Attorney for Board of  
Public Utility Commissioners.

Service of a copy of the within is hereby ac-  
knowledged this 3rd day of April, 1928.

EDWARD L. KATZENBACH,

Attorney of Central Transportation Com-  
pany and Trenton and Mercer County  
Traction Company.

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## New Jersey Court of Errors and Appeals

MOTOR TRANSPORT COMPANY,  
*Appellant,*

*vs.*

BOARD OF PUBLIC UTILITY COM-  
MISSIONERS OF NEW JERSEY,  
CENTRAL TRANSPORTATION  
COMPANY and TRENTON AND  
MERCER COUNTY TRACTION  
CORPORATION,

*Appellees.*

*On  
Certiorari.*

### POINTS FOR APPELLANT.

#### Statement of Issue.

This writ is to test the right of the Board to prefer one operator over another in the approval of municipal consents to use the public streets of Hamilton Township for the carrying on of a bus transportation business.

The appellant has succeeded to the business established in April, 1922, by Israel Weisberg and Hyman Gordon. Later Weisberg bought out the interest of Gordon and continued to operate the business until 1926, when he formed the prosecutor company and transferred to it all of his rights in the route and the buses and in the consents to operate the same.

The Utility Board approved the transfers to the prosecutor on March 4, 1926.

The route in Hamilton Township over which the prosecutor runs its buses parallels the line of the trolley of the defendant, Trenton and Mercer County Traction Corporation—although

not on the same street—from the township line, near Logan street, Trenton, to the settlement known as Mercerville, a distance of approximately two miles. The route of the buses is along Greenwood avenue to Nottingham Way and thence on Nottingham Way to Mercerville. The trolley follows East State street, looping around the Inter-State Fair Grounds and joining the bus route at Mercerville. East State street runs in the same general direction as Greenwood avenue and about a quarter of a mile distant therefrom, but after passing Nottingham Way the route of the trolley diverges from that of the bus which follows Nottingham Way. The two routes are a half mile apart at the point where the bus route enters Nottingham Way and continue to diverge without connecting streets until the Inter-State Fair Grounds are passed, a distance of approximately a half a mile. From Mercerville to Hamilton Square, a distance of something over a mile, the trolley and bus follow the same street.

When the bus route was established in 1922, that operation was restricted by the order of the Board against accepting passengers "who begin and end their trips between the bus terminal at Trenton and a point one mile east of Hamilton Square" (State of Case, p. 20).

This restriction was made in the interest of the Trenton and Mercer County Traction Corporation in pursuance of the policy adopted by the Board of preventing destructive competition with existing lines of transportation (State of Case, p. 90). This policy is supposedly in the public interest, to retain for it such transportation facilities as exist until an adequate substitute is supplied.

Such being the situation in March, 1922, the Board held, in effect, that this transportation field between the terminus in Trenton and one mile east of Hamilton Square was completely occupied by the Trenton and Mercer County Traction Corporation, and that it would be injured by the competition of the Weisberg and Gordon bus service line then about to be inaugurated, without corresponding benefit to the public. The new operation was therefore restricted.

In 1924, the owners of a large portion of the stock in the traction company decided to embark in the bus business and operate a route identical with the then Weisberg line from Trenton to beyond the restricted zones, one mile east of Hamilton Square, and the status as to the completeness of the occupancy of the traction company within the restricted zone was again recognized by the Board by the imposing of the same restriction on the Central Transportation Company as had previously been imposed on the Weisberg line.

See order of Board of April 8, 1924 (Case, pp. 95, 96 and 97).

No identity of organization nor of rights arising therefrom was then recognized nor even claimed.

Both bus lines were treated as new systems and not entitled to occupy any portion of the transportation field between Trenton and one mile east of Hamilton Square because that field was then, as the Board viewed it, completely occupied by the traction company.

On June 4, 1925, however, the Board found after hearing, that conditions had changed and that the transportation field between Trenton and

one mile east of Hamilton Square was no longer completely occupied by the traction company, and that the public interest would be served by increased facilities. The Board then removed the restriction as to the defendant, Central Transportation Company.

At that time, however, and as part of that decision the Board expressly preserved whatever rights the prosecutor had, in the following language:

“Israel Weisberg \* \* \* objected to the granting of this application. The operation of his bus line, however, is not affected at present by the removal of the restriction and he will not be prejudiced, if and when that condition arrives, on any application which he may then desire to make.”

See order of Board of June 4, 1925 (Case, pp. 12, 39, 124).

In December, 1926, the prosecutor, having obtained a consent from Hamilton Township, applied for the approval of that consent and the lifting of the restriction (Case, p. 4).

In the order now under review, entered on that combined application, the Board failed to remove the restriction, except as to that portion of the route which is one-quarter of a mile east of Hamilton Square.

On certiorari the Supreme Court sustained the finding of the Board and that order of the Supreme Court is now here on appeal.

#### **Analysis of Opinion of Supreme Court.**

In the opinion of the Supreme Court the inquiry is divided into four categories.

First: The interest of the public located on that portion of the appellant's line between Hightstown and the beginning of the restricted zone.

Second: The interest of the public located on that portion of the appellant's line within the restricted zone.

Third: The interest of the public located on that portion of the line of the defendant, Central Transportation Company, lying between Allentown and the beginning of the restricted zone.

Fourth: The interest of the public lying within the restricted zone.

We think that the conclusions of the Supreme Court are based on an erroneous impression as to the effect of the testimony and to its failure to give due consideration to the reservation in favor of appellant made by the Board in its earlier order.

First, taking up the Court's opinion relating to “that part of the route of the bus line east of the toll gate,” this part of the route being unrestricted.

The Court deduced from the evidence, and so stated in the opinion, that the lifting of the restriction further than was done by the Board would adversely affect the riding public east of the restricted zone. In arriving at this conclusion the Court was misled in certain respects which we shall endeavor to point out.

The Court's argument proceeds on the assumption that the appellant's buses were filled to capacity under the conditions existing at the time this case was heard. Their opinion is based on an answer by the appellant found on page 26,

where it is quite evident from an examination of the context, that the transcript of the testimony contains a misleading error. On line 30, page 26, the appellant was asked "Are your buses filled?" It is apparent from his answer that he wished to clarify the questions as the answer is "Between one mile east of Hamilton Square and Trenton." Following this the stenographer has a period, but it is obvious that there should have been an interrogation point, because the next line is an answer to a question. Q "Yes. Are your buses filled?" A "No, not all the time." It is certain that the appellant did not intend to say that his buses were filled between one mile east of Hamilton Square and Trenton. We believe what he did intend was an inquiry to clarify the question asked him, as to the part of the route intended to be covered by the question. When that was made clear, by the answer of the questioner, stating that the part between one mile east of Hamilton Square and Trenton was intended to be covered by the question, the appellant answered "No, not all the time." So that the only evidence before the Board was that the buses were not filled all the time. Furthermore the Supreme Court overlooked the previous statement made by the appellant to this effect: Q "Do you ever have to put on extra buses to handle the business?" A "I have not asked for any extra buses but if there is a necessity for it, I would say yes" (p. 26, l. 10). The testimony does not show, contrary to the conclusion of the Supreme Court, that the lifting of the restriction would be a detriment to the riding public outside the restricted zone and there is a fair inference that with the added financial strength resulting from the ability to do business throughout the whole length of the line, better service could be rendered to the public throughout the restricted zone.

It is the duty of the appellant, as of every public utility, to render adequate service and the duty of the Board to compel a utility to do so. The fulfillment of this duty, however, is limited, practically if not legally, to the financial ability of the utility to carry on.

Further, we feel sure that the Supreme Court has attributed to the Board something that the Board did not have in mind in making its decision. The Board was not misled by this evidence and the proof of this is that they did lift the restriction in part but failed to lift it where the route came into competition with the Mercer County Traction Company and the Central Transportation Company. We think this indicative of the fact that the Board's reaction to the testimony on this aspect of the case was not fear of injury to the riding public outside of the restricted zone but fear of injury to the trolley company—of which more hereafter.

This brings us to the second of the categories discussed by the Supreme Court, namely, the effect on the public within the restricted zone. The Court says there was no attempt on the part of the appellant to show necessity and convenience within that zone. We feel that the Court has overlooked the offer of the testimony (see p. 26 of the record), where it was specifically stated (as adverted to later in the Supreme Court's opinion) *that additional transportation facilities were needed—thus proving necessity and convenience.* The record in that case was introduced by the appellant *for that very purpose* (see case, p. 21, ll. 36 to 40).

In that case the appellant here made the claim that it was entitled to equality of opportunity in serving the public along that route and the

Board in its decision specifically stated that the appellant here would not be prejudiced by the granting of the application then made "on any application which he may then desire to make."

It is our contention that by this language the Board pledged itself not to continue to impose this restriction on the appellant for the benefit of the trolley company then serving the territory nor for the benefit of the Central Transportation Company then being allowed to serve the territory and that the appellant has relied on this pledge of the Board to its prejudice.

As to the third and fourth categories in the opinion of the Supreme Court, we feel that the argument in regard to these does not in any manner affect the appellant's rights to equality of opportunity. We have not argued and do not argue that the Board was wrong nor that we were prejudiced by its order lifting the restriction as to the Allentown Bus Line and the argument of the Supreme Court in this respect is not against us.

Granting, as the evidence in the former case shows, that the necessity and convenience of the people within the restricted zone required better service and assuming (although the random answer of the appellant, referred to by the Supreme Court (p. 146, l. 30) is hardly convincing evidence of the fact assumed) that the service outside of the restricted zone needed the support of increased revenues which might be obtained within the restricted zone, the former order of the Board lifting the restriction was unassailable, but at that time the appellant appeared and, in effect, said, "I also run my bus through this restricted zone. I also am capable of furnishing additional facilities for the re-

stricted zone. I also need the additional revenue to support my operation and, moreover, I have been in the field several years longer than the other party and if anybody is entitled to priority of consideration I am."

The Board expressly recognized the equity of that contention and inserted in its order the clause in its favor which has been frequently referred to. That reservation certainly meant something, and yet on the application by appellant the Board, by its order here under review, failed (as we believe without having given the matter sufficient consideration) to recognize the status of the appellant created in the reservation in the preceding order.

#### ARGUMENT ON THE LAW.

Before the Board the status of each of the bus lines was the same. Each was seeking to engage in a lawful business and exercise a right common to all citizens except as restricted by terms. P. L. 1916, p. 284 (The Kates Act) as amended.

See *Public Service v. Reinhardt*, 92 N. J. Eq. 365 (367).

That Act does not confer a franchise but is merely a permit or license to use the public streets, during the pleasure of the legislature, and subject to such conditions imposed to insure public order and safety as the terms of the statute itself and the local ordinances provide and subject to the payment of a stipulated portion of its income to the municipality.

*Public Service v. Reinhardt*, 92 N. J. Eq. 365 (371).

The statute is a regulatory and a revenue measure. It is permissive but not dedicatory. It is a privilege and not a grant. The rights under it are not property nor the subject of sale and the possessor of it has no exclusive right.

*Public Service v. Reinhardt, supra*, (371);  
*West v. Asbury Park*, 89 N. J. L. 402.

His only right as against others is to protection in his possession so long as he is giving adequate service.

The appellant and the defendant Central Transportation Co., when they came before the Board, had each as much right as the other, except that for four years the appellant and its predecessors had been standing by ready at any time to furnish service over the restricted zone in the event that the traction company left the public necessity unprovided for.

In 1925 this happened and the Central Transportation Company was allowed to fill in the gap left by the traction company, but subject to the rights of the appellant to equal treatment whenever it should see fit to make its application.

The defendant, Central Transportation Company, derived no rights from the traction company.

It is a separate corporate entity; its revenues are not devoted to the maintenance of the traction system, but are its own, (Case, pp. 111 and 112).

The only relation with the traction company is a common stock ownership, but this gives it no right of succession. It claims no rights by grant, nor could it derive by grant of the trolley franchise any rights in the streets except the right to operate a trolley.

The consent of the traction company to the operation by the Central Transportation Company has no legal significance, except to show necessity and convenience.

The traction company has no rights that are being infringed on nor which it can protect and it can have no voice in the determination as to who may use the public streets.

Its only right rests in that public policy which gives it protection from injurious competition, so long as it is furnishing an adequate public service.

It has attempted to create *out of that public policy* an exclusive, monopolistic right which it might, by its consent, share with its related company, *but that public policy* is founded in the public interest and not on private rights.

It having been demonstrated to the Board that the public interest would not further be served by the restriction in favor of the traction company (Case, pp. 12, 37, 124), the prosecutor was entitled to equality of opportunity in the use of the public streets for the purposes of its business, unless some other user could rightfully invoke the protection of that public policy in its behalf.

The only other user was the Central Transportation Company. It, however, had no rights which were superior to the appellant. It was not the first on the ground, nor did it derive anything from its relation to the traction company.

The restriction on the appellant was no longer in the interest of the traction company and to impose it in favor of the transportation company was a denial to the appellant of the equal protection of the laws, (*Gulf, Colorado and Santa*

*Fe Railway Co. v. Ellis*, 165 U. S. 150; *W. D. Cargill Co. v. Minnesota*, 180 U. S. 452,) to an equal opportunity under the law, and was an unjust and unlawful discrimination against the appellant (*Muhlenbrinck v. Commissioners*, 42 N. J. L. 346; *Morin v. Nunan*, 91 N. J. L. 506).

The Board recognized that this was the situation between the parties in its earlier decision and expressly held the case open for appellant's benefit until it should have an opportunity to apply for approval of permits within the restricted zone.

We claim that the situation has not changed in any respect since that decision of the Board and that we are entitled now, on the theory of equal opportunity and equal protection of the law, to be protected against discrimination for the benefit of other utilities.

Respectfully submitted,

GERAGHTY & WEELANS and  
OSBORNE, CORNISH & SCHECK,  
Attorneys for Appellants.

## New Jersey Court of Errors and Appeals

MOTOR TRANSPORT COMPANY, <div style="text-align: right;"><i>Appellant,</i></div>	}	<i>On Appeal from Supreme Court.</i>
<i>vs.</i>		
BOARD OF PUBLIC UTILITY COM- MISSIONERS, <i>et al.</i> , <div style="text-align: right;"><i>Respondents.</i></div>		

### BRIEF OF JOHN O. BIGELOW FOR BOARD OF PUBLIC UTILITY COMMISSIONERS.

The opinion of Justice Trenchard in the Supreme Court is so persuasive on the subject of public convenience and necessity that no further argument on that subject seems necessary. But the appellant seeks to avoid the reasoning of the Supreme Court by alleging, in effect, an estoppel against the Board.

The Allentown bus line parallels the appellant's line along a large part of its route. It was originally subject to the same restrictions as appellant's line. The Board, on June 4, 1925, removed the restrictions upon the Allentown line. The decision of the Board contained the following passage:

"Israel Weisberg \* \* \* objected to the granting of this application. The operation of his bus line, however, is not affected at present by the removal of the restriction and he will not be prejudiced if and when that condition arrives on any application which he may then desire to make" (Case, p. 124).

Appellant's counsel say:

"It is our contention that by this language the Board pledged itself not to continue to impose this restriction on the appellant for

the benefit of the trolley company then serving the territory nor for the benefit of the Central Transportation Company then being allowed to serve the territory, and that the appellant has relied on this pledge of the Board to its prejudice" (Appellant's Brief, p. 8).

Let us assume for the purpose of the argument that appellant's construction of this language is correct and that the Board in 1925 pledged itself as asserted by appellant; that the appellant relied thereon to its prejudice, and that the Board, by its order of May 24, 1927, now under review, reversed its former attitude and refused to fulfill this pledge. I reply that such a pledge is beyond the power of the Board and cannot serve to upset the Board's order of May 24, 1927.

The Board is an agency of the State, a branch of the State government. The State is not bound by the acts of the Board beyond the actual authority of the Board and likewise the Board itself, as the agency of the State, is not bound by its own prior acts beyond the scope of its authority.

*Whiteside v. U. S.*, 93 U. S. 247, 23 L. Ed. 882. Headnote. "The Government is not bound by the acts of its agent not within the scope of his authority. Individuals, as well as courts, must take notice of the extent of authority of public agents."

No specific authority to make the supposed pledge upon which appellant relies, may be found in the Public Utility Act of 1911 or in any other statute. The general grants of power to the Board are not sufficient to sustain appellant's contention.

*Hackensack Water Co. v. Board*, 96 N. J. L. 184. "It was the intent of the Legislature that the exercise of these powers should be

controlled not only by the statute itself but by the settled rules and principles of the common law."

When the application of the Central Transportation Company for the removal of the restriction on the Allentown line was pending before the Board, the only question at issue was whether the public interest required the removal of that restriction. Presumably the evidence then received by the Board was pertinent to that question and to no other. Likewise, the only parties notified of that proceeding were those interested in that issue. It seems clear that the Board was without authority to go beyond the issue before it and to pledge itself to remove the restriction on appellant's bus line. The appellant's line involved other issues, other evidence and other parties than those before the Board.

The function of the Board is quasi-judicial and the Board is bound by the principle that a judgment to be valid must be within the issues raised by the pleadings.

But even if there were no difference in parties and if the issue in 1925 had been "Shall the Board in 1927, upon the happening of certain named contingencies, revoke the restrictions on appellant's operations?" and if all the evidence pertinent to that issue and then available had been received—still the Board had no power to decide that issue and bind itself as to the course it would pursue two years later. The power of the Board in general is limited to solving present as distinct from future problems, actual and not academic questions. Conversely, when the application to remove the restrictions on appellant's buses was decided in 1927, it was the clear duty of the Board to act in the light of all evidence then available and not to shut out pertinent facts

that had developed since the hearing of the Allentown case.

Lastly, the so-called pledge is not in the form of an order but is part of an opinion setting forth the reasons which led the Board to its decision in the Allentown case. At most, the language relied on by appellant is a mere recital. Such opinion or recital is not binding on anyone. An interested party, satisfied with the order of the Board removing the restrictions on the Allentown line but affected adversely by the so-called pledge, could not have had the pledge set aside on certiorari or otherwise.

The State has not delegated to the Board power to make the alleged pledge on which appellant relies. That pledge, therefore, raises no equity in favor of appellant. The order of the Board under review should be sustained for the reasons set forth in the opinion of the Supreme Court.

Respectfully submitted,

J. O. BIGELOW,  
Of Counsel with the Board.

OF ERRORS

v. Central Transport Co.

Apr. Term.



MOTOR TRANS CO. ——— (red line)  
 CENT TRANS CO. ——— (yellow line)  
 MERCER CO. TRAC. CO. ——— (purple line)

• BUS ROUTE •  
 • HIGHTSTOWN TO TRENTON •  
 • SCALE - 1" = 1 MILE •

F. WOODRUFF.

# New Jersey Court of Errors and Appeals

MOTOR TRANSPORT COMPANY,  
*Prosecutor-Appellant,*

vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS OF NEW JERSEY, CENTRAL TRANSPORTATION COMPANY AND MERCER COUNTY TRACTION CORPORATION,  
*Defendants-Respondents.*

ON APPEAL.

BRIEF IN BEHALF OF CENTRAL TRANSPORTATION COMPANY AND TRENTON AND MERCER COUNTY TRACTION CORPORATION, DEFENDANTS-RESPONDENTS.

## STATEMENT OF FACTS

The Motor Transport Company, the appellant herein, operates a motor bus service between Trenton and Hightstown, which service was originally operated by Israel Weisberg and Hyman Gordon. Weisberg and Gordon obtained the consent of the City of Trenton to operate the route in 1922, and the Ordinance passed by the City contained the restriction that "no passenger or passengers shall be accepted for the City of Trenton from a point one mile east of Hamilton Square, or for or at interme-

ciate points, and no passenger or passengers shall be accepted when going out of the City of Trenton for any point west of one mile east of Hamilton Square" (Case, p. 135). In their application to the Board of Public Utility Commissioners for the approval of this route, they stated that they would "not accept or discharge passengers in Hamilton Township or at any point from Trenton to a point one mile east of Hamilton Square" (Case, p. 135), and the Order of the Board, dated March 27, 1922, contained that restriction (Case, p. 136). The point one mile east of Hamilton Square is also known as the Toll Gate. Later Israel Weisberg bought out the interest of Hyman Gordon, and the Ordinance of the City of Trenton, dated April 1, 1924, permitting him, trading as the Hightstown-Trenton Bus Line, to operate the route and the Decision of the Board of Public Utility Commissioners contained the restriction (Case, p. 136). Subsequently Mr. Weisberg formed the Motor Transport Company, and the transfer to the company was approved by the Board of Public Utility Commissioners on March 4, 1926, and the Decision of the Board contained the restriction (Case, p. 137).

The Trenton and Mercer County Traction Corporation, one of the defendants herein, operates a trolley service in the City of Trenton and in the County of Mercer, and has operated a trolley line between Trenton and Hamilton Square for more than twenty-five years, and numerous cars run on this line (Case, p. 127). In 1923 the Trenton and Mercer County Traction Corporation formed the Central Transportation Company for the purpose of supplementing its trolley service with a motor bus service. The Central Transportation Company

operates several lines in the City of Trenton and Mercer County and also in several other counties in the State of New Jersey. This company operates a bus line known as Route A between Perry Street, Trenton, and the intersection of Hamilton Avenue and Nottingham Way (Case, p. 108, l. 20), which intersection is three miles west of the Toll Gate. The Central Transportation Company was given permission by the Board of Public Utility Commissioners on April 8, 1924, to operate route "E," also known as the Allentown route, which extends from the terminus in Trenton, through Mercerville, Hamilton Square, Robbinsville to Allentown, New Jersey. The permission contained a restriction similar to that imposed upon the Weisberg line (Case, p. 99, l. 33), but the Ordinance of the City of Trenton approving this route contained no such restriction (Case, p. 99, l. 19), and on June 4, 1925, the Board of Public Utility Commissioners on the application of the Central Transportation Company removed the restriction (Case, p. 124, l. 25).

The Motor Transport Company filed an application with the Board of Public Utility Commissioners on October 14, 1926, requesting the Board to remove the restriction which prevented its busses from picking up passengers who begin and end their trips between Trenton and a point one mile east of Hamilton Square (Case, p. 4). After hearing the matter, the Board refused to remove the entire restriction, but modified the restriction as follows: "That the operators of the busses shall not accept passengers who begin and end their trips between the bus terminal in Trenton and the intersection of Burtus Avenue and Nottingham Way in Hamilton Township" (Case, p. 91, l. 20-30). This modification is

favorable to the prosecutor because it reduces the restricted area by permitting its busses to take and discharge passengers between Burtus Avenue and a point one mile east of Hamilton Square.

On certiorari the Supreme Court affirmed the order of the Board of Public Utility Commissioners (Case, pp. 140-147), and from that decision the prosecutor now brings this appeal, assigning as its reason that the conclusions of the Supreme Court are based on an erroneous impression as to the effect of the testimony and to its failure to give due consideration to the reservation in favor of appellant made by the Board in its earlier order.

## ARGUMENT

### I. THE BOARD OF PUBLIC UTILITY COMMISSIONERS HAD JURISDICTION.

The prosecutor in its brief made no mention of the lack of jurisdiction of the Board, and for that reason it may be assumed that this objection has been abandoned. However, a reading of the Public Utility Act shows that the Board had jurisdiction in the matter.

The Act of 1921, chapter 149, p. 390, amends section 15 of the Act of 1911, and the pertinent portions of the amendment are as follows:

"The board shall have general supervision and regulation of, jurisdiction and control over, all public utilities, and also over their property, property rights, equipment facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this act. The term 'public utility' is hereby defined to include every individual, copartnership, association, corporation \* \* \*

that now or hereafter may own, operate, manage or control within the State of New Jersey any \* \* \* auto bus commonly called jitney, the route of which in whole or in part parallels upon the same street the line of any street railway or traction railway; \* \* \* (Cum. Supp. to Comp. St., 1911-1924, Vol. 2, p. 2880, \*167-14).

This section was amended by Chapter 146 of the Laws of 1926, page 226, and the amendment continued the regulation over "auto bus," but eliminated the words "commonly called jitney, the route of which in whole or in part parallels upon the same street the line of any street railway or traction railway."

The prosecutor in its brief admits that the trolley of the Trenton and Mercer County Traction Corporation and the bus of the Motor Transport Company follow the same street from Mercerville to Hamilton Square, and in addition to this they also follow the same street from Johnston Avenue to Nottingham Way. Therefore, even prior to the 1926 amendment, the Board had jurisdiction over the bus operation of the prosecutor and its predecessors.

The restriction in question was imposed upon the appellant's predecessors with their consent by the Public Utility Commission (Case, p. 90, l. 15) pursuant to Sec. 24 of the Public Utility Act:

"\* \* \* And the Board shall have power \* \* \* to impose such conditions as to construction, equipment, maintenance, service, or operation as the public convenience and interests may reasonably require."

## II. THE APPELLANT FAILED TO ESTABLISH FACTS WHICH WOULD ENTITLE IT TO THE REMOVAL OF THE RESTRICTION.

The appellant in asking the Board of Public Utility Commissioners to remove the restriction in its entirety based its application partly upon the decision of the Board dated June 4, 1925, in which the Board lifted the restriction as to the bus operation of Route E of the Central Transportation Company, in which decision the Board stated that "the operation of his (Weisberg) bus line, however, is not affected at present by the removal of the restriction, and he will not be prejudiced if and when that condition arrives on any application which he may then desire to make" (Case, p. 16, l. 10). The purpose of that reservation and the meaning of the word "condition" are clearly shown by the testimony taken at the hearing before the Board in that matter. The testimony shows that Mr. Weisberg admitted that the lifting of the restriction on the operation of Route E would not interfere with his present business (Case, p. 116, l. 11, to p. 117, l. 30), and a similar statement was made by his attorney (Case, p. 122, l. 19-29). He merely asserted that it would hurt his future on the theory that sooner or later either the trolley line or the Allentown line, also known as Route E, would be discontinued (Case, p. 117, l. 24). Since that is the only danger alleged by him, it must be assumed that the reservation of the Board was made to protect him from that danger and not for the purposes suggested in the appellant's brief. The testimony of Mr. Johnson shows that the trolley company and Central Transportation Company are both operating in the territory in question (Case, p. 40,

l. 30, to p. 41, l. 10, and p. 41, l. 32-40). The contingency contemplated by the Board has not arisen, and for that reason the appellant is not entitled to rely upon this reservation as a basis for its present application, and is not in a position to properly assert that the Board has broken any pledge made with it or that the Supreme Court has failed to give this reservation due consideration.

The appellant has also relied upon a change of circumstances as a basis for its application. To prove a change of circumstances several witnesses were introduced. Mr. Weisberg stated that the lifting of the restriction had caused his company, the Motor Transport Company, a loss of \$3.00 a day (Case, p. 24, l. 30, to p. 27, l. 32, and p. 34). In reference to this Mr. Osborne asked the following question: "I understand you to say because of the fact that this drop in your receipts from traffic originating one mile east of Hamilton Square happened at the same time as the lifting of this restriction, that it is a fair deduction it was the result of the lifting of the restriction, is that so?" To which Mr. Weisberg replied: "Yes, we used to get it, and they get it now." (Case, p. 35, l. 39.) However, the attention of the Court is respectfully called to the testimony of Mr. Weisberg taken at a former hearing on June 10, 1924, at which time he was seeking the approval of the purchase of Gordon's interest. In that hearing Mr. Weisberg testified that the Central Transportation Company was then operating the Allentown route and was restricted between Trenton and a point one mile east of Hamilton Square, and in answer to a question he stated that the Central Transportation Company had taken about three dollars a day of his gross revenue (Case, p. 137, l. 31).

A comparison of this testimony given by him at two different hearings shows that the loss to which he referred actually occurred prior to the removal of the restriction in the operation of the bus line of the Central Transportation Company, and therefore fails to show any pecuniary loss resulting from the removal of the restriction.

Two other witnesses were introduced by the prosecutor for the purpose of showing that the removal of the restriction caused the Motor Transport Company pecuniary loss. One witness, Thomas Keegan, testified that he left the employ of Mr. Weisberg in the spring of 1923 (Case, p. 52, l. 39). This was almost a year before the Central Transportation Company operated its Allentown route under the restriction and a year and eight months prior to the lifting of the restriction. Later he testified that a couple of months after he left the Weisberg service he went to work for the Central Transportation Company, and remained in its service for about a year, a portion of which time he operated a Bay Head bus for the Company (Case, p. 54, l. 1 to l. 14). His testimony shows that if he operated a Central Transportation Company bus on the route in question he must have operated it within a year and two months from the time he left the Weisberg service, and that would mean that he had only operated a Central Transportation Company bus while it was operating under the restriction, for the restriction was not removed until June 4, 1925. It is obvious that this witness had no knowledge of facts that would tend to show that the removal of the restriction caused the Weisberg line any loss in revenue. The second witness, John Furman, testified that there had been a loss of patrons, but in his testimony

he could not state that they lived in the restricted area (Case, p. 62, l. 30). He stated that he worked for Mr. Weisberg four years and that his service ended three months prior to the hearing in January, 1927. His term of service, therefore, began prior to the entry of the Central Transportation Company and it extended over the period when the Company was operating under the restriction and also after the restriction had been removed. His testimony in no way indicates when the loss of patronage occurred, and it is submitted that it is not sufficiently accurate to show that loss of patrons only occurred after the restriction was removed.

Elmer Fouratt and Edna Fouratt, his wife, testified in behalf of the prosecutor, and stated that at one time they had lived a quarter mile east of Hamilton Square, but had since moved. Mr. Fouratt testified that his house was the same distance from the Weisberg bus stop as it was from the trolley (Case, p. 69, l. 18), and that he took the Weisberg bus because it went at the right time. Mrs. Fouratt testified that she took the Weisberg bus from Trenton because it suited her convenience (Case, p. 75, l. 15-20). Both witnesses testified that they did not know whether or not the Allentown bus of the Central Transportation Company was restricted (Case, p. 68, l. 25, and p. 75, l. 29).

To summarize the testimony introduced on behalf of the prosecutor it may be said that no evidence was introduced to show that there was any public need for lifting the restriction over that portion of the route between Trenton and Hamilton Square, and that there was only very slight evidence of public necessity for lifting the restriction for a portion of the area between Hamilton Square and a point one

mile east of Hamilton Square. The testimony is also significant because it is given by former employees, or by persons who had never lived in the restricted area or who had ceased to live there. There was no evidence that any complaint had been made to the Board by individuals living in the restricted area, and the only complaint is made by a competing company.

On the other hand there is evidence showing that the restricted area is adequately served. Mr. Fouratt testified that the trolley and the Central Transportation Company have maintained schedules and that they could be depended upon (Case, p. 70, l. 39, p. 71, l. 3), and that he had ridden on the trolley and the busses of both Companies and did not find them overcrowded (Case, p. 72, l. 32-38). Moreover, an examination of the schedules of the bus operations shows that the area is adequately served. The schedule of the Central Transportation Company is found on page 129 of the State of the Case. The points designated as the Public Service Station and Toll Gate are  $2\frac{1}{4}$  miles apart, and the Toll Gate is the point one mile east of Hamilton Square. The distance between the Public Service Station and the end of the trolley line is  $1\frac{1}{4}$  miles, and the distance between the end of the trolley line and the Toll Gate is 1 mile. The Motor Transport Company's schedule, set forth on page 131 of the State of the Case, shows that its busses stop at Hamilton Square, which is practically the end of the trolley line. If you allow the Central Transportation Company bus three minutes to go from the Public Service Station to the end of the trolley line, and then allow the bus of each Company two minutes to go from Hamilton Square or the end of the trolley line to the Toll Gate,

the comparison of the two schedules shows that the Central Transportation Company is giving more adequate service in this territory than the Motor Transport Company is giving to its patrons who live at a point one mile east of Hamilton Square and extending to Hightstown for the following reasons:

A. The spread of time covered by the Central Transportation Company's schedule is four minutes less than the Motor Transport Company on weekdays and thirty-four minutes less on Sundays.

B. The Central Transportation Company makes more trips per day.

C. The average headway is less in each case on the Central Transportation Company's service.

D. The maximum headway of the Central Transportation Company (that is, the greatest length of time between any two trips) in each case is less than the Motor Transport Company.

The Central Transportation Company operates a bus line known as Route A between Perry Street, Trenton, and the intersection of Hamilton Avenue and Nottingham Way (Case, p. 108, l. 20), which intersection is three miles west of the Toll Gate. This bus runs every thirty minutes during the rush hours and every hour the rest of the day. The Allentown route of the Central Transportation Company operates upon a two-hour schedule (Case, p. 129). In comparison with this it should be noted that the appellant's bus runs from Trenton to Hightstown about every three hours.

And it is also submitted that if the service of the Motor Transport Company is adequate for Hightstown, it follows that the Central Transportation Company, which is giving more service between Hamilton Square and a point one mile east thereof, where only a few hundred people reside, is also giving adequate service.

On this testimony the Board lifted the restriction between the point known as the intersection of Burtus Avenue and Nottingham Way and the point known as one mile east of Hamilton Square, and it is submitted that its refusal to lift the restriction from the rest of the territory was proper under the evidence submitted in the case.

### **III. THE ORDER DOES NOT DISCRIMINATE AGAINST THE MOTOR TRANSPORT COMPANY.**

Mr. Weisberg began the operation of the bus route with full knowledge that the Trenton and Mercer County Traction Corporation was operating a trolley line between Trenton and Hamilton Square. In fact, the Ordinance of the City of Trenton, dated January 2, 1922, restricted Weisberg and Gordon from taking on and discharging passengers from their busses between Trenton and a point one mile east of Hamilton Square (Case, p. 135, l. 35). This restriction, therefore, originated in this Ordinance and not in the Order of the Board, as intimated by the brief of the prosecutor. In making their application to the Board for approval of the Trenton-Hightstown route, they stated that they would not take on and discharge passengers in this restricted area (Case, p. 135, l. 27). The Trenton

and Mercer County Traction Corporation opposed this hearing, but the applicants denied that the trolley company was getting any revenue from the territory in which they intended to operate, and as evidence of that the applicants pointed out that their bus line would be restricted between Trenton and a point one mile east of Hamilton Square (Case, p. 136, l. 17). This led Mr. Osborne, the attorney for the prosecutor on this appeal, who was at the time of that hearing the President of the Board of Public Utility Commissioners, to say to the trolley company: "That meets the situation. They will do no local business between Hamilton Square and the City of Trenton" (Case, p. 136, l. 22). The application was granted with the restriction. Later Mr. Weisberg bought out Gordon's interest, and in approving the permit to operate the Board imposed the same restriction, and the testimony taken at this hearing shows that Weisberg knew that the Central Transportation Company was operating its Allentown route (Case, p. 137, l. 14). The Central Transportation Company had been given permission to operate this route by the Board on April 8, 1924 (Case, p. 139, l. 17), and at the hearing of that application, the statements in the appellant's brief to the contrary notwithstanding, it was shown that there was identity between the Trenton and Mercer County Traction Corporation and the Central Transportation Company, for Mr. Johnson said: "The bus line is to be operated by the Central Transportation Company, which is a subsidiary of the Trenton and Mercer County Traction Corporation, organized for the purpose of operating busses." (Case, p. 138, l. 26.) And later on he stated that the application of the Central Transportation Company had the

approval of the Trenton and Mercer County Traction Corporation (Case, p. 139, l. 11). Then in 1925 the restriction of the Central Transportation Company was lifted. In 1926 when the Board approved the transfer of Weisberg's interest to the Motor Transport Company, the restriction was continued, and this was done with the knowledge and sanction of Mr. Weisberg, the President of the Motor Transport Company (Case, p. 138, ll. 6-15), and this is significant because the hearing took place approximately eight months after the Board had removed the restriction from the operation of the Allentown route of the Central Transportation Company. It is difficult to see how Mr. Weisberg, after desiring and requesting that these restrictions be imposed upon him for the purpose of obtaining permission to enter the territory, and requesting that these restrictions be continued when he took over Gordon's interest and also when he incorporated the Motor Transport Company, the last of which occurred after the restriction had been removed from the Central Transportation Company, can now assert that the restrictions are a discrimination against his Company, or that he has a prior right in the territory.

Moreover, these same objections were previously considered by the Board at the hearing on May 19, 1925, at which time the Board was considering the application of the Central Transportation Company to have the restriction removed as to its operation. Mr. Weisberg was present at the hearing and opposed the application, and, as the record shows, admitted at that time that the lifting of the restriction would cause him no present injury, but merely based his objection upon danger of future loss due

to possible abandonment of the trolley (Case, p. 116 and p. 117), and the Board also considered fully the status and organization of the Central Transportation Company and its relation to the Trenton and Mercer County Traction Corporation. Evidence was also submitted to show that the removal of the restriction would permit the Central Transportation Company to co-ordinate its service with another bus route operated by it, known as Route A (Case, p. 108, l. 18-35) (Case, p. 123, l. 36). The testimony shows that the bus service supplements the trolley service (Case, p. 111, l. 24); that the two companies are practically the same (Case, p. 111, l. 32); that the bus company is controlled by the trolley company (Case, p. 111, l. 36), and that the attorney for Mr. Weisberg was given full opportunity to present his argument that the Central Transportation Company and the trolley company were separate legal entities and competitive companies (Case, p. 119-p. 122). In the present application which is now under review this question was reopened by the prosecutor, and at the hearing Mr. Johnson testified that 95 per cent. of the stock of the Central Transportation Company is owned by the trolley company; that no stock is owned except by the trolley company and the officers of the two companies, and that the management is the same (Case, p. 42-44).

It is respectfully submitted that the decisions of the Board of Public Utility Commissioners and the decision of the Supreme Court with respect to the Weisberg route have been proper and that there is no basis upon which the prosecutor can properly invoke section 38 of the Public Utility Act, which authorizes the Court to set aside an Order of the Board when it clearly appears that there was no

evidence before the Board to support reasonably such Order. The Board and the Supreme Court each recognized that the Weisberg interests entered this territory for the purpose of serving Hightstown and that the Weisberg interests did not desire to operate in the restricted area. The Board recognized, as did the Weisberg interests, that to permit Weisberg to operate in the restricted area would result in allowing him to compete with the Trenton and Mercer County Traction Corporation, which had been operating for over 25 years, not only in its Trenton-Hamilton Square trolley line, but also in its various other routes in the City of Trenton and vicinity. The Board recognized that the Trenton and Mercer County Traction Corporation formed the Central Transportation Company for the purpose of operating busses prior to the enactment of Chapter 244, Laws 1926, pages 675-676, permitting traction corporations to operate busses. The Board realized that it should permit the trolley company to supplement its trolley service with a bus service and thereby permit it to avail itself of later methods of transportation. And the respondents insist that this permission was given for those reasons and for the purpose of permitting the trolley and its supplementary bus service to co-ordinate its schedules as shown by the decision of the Board, dated June 4, 1925 (Case, pp. 123 and 124), and with the consent of the trolley company which continues to operate in the territory, and not because the trolley company had in any way curtailed its service as suggested in the prosecutor's brief. It recognized that the Trenton and Mercer County Traction Corporation and the Central Transportation Company, although separate legal entities, were so related that the latter

could supplement the former, and that the operation would not be competitive. It merely followed the policy which it had adopted in its approval of the Public Service Transportation Company supplementing by busses the trolley service of the Public Service Railway Company, and in the approval of the Atlantic Coast Transportation Company supplementing by buses the trolley service of the Coast Cities Railway Company, and in the approval of other routes of the Central Transportation Company supplementing by busses the service of the Trenton and Mercer County Traction Corporation. The appellant in seeking to have the restriction removed in effect asks the Board to change the long existing and well recognized policy of protecting utilities from unnecessary competition. That such protection is sound and in the end brings about the greatest public convenience and benefit is well shown in the opinion in the case of *Hunter vs. Board of Public Utility Commissioners, et al.* (1 N. J. Mis. R., 408), in which Justice Katzenbach stated on page 410:

"The board by its findings evidently concluded that the public convenience and interest required that the business of the Public Service Railway Company should be as little disturbed as possible by the operation of the bus line of the prosecutor in that territory in which the railway company was affording service. This position is sound. While temporarily the public might have greater facilities of transportation in Woodbury and from Woodbury to Camden by permitting the prosecutor to compete with the railway company, in the end such competition is not for the public convenience and interest, as it either results in less efficient service by the

railway company or an abandonment of its service, because the operation of the line will not pay operating expenses on a fair return on the capital invested. The state assumes to regulate the rates for transportation, and the character of the service rendered. Morally and legally it should protect the business of the established utility from impairment and encroachment. To do otherwise would soon create a situation where the public would be without transportation service. No capital could be obtained for an enterprise where no security was afforded the investor. Without capital there would be no transportation facilities, which in this age are indispensable to the transaction of business and the enjoyment of life. These, in brief, were the reasons which undoubtedly actuated the board in the imposition of the conditions mentioned. These conditions the board had the power, in the exercise of a far-sighted policy, to impose for the convenience and interests of the public."

For these reasons it is respectfully submitted that the Order of the Board and the decision of the Supreme Court should not be reversed.

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