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INDEX.

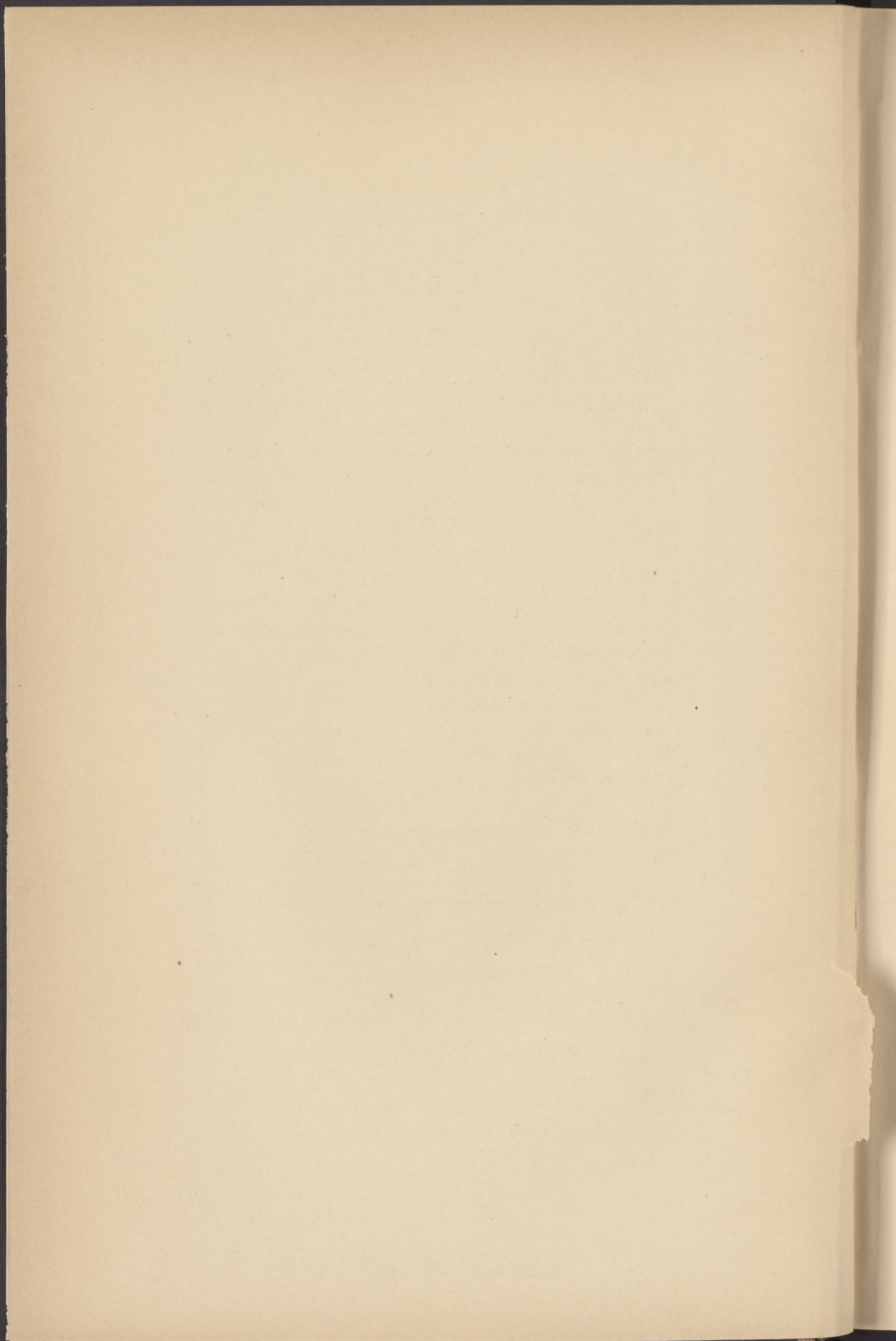
	PAGE
Writ of Certiorari.....	1
Testimony	2
Notice of Decision.....	7
Inspector's Report.....	8
Notice to Show Cause.....	9
Decision	10
Order	13
Affidavit of Melville E. Snyder, dated March 28, 1929.....	15
Affidavit of Melville E. Snyder, dated January 19, 1923.....	17
An Ordinance	18
Additional Statement of Facts.....	23
Reasons	24
Affidavit of Donald L. Whitehead.....	27
Notice of Argument.....	29
Opinion of the Supreme Court.....	30
Notice of Appeal.....	34

WITNESS FOR COMMISSION :

Oliver F. Vincent, Direct	2
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WITNESS FOR RESPONDENTS :

Donald L. Whitehead, Direct	4
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Writ of Certiorari.

(Writ Allowed November 16, 1929.)

NEW JERSEY, ss.:

*The State of New Jersey to Board of
Public Utility Commissioners of the State
(Seal) of New Jersey, and Joseph F. Auten-
rieth, President of the Board. GREETING:*

We being willing, for certain reasons, to be cer- 10
tified of a certain decision rendered on the 16th
day of October, 1929, by the Board of Public
Utility Commissioners of the State of New Jer-
sey, in relation to the hearing before the said
Board instituted on the initiative of said Board
as to the right of Donald L. Whitehead to operate a
motor bus within the territorial limits of The Ocean
Grove Camp Meeting Association, of the Town-
ship of Neptune, County of Monmouth and State
of New Jersey, do command that you certify and 20
send under your seal, to our Justices of our Su-
preme Court of Judicature, at Trenton, on the 6th
day of December, 1929, the said decision of the
Board of Public Utility Commissioners above
mentioned, together with all things touching and
concerning the same, as fully and completely as
they remain before you, together with this, our
writ, that we may cause to be done thereupon
what of right and justice and according to the
laws of the State of New Jersey ought to be done. 30

WITNESS, WILLIAM S. GUMMERE, Esquire, Chief
Justice of our Supreme Court, at Trenton, this
16th day of November in the year of our Lord,
One Thousand Nine Hundred and Twenty-nine.

FRED. L. BLOODGOOD,
Clerk.

BLANCHARD & CAREY,
Attorneys for Prosecutor.

ALLOCATUR.

WM. GUMMERE,
C. J.

40

Writ of Certiorari.

Service of the within notice is hereby acknowledged this twenty-sixth day of November, 1929.

EMMETT T. TRENT,
Secretary.

Board of Public Utility Commissioners.

10

Testimony.

(Filed December 6, 1929.)

BOARD OF PUBLIC UTILITY
COMMISSIONERS.

Newark, N. J., Wednesday, October 2nd, 1929.

20

In re operation of buses by D. L.
WHITEHEAD in Ocean Grove
without the approval of the
Board.

Before

Commissioner Jos. F. AUTENRIETH, Esq.; F. J.
DAY, Esq. Senior Inspector.

30

For the Respondent appears D. L. WHITE-
HEAD, Esq., and EARL S. LEVIC, Esq.

OLIVER F. VINCENT, sworn on behalf of Com-
mission.

Direct examination by Mr. Daly:

Q. What is your full name? A. Oliver F. Vin-
cent.

40

Oliver F. Vincent, for Commissioner—Direct.

Q. Are you connected with the Board of Public Utility Commissioners of the State of New Jersey? A. Yes, sir.

Q. What position? A. Jitney inspector, Board of Public Utility Commissioners.

Q. Are you assigned to observe jitney operations in Monmouth County? A. Yes, sir. 10

Q. Before the past summer, did you notice any operation of auto buses in Neptune Township within the confines of what is known as the Ocean Grove Camp Meeting Association? A. Yes, sir.

Q. Before this year? A. No, sir.

Q. Did you, during the past summer, notice any operation? A. Yes, sir.

Q. Tell the Board just what you noticed there and who operated the buses. A. I went down there some time in June, I think the first or second week in June, and I noticed a bus operated by Mr. Whitehead. I got in conversation with him and asked him just what he was doing and he said he was traveling around through the limits of the town and charging a five cent fare. 20

Q. Was this gentleman's name D. L. Whitehead? A. I believe it was. He gave me a card to that effect.

Commissioner Autenrieth: Is that the man sitting there (indicating)? 30

Witness: This is the gentleman, right here (indicating).

Q. Do you know whether a fare was paid by passengers riding this bus? A. Yes, sir; a five cent fare was paid by every passenger that got into the bus.

Q. Were you informed by the Reverend Dr. Snyder of the Camp Meeting Association that Mr. Whitehead was operating this auto bus? A. No, sir. 40

Donald L. Whitehead, for Respondent—Direct.

Commissioner Autenrieth: Did you want to ask any questions, Mr. Whitehead?

10 Mr. Whitehead: In reference to the card I gave you, I gave a garage card because I am in the garage business too, in order to give you the address. I said I did not have a business card of the bus company with me. I said Mr. Levic was president and I was secretary, it was a partnership.

Witness: But you were one of the owners.

Mr. Whitehead: I was one of the owners.

Witness: Yes, sir.

20 DONALD L. WHITEHEAD, sworn on behalf of respondent.

We applied to the Association. Doctor Snyder is the general manager of it.

By Commissioner Autenrieth:

Q. By we, you mean whom? A. Mr. Levic and myself.

Q. Mr. Levic and yourself; you are a partnership? A. Yes, sir.

30 Q. Operating buses? A. Yes, sir. The Association took the matter up at their meeting and we were informed we would not need anyone's permit other than the Association, so we started to run two buses around the grove. That is about all I can say. A five cent fare.

Q. You operated a regular bus business? A. Yes, sir.

Q. At a five cent fare? A. That is it.

Q. For any passengers who offered themselves for the ride? A. Within the confines of the Grove.

40 Commissioner Autenrieth: I think the difficulty with it is that Mr. Snyder did not give you very good advice. The law says

Donald L. Whitehead, for Respondent—Direct.

that no auto bus shall be operated on any street, avenue, park, parkway, highway, road or other public place in any municipality without the consent of the Board or Body having control of the public streets. Ocean Grove is situated in Neptune Township, isn't it?

10

Witness: Yes, sir.

Commissioner Autenrieth: Neptune Township is a municipality; although Ocean Grove may be a private Camp Meeting Association, they are still within the municipality. Apparently under the law you would have to have the consent of Neptune Township, as well, to operate in Ocean Grove. Do you operate in the winter time down there?

20

Witness: No, sir, we are closed now, October 1st.

Commissioner Autenrieth: Why don't you do this: If you want to operate next year, so you will have your operation in a lawful manner—

Witness: That is what we want to do.

Commissioner Autenrieth: (Continued)—why don't you apply to Neptune Township for a permit and let the authorities of Ocean Grove give their consent to operate within Ocean Grove? Then you will have the lawful consent of Neptune Township, which can be brought here for approval, and then your operation will be all right. Otherwise, it is somewhat a technical position, but that is what the law says, and I haven't any control about the situation.

30

Witness: Down the Grove, it is hard to understand it.

40

Donald L. Whitehead, for Respondent—Direct.

10 Commissioner Autenrieth: The trouble with Ocean Grove is they always consider themselves an independent sovereignty, but they are not; they are still within the Township of Neptune. They are for certain things, but not for the operation of buses. If you, in the meantime, before next season comes around, get your consent from Neptune Township and make application here for its approval, your operation won't be questioned next year. You will be a lawful operator and will be in a position to prevent any unnecessary competition to come in that is not required.

20 Witness: How can we get to understand the papers? We had some papers we did not understand at all.

Commissioner Autenrieth: Go to the Neptune Township officials.

Witness: I mean the Utility Commission.

30 Commissioner Autenrieth: Call right here at the Traffic Bureau of the Board and they will furnish you with any necessary papers to make application, and give you any information you require. As soon as you get the permit from Neptune Township, bring it up here and they will tell you what to do with the rest of it. We are glad to give you that service.

Witness: We want to do what is the right thing.

40 Commissioner Autenrieth: You get your permit from Neptune Township and you won't have any more difficulty; send it up here and we will bring it on for hearing and your operation will be lawful.

(Matter taken into conference.)

Notice of Decision.

*To the Honorable the Justices of the New Jersey
Supreme Court:*

The Board of Public Utility Commissioners, as
it is within commanded, herewith sends to the New
Jersey Supreme Court a certain Decision made by 10
said Board and dated October 16, 1929, together
with all things touching and concerning the same
as fully and entirely as before said Board they
remain.

IN WITNESS WHEREOF, the seal of said Board is
hereto affixed and certified by the subscriber.

EVERETT T. DREW,
Secretary of the Board of Public 20
Utility Commissioners of New
Jersey.

Dated December 6, 1929.

(Seal)

30

40

Inspector's Report.

STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITY COMMISSIONERS

10 FJD
VCH

INSPECTOR'S REPORT

Board of Public
RECEIVED
July 16 1929
Utility Commissioners
Date July 12, 1929.

20 Company: D. L. Whitehead.
Nature: In re operation of Auto Buses.
Place: Ocean Grove Belt Line.

REMARKS:

Inspector's attention was directed to the operation of an auto bus line by D. L. Whitehead, 1202 Main Street, Bradley Beach, N. J., within the limits of Ocean Grove. The route is known as the Ocean Grove Belt Line.

30 It appears that on or about June 1st, 1929, Mr. Whitehead was granted a consent to operate an auto bus within the limits of Ocean Grove by the Camp Meeting Association. A fare of five cents per passenger is charged and insurance is carried with the Commonwealth Casualty Company. The Inspector was informed that Mr. Whitehead was advised by the Rev. Dr. M. E. Snyder of the Camp Meeting Association that he would not have to make application to the Board for approval of

40

Inspector's Report.

municipal consent, due to the fact that he is operating on private property.

Respectfully submitted,

JOHN P. PETTY,
Deputy Chief Inspector, Bureau
of Utilities. 10

Investigation made by,

F. J. DALY,
Senior Inspector of Traffic.

Notice to Show Cause.

September 24, 1929. 20

Mr. D. L. Whitehead,
1202 Main Street,
Bradley Beach, New Jersey.

Dear Sir:

Inasmuch as you have not filed an application for the approval of a permit to operate a bus in Ocean Grove, you will be given an opportunity to show cause on October 2, at the Board's rooms in the Industrial Office Building, 1060 Broad Street, Newark, at 11 A. M., why an order should not be issued restraining this unlawful operation. 30

Very truly yours,

Secretary.

D:R

Decision.

STATE OF NEW JERSEY,
BOARD OF PUBLIC UTILITY COMMISSIONERS.

10

IN THE MATTER

of

Unlawful operation of auto buses
by D. L. WHITEHEAD within the
municipal limits of Ocean
Grove on what is known as the
Ocean Grove Belt Line.

Decision.

20

EARL S. LEVIC and D. L. WHITEHEAD, for the
Respondent.

The matter of unlawful operation of auto buses
by D. L. Whitehead within the municipal limits
of Ocean Grove on what is known as the Ocean
Grove Belt Line was called for hearing upon the
Board's own initiative. Hearing was held on this
matter in Newark on Wednesday, October 2, 1929.

30 Testimony in support of this matter was offered
by Inspectors of the Board.

Donald L. Whitehead, in behalf of himself, tes-
tified that Earl S. Levic and himself, as partners,
were operating an auto bus on the Ocean Grove
Belt Line in Neptune Township during the past
summer. This operation is without the approval
of the Board of Public Utility Commissioners of
municipal consents given for said operation.

Chapter 144, P. L. 1926, Section 2, paragraph 2,
reads as follows:

40

Decision.

“No auto bus as defined herein shall be operated or run while carrying passengers for hire wholly or partly along any street in any municipality, whether such operation is over a route, wholly or partly within the territorial limits of such municipality, except as hereafter set forth, until the person owning or possessing the right to use the same shall obtain the consent of the Board or body having control of public streets in such municipality for such operation and the use of any street or streets in said municipality; * * *.” 10

Chapter 195, P. L. 1911, as amended, Section 3, paragraph 24, reads as follows:

“No privilege or franchise hereafter granted to any public utility as herein defined, by any political subdivision of the State, shall be valid until approved by said board, such approval to be given when, after hearing, said board determines that such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interests * * *.” 20

Ocean Grove is within the municipal limits of Neptune Township. Therefore, under the statute, it will be necessary for the respondents to obtain municipal consents which must be approved by the Board of Public Utility Commissioners before said operation is lawful. As the testimony shows that the operation of the bus was for the summer season only, no order to cease the unlawful operation will be entered at this time, pending appli- 30

Decision.

cation of the respondent for approval of municipal consents.

Dated October 16, 1929.

(Seal)

10

BOARD OF PUBLIC UTILITY COMMISSIONERS,
By (Signed) JOS. F. AUTENRIETH,
President.

Attest:

(Signed) EMMETT T. DREW,
Secretary.

20

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

Secretary.

A true copy.

FRED L. BLOODGOOD,
Clerk.

30

40

Order.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">DONALD L. WHITEHEAD, Prosecutor,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, Defendant.</p>	}	<p>10</p> <p>On Certiorari.</p> <p>Order.</p>
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It appearing that John O. Bigelow, solicitor for the respondent, and Messrs. Blanchard & Carey, solicitors for the prosecutor, have consented to the entry of an order stipulating as to certain facts in the above entitled proceedings, 20

It is, on this 9th day of January, in the year 1930,

ORDERED, that for the purpose of the above entitled certiorari proceedings all public and private laws of the State of New Jersey relating to the Ocean Grove Camp Meeting Association of the Methodist Episcopal Church of the Township of Neptune or the Public Utility Commissioners, or in any way relating to any matters whereunder and by virtue of which operation of motor busses within the territorial limits of the Ocean Grove Camp Meeting Association are controlled or concerned, shall be taken to be and hereby are recognized as facts in the above entitled proceedings; and it is 30

Order.

10 FURTHER ORDERED, that the certified copy of the ordinance passed January 19, 1923, and the resolutions of the Business Committee of the Board of Trustees of March 28, 1929, and April 18, 1929, attached hereto, and the matters and things contained in the separate statement of additional facts attached hereto, all of the Ocean Grove Camp Meeting Association, be and they hereby are taken and accepted to be facts in the above entitled proceeding; and it is

FURTHER ORDERED, that the foregoing matters may be incorporated in the case to be presented before this Court upon the argument of the above entitled matter.

20

WM. J. GUMMERE,
C. J.

We consent to the entry of the foregoing order.

BLANCHARD & CAREY.
J. O. BIGELOW,
Attorney for Deft.

30

40

Affidavit of Melville E. Snyder.

I, MELVILLE E. SNYDER, General Superintendent of the Ocean Grove Camp Meeting Association of the Methodist Episcopal Church, and Secretary of the Business Committee of said Association, do certify that on March 28, 1929, at a regular meeting of the Business Committee of the Ocean Grove Camp Meeting Association of the Methodist Episcopal Church, the following resolution was regularly introduced and passed by the said Committee: 10

“9. D. L. Whitehead, 131 Franklin Ave., Ocean Grove, desires permission to run a bus through the various streets of Ocean Grove from May 1st to October 1st, on a half hour schedule, but to increase that schedule to every 15 minutes from June 1st to September 15th, running approximately from 6:00 a. m. to 12:00 p. m. 20

“The secretary was authorized to enter into an agreement with Mr. Whitehead to run a bus line in Ocean Grove, he to pay \$50.00 per bus, license fee annually, and to furnish an indemnity bond that will be satisfactory to the state and the Association, and run upon a schedule to be approved by the Secretary of the Business Committee.”

And I do further certify that at the regular meeting of the Board of Trustees of the Ocean Grove Camp Meeting Association of the Methodist Episcopal Church held on April 19, 1929, the following resolution was introduced and regularly passed by the said Business Committee: 30

“Superintendent Snyder read the report of the Business Committee as follows:

“The minutes of the Business Committee for March 28, 1929 were read and approved. The minutes for April 18, 1929 were read and approved.” 40

Affidavit of Melville E. Snyder.

And I do certify that the foregoing quotations are a true and exact copy of the resolutions passed as stated and incorporated in the records of the Ocean Grove Camp Meeting Association of the Methodist Episcopal Church.

10

MELVILLE E. SNYDER.

Sworn and subscribed to before me this }
21st day of December, 1929. }

MARY GRACE ASHTON

Notary Public of New Jersey

My Commission expires Feb. 28, 1932.

(Seal)

20

30

40

Affidavit of Melville E. Snyder.

I, MELVILLE E. SNYDER, General Superintendent of the Ocean Grove Camp Meeting Association of the Methodist Episcopal Church, do certify that on the 19th day of January, 1923, James D. Bills was secretary of the Board of Trustees of the Ocean Grove Camp Meeting Association of the Methodist Episcopal Church; that the said James D. Bills is now deceased; that on the said 19th day of January, 1923, I was elected Secretary of the Board of Trustees of the Ocean Grove Camp Meeting Association of the Methodist Episcopal Church and continued as Secretary of said Board until April 16, 1926; that on the said 19th day of January, 1923, all the records were turned over to me; that I have compared a copy of the ordinance attached hereto with the original thereof, and that the copy attached hereto is a true and exact copy of the original ordinance passed by the Board of Trustees of the Ocean Grove Camp Meeting Association of the Methodist Church on the 19th day of January, 1923.

MELVILLE E. SNYDER.

Sworn and subscribed to before me }
 this 21st day of December, 1929. } 30

MARY GRACE ASHTON,
 Notary Public of New Jersey
 My Commission expires Feb. 28, 1932

(Seal)

An Ordinance.

RELATING TO CERTAIN TRADES, BUSINESSES, OCCU-
PATIONS AND EMPLOYMENTS IN OCEAN GROVE.

10 An ordinance relating to certain trades, busi-
nesses, occupations and employments, and to the
use of the streets, drives, avenues and public
places within the limits of grounds or lands owned
or controlled by the Ocean Grove Camp Meeting
Association of the Methodist Episcopal Church,
requiring licenses to be obtained for the purpose
of carrying on such trades, businesses, occupations
and employments; for the use of the streets,
drives, avenues and public places for certain pur-
poses; providing for the granting of such licenses,
and fixing the fees to be paid therefor.

20 Be it ordained by the trustees of the Ocean
Grove Camp Meeting Association of the Methodist
Episcopal Church:

1. That no person, persons or corporation
shall, within the limits of lands or grounds owned
by the Ocean Grove Camp Meeting Association of
the Methodist Episcopal Church, engage in, or
carry on any trade, business, occupation or em-
ployment hereinafter mentioned, or carry on or
conduct the same without having first obtained a
license therefor as herein provided, nor shall any
30 person, persons or corporation use the streets,
drives, avenues or public places within the limits
aforesaid for any of the purposes hereinafter re-
quired to be licensed without having first obtained
a license therefor as herein provided. All licenses
shall be granted by the Trustees of the said Asso-
ciation, and shall be signed by the President, Vice
President or Secretary of the said Association,
and shall be dated on the First Day of May, in
40

An Ordinance.

each year, and shall expire on the thirtieth day of April of the succeeding year, and no license shall be granted for less than a year, and if applied for after the first day of May in each year, shall be dated on the day applied for, and expire on the thirtieth day of the succeeding April, but full license fees shall be paid as if applied for on the first day of May. 10

And be it ordained that a license shall be obtained and a license fee paid for each particular purpose, business or employment as follows:

—A—

1. Advertising bills, circulars and sample distributors, a license fee of ten dollars.
2. Auctioneers, a license fee each of ten dollars. 20
3. Automobiles engaged in transferring passengers to or from railroad stations to hotels or cottages, with a seating capacity of five a license fee of \$20.00, with a seating capacity of seven a license fee of \$30.00 with a seating capacity of from seven to twenty a license fee of \$50.00.
4. Automobiles for the transportation of baggage, merchandise, goods and chattels of any kind a license fee of ten dollars for a small automobile and fifteen dollars for a large automobile. 30

* * * * *

—I—

1. Ice cream stores selling soft drinks and confectionery, a license fee each of fifteen dollars.
2. Ice cream cone wagons or other vehicles selling ice cream cones, a license fee each of twenty-five dollars. 40

An Ordinance.

3. Ice wagons drawn by one horse, a license fee each of twenty dollars. Drawn by two horses, a license fee each of thirty dollars.

* * * * *

—W—

10

1. Window cleaners, a license fee each of five dollars.

Any business or trade not herein otherwise mentioned or referred to, and carried on within the borders of Ocean Grove, shall be subject to a license fee of ten dollars.

20

2. That the owner or driver of each and every wagon, automobile or other vehicle, occupation or trade, who shall not have a business store or stand within the borders of Ocean Grove, and not herebefore mentioned and licensed, soliciting orders or delivering goods within the borders of Ocean Grove, with said wagon, automobile or other vehicle, shall pay for every such wagon, automobile or other vehicle so used, a license fee of fifteen dollars.

30

3. That the owner or driver of each and every hack, stage, omnibus, carriage or other vehicle, for the transportation of passengers, licensed under this ordinance at the time of taking out a license shall have a number assigned to him or her by the license inspector or such other person as the Trustees may direct—any such number, so assigned, shall be conspicuously and permanently fixed in plain view on the lamps to be carried on either side of said vehicle; and any owner or driver, who shall after receiving such license number neglect or refuse to immediately place the same on the lamps as aforesaid, shall be deemed

40

An Ordinance.

guilty of having violated this section of this ordinance.

4. That the owner or driver of each and every vehicle licensed under this ordinance except hacks, stages, omnibuses, carriages and other vehicles for the transportation of passengers, at the time of taking out a license shall have a number assigned to him or her by the license inspector or such other official as the Trustees may direct, and said license number so assigned shall be conspicuously and permanently fixed in plain view on each side of the outside of the vehicle to be licensed. And any owner or driver who shall after receiving such license numbers neglect or refuse to affix said number or numbers to his or her wagon and shall use said vehicle within the borders of Ocean Grove for any purpose requiring a license shall be deemed guilty of having violated this section of this ordinance.

* * * * *

6. No license granted to any person or persons or corporation by the Trustees shall be assigned or transferable to any other person or persons or corporation.

7. No owner or driver of any hack, omnibus, stage or other vehicle shall, while waiting for employment, on any stand, use loud, indecent or profane language, or be guilty of hallooing, or of any disorderly conduct or annoy or harass travelers or citizens, or obstruct any sidewalk or crossing or public place.

8. That each and every person engaged in the business of carrying passengers for hire, with any stage or omnibus within the borders of Ocean Grove, shall not charge any one passenger from

An Ordinance.

any point to any point within Ocean Grove, more than twenty-five cents. And each or every person or company engaged in the business of carrying passengers for hire, with any carriage, hack or other vehicle, except stages and omnibuses, above mentioned, shall not charge for any one passenger more than fifty cents from any point to any point within the borders of Ocean Grove.

* * * * *

12. That all licenses granted by the Trustees of Ocean Grove shall expire on the 30th day of April of each and every year, without regard to the time when the same is taken out or issued, and such license shall state the purpose for which the same was granted, the number of the license and the name of the person or persons or corporation licensed.

13. Any person or persons or corporation who shall violate any of the provisions of this ordinance shall, upon conviction, forfeit and pay a fine not exceeding one hundred dollars, or be imprisoned in the county jail, or in any place provided by said Association for the detention of prisoners, for a term not exceeding sixty days, or both.

14. That all ordinances respecting licenses heretofore passed, be and are hereby repealed.

15. That this ordinance shall take effect when passed and published according to law.

Approved this 19th day of January, 1923.

JOSEPH F. BERRY, President.
MELVILLE E. SNYDER, Secretary.

Additional Statement of Facts.

Donald L. Whitehead operated an auto bus within the limits of the Ocean Grove Camp Meeting Association during the summer months of 1929 under authority given him by license from the proper governing body of the Ocean Grove Camp Meeting Association pursuant to resolutions of the Business Committee and Board of Trustees of the Ocean Grove Camp Meeting Association and in accordance with the ordinance of said association of January 19, 1923. Under the said license, Donald L. Whitehead was obligated to operate an auto bus through the various streets of Ocean Grove from May 1st to October 1st, 1929, at half hour intervals which intervals were shortened to fifteen minute intervals from June 1st to September 15th, 1929, during that portion of the day from 6:00 A. M. to 12:00 P. M.

Under the license so granted Mr. Whitehead, Mr. Whitehead did operate an auto bus over the principal streets of Ocean Grove for the purpose of transporting summer residents of the Ocean Grove Camp Meeting Association to and from their homes, the auditorium, the beach and various places of interest, all wholly within the confines of the Ocean Grove Camp Meeting Association. Nothing in the license under which the said bus was operated restricted the operation of the bus to any prescribed route, but as a matter of practice, the bus was operated along those thoroughfares most usually frequented by the summer residents in order to afford a maximum service to them. The bus so licensed and operated by Donald L. Whitehead picked up and discharged passengers indiscriminately on any of the streets upon which it ran. The limits of the Ocean Grove Camp Meeting Association lie wholly within the limits of Neptune Township.

Reasons.

Received Dec. 14 1929

(Stamp)

BOARD OF PUBLIC
UTILITY COMMISSIONERS

10

NEW JERSEY SUPREME COURT.

DONALD L. WHITEHEAD,
Prosecutor,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS OF THE STATE OF
NEW JERSEY,
Defendants.

20

On Certiorari.
Reasons.

30 The prosecutor presents the following reasons why the decision of the Board of Public Utility Commissioners entered on the 16th day of October, 1929, after hearing instituted by the Board on its own initiative should not be set aside, reversed and declared void.

1. The license given the prosecutor by the governing body of the Ocean Grove Camp Meeting Association was sufficient authorization for the legal operation by the prosecutor of his motor bus within the territorial limits of the Association. The Board of Public Utility Commissions erred in deciding to the contrary.

40 2. The Township of Neptune has not, nor has it ever had, any authority to issue licenses for the

Reasons.

operation of busses within the territorial limits of the Ocean Grove Camp Meeting Association, and the said Township of Neptune has no right to exercise any municipal authority over the Ocean Grove Camp Meeting Association or those operating busses within the territorial limits of the Association. The Board of Public Utility Commissioners erred in deciding to the contrary. 10

3. The Township of Neptune has no authority or right to restrict, regulate, or interfere with, or in any way deal with the regulation, licensing and operation of buses within the territorial limits of the Ocean Grove Camp Meeting Association. The Board of Public Utility Commissioners erred in deciding to the contrary.

4. The license granted to the Prosecutor by the Ocean Grove Camp Meeting Association for the operation of a motor bus within the territorial limits of the Association is all the authorization required by the prosecutor for the legal operation of his motor bus within such limits, and the prosecutor is under no duty to secure the approval or consent of the Board of Public Utility Commissioners with respect to such license. The Board of Public Utility Commissioners erred in deciding to the contrary. 20

5. There is nothing in the laws of the State of New Jersey granting to the Board of Public Utility Commissioners jurisdiction or authority to pass upon, regulate or interfere with or supervise the granting by the Ocean Grove Camp Meeting Association of licenses for the operation of motor busses exclusively within the territorial limits of the Association. The Board of Public Utility Commissioners erred in deciding to the contrary. 30 40

Reasons.

6. The Board of Public Utility Commissioners have no jurisdiction in reference to the granting by the Ocean Grove Camp Meeting Association of licenses to operate motor busses exclusively within the territorial limits of said Association.
- 10 7. The decision of the Board of Public Utility Commissioners violates the charter and property rights of the Ocean Grove Camp Meeting Association in so far as it attempts to deprive the Ocean Grove Camp Meeting Association of power and authority to enjoy the untrammelled use of its land, property, and privileges as granted under its charter and acts supplemental and applicable thereto.
- 20 8. The decision of the Board of Public Utility Commissioners deprives the prosecutor of his property without authority and due process of law; and is unjust, oppressive and illegal, and should be set aside and for nothing holden.

BLANCHARD & CAREY,
Attorneys for Prosecutor.

Affidavit of Donald L. Whitehead.

(Filed November 18, 1929.)

NEW JERSEY SUPREME COURT.

 DONALD L. WHITEHEAD,
 Prosecutor,

10

vs.
 BOARD OF PUBLIC UTILITY COM-
 MISSIONERS OF THE STATE OF
 NEW JERSEY,
 Defendants.

 On Certiorari.
 Affidavit.

 STATE OF NEW JERSEY, }
 COUNTY OF MONMOUTH, } ss.:

20

DONALD L. WHITEHEAD, the Prosecutor, being duly sworn according to law, upon his oath, deposes and says:

That he is the owner of a motor bus which he operates for hire within the territorial limits of the Ocean Grove Camp Meeting Association, a corporation organized under a special act of the New Jersey Legislature under Chapter 157 of the laws of 1870, and which motor bus he has heretofore operated on the Ocean Grove Belt Line within the jurisdictional limits aforesaid, under and pursuant to a license and permit granted to him by said Ocean Grove Camp Meeting Association, pursuant to the power and authority granted to the Ocean Grove Camp Meeting Association by the public laws of 1878, page 133, as amended by the public laws of 1881, page 197. Upon its own initiative, the Board of Public Utility Commissioners required him to appear before them in Newark on

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Affidavit of Donald L. Whitehead.

the 2nd day of October, 1929, at a hearing to determine the propriety and legality of the operation of the deponent's motor bus with the authority of the Ocean Grove Camp Meeting Association within the territorial limits of that Association without a further and supplemental license, permit or authorization of the Township of Neptune. Deponent appeared before the Board at that time and explained to that Body the character of the operation of the motor bus owned by said deponent and the nature of the authority under which the motor bus was operated.

Thereafter, on the 16th day of October, 1929, the Board of Public Utility Commissioners filed their decision denying to the deponent the right to operate his motor bus in the manner hereinbefore set forth. Deponent is informed and believes that the action of the Board of Public Utility Commissioners is illegal and void, and that said action deprives the deponent of his constitutional right to possess and enjoy his property, and that the said action deprives the deponent of his property without due process of law, and is an illegal and unwarranted exercise of the authority of the Board of Public Utility Commissioners, and is contrary to the laws, statutes and constitution of the State of New Jersey.

DONALD L. WHITEHEAD.

Sworn to and subscribed before me this }
Fifteenth day of November, 1929. }

MILTON E. BLANCHARD

Master in Chancery of New Jersey

A True Copy

FRED L. BLOODGOOD

Clerk

Notice of Argument.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">DONALD L. WHITEHEAD, Prosecutor,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">BOARD OF PUBLIC UTILITY COM- MISSIONERS OF THE STATE OF NEW JERSEY,</p> <p style="text-align: center;">Defendant.</p>	}	<p>10</p> <p>On Certiorari. Notice of Argument.</p>
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*To the Board of Public Utility Commissioners of
the State of New Jersey and John O. Bigelow,
Attorney for Respondents.* 20

Sirs:

TAKE NOTICE of the argument of the issue joined in this cause before the Supreme Court of New Jersey, to be held at the State House, in the City of Trenton, State of New Jersey, on the third Tuesday of January, next, at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

Yours respectfully,

BLANCHARD & CAREY,
Attorneys for Prosecutor.

Dated: January 9, 1930.

[ENDORSED]

I hereby acknowledge due and legal service of a copy of the within Notice of Argument on this 10th day of January, 1930. 40

JOHN O. BIGELOW,
Attorney of Defendant.

Opinion of the Supreme Court.

(Filed August 2, 1930.)

NEW JERSEY SUPREME COURT.

#245, January Term, 1930.

10

DONALD L. WHITEHEAD,
Prosecutor,*vs.*BOARD OF PUBLIC UTILITY COM-
MISSIONERS OF NEW JERSEY.
Respondent.

20

Argued January Term 1930. Decided
1930.

On Certiorari.

For Prosecutor: Blanchard & Carey.

For Respondent: John O. Bigelow.

Before Justices TRENCHARD, LLOYD and CASE.

LLOYD, J.

30 The prosecutor holds a license from the Ocean
Grove Camp Meeting Association to operate an
autobus within the territorial limits of that asso-
ciation. On its own initiative the authority of the
license thus granted was challenged by the Board
of Public Utility Commissioners and it is stipu-
lated on the record that on the 16th day of Octo-
ber, 1929, that body entered an order that the
operation of the bus without the consent of the
township of Neptune (in which Ocean Grove is
40 located) was unlawful, and directed the prosecutor

Opinion of the Supreme Court.

to discontinue the operation of the bus until the consent of Neptune Township should be obtained and approved by the Board. The certiorari issued in the case is to test the legality of this order.

The validity of the order depends, as we think, on the proper construction of Chapter 144, Laws 1926, it being contended by the prosecutor that it was not the legislative purpose that the act should apply to Ocean Grove. The statute in question purports to be a general act, covering the operation of automobile busses within the state, although in form an amendment entitled, "An Act concerning auto busses, commonly called jitneys, and their operation in cities," Chapter 136 of the Laws of 1916. The first section of the act of 1926 amends the title of the act of 1916 to read, "An act concerning auto busses and their operation," The words "auto bus" are defined to mean (so far as affects the question here involved) "Any auto or motor bus carrying passengers for hire which is held out, announced or advertised to operate or run or which is operated or run over any of the streets or public places in any municipality of this state." The word municipality is defined to mean and include any city, town, township, village, borough and any municipality governed by a board of governors or improvement commission.

The prosecutor relies upon the provisions of sundry statutes of the state including the act incorporating the Ocean Grove Camp Meeting Association under which that body is given some powers usually conferred upon municipal corporations, among which is the power to license hacks, cars, omnibuses and other vehicles, and hence contends that it was no part of the legislative purpose to modify the method of licensing auto busses within the territory of Ocean Grove.

Opinion of the Supreme Court.

We think the contention is unsound. It is to be gathered from the Act of 1926 that the legislature intended a comprehensive scheme whereby the transportation of passengers by auto busses should be brought under state control, and as part of this scheme it was required that all auto bus
10 owners should obtain a double consent before starting operation; first, the local consent of the municipality within which the vehicle is proposed to be operated, and second, that this consent should have the approval of the state board. In the present instance the prosecutor proposed to operate within the territory of Neptune Township, though limited to the confines of the territory of the Ocean Grove Camp Meeting Association.

20 The reasons operating for the enactment of such comprehensive licensing power are not hard to discover. It was legislation under the police power intended for the protection of the inhabitants of the state and others using the public highways. Auto busses coming under the act are required to furnish an insurance policy conditioned for the payment of damages for injuries or death; to furnish a monthly statement of receipts and is subjected to a franchise tax thereon. No
30 good reason exists why these salutary protective measures should not be as applicable to auto busses operating within the Camp Meeting Association territory as in the territory of any other section of the state. It is common knowledge that in the Camp Meeting Association territory large masses of people from within and without the state are congregating especially during certain periods of the year. The measures provided for the protection of the public are as essential in such places as elsewhere.

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Opinion of the Supreme Court.

Coming back to the act of 1926, as already stated, it purports to be an amendment of the act of 1916 which was an act entitled "An act concerning auto buses commonly called jitneys and their operation in cities". By the enactment of 1926 the limitation to cities is eliminated and the act was, as we think, intended to be made general throughout the state and operative over all its territory, not excluding that of the two or three camp meeting associations existing in the state. The boundaries of the association under its powers of purchase and sale of real estate, are, unlike the ordinary municipality, liable to be enlarged or diminished at will, and such fluctuating status was certainly not intended to be the basis of an exception under the act. Finding a comprehensive legislative purpose to exist, we conclude that the Ocean Grove Camp Meeting Association was not regarded by the legislature as a municipality having power to license auto buses under the act of 1926 or to longer issue licenses under its previous powers, but that auto bus operators in the Township of Neptune, whether within or without the territorial limits of Ocean Grove, must obtain the consent of the proper board or body of that township.

The order of the Board of Public Utility Commissioners is affirmed.

Notice of Appeal.

October 14, 1930
 (Filed ~~September 17, 1930.~~)

NEW JERSEY SUPREME COURT.

10

DONALD L. WHITEHEAD,
 Prosecutor,

vs.

BOARD OF PUBLIC UTILITY COM-
 MISSIONERS OF THE STATE OF
 NEW JERSEY,
 Respondent.

} Notice of Appeal.

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*To the Board of Public Utility Commissioners of
 the State of New Jersey, and Joseph F.
 Autenrieth, Esq., President of the Board, or
 to whom it may concern:*

PLEASE TAKE NOTICE that the prosecutor in the
 above entitled cause appeals to the Court of
 Errors and Appeals in the last resort in all causes
 in the State of New Jersey from the whole of the
 judgment entered in this cause on the following
 grounds, to wit:

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1. The New Jersey Supreme Court erred in giving judgment to the respondent, Board of Public Utility Commissioners of New Jersey in the certiorari proceedings argued before that Court in the above entitled matter in the January term, 1930, in that:

(a) The license given the prosecutor by the
 governing body of the Ocean Grove Camp Meet-

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Notice of Appeal.

ing Association was sufficient authorization for the legal operation by the prosecutor of his motor bus within the territorial limits of the Association. The New Jersey Supreme Court erred in deciding to the contrary.

(b) The Township of Neptune has not, nor has it ever had, any authority to issue licenses for the operation of buses within the territorial limits of the Ocean Grove Camp Meeting Association, and the said Township of Neptune has no right to exercise any municipal authority over the Ocean Grove Camp Meeting Association or those operating buses within the territorial limits of the Association. The New Jersey Supreme Court erred in deciding to the contrary. 10

(c) The Township of Neptune has no authority or right to restrict, regulate, or interfere with, or in any way deal with the regulation, licensing and operation of buses within the territorial limits of the Ocean Grove Camp Meeting Association. The New Jersey Supreme Court erred in deciding to the contrary. 20

(d) The license granted to the Prosecutor by the Ocean Grove Camp Meeting Association for the operation of a motor bus within the territorial limits of the Association is all the authorization required by the prosecutor for the legal operation of his motor bus within such limits, and the prosecutor is under no duty to secure the approval or consent of the Board of Public Utility Commissioners with respect to such license. The New Jersey Supreme Court erred in deciding to the contrary. 30

(e) There is nothing in the laws of the State of New Jersey granting to the Board of Public 40

Notice of Appeal.

10 Utility Commissioners jurisdiction or authority to pass upon, regulate or interfere with or supervise the granting by the Ocean Grove Camp Meeting Association of licenses for the operation of motor buses exclusively within the territorial limits of the Association. The New Jersey Supreme Court erred in deciding to the contrary.

(f) The Board of Public Utility Commissioners have no jurisdiction in reference to the granting by the Ocean Grove Camp Meeting Association of licenses to operate motor buses exclusively within the territorial limits of said Association. The New Jersey Supreme Court erred in deciding to the contrary.

20 (g) The decision of the Board of Public Utility Commissioners violates the charter and property rights of the Ocean Grove Camp Meeting Association in so far as it attempts to deprive the Ocean Grove Camp Meeting Association of power and authority to enjoy the untrammelled use of its land, property, and privileges as granted under its charter and acts supplemental and applicable thereto. The New Jersey Supreme Court erred in deciding to the contrary.

30 (h) The decision of the New Jersey Supreme Court deprives the prosecutor of his property without authority and due process of law; and is unjust, oppressive and illegal, and should be set aside and for nothing holden.

Respectfully yours,

BLANCHARD & CAREY,
Attorneys for Prosecutor.

40 *Service of the within
Notice of Appeal is
acknowledged as within time
L. Edward Herrmann*

Rule for Judgment.
 Filed October 10, 1930.
 NEW JERSEY SUPREME COURT.

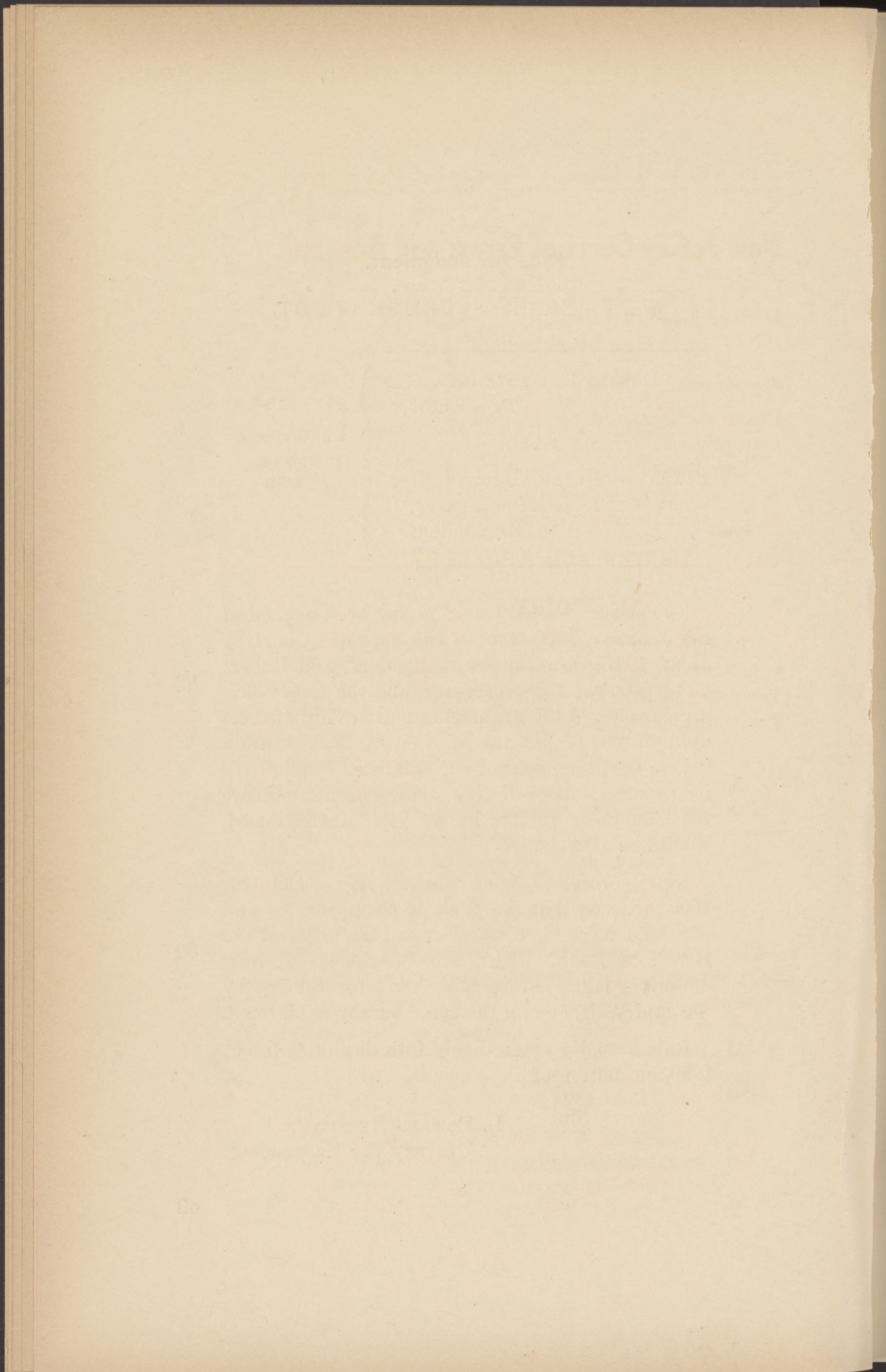
<p style="text-align: center;">DONALD L. WHITEHEAD, Prosecutor,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">BOARD OF PUBLIC UTILITY COM- MISSIONERS OF NEW JERSEY, Respondent.</p>	}	<p style="text-align: center;">On Certiorari. 10</p> <p style="text-align: center;">Rule for Judgment.</p>
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The above entitled cause having been argued at the January, 1930 term of the Supreme Court by John O. Bigelow for the respondent, and Robert Carey, Jr. for the prosecutor, and the Court having considered the arguments and having filed its opinion on the 2nd day of August, 1930, wherein it held that the order of the Board of Public Utility Commissioners of New Jersey brought before the Court for review by a Writ of Certiorari, should be affirmed. 20

Now therefore, it is on this 10th day of October, 1930, ordered that the Writ of Certiorari be and the same hereby is dismissed, and the order of the Board of Public Utility Commissioners of New Jersey brought before this Court for review, by the said Writ, be and the same hereby is affirmed. 30

Rule actually entered this 10th day of October, 1930, on motion of

L. EDWARD HERRMANN,
 Attorney for Respondent.



Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

DONALD L. WHITEHEAD,
Prosecutor-Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS OF THE STATE OF
NEW JERSEY,
Respondent-Appellee.

BRIEF FOR APPELLEE.

POINT I.

The Supreme Court did not err finding that the appellant proposed to operate an auto-bus in the Township of Neptune and that the consent of said Township had to be first obtained.

A.

The legislature, in enacting Chapter 144, P. L. 1926, entitled "An Act Concerning Auto Busses and Their Operation," intended to have its provision apply to all auto busses thereafter proposed to be operated within the State.

Paragraph 2 of Section 2 of the act, defines the auto-busses to which its provisions were intended to apply:

"1. The words 'auto bus' as used herein shall mean and include any automobile or motor bus carrying passengers for hire which is held out, announced or advertised to operate or run, or which is operated or run, over any of the streets or public places in any municipality of this State, and indiscriminately accepts and discharges such persons as may offer themselves for trans-

portation either at the termini or points along the way or route on which it is used or operated or may be running. Nothing herein contained shall be construed to include taxicabs, hotel buses, or buses employed solely in transporting school children and teachers."

It will be noted that the legislature exercised care in definitely excluding vehicles to which it did not intend the provisions of the act to be applicable to viz: "taxicabs, hotel busses, or busses employed solely in transporting school teachers and children." It did not except busses operated or proposed to be operated within the territorial limits of the camp meeting associations of the State although there are several of such committees within the State.

The streets of Ocean Grove are streets within the Township of Neptune, and would come within the language of the section, viz: "or which is operated or run over any of the streets * * * in any municipality."

In the Supreme Court the appellant contended that the Ocean Grove Camp Meeting Association, through powers conferred upon it by the legislature in its charter, and by sundry acts had the same power to license auto busses to operate on the streets within its territorial limits. The Supreme Court found that the legislative purpose of the act of 1926 was comprehensive and intended to include within its provisions the operation of all auto-busses:

Mr. Justice Lloyd said:

"We think the contention is unsound. It is to be gathered from the act of 1926 that the legislature intended a comprehensive scheme whereby the transportation of passengers by auto busses should be brought under state control, and as part of this

scheme it was required that all auto bus owners should obtain a double consent before starting operation; first, the local consent of the municipality within which the vehicle is proposed to be operated, and second, that this consent should have the approval of the state board. In the present instance the prosecutor proposed to operate within the territory of Neptune Township, though limited to the confines of the territory of the Ocean Grove Camp Meeting Association."

State of Case, page 32, lines 8 to 19.

"* * * Coming back to the act of 1926, as already stated, it purports to be an amendment of the act of 1916 which was an act entitled 'concerning auto buses commonly called jitneys and their operation in cities.' By the enactment of 1926 the limitation to cities is eliminated and the act was, as we think, intended to be made general throughout the state and operative over all its territory, not excluding that of the two or three camp meeting associations existing in the state. The boundaries of the association under its powers of purchase and sale of real estate, are, unlike the ordinary municipality, liable to be enlarged or diminished at will, and such fluctuating status was certainly not intended to be the basis of an exception under the act. Finding a comprehensive legislative purpose to exist, we conclude that the Ocean Grove Camp Meeting Association was not regarded by the legislature as a municipality having power to license auto busses under the act of 1926 or to longer issue licenses under its previous powers, but that auto bus operators in the Township of Neptune, whether within or without the territorial limits of Ocean Grove, must obtain the consent of the proper board or body of that township."

State of Case, page 33, lines 10 to 30.

B.

The Supreme Court did not err in holding in effect, that the regulation of auto busses is an exercise by the State of its police power; and that such power could be exerted by the State in the territory of camp meeting associations.

The major part of appellant's brief deals with the powers which have been delegated to the camp meeting association through its charter and sundry enactments. He therefore contends in effect that, in empowering it to license vehicles, omnibuses, etc., the State barred itself from any further control of regulation thereof. It does not require the citation of authorities to demonstrate the absurdity of such contention. Mr. Justice Lloyd briefly disposed of it when he said:

“Finding a comprehensive legislative purpose to exist, we conclude that the Ocean Grove Camp Meeting Association was not regarded by the legislature as a municipality having the power to license auto busses under the act of 1926, *or to longer issue licenses under its previous powers*, but that auto bus operators in the Township of Neptune, whether within or without the territorial limits of Ocean Grove must obtain the consent of the proper board or body of that Township.”

Case, page 33, lines 19-29. (Italics mine.)

The Supreme Court having found that in enacting the act of 1926 intended a comprehensive scheme for the regulation and control of auto busses, as a utility extensively engaged in the transportation of passengers by the State Board of Public Utility Commissioners. The reasons actuating the legislature are succinctly stated by Mr. Justice Lloyd as follows:

“The reasons operating for the enactment of such comprehensive licensing power are

not hard to discover. It was legislation under the police power intended for the protection of the inhabitants of the state and others using the public highways. Auto busses coming under the act are required to furnish an insurance policy conditioned for the payment of damages for injuries or death; to furnish a monthly statement of receipts, and is subjected to a franchise tax thereon. No good reason exists why these salutary protective measures should not be as applicable to auto busses operating within the Camp Meeting Association territory as in the territory of any other section of the state. It is common knowledge that in the Camp Meeting Association territory large masses of people from within and without the state are congregating especially during certain periods of the year. The measures provided for the protection of the public are as essential in such places as elsewhere."

Case, page 32, lines 20 to 40.

POINT II.

The Supreme Court did not err in holding that the Ocean Grove Camp Meeting Association was without power to license auto busses after the enactment of Chapter 144, P. L. 1926.

I concede that the Association was empowered to pass ordinances to license hacks, omnibuses, stages and other vehicles for the transportation of passengers prior to the enactment of Chapter 144, P. L. 1926. Municipalities also had similar powers. During the few years just prior to 1916, transportation by means of a vehicle called "jitneys" was inaugurated. The jitney transportation business grew rapidly, until the legislature in 1916, in the public interest, enacted the so-called "Kates Act." P. L. 1916, page 283.

The principal purposes of this act were three: To increase the revenues of the city by imposing a 5% tax on the gross receipts of the jitney or busses; to secure the payment of damages to persons who might be injured by the jitney or bus, and to requiring the consent of cities in which they propose to operate before commencing operation.

Prior to the enactment of the "Kates Act," the cities of the State had the power to pass ordinances to license and regulate vehicles, and this included the power to license and regulate busses, but it did not include the power to prohibit their operation, or to refuse a permit to one who complied with the conditions, of the ordinance.

South Orange v. Heller, 92 N. J. Eq. p. 505,
and

Keavey v. Randel, 122 Atl. 379.

Neither did the Kates Act repeal the former statutes under which cities might regulate busses.

West v. Asbury Park, 89 N. J. L. p. 402,
and

Irwin v. Atlantic City, 90 N. J. L. 99.

"The operator of a bus did not become a public utility for five years or until 1921 when the Legislature amended Section 15 of the Public Utility Act so as to include within the definition of a public utility the owner or operator of 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 * * * under privileges granted or hereafter to be granted by the State of New Jersey or by any political subdivision thereof,' (P. L. 1921, p. 390). After the passage of that amendment, an auto bus operated by virtue of the consent required by the Act of 1916 or operated under a license granted by

any political subdivision of the State became subject to the regulatory powers of the Board, provided the route of the bus paralleled a street railway line."

In 1926 the legislature enacted the law which is now in force and effect. The title of the Kates Act was:

"An Act concerning auto busses, commonly called jitney, and their operation in Cities."

A very significant change was made in the 1926 Act, the first section of the act amended the title to read:

"An Act concerning auto busses and their operation."

In defining the words "auto busses," the language of the act is, "any auto or motor bus carrying passengers for hire is held out, announced or advertised to operate or run, or which is operated or run over any of the streets or public places in any municipality of this State."

In defining the word "municipality," it states that it shall include "any city, township, town, village, borough, and any municipality governed by a board of governors or improvement commission."

Attention is called to these provisions of the act, because of their significance in serving to indicate that in its enactment the legislature intended to adopt a comprehensive scheme for their regulation and control of all busses, that it intended to subject all auto busses including those operated within the territorial limits of camp meeting associations is evidenced by the fact, it did not exclude such busses from jurisdiction under the act, although it did specifically exclude "taxicabs, hotel busses or busses employed solely

in transporting school children and teachers." It enlarged the class of busses affected by including those "held out, announced or advertised to operate or run, or which is operated or run over *any of the streets, or public places* in any municipality of this state instead of those which were operated in 'cities,' as were provided, for in the Kates Act."

The streets of Ocean Grove are streets within the Township of Neptune. After the enactment of the 1926 act, such powers as had been conferred upon the Camp Meeting Associations, passing ordinances to license busses ceased, and the condition was imposed that the consent to operate or run a bus should first be obtained from the Township of Neptune.

The further requirement was imposed that the approval of the Board of Public Utility Commissioners must then be obtained before such consent was valid or effective.

CONCLUSION.

I submit that the judgment of the Supreme Court, and the opinion upon which it is based should be sustained.

Respectfully submitted,

L. EDWARD HERRMANN,
Counsel for Appellee, Board of
Public Utility Commissioners.

TABLE OF CONTENTS.

	PAGE
BRIEF OF PROSECUTOR.....	1
STATEMENT OF FACTS.....	1
POINTS	6
ARGUMENT	7
SUMMARY	24

TABLE OF CASES.

Allison <i>v.</i> Corker, Assessor, 38 <i>id.</i> 606.....	22
Buttler <i>v.</i> Commonwealth Tobacco Co., 14 N. J. 423.....	13
Commonwealth Roofing Co. <i>v.</i> Riccio, 81 <i>id.</i> 486, 489	13
Francis <i>v.</i> Kuhl, 51 L. 191.....	9
Grover <i>v.</i> Trustees of Ocean Grove, 45 L. 399	9, 12
Layton <i>v.</i> Ocean Grove, 59 L. 369.....	9
McCran <i>v.</i> Ocean Grove, 96 N. J. L. 158.....	7, 12, 13
McNeil Pipe Co. <i>v.</i> Lippincott, 57 L. 540.....	10
Ocean Grove <i>v.</i> Berthall, 63 L. 312.....	9
Percello <i>v.</i> Ocean Grove, 100 L. 407.....	10, 15
<i>25 Ruling Case Law</i> , Sec. 273.....	10
Slocum <i>v.</i> Ocean Grove, 59 L. 110.....	9, 13
State <i>v.</i> Kelcey, 44 L. 1.....	10
State <i>v.</i> Minton, 23 N. J. L. 529.....	21
State, Lydecker, Pros. <i>v.</i> Englewood, 12 Vroom. 157	22
State <i>v.</i> Stevenson, 44 N. J. L. 371.....	21

STATUTES.

	PAGE
Laws of 1926, Chap. 144.....	16
P. L. 1879, p. 421.....	2
Laws of 1878, Chap. 40, p. 45.....	3
Laws of 1878, p. 133.....	3
Laws of 1878, p. 229.....	3
Laws of 1922, Chap. 205, p. 351.....	3, 14
Laws of 1930, Chap. 63.....	4
Laws of 1930, Chap. 78.....	4
P. L. 1926, Sec. 2, para. 2.....	5
Laws of 1894, p. 142.....	9
Laws of 1899, 4 Comp. Stat., p. 5563.....	15
Amendments to New Jersey State Consti- tution, Sub-sec. 11, sec. 7, para. 4.....	16

New Jersey Court of Errors and Appeals

DONALD L. WHITEHEAD,
Prosecutor,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS OF THE STATE OF
NEW JERSEY,
Defendant.

On Certiorari.

BRIEF OF PROSECUTOR.

This matter is brought before this Court on an Appeal from the decision and judgment of the Supreme Court of New Jersey entered October 10, 1930, wherein the Supreme Court of New Jersey affirmed an Order of the Board of Public Utility Commissioners of New Jersey, holding unlawful the operation of an auto bus by the Prosecutor within the property limits of the Ocean Grove Camp Meeting Association of the Methodist Episcopal Church, under a license granted to the Prosecutor by the duly constituted authorities of the Camp Meeting Association.

Statement of Facts.

The Ocean Grove Camp Meeting Association was incorporated by a special act of the legislature in 1870 (Chap. 157, Laws of 1870, p. 397). Shortly thereafter, the Association acquired the fee in the name of the Trustees to large tracts of seaside property on the Atlantic Coast in Monmouth County.

It is conceded that the territory of the Ocean Grove Camp Meeting Association lies entirely within the physical boundaries of the present Township of Neptune.

Subsequent to the incorporation of the Ocean Grove Camp Meeting Association and its acquisition of the fee to the territory which it then and now owns, the Township of Neptune was incorporated by a special act of the legislature approved on February 27, 1879 (P. L. 1879, p. 421), being entitled, "an Act to set off from the Township of Ocean, in the County of Monmouth, a new Township to be called the Township of Neptune". This territory of Neptune Township concededly included within its limits the property then and still occupied and owned by the Trustees of the Ocean Grove Camp Meeting Association. Section 7 of the act incorporating Neptune Township expressly excepted, however, from the operation of the act, the territory occupied by the Ocean Grove Camp Meeting Association, stating,

"And be it enacted that nothing in this act contained shall be construed, to impair, alter or interfere with any of the corporate rights and privileges of Ocean Grove or Asbury Park, or with any of the provisions of the acts incorporating said places or the supplements thereto."

The act incorporating Neptune Township was passed subsequent to the adoption of Section 7, paragraph 4 of the amendments to the New Jersey State Constitution, prohibiting the passage of special or local laws regulating the internal affairs of towns or counties. The act incorporating Neptune Township gave to the Township of Neptune powers characterized as being similar to powers held by other Townships of Monmouth County. The general law relating to the incorporation of Townships in the State of New Jersey was first

passed in 1899 (4 Comp. Statutes 5567) but notwithstanding, in the act incorporating Neptune Township, the powers granted to the Township were not specifically given in the charter, but were incorporated by reference. Furthermore, no reference was made in the Township act to the continuation of Neptune Township as a body politic and corporate under the general act itself.

Special charters similar to that granted to the Ocean Grove Camp Meeting Association were granted to the Camp Meeting Association of the Newark Conference of the Methodist Episcopal Church (Laws of 1869, Chap. 185, p. 484), and to the New Jersey Conference Camp Meeting Association (Laws of 1872, Chap. 233, p. 581). Under these charters, broad powers were given to the directors and trustees for the management and control of the respective associations.

Subsequently, general acts were passed by the Legislature relating to Camp Meeting Associations. Among these acts are the following:

Laws of 1878, Chap. 40, p. 45 (amended by the laws of 1889, p. 255), giving to the trustees of such associations the power to lay out sewers;

Laws of 1878, p. 133 (amended by the laws of 1881, page 83—1 Comp. Statutes 358) giving to the trustees the right to license boats, hacks and other vehicles by ordinances, rules and by-laws;

Laws of 1878, p. 229 (1 Comp. Statutes 363), giving the trustees of Camp Meeting Associations authority to lay out and control the use of streets, to enact regulations, ordinances and resolutions, and also giving full power and authority in the granting of licenses;

Laws of 1922, Chap. 205, p. 351, wherein the licensing powers of the trustees of such associations was extended and the power to

license hacks, cars, omnibuses and other vehicles was again specifically provided for;

Laws of 1930, Chapter 63, a general statute applicable to Camp Meeting Associations, providing for the extension of fire districts;

Laws of 1930, Chapter 78, a general statute applicable to Camp Meeting Associations, providing for the legalizing of loans made with respect to property located in Camp Meeting Associations and providing for the acceptance of mortgages on leaseholds interests therein. This latter act was amended in Chapter 264 of the Laws of 1930.

Pursuant to the legislative authority so given, the Board of Trustees of the Ocean Grove Camp Meeting Association of the Methodist Episcopal Church under date of January 19, 1923, duly passed an ordinance providing, among other things, for the licensing of automobiles and auto buses.

Pursuant to the ordinance of January 19, 1923, and upon application to the Board of Trustees by Donald L. Whitehead, the Prosecutor in these proceedings, the Board of Trustees did, by resolution, license Donald L. Whitehead to run a bus through the various streets of Ocean Grove from May 1st to October 1st, upon the payment of a license fee of \$50.00.

Donald L. Whitehead thereupon paid the license fee required of him, and did operate an auto bus exclusively and entirely within the limits of the Ocean Grove Camp Meeting Association from May 1st to October 1st, at regular half-hour intervals, shortening the intervals to fifteen minutes each from June 1st to September 15th. Nothing in the resolutions or license required Mr. Whitehead to operate over any prescribed route. The bus was operated along the principal streets of the Camp Meeting Association for the purpose of

transporting the summer residents of the Association to and from their homes, the auditorium, the beach and various places of interest all wholly within the confines of the territorial limits of the Ocean Grove Camp Meeting Association. The bus so operated by Donald C. Whitehead picked up and discharged passengers indiscriminately upon any of the streets upon which it might at the time be running.

On the initiative of the Board of Public Utility Commissioners the Prosecutor was summoned to appear before the Board at Newark on October 2nd, 1929, and give evidence against himself in a hearing wherein he was without representation by counsel.

It being conceded that the Prosecutor held no license from the Township of Neptune for the operation of his motor bus within the limits of Ocean Grove, and it being further conceded that Ocean Grove lies wholly within the territorial boundaries of Neptune Township, the Commission held that the operation of the bus by the Prosecutor was unlawful as a violation of Chapter 144 of the Public Laws of 1926, Section 2, paragraph 2, which reads as follows:

“1. The words ‘auto bus’ as used herein shall mean and include any automobile or motor bus carrying passengers for hire which is held out, announced or advertised to operate or run, or which is operated or run, over any of the streets or public places in any municipality of this State, and indiscriminately accepts and discharges such persons as may offer themselves for transportation either at the termini or points along the way or route on which it is used or operated or may be running. Nothing herein contained shall be construed to include taxicabs, hotel buses, or buses employed solely in transporting school children and teachers.”

The Board of Public Utility Commissioners further held that the Prosecutor, in order to operate his bus within the limits of Ocean Grove in complete compliance with the requirements of law, should first secure a license from Neptune Township, which license should, in turn, be approved by the Board of Public Utility Commissioners by virtue of Chap. 195 of the Public Laws of 1911 as amended (Supp. to Comp. Statutes, Sec. 167-40, p. 2892).

The Prosecutor now respectfully submits that the Board of Public Utility Commissioners erred in rendering this decision.

POINTS.

The Supreme Court of New Jersey erred in its decision and judgment of October 10, 1930, for the following reasons:

1. The Ocean Grove Camp Meeting Association has the sole right to license auto busses operated within its territorial limits.
2. The Ocean Grove Camp Meeting Association lawfully exercised its rights and privileges in licensing the Prosecutor to operate an auto bus within the limits of the Association.
3. The Township of Neptune had no authority to license the operation of auto busses within the territorial limits of Ocean Grove.
4. The Board of Public Utility Commissioners was without authority under the law to require its consent to the license given the Prosecutor by the Ocean Grove Camp Meeting Association.

ARGUMENT.

The Board of Trustees of the Ocean Grove Camp Meeting Association of the Methodist Episcopal Church has the sole right to license the operation of auto buses within its territorial limits.

A. The charter granted the Ocean Grove Camp Meeting Association constituted that Association a body politic and corporate with certain power to administer its internal affairs (Laws of 1870, p. 397, chap. 157).

The provisions of this charter were clearly and definitely summed up by Chief Justice Gummere in the case of *McCran v. Ocean Grove*, 96 N. J. 158. That case was brought before the Court of Errors and Appeals in an effort to establish a borough government in Ocean Grove, and the Court said, in defining the scope of the charter of the Association:

“The charter of that corporation, by the first section, constitutes it a body corporate and politic. The second and third sections authorize it to purchase and hold such real and personal estate as it may deem necessary or desirable for the purposes and objects of the corporation; to construct and provide all necessary works to supply the territory acquired by it with water and artificial light; and to provide all other conveniences and make all other improvements which it may deem necessary or desirable. The fourth, fifth and seventh sections provide for the creation of a board of trustees, which is made self perpetuating, and is given power to pass and enforce such by-laws as it may deem needful and to appoint such peace officers as may be deemed requisite for the purpose of keeping order within the territory of the association, such officers being clothed with the

same power, authority and immunities as constables, including the power to enforce obedience to any rule or regulation of the trustees for the preservation of quiet and good order, for the suppression of vice and immorality, and for the purpose of preventing disturbances at meetings, held for religious worship. The sixth section provides that all the real and personal property of the corporation, not exceeding the annual value of five thousand dollars, shall be exempt from assessment and taxation. All the rights, powers and privileges vested in the Ocean Grove Camp Meeting Association are contained in the provisions of its charter, which we have referred to."

B. Subsequent to the incorporation of the Ocean Grove Camp Meeting Association, general legislation was enacted relating to the administration of the affairs of Camp Meeting Associations. Under this legislation, the Ocean Grove Camp Meeting Association received the power to license auto buses.

The first act relative to the delegation of such powers to Camp Meeting Associations was passed in 1878 (P. L. 1878, p. 133, 1 Comp. Statutes 358). Section 1 of that act provides as follows:

"15. LICENSING AND REGULATING CARTMENT, HACKS, BOATS, ETC.; PENALTIES—Sec. 1. That the board of trustees, directors, commissioners, or other corporate authorities of any incorporated camp meeting association or seaside resort, shall have power, within the premises of said corporation, to make, establish, publish and modify, amend or repeal ordinances, rules, regulations and by-laws for licensing and regulating cartment, porters, hacks, cab, omnibus, stage and truck-owners and drivers, or owners and drivers of market wagons, garbage wagons, baggage wagons, milk wagons and carriages and vehicles used for the transportation of passengers and merchandise, and boats upon the lakes and prem-

ises of said corporations used for the transportation of passengers, and also hucksters and peddlers of merchandise and provisions, or persons soliciting orders for the sale thereof (but this act shall not be construed to require a license from any person or persons selling or exposing for sale produce of their own growing), and to fix the rates of compensation to be paid to them, and to prohibit unlicensed persons and vehicles from acting or being used in such capacities and to impose a license fee or license fees therefor, and the fees for such license may be imposed for revenue.”

The act of 1878 was added to, amended and altered from time to time. Page 36 of the Laws of 1887 (1 Comp. Statutes, p. 362) in effect by repetition again authorizes the Board of Trustees of an incorporated camp meeting association to exercise and carry out the same functions.

Page 142 of the Laws of 1894 again confers upon the Board of Trustees of Camp Meeting Associations broad powers to lay out and control streets, to construct sewers and to perform other municipal functions by means of by-laws, regulations, ordinances and resolutions. Numerous decisions have been rendered upholding the exercise of these powers by camp meeting associations, the Ocean Grove Camp Meeting Association among them.

Grover v. Trustees of Ocean Grove, 45 L. 399;
Slocum v. Ocean Grove, 59 L. 110;
Layton v. Ocean Grove, 59 L. 369;
Ocean Grove v. Berthall, 63 L. 312.

That camp meeting associations as such are a legitimate class for general legislation with respect to them is well established.

Francis v. Kuhl, 51 L. 191;

McNeil Pipe Co. v. Lippincott, 57 L. 540;
25 Ruling Case Law, Sec. 273;
State v. Kelcey, 44 L. 1.

The last enactment of the legislature empowering the trustees of a camp meeting association to enact ordinances regulating the licensing of auto buses within the limits of such associations was passed in 1922. (P. L. 1922, Chap. 205, p. 351—Vol. 1, Supp. to Comp. Statutes, p 235.) That act provided as follows:

“AN ACT RESPECTING LICENSES IN
 INCORPORATED CAMP MEETING ASSOCIATIONS”

(L. 1922, c. 205, p. 351)

“28-47. POWERS OF CAMP MEETING ASSOCIATIONS. 1. The board of trustees, directors or managers of any camp meeting association heretofore incorporated under the laws of this State shall have power to make, enforce, amend or repeal ordinances to license and regulate:

REGULATE PUBLIC VEHICLES. (a) Hacks, coupes, cars, omnibuses, stages, wheel chairs, and all other vehicles used for the transportation of passengers, baggage, merchandise and goods and chattels of any kind, and the owners and drivers of all such vehicles; and the place or places or premises in which or at which the different kinds of business or occupation mentioned herein are carried on and conducted.”

The full authority of the Ocean Grove Camp Meeting Association to pass the ordinance involved in the present case, and to issue licenses thereunder was definitely settled in the case of *Percello v. Ocean Grove*, 100 L. 407. In that case, one Percello was arrested for violating the same licensing ordinance under which the prosecutor in the present case operated his auto bus, by sell-

ing ice-cream cones under the alleged authority given by a license issued by the Township of Neptune, within whose territorial boundaries the Ocean Grove Camp Meeting Association lies. Percello neglected to obtain a license from Ocean Grove and the case came before the Court of Errors and Appeals upon Percello's conviction for conducting the business of selling ice-cream cones without the license of the Ocean Grove Camp Meeting Association. We quote herewith to some extent from that opinion:

“The territory over which the Ocean Grove Camp Meeting Association claims jurisdiction is within the boundaries of the Township of Neptune. That township has a licensing ordinance also, and the prosecutor took out the desired license (which was to sell ice-cream cones) from the township authorities, and paid the fee for the same. This ordinance was passed under an act entitled ‘An act respecting licenses in incorporated camp meeting associations’, which provides, among other things, that the board of trustees, directors or managers of any camp meeting association heretofore incorporated under the laws of this state shall have power to make, enforce, amend and repeal ordinances to license and regulate various trades and industries, including peddlers and itinerate vendors of merchandise. No question is raised but that the business of the prosecutor is covered by the purview of this act. The ordinance above referred to, as passed January 19th, 1923, specifically covers the business of dispensing ice-cream cones.

“The reasons seem to be all direct to the power of the legislature to authorize the association to enact such an ordinance. They may be epitomized as follows: That the statute is unconstitutional as a special law respecting the internal affairs of Neptune township, and as also granting to the camp meeting association, as a private corporation, certain

exclusive privileges; that it is, in effect a delegation of police powers to a private association; that it purports to attach a religious test to municipal franchises; that the classification of camp meeting associations is illusory. Other reasons assigned are that the original charter of the association in 1870 conferred no licensing powers; that the township of Neptune has exclusive powers; that two municipal corporations cannot occupy the same space at the same time; that the territory called Ocean Grove was never incorporated; that the charter of 1870 was repealed in 1879, and that any attempt to restrict the municipal powers of the township of Neptune is unconstitutional and void.

“We incline to think this last reason hardly pressed with seriousness. As to the others, the fundamental idea underlying all of them that are worthy of consideration is that camp meeting associations are not a legitimate class of municipalities with respect to which legislation purporting to be general municipal legislation can be enacted.

“If this be so, it seems strange that the invalidity and unconstitutionality of legislation affecting camp meeting associations as a class have not been discovered before. They have been treated by the legislature as a class in municipal legislation for many years, in fact, since just after the constitution of 1875. *Comp. Stat.*, p. 354, &c. In 1878 there was an act giving license powers to camp meeting associations (*Comp. Stat.*, p. 358), including hucksters and peddlers of merchandise and provisions. This act was attacked in the case of *Grover v. Ocean Grove Camp Meeting Asso.*, 45 N. J. L. 399, but it is noticeable that the attack was not based on any question of special legislation, and went solely to the powers contained in the body of the act in relation to liquor licenses, and this on the ground that the title of the act did not cover that point; and this was what the court de-

cided. Later, in 1887, came an act with regard to licensing of vehicles in camp meeting associations. *Comp. Stat.*, p. 362. In 1894 there was enacted another act conferring certain powers of government on the managers of camp meeting associations, by section 8 of which (*Comp. Stat.*, p. 364) it is provided that every such board of trustees, directors or managers shall have full power and authority to make, establish and enforce ordinances regulating the granting of all licenses and fixing the fees to be paid therefor, which, by any laws of this state now in force or hereafter passed, they may have authority to grant, and to fix and prescribe penalties for the violation of such ordinances, &c. This act was considered by this court in the case of *Slocum v. Camp Meeting Asso.*, 59 N. J. L. 110, and, again it is noticeable that the question discussed, and substantially the only question, was whether the association could delegate to a magistrate the power to fix a fine for the infraction of an ordinance requiring a license to sell fruit. There seems to have been no hint on the part of either counsel or the court that the statute itself was an infraction of the constitution.

So far as relates to the statute of Ocean Grove as a municipal corporation, we need go no further than to quote the language of the present Chief Justice in *McCran v. Ocean Grove*, 96 N. J. L. (at p. 161), where it was said that that corporation by its charter was constituted a body corporate and politic.

As an abstract proposition, we think there is little or no merit in the attack on the constitutional status of the act now under consideration. But even if we were inclined to think it somewhat vulnerable in that regard, the existence of other acts in *pari materia* unchallenged for a period of nearly fifty years should clearly turn the scale in favor of its support. *Butler v. Commonwealth Tobacco Co.*, 74 N. J. Eq. 423; *Commonwealth Roofing Co. v. Riccio*, 81 *id.* 486, 489, and cases cited."

The Ocean Grove Camp Meeting Association properly exercised its functions under its charter and in accordance with legislative authority given to such associations.

1. There is no question raised as to the validity and regularity of the passage of the ordinance of January 19, 1923 (See pp. 14-17, State of Case). This ordinance required the licensing of automobiles used for the purpose of and in the manner followed by the Prosecutor in the present case. No question is raised as to this fact (See Stipulation of Facts, pp. 18-23, State of Case).

No question is raised as to the fact that the Board of Trustees of the Ocean Grove Camp Meeting Association as the governing body of that Association, did by proper resolution, grant to the Prosecutor a license in pursuance of the ordinance hereinbefore referred to (See pp. 15-23, State of Case—Resolutions of the Executive Committee and of the Board of Trustees of the Ocean Grove Camp Meeting Association).

No question is raised that the prosecutor operated an auto bus exclusively within the territorial limits of the Ocean Grove Camp Meeting Association in exact accordance with the requirements of the license thus given to him.

That the Board of Trustees of the Ocean Grove Camp Meeting Association was the proper authority to grant such a license is also unquestioned. (Laws of 1870, p. 397, Chap. 157; Laws of 1922, Chap. 205, p. 351—Vol. I Supp. to Comp. Stat., pp. 235-6; *McCran v. Ocean Grove*, 96 L. 158 at p. 161, see *supra*.)

2. Neptune Township cannot be said to have the right or power to license an auto bus within the limits of the Ocean Grove Camp Meeting Association.

The charter of Neptune Township expressly excepts from the operation of the rights, powers and privileges granted thereunder, the territory of the Ocean Grove Camp Meeting Association under Section 7 thereof (Laws of 1879, p. 421). That this exception is of full force and effect must necessarily follow from the decision of the Court of Errors and Appeals in the case of *Percello v. Ocean Grove* (see *supra*).

Indeed, it would appear that not only has Neptune Township no authority over the territory of Ocean Grove, but it is open to question whether the Township of Neptune is properly constituted to exercise the functions of a Township government within its own limits.

3. Neptune Township was incorporated by a special act of the Legislature (P. L. 1879, p. 421).

4. The powers granted to Neptune Township were not specifically contained under the act under which it was incorporated, but are made a part thereof by reference to similar powers enjoyed by other townships in Monmouth County. It is well established that the powers to be granted under a special act must be included within that act explicitly unless there is at the same time a general act covering the same subject matter (Laws of 1899—4 Comp. Stat., p. 5563). That general act was passed some twenty years subsequent to the incorporation of Neptune Township. Furthermore, it is noteworthy that Neptune Township is not included in the voluminous list of townships referred to in the general act of 1899, and therein continued and re-enacted to be lawfully constituted townships under the laws of the State of New Jersey. Furthermore, the act incorporating the Township of Neptune was passed approximately four years after the adoption of the seventh section of the fourth paragraph of the

amendments to the New Jersey State Constitution, prohibiting the passage or enactment of special or local laws, regulating the internal affairs of towns or counties (see Sub-sec. 11, Sec. 7, para. 4, Amendments to New Jersey Constitution, Vol. 1, Comp. Stat. LXXVI). Accordingly, it may well be questioned whether the Township of Neptune has the right to pass ordinances operative over the territory over which it claims jurisdiction, let alone whether it may exercise this same authority in territory of the Ocean Grove Camp Meeting Association.

The Board of Public Utility Commissioners are without authority over the operation of auto buses within the territorial limits of the Ocean Camp Meeting Association.

A. The Laws of 1926, Chap. 144, set forth the requirements of the licensing of auto buses. That act by limitation of the terms used therein does not bring the operation of an auto bus within the territorial limits of the Ocean Grove Camp Meeting Association within the application of the Act.

The act by its first section provides:

“1. The words ‘auto bus’ as used herein shall mean and include any automobile or motor bus carrying passengers for hire which is held out, announced or advertised to operate or run, or which is operated or run, over any of the streets or public places in any municipality of this State, and indiscriminately accepts and discharges such persons as may offer themselves for transportation either at the termini or points along the way or route on which it is used or operated or may be running. Nothing herein contained shall be construed to include taxicabs, hotel buses, or buses employed solely in transporting school children and teachers.”

It will appear from the foregoing quotation that the act is applicable only in a municipality of this State. The exact meaning of the word "municipality" is then defined in the following section:

"The word 'municipality' as used herein shall mean and include any city, town, township, village, borough and any municipality governed by a board of commissioners or improvement commission."

Obviously the term "municipality" cannot be extended to embrace any governmental body other than that defined and limited by this definition. It is equally apparent that Ocean Grove is not a city, a town, a township, a village, a borough, or any municipality governed by a board of commissioners or improvement commission.

The Charter of the Camp Meeting Association provides for a Board of Trustees, and the word Municipality as defined in Chapter 144 of the Laws of 1926 makes no reference whatsoever to any municipality or governmental sub-division administered or governed in this manner. There is no inconsistency in the Court's holding that the interpretation of Chapter 144 of the Laws of 1926 has the meaning contended for it by your appellant. That act when taken in connection with the Act of 1922, presents a scheme of Legislation covering the entire State and all the territory therein. Camp Meeting Associations are the only class of Governmental Sub-division covered by the Act of 1922 and apparently the only ones omitted in the Act of 1926. There are no conflicts between these two statutes.

Further, there is a presumption that the omission of Camp Meeting Associations from the statute was intentional on the part of the Legislature and that the Legislature acted with knowledge of the fact that the Act of 1922 applied to Camp Meeting Associations (94 N. J. L. 384).

We cannot assume that the Legislature meant to include camp meeting associations in the absence of the express inclusion of such associations within the definition above quoted. Camp meeting associations are a definite, special and recognized class of organizations for which the Legislature has seen fit from time to time to adopt general legislation. We have seen that the most recent instances of such legislation are the enactments of 1922 relating to the licensing of buses, and the enactments of 1930 relating to the extension of fire districts and the subsequent enactments in the same year providing for a method of securing loans by mortgages on leasehold interests within Camp Meeting Association territory. We have seen that this licensing privilege has existed in camp meeting associations since 1878. We are thus compelled to recognize the fact that provisions looking towards the regulation and licensing of buses by camp meeting associations have been in existence for a longer space of time than general legislation of a similar nature, applicable to the various classes of the governmental bodies and municipalities embraced within the meaning of chapter 144 of the laws of 1926.

The Supreme Court in its decision said that the intention of the Legislature is gathered from Chapter 144 of the Laws of 1926, stating that Camp Meeting Associations should be included within the purpose of that Act. They supported their conclusion by an argument designed to show full and sufficient reasons why the Act in question should not apply to Camp Meeting Associations. To this portion of their opinion we take no exceptions. Very probably the application of Chapter 144 of the Laws of 1926 would be beneficial to residences of the Ocean Grove Camp Meeting Association. That, however, is a matter

for the Legislature to consider. The reasons given by the Supreme Court might very well be argued to the Legislature, contemplating whether to extend their enactment to Camp Meeting Associations. That reasoning, however, cannot, we submit, be properly put forward in support of an interpretation of the actual legislative enactment, when the legislation itself does not by its very words and phrases lend itself the conclusion reached by the Supreme Court. If the Legislature had intended every portion of this State to be included within the purview of Chapter 144 of the Laws of 1926, they might well have omitted that portion of the Act limiting and defining the word Municipality, and thus presented a legislative enactment properly open to construction and interpretation as to the meaning of the word Municipality. When, however, the Act itself by a particular definition describes various governmental groups, commissions and other specific sub-divisions of government, and utterly and entirely fails to refer to Camp Meeting Associations, well recognized though they are by the Legislature as a separate and distinct class for the purposes of general legislation, it is not within the province of the Supreme Court to extend the application of the Act by the interpretation which they seek to put upon it in the opinion and judgment from which this appeal is taken. This principal is set forth as follows:

“The Legislature may define certain words used in the statute, or declare in the body of the act the construction to be placed thereon, and the courts are bound by such construction, and all other parts of the act must yield, although otherwise the language would have been construed to mean a different thing.”
(36 *Cyc.* 1106.)

In other words, the decision of the Supreme Court in this respect is in effect judicial legisla-

tion, and it is respectfully submitted that it therefore be set aside. It is submitted that the proper function of the Court in the matter of interpretation of this and any statute is to show what the statute means and not what it might well have been intended to cover. In other words, the Court is interpreting this statute and is not writing a statute of wider scope which, no matter how praiseworthy it might be, was not a statute which was enacted by the Legislature of this State.

Furthermore, if, as the Supreme Court has held, the Camp Meeting Association of Ocean Grove was not meant to be excepted from the provisions of Chapter 144 of the Laws of 1926, then clearly it must have been considered to be a municipality such as the Act applied to, for the application of the Act clearly is only to municipalities, as will plainly appear from the reading of the Act itself.

If, therefore, the Camp Meeting Association of Ocean Grove be considered a municipality by the very reasoning of the Supreme Court decision from which this appeal is taken, the Camp Meeting Association must necessarily have the right and privilege of enacting ordinances providing for the license of auto buses and the like. Indeed, the Courts of this State have taken that very position, as we have already pointed out in the case of *Percello v. Ocean Grove (supra)*. This decision is set forth in detail on pages 11, 12, 13 and 14 of this brief.

In any event, the final conclusion of the Supreme Court that the Act applies to municipalities can, under no circumstances, justify that Court in going so far as to say that the Ocean Grove Camp Meeting Association itself has by that Act been deprived of its powers as granted in its original charter and continued from time to time by subsequent legislative enactments, many of which have met with the full approval of this Court, in decisions to which we have already referred.

The theory of legislative enactments requires a careful exercise of this power when a meaning is given to an enactment by the Courts which is not clear and manifest on the face of the enactment itself, and this power should be exercised with the most scrupulous care, if the results might constitute complete revocation of a specific special charter given by the State to a municipal corporation, especially when such charter has been recognized for a period of 58 years, and has found approval in various decisions of the very Court which is asked to abrogate that charter. The Court in *State vs. Dwyer* (42 N. J. L. 327) said at page 331:

“The act of 1872 is both special and local; the statute of 1878 is a general statute. Where a general law and a special statute come in conflict, the general law yields to the special, without regard to priority in date, and a special law will not be repealed by a general statute, unless by express words or necessary implication.”

State v. Minton, 23 N. J. L. 529;

State v. Stevenson, 44 N. J. L. 371.

In other words, it is the contention of your appellant that if the Supreme Court is correct in holding that Chapter 144 of the Act of 1926 applies to the Ocean Grove Camp Meeting Association, it by that very point and for the reasons which we have already set forth cannot reasonably take the further step which it has taken in its opinion and judgment of October 10, 1930, and say that thereby the Ocean Grove Camp Meeting Association has lost its status as a municipality. A full recognition of the application of Chapter 144 of the Act of 1926 is accomplished without such a drastic determination. It is respectfully urged that quite regardless of the initial propo-

sition as to the application of the Act to the Camp Meeting Association, this latter phase of the decision should not be sustained. All statutes must be presumed to have been passed by the Legislature with full knowledge of the existing laws and jurisdiction.

Even if the Legislature had neglected to limit and specifically define the types of organizations and municipalities over which Chapter 144 of the Laws of 1926 was intended to be applicable, it is very doubtful if the Ocean Grove Camp Meeting Association could be construed to be a municipality so as to come within the purview of this act. Justice Pitney, in discussing the character of the Passaic Valley Sewerage Commission made the following observations with respect to whether that Commission could be treated as a municipal corporation:

“To call this sewerage district, or the commission that is put in charge of this work, a municipal or quasi-municipal corporation, is, we think, a misuse of terms. There is lacking the delegated power of legislation for local purposes, which is of the essence of municipal government. 2 Kent Com. 275. There is also lacking the direct and exclusive voice of the people locally concerned, so common in our municipalities. Some of our judicial decisions, indeed, have almost treated the right of self-government as essential to the definition of a municipal corporation (*State, Lydecker, Pros., v. Englewood*, 12 Vroom. 157; *Allison v. Corker, Assessor*, 38 Id. 606), but so far as observed this point has not been necessarily involved in the cases. Self-government in municipal affairs is so well nigh universal in this country that it is sometimes thought of as a constitutional right, but perhaps it is not, in the absence of express constitutional provision. See 1 Dill. Mun. Corp. (4th ed.), para. 9, 19, 20, 21, 44, 58a, 60, 61, 183, and elsewhere *passim*.”

B. Chapter 146 of the Laws of 1926 was approved at the same time as Chapter 144, and by its terms gives the Board of Public Utility Commissioners general supervision, regulation of and jurisdiction and control over all public utilities. It then proceeds to define public utilities, and in reference to auto buses defines as a public utility an organization operating auto buses under privileges granted or hereafter granted by the State of New Jersey, or any political subdivision thereof.

The act of 1926 amending the act of 1911, whereby the Board of Public Utility Commissioners was first constituted, limits and defines the jurisdiction of the Public Utility Commission.

The Ocean Grove Camp Meeting Association cannot be said to be a political subdivision of the State, but rather a private corporation located within the political subdivision of Neptune Township with special privileges, however, granted under its charter. The residents of Ocean Grove, as we have observed, have no share or vote in their local self-government. They pay their taxes to the Township of Neptune and cast their ballots in State and nation-wide elections as inhabitants of the Township of Neptune.

The trustees of the Camp Meeting Association own the fee to the land occupied by the Association. They are a self-perpetuating Board, the residents having no power in their selection or perpetuation (Chap. 157, Laws of 1870).

Thus, it will appear, that the privilege under which the prosecutor's auto bus was operated was not granted by the State of New Jersey or by the Township of Neptune, a political subdivision thereof, but by the Ocean Grove Camp Meeting Association, an Association specifically provided for in other general acts and not within the meaning of Chapter 146 of the Laws of 1926.

Since the Supreme Court in its decision held that the operation of the auto bus by the Prosecutor within the territorial limits of the Ocean Grove Camp Meeting Association without the permission of Neptune Township was unlawful, and inasmuch as we have already demonstrated that Neptune Township has no authority to issue such a license in Ocean Grove by reason of the limitations upon its own act of incorporation, we need go no further in our argument to demonstrate the error in the decision of the Court, for if the decision is based upon the fundamental requirement of the power of Neptune Township to license in Ocean Grove and this power be shown to be non-existent, then it necessarily follows that the entire opinion of the Court is in error. We have, nevertheless, demonstrated that a further and second error was made by the Court in deciding that the operation of buses in Ocean Grove comes within the jurisdiction of and under the supervision of the Board of Public Utility Commissioners.

Wherefore, prosecutor respectfully requests that the decision of the Supreme Court of New Jersey be reversed and set aside.

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INDEX

Introduction	1
Chapter I	1
Chapter II	12
Chapter III	24
Chapter IV	34
Chapter V	44
Chapter VI	54
Chapter VII	64
Chapter VIII	74
Chapter IX	84
Chapter X	94
Chapter XI	104
Chapter XII	114
Chapter XIII	124
Chapter XIV	134
Chapter XV	144
Chapter XVI	154
Chapter XVII	164
Chapter XVIII	174
Chapter XIX	184
Chapter XX	194
Chapter XXI	204
Chapter XXII	214
Chapter XXIII	224
Chapter XXIV	234
Chapter XXV	244
Chapter XXVI	254
Chapter XXVII	264
Chapter XXVIII	274
Chapter XXIX	284
Chapter XXX	294
Chapter XXXI	304
Chapter XXXII	314
Chapter XXXIII	324
Chapter XXXIV	334
Chapter XXXV	344
Chapter XXXVI	354
Chapter XXXVII	364
Chapter XXXVIII	374
Chapter XXXIX	384
Chapter XL	394
Chapter XLI	404
Chapter XLII	414
Chapter XLIII	424
Chapter XLIV	434
Chapter XLV	444
Chapter XLVI	454
Chapter XLVII	464
Chapter XLVIII	474
Chapter XLIX	484
Chapter L	494
Chapter LI	504
Chapter LII	514
Chapter LIII	524
Chapter LIV	534
Chapter LV	544
Chapter LVI	554
Chapter LVII	564
Chapter LVIII	574
Chapter LIX	584
Chapter LX	594
Chapter LXI	604
Chapter LXII	614
Chapter LXIII	624
Chapter LXIV	634
Chapter LXV	644
Chapter LXVI	654
Chapter LXVII	664
Chapter LXVIII	674
Chapter LXIX	684
Chapter LXX	694
Chapter LXXI	704
Chapter LXXII	714
Chapter LXXIII	724
Chapter LXXIV	734
Chapter LXXV	744
Chapter LXXVI	754
Chapter LXXVII	764
Chapter LXXVIII	774
Chapter LXXIX	784
Chapter LXXX	794
Chapter LXXXI	804
Chapter LXXXII	814
Chapter LXXXIII	824
Chapter LXXXIV	834
Chapter LXXXV	844
Chapter LXXXVI	854
Chapter LXXXVII	864
Chapter LXXXVIII	874
Chapter LXXXIX	884
Chapter LXXXX	894
Chapter LXXXXI	904
Chapter LXXXXII	914
Chapter LXXXXIII	924
Chapter LXXXXIV	934
Chapter LXXXXV	944
Chapter LXXXXVI	954
Chapter LXXXXVII	964
Chapter LXXXXVIII	974
Chapter LXXXXIX	984
Chapter LXXXXX	994

Since the Supreme Court in its decision held that the operation of the auto bus by the Prosecutor within the territorial limits of the Ocean Grove Camp Meeting Association without the permission of Neptune Township was unlawful, and inasmuch as we have already demonstrated that Neptune Township has no authority to issue such a license in Ocean Grove by reason of the distinction upon its own act of incorporation, we need go no further in our argument to demonstrate the error in the decision of the Court, for if the decision is based upon the fundamental requirement of the power of Neptune Township's license in Ocean Grove and this power is shown to be non-existent, then it necessarily follows that the entire opinion of the Court is in error. We have, nevertheless, demonstrated that a further and second error was made by the Court in deciding that the operation of buses in Ocean Grove comes within the jurisdiction of and under the supervision of the Board of Public Utility Commissioners.

Wherefore, prosecutor respectfully requests that the decision of the Supreme Court of New Jersey be reversed and set aside.

REYNOLDS & CASEY,
Attorneys for Prosecutor.

REYNOLDS & CASEY, JR.,
OF NEW JERSEY.