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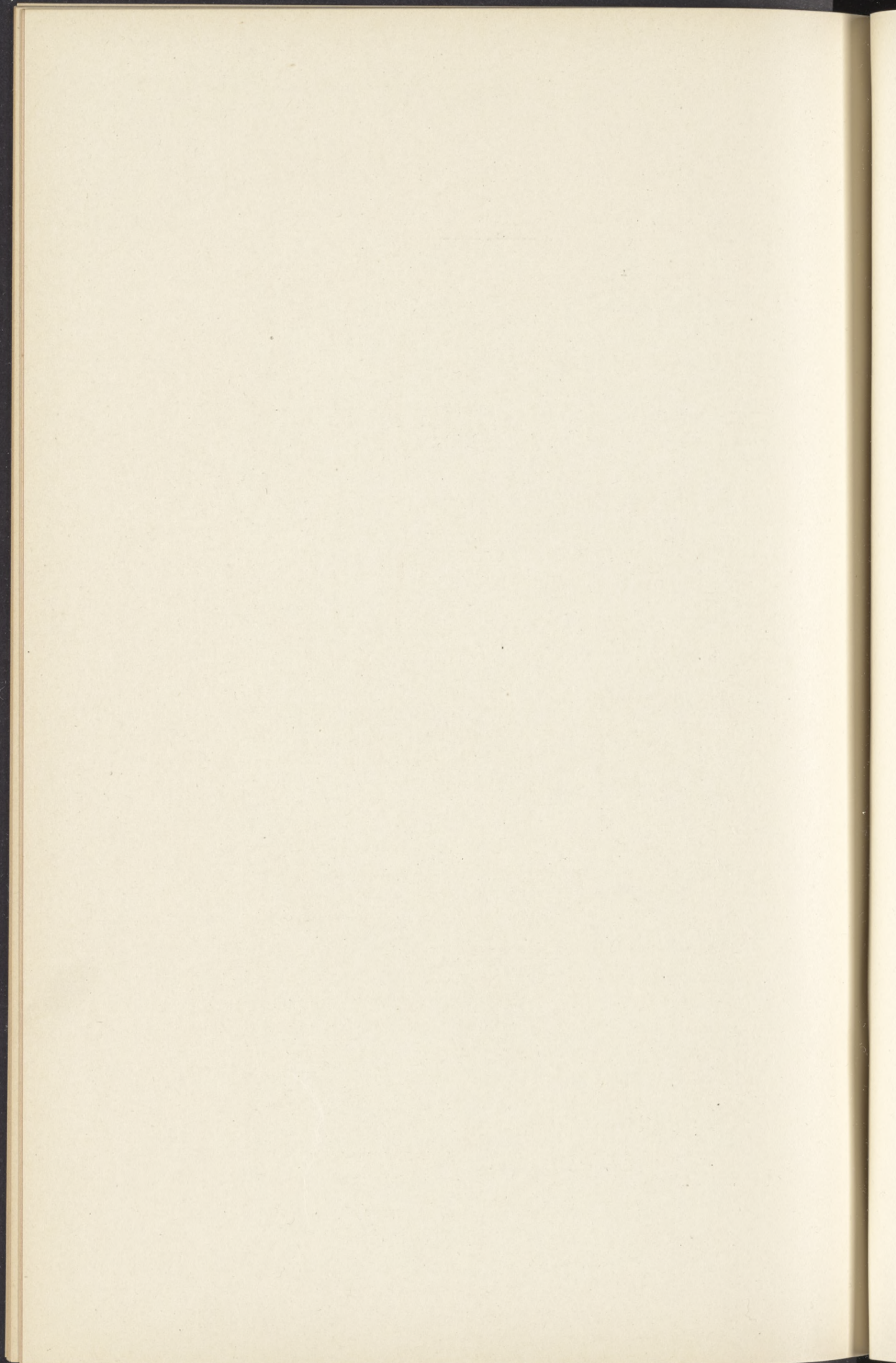
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**Notice of Appeal**

**NEW JERSEY SUPREME COURT**

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HILLSIDE BUS OWNERS ASSOCIATION and JOSEPH NOON, et als.,  
Prosecutors,

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vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY and THE PUBLIC SERVICE COORDINATED TRANSPORT,

Respondents.

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To: The Board of Public Utility Commissioners of the State of New Jersey, and The Public Service Coordinated Transport, or their attorneys:

Sirs:

TAKE NOTICE that the Prosecutor-Appellant, Hillside Bus Owners Association and Joseph Noon, et als., appeals to the Court of Errors and Appeals of the State of New Jersey from the whole of the judgment entered in the above stated cause on the following ground:

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That the Supreme Court erroneously dismissed the writ of certiorari allowed in the above-stated cause reviewing an order of the Board of Public Utility Commissioners approving the consents of the Township of North Bergen and the Borough of Cliffside Park, to re-route, in part, a portion of the buses operated by the Public Service Coordin-

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**Rule for Judgment**

NEW JERSEY SUPREME COURT  
No. 274, October Term, 1928.

HILLSIDE BUS OWNERS ASSOCIATION, et als., <p style="text-align: center;">Prosecutors,</p>		10
vs.		
BOARD OF PUBLIC UTILITY COMMISSIONERS and THE PUBLIC SERVICE COORDINATED TRANSPORT, <p style="text-align: center;">Defendants.</p>	} On Certiorari.	20

This cause coming on to be heard before the Court upon a writ of certiorari allowed herein and the Court having examined said writ, the return thereto and the reasons for reversal filed by the prosecutor, and having heard the argument of counsel thereon and having read the briefs filed by counsel and being satisfied that the order of the Board of Public Utility Commissioners of the State of New Jersey in the matter of the application of Public Service Coordinated Transport for the approval of municipal consents to extend the Hillside route between Hoboken and the northerly limit of Cliffside via Palisade Avenue, dated August 7th, 1928, which approved municipal consents for the operation of auto buses as described, should not be disturbed or set aside,

IT IS ADJUDGED AND DECREED that the said order of said Board is therefore affirmed and

*Rule for Judgment*

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the writ of certiorari is dismissed with costs to the defendants.

Rule entered this 5th day of February, A. D. 1929.

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On motion of  
FRANK BERGEN,  
Attorney of Defendants.

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**Writ of Certiorari.**

THE STATE OF NEW JERSEY,

To the Board of Public Utility Commissioners of the State of New Jersey, and the Public Service Co-ordinated Transport, Greeting: We being willing for certain reasons to be certified to a certain order of the Board of Public Utility Commissioners of the State of New Jersey, made on the 7th day of August, 1928, approving the

(L. S.)

application of the Public Service Co-ordinated Transport for the approval of municipal consents to extend the Hillside Route between Hoboken and the northerly limits of Cliffside via Palisade Avenue, DO COMMAND YOU that you certify and send under your seal to our justices of the Supreme Court on the first day of October next, the said order of the said Board of Public Utility Commissioners of the State of New Jersey, approving the application of the Public Service Co-ordinated Transport for the approval of municipal consents to extend the Hillside Route between Hoboken and the northerly limits of Cliffside via Palisade Avenue, together with all things touching and concerning the same, and leading up to the same, as fully and completely as they remain before you, together with this our writ, that we may cause to be

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*Writ of Certiorari.*

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done thereupon what of right and justice and according to the laws of the State of New Jersey ought to be done.

Witness, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court at Trenton, this 22nd day of  
 10 September in the year of Our Lord, one thousand nine hundred and twenty-eight.

FRED L. BLOODGOOD,  
 Clerk.

NICHOLAS S. SCHLOEDER,  
 Attorney for Prosecutors.

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20 The above writ is allowed. Let it be sealed on terms that if desired by defendants the cause be heard at the October term 1928, of the court, the return to contain the depositions or testimony and other evidence taken before the board in the matter above described and the depositions taken under the rule to show cause herein to be considered as though taken under this writ: No further depositions or evidence to be taken unless by special order. Return to be made on or before October 1,  
 30 1928. The writ not to operate as a stay.

CHARLES W. PARKER,  
 Justice Sup. Crt.

December 11, 1928.

**Return on Writ.**

## NEW JERSEY SUPREME COURT.

HILLSIDE BUS OWNERS ASSOCIATION, and JOSEPH NOON, et al., Prosecutors, v. BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY and PUBLIC SERVICE CO-ORDINATED TRANSPORT, Defendants.	}	On Certiorari.	10
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To the Honorable the Justices of the Supreme Court of Judicature of New Jersey:

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The Board of Public Utility Commissioners herewith sends to the Supreme Court of Judicature of the State of New Jersey, a certain order made by said board the seventh day of August, Nineteen Hundred and Twenty-eight, and all things touching and concerning the same, as fully and entirely as before the board they appear and remain, as it is within commanded.

IN WITNESS whereof the seal of said board is hereto affixed, and certified by the subscriber. 30

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

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### Schedule.

#### BOARD OF PUBLIC UTILITY COMMISSIONERS.

10 Application of Public Service  
Co-ordinated Transport for  
Approval of Extension of the  
Hillside Route, Operating Be-  
tween Hoboken and Cliffside,  
to Fort Lee, New Jersey.

Public Service Co-ordinated Transport respect-  
fully shows:

20 1. That it is now operating a line of buses on  
the Hillside route, between Hoboken and Cliffside,  
as follows:

30 Beginning at the Fourteenth Street termi-  
nal, Hoboken, thence via Fourteenth Street,  
Fourteenth Street Viaduct, Manhattan Ave-  
nue, Eighteenth Street, Palisade Avenue,  
Monastery Place, New York Avenue, Forty-  
seventh Street, Bergenline Avenue, Anderson  
Avenue to Lafayette Avenue, Cliffside; return-  
ing via same route to Bergenline Avenue and  
Forty-eighth Street, thence via Bergenline  
Avenue, Sixteenth Street, Manhattan Avenue,  
Fourteenth Street Viaduct, and Fourteenth  
Street to Fourteenth Street Terminal Ho-  
boken.

2. That it is now desired to operate a portion  
of the service as follows:

40 Same as above route to Bergenline Avenue  
and Bulls Ferry Road, thence via Bulls Ferry

*Schedule.*

Road and Palisade Avenue, to the Hudson River P. R. W., Fort Lee; returning via same route.

Attached hereto are consents from the Township of North Bergen and the Borough of Cliffside Park, approving of the extension requested.

10

Your petitioner therefore prays the approval of your Honorable Board to the foregoing extension.

Respectfully submitted,

PUBLIC SERVICE CO-ORDINATED TRANSPORT,  
A.T.W. By GEORGE H. BLAKE,  
General Solicitor.

Dated, Newark, N. J., May 3rd, 1928.

WHEREAS, On April 3rd, 1928, the Public Service Co-ordinated Transport made application for municipal consent to re-route and extend a portion of the buses now operating on the Hillside Line between 14th Street, Hoboken, and Lafayette and Anderson Avenues, Cliffside, to and in the Township of North Bergen, and

20

WHEREAS, The Township Committee has determined that such transportation is necessary in the interest of public welfare, and

30

WHEREAS, Proper application has been made and all requirements satisfied for the issuance of the license applied for,

NOW THEREFORE BE IT RESOLVED, That municipal consent be and is hereby granted to Public Service Co-ordinated Transport to extend a portion of the buses now operating on the Hillside Line between 14th Street, Hoboken, and Lafayette and Anderson Avenues, Cliffside, to operate as follows:

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*Schedule.*

- From 14th Street Ferry, Hoboken, via the present Hillside bus route to Bergenline Avenue and Hudson County Boulevard, North Bergen, thence via Bull's Ferry Road, to Palisade Avenue into Cliffside, continuing on Palisade Avenue to the junction of Palisade Avenue and the Hudson River trolley line, Fort Lee.
- 10 And be it

FURTHER RESOLVED: That a certified copy of this resolution be forwarded to the Public Service Co-ordinated Transport by the Township Clerk.

April 12, 1928.

SHERMAN C. PORTER.

E. A. LAWLER.

HENRY E. WOLFF.

JOSEPH L. MILLER.

20

I HEREBY CERTIFY the foregoing to be a true and correct copy of resolution passed and adopted by the Township Committee of the Township of North Bergen, Hudson Co., N. J., at a meeting held on the above date.

(Signed) EDWARD A. RYAN,  
Township Clerk.

30 (Seal)

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BE IT RESOLVED BY THE BOROUGH COUNCIL OF THE BOROUGH OF CLIFFSIDE PARK IN THE COUNTY OF BERGEN

WHEREAS, on April 3, 1928, Public Service Co-ordinated Transport made application for municipal consent to re-route and extend a portion of the buses now operating on the Hillside Line between

40

*Schedule.*

14th Street, Hoboken, and Lafayette and Anderson Avenues, Cliffside Park, to and in the Borough of Cliffside Park; and

WHEREAS, this Honorable body has investigated and determined that such transportation is necessary, advisable and convenient for the public welfare; and 10

WHEREAS, proper application has been made and all requirements satisfied for the issuance of the license applied for:

BE IT RESOLVED, that municipal consent be and is hereby granted to Public Service Coordinated Transport subject to approval of schedule to extend a portion of the buses now operating on the Hillside Line between 14th Street, Hoboken, and Lafayette and Anderson Avenues, Cliffside Park, to operate as follows: 20

From 14th Street Ferry, Hoboken, via the present Hillside bus route to Bergenline Avenue and Hudson County Boulevard, North Bergen, thence via Bull's Ferry Road to Palisade Avenue into Cliffside Park, continuing on Palisade Avenue to the junction of Palisade Avenue and the Hudson River trolley line, Fort Lee. 30

(Seal) This is to certify that the above is a true copy of a resolution passed at a regular meeting of the Mayor and Council of the Borough of Cliffside Park on Monday evening, April 9th, 1928.

(Signed) ARTHUR H. ABRAMS,  
Borough Clerk. 40

**Return.**BOARD OF PUBLIC UTILITY  
COMMISSIONERS,

Newark, N. J., Thursday, June 21st, 1928.

- 10 Extension of Hillside Route Between Hoboken and Cliffside via Fort Lee—Application Public Service Coordinated Transport for approval of local consents.

Before Commissioner—F. W. GNICHTEL, ESQ.

- 20 For Public Service Coordinated Transport appears:  
GEORGE H. BLAKE, ESQ.  
For Hillside Bus Line appears: NICHOLAS S. SCHLOEDER, ESQ.  
For Real Estate Board of Palisade Park appears:  
PATRICK J. CARNEY, ESQ.  
For Exchange Club of Cliffside Park appears:  
HENRY GUBLER, JR., ESQ.

- 30 Mr. Blake: May we have a statement from counsel as to the nature of the objection, your Honor?

Commissioner Gnichtel: What is your objection?

Mr. Schloeder: Well, I suppose the simple fact that the extension is neither necessary nor convenient and that it is in direct competition with us, depriving us of a certain portion of our revenue.

Commissioner Gnichtel: Whom do you represent?

Mr. Schloeder: I represent ten Independents on the Hillside bus route.

- 40 Commissioner Gnichtel: All right, proceed.

Mr. Blake: This is not an application for new buses. This is an application for a diversion of some of our buses from the main route on which the Hillside buses operate into another territory not now served. There are no additional buses to be operated and, therefore, the question of necessity and convenience upon the existing line, it seems to me, is immaterial, because we will be operating the same number of buses, simply taking them from one street and putting them over on another. 10

Commissioner Gnichtel: All right, you may proceed.

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ARTHUR T. WARNER, sworn on behalf of Public Service Coordinated Transport.

Direct Examination by Mr. Blake: 20

Q. Mr. Warner, you are general manager in charge of traffic of the Public Service Coordinated Transport, are you not? A. Yes, sir.

Q. Is that company now operating buses between Hoboken and Cliffside? A. Yes, sir.

Q. And it has received permission from the municipalities to re-route a portion of its buses, has it not? A. It has, yes, sir. 30

Q. And consents of Cliffside and North Bergen are attached to the application, are they not? A. They are.

Mr. Blake: I offer them in evidence.

Mr. Schloeder: Could I examine them, please.

Mr. Blake: Certainly (handing Mr. Schloeder consents).

(Consent of Cliffside received and marked Ex. P. S.-1.) 40

(Consent of North Bergen received and marked Ex. P. S.-2.)

Q. Have you a map, Mr. Warner? A. Yes, sir (producing map).

10

Mr. Blake: I offer that in evidence.

(Map showing present route of Hillside Bus Line and route of proposed extension, received and marked Ex. P. S.-3.)

20

Q. Will you explain to the judge, Mr. Warner, the present operation of the line? A. The line starts in Hoboken and operates west in Hoboken to Union City and north on Bergenline Avenue through West New York, Guttenburg and North Bergen up to the county line between Hudson and Bergen Counties; then Bergenline Avenue becomes Anderson Avenue, and thence over the line shown in red on the map up to the northerly line of Cliffside Park.

Q. That is the present operation? A. Yes, sir.

Q. How many buses operate there? A. Forty-three.

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Q. How many are owned by the Public Service Coordinated Transport? A. There are nine Independents, thirty-three Public Service, and there is one, the title of which I don't know what it is now; it is very much up in the air anyway.

By Commissioner Gnichtel:

Q. Those forty-three buses run where? A. On the red line, as indicated on the map.

40

Q. They all run the same now? A. Yes, sir. The diversion asked for is to carry them over the black line and up Palisade Avenue instead of Anderson Avenue in Cliffside.

By Mr. Blake:

Q. At the present time, all the buses, both Public Service and Independents, operate over the red line? A. Yes, sir.

Q. Now, you have received permission from North Bergen and Cliffside to take a certain number of the Public Service buses off the red line and put them over on the black line, have you not? A. Yes, sir. 10

Q. How will those buses operate? A. They will operate in Hoboken up to Nungesser's, where the line will be split, part of the line continuing over Anderson Avenue and the balance of the line going over Palisade Avenue, over the black line as indicated on the map.

Q. What service is there now over the black line? A. On Palisade Avenue there is no service at all. 20

Q. And what is the distance between the black line and the red line? A. It varies from a block at Edgewater Road to three blocks—it is about two thousand feet, over two thousand feet at its widest point, but in the center, between Anderson Avenue and Palisade Avenue, is the private right of way of the Palisade trolley line over which there are very few cross streets, and it divides the town practically in a north and south line, so that the side of the community on the east side of the Palisade trolley line hasn't free access to the community on the west side. 30

Q. So it isn't a matter of one or two blocks, as is shown on the map, to get from one side of the town to the other, is it? A. No, sir, it is a great deal more than in a great many cases, because a lot of those streets do not go through that private right of way.

By Commissioner Gnichtel: 40

Q. Do they both stop at this same cross street

here (indicating on map)? A. Yes, sir, that is the Fort Lee line.

By Mr. Blake:

10 Q. This is not an application to put additional buses on the line, is it? A. No, sir.

Q. And it does not take away from the existing line any of its revenue, does it? A. No, sir.

Mr. Schloeder: I object to counsel's leading questions.

Mr. Blake: Yes, that was a leading question, I admit.

Commissioner Gnichtel: Put it another way.

20 Mr. Blake: Yes, sir.

30 Q. Does it divert any of the revenue from the existing bus line, Mr. Warner? A. No, sir, I do not think it would. If anything, it would leave more business to the buses that are on Anderson Avenue in that section because some of that business on Anderson Avenue which is now being divided between forty-three buses is not going to be divided between forty-three buses, because part of them will not be there, so those that are left will gain by it.

By Commissioner Gnichtel:

Q. What advantage will the public receive by diverting these buses? A. The service will be spread out. People who now live on the east side of Palisade Avenue in Cliffside Park will have service far closer to their homes than they now have it.

40 Q. Will the buses remaining on Anderson Avenue be sufficient to serve the public convenience?

A. Yes, sir, there will be enough service on Anderson Avenue, because the heavy portion of the route is in Hudson County, after the buses get below the Hudson County line.

By Mr. Blake:

Q. What will it mean to the people living east of the Palisade trolley line? They now have to walk to the nearest through street to get over to Anderson Avenue, do they not? A. Yes, sir.

10

Q. Whereas, by the buses running this way, they would not have to do that, would they? A. That is correct.

Q. In your opinion, will that be a convenience to the people living in that vicinity? A. It certainly will be.

Q. And do you think there is necessity for the type of service you will offer there? A. I do. We have been approached by the Borough authorities of the Borough of Cliffside Park for a long time to put this service in.

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Q. And finally they gave you the municipal consent to do that, did they not? A. Yes, sir.

Mr. Blake: Cross examine.

Mr. Schloeder: Before proceeding with my cross examination, I would like to know if these resolutions have been offered in evidence?

30

Mr. Blake: Yes, sir.

Mr. Schloeder: Then presumably they have been admitted in evidence as exhibits?

Commissioner Gnichtel: Yes; certified copies are attached to the petition.

Mr. Schloeder: And now you offer that map in evidence?

40

Mr. Blake: Yes, sir, it has been offered and marked as an exhibit.

Mr. Schloeder: It has been marked, but not in evidence.

Mr. Blake: Yes, I offered it before.

10 Mr. Schloeder: I understood it was simply marked for identification. I did not have an opportunity to cross examine on it.

Commissioner Gnichtel: Do you want to cross examine on it.

Mr. Schloeder: Yes, sir.

Commissioner Gnichtel: All right, proceed.

Cross Examination by Mr. Schloeder:

20 Q. This map does not show all the existing facilities in that vicinity, does it, Mr. Warner? A. In what vicinity?

Q. Well, both the red line and the black line. A. Yes, sir.

Q. Are there any other lines along Palisade Avenue now? A. Any bus lines along Palisade Avenue?

Q. Yes. A. No, sir.

Q. None at all? A. No, sir.

30 Q. Are there any other lines along Anderson Avenue? A. No, sir.

Q. Now, where does this trolley line go to? A. You mean the Palisade trolley line?

Q. Yes. A. From Grantwood Junction, which is just within the Borough of Fort Lee, to the 42nd Street ferry, the West Shore ferry.

Q. You maintain regular headways, I presume? A. Sometimes.

40 Q. What is the headway on that line? A. I think it is five minutes in the middle of the day and it gets down to about two minutes in the rush hours.

Q. Two minutes in the rush hours? A. Yes, sir.

Q. Now, to the easterly side of the black line, along Palisade Avenue, as indicated here, what do you know about the population of that territory there? A. The southern portion of Palisade Avenue is built up fairly solidly along Palisade Avenue to the center of the business section of Cliffside Park; then there is a little break as it approaches Edgewater Avenue and makes the turn up there past the school; beyond the turn the population is solid again, on the east side, up to the south end of the Palisade Amusement Park. 10

Q. What do you mean by "solid", single family houses? A. Yes, sir, built up; those are single family houses up in that section very largely, I guess entirely.

Q. Now, you mentioned Palisade Amusement Park. That is on the easterly side of the northerly end of the proposed extension, is it not? A. Practically the north end of the proposed extension. 20

Q. When does that park open as a rule, during the year? A. That park is open from sometime in the early part of May until after Labor Day.

Q. For a period of about three months, would you say, roughly? A. I should say about four months.

Q. And what is the character of the riding then with respect to any of these existing lines, with regard to the patrons of that park? When I say "character" I mean, what is the number, is it large? A. Oh, yes; Saturdays, Sundays and holidays in the summer time it is well patronized. A great many people come over from New York, from the Harlem section of New York, come across on the ferry there, and come up the hill, and a lot of people from Hudson County come up to it, using either the bus line or the car line, and people from all 30 40

North Jersey, Bergen County, Hackensack and Paterson, and so forth.

Q. Now, that ceases, of course, during the balance of the year, does it not? A. It stops shortly after Labor Day, usually.

10 Q. What lines do they use in respect to going in a southerly direction? A. Well, on Saturdays and Sundays we run a lot of additional tripper service on the Palisade trolleys; we have a terminus up there for the park. The trolleys handle a large part of the people who go from the south up there to the park. We have sometimes in the past run considerably better than a minute headway up there on Saturdays and Sundays in the summer time.

20 Q. I see. What about the present Hillside line? A. A great number of people walk over to the end of that line, to and from the park.

Q. The terminus of the two lines, that is, the Hillside line and the trolley line, are different, are they not? A. Yes, sir.

Q. What is the southerly terminus of the Palisade line? A. The southerly terminus of the Palisade line is at the 42nd Street ferry.

Q. And of the Hillside line? A. The 14th Street ferry, Hoboken.

30 Q. Now, anyone desiring to go to Union City, particularly the center and southern end of Union City, or Hoboken, would use the Hillside line, would they not, in preference to the Palisade line?

A. Well, on Saturdays and Sundays there is tripper service operated from Union City up there on the cars, so on Saturdays and Sundays that direct service to Union City would be available.

Q. What is the fare on that service? A. Ten cents.

40 Q. And what is the fare on the Hillside service? A. Five cents to Union City.

Q. I mean, to the southerly end of Union City it is five cents, isn't it? A. Yes, sir.

Mr. Schloeder: I will admit the map without objection.

Q. Now to continue. Do you know whether or not the Borough of Fairview passed any resolution authorizing the suspension of a number of buses for the rerouting of this proposed line? A. Not that I know of. 10

Q. Not that you know of? A. No, sir.

Q. Well, do you know whether or not the consents which have been obtained, the purported consents which have been obtained from the Borough of Cliffside Park, are in conformity with the provisions of the local ordinance up there? A. I don't know. That is a legal question. I could not answer that. 20

Q. You do not know whether or not the consents which have been obtained from North Bergen, with respect to the Bulls Ferry Road portion of the proposed rerouting conform with the requirements of their ordinance?

Commissioner Gnichtel: He wouldn't know that.

Witness: I would rather have you ask Mr. Blake those questions. 30

Commisisoner Gnichtel: Yes, that is a matter of law. You cannot introduce that evidence through a lay witness. I would not take his word for it whether they did or not.

Mr. Schloeder: That is more or less by way of introduction anyway. I concede that your Honor is correct with regard to that.

Q. Now, Mr. Warner, how many buses is it proposed to run up on this Palisade Avenue line? A. 40

We will start the operation with a sufficient number of buses to run about a ten minute headway over Palisade Avenue and it will vary as the traffic demands.

Q. May I see the permits, please.

10                    Commissioner Gnichtel: (Hands Mr. Schloeder permits).

Q. In your application which, of course, speaks for itself, you are aware it does not specify any specific number of buses which you desire to reroute; isn't that so? A. I don't think it does.

Mr. Blake: It speaks for itself, whatever it is.

20                    Q. How many buses do you contemplate, in number, to run up this proposed extension? A. Well, as I said a minute ago, we will start service on the extension with about ten minute headway.

Q. About a ten minute headway? A. Yes, sir, and it will take about twelve buses, covering the entire length of the line, so that portion of the forty-three, about twelve, would be diverted over to Palisade Avenue to furnish that ten minute headway. Of course, those twelve would not be on Palisade Avenue at the one time.

30

Q. Suppose you needed more buses according to your conception of necessity, what would you do in such a case? A. It would depend entirely on what the traffic was on Anderson Avenue.

Q. Would it depend in any way upon the number of people who were visiting Palisade Park? A. No, sir, it would not, because the bus service to and from Palisade Park, that is, the necessity for additional buses, so far as the Palisade Park business goes, would be merely a Saturday and Sunday

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proposition in nice weather in the summer time and it certainly would not be a reason for putting on additional buses on a line as a matter of permanent operation.

Q. Well, do you think that twelve buses would be enough to handle the Palisade Park's crowd? A. Twelve buses by themselves?

10

Q. No, I mean the proposed rerouting of twelve buses, would that take care of the Palisades Park's crowd? A. You mean, by themselves?

Q. Yes. A. No.

Q. I mean, those that are now using the present Hillside line. A. I do not believe they would.

Q. They would not? A. I do not think they would.

Q. In other words, you would conceive that it would be necessary to run more; is that right? A. No, I do not say that. That was not the question you asked me.

20

Q. Would it be necessary at any time to run more than twelve buses along this proposed extension? A. See if this answer is responsive to your question, because I do not quite understand you: The people who now come out of Palisade Park and go south, either walk over to the trolley terminus on the private right of way and take trolley cars or continue on to Anderson Avenue and take the buses there. Now, the same number of buses and the same number of cars will be available for those people, either at one place or the other. Now, if you consider merely these twelve buses by themselves, without any other bus service or without any other trolley service, those twelve buses probably, at times, would be overtaxed, but the other service is still there and available for those people.

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Q. Isn't it a fact that if those buses went up there, that nobody would go over to Anderson Ave-

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nue to board the buses there? A. I think they would.

Q. You think they would? A. Yes, sir, certainly.

Q. Your idea is that they are going to walk that two thousand feet that you mentioned before? A. I think that people will continue to go over to the trolleys and take the trolleys and I think that people will continue to go over to Anderson Avenue and take the Anderson Avenue buses.

Q. In other words, the introduction of these buses won't have any effect upon the present existing facilities; is that your answer? A. I think, as I said in my direct examination, I think that the buses which remain on Anderson Avenue will do a larger business than they do now.

Q. Will do a larger business? A. Then they do now, yes, sir.

Q. I am talking now about the Palisade Park business. A. Well, I don't know.

Q. You don't know? A. No.

Q. In other words, you are— A. I don't know how many people will continue to walk over to the trolleys and I don't know how many people will continue to walk over to Anderson Avenue to the buses, but I certainly think a certain amount of them will and I think it is fair to assume so.

Q. But you do know that a great deal of the business that would go to the existing facilities will be taken care of by the proposed rerouting, do you not? A. No, I don't think a great deal of the Palisade Park business will be, not a great deal.

Q. I am talking of the existing facilities which are now before this Board, not any facilities to New York or Hackensack? A. All right; I am talking about the existing facilities too.

By Mr. Blake:

Q. These are part of the existing facilities, but

on another street, are they not, Mr. Warner? A. Yes, sir. I am talking about the existing facilities.

By Mr. Schloeder:

Q. So that your answer is that your introduction of twelve buses going directly to Palisade Park will not affect the business that is created by the people walking over to Anderson Avenue and also walking over to the trolley line; is that your answer? A. I do not think it will affect it materially. I think the trolleys will still carry the bulk of the people to and from Palisade Park to the south. Twelve buses on a ten minute headway could not possibly carry the passengers that go up there, running on a minute, a minute and a half, or a two minute headway; they could not possibly carry them. 10

Q. Is it proposed that this number of twelve buses is a variable number? A. As I said before, it is proposed to start on a ten minute headway, that is, a fixed quantity of service. 20

Q. And will that ten minute headway fix the number of buses? A. Yes, sir.

Q. Which you approximate at twelve; is that it? A. Yes, sir.

Q. Now I ask you again, Mr. Warner, will that be a variable number or will that number be continued or is it proposed to be continued throughout the year? A. I don't know. It depends on what the traffic develops over there and how the traffic divides itself. 30

Q. So that this application is an application to run up along Palisade Avenue an unknown and an uncertain number of buses; isn't that so? A. To run a service which the traffic on the street will require. 40

Q. Which will vary according to the requirements? A. I suppose it will.

Q. Now, in respect to the service on the Palisade line, will that in any way be affected by the running of these buses? A. I suppose that the service on the Palisade Park line will be somewhat affected. It will be far more affected than the bus service on Anderson Avenue, in my opinion.

Q. Well now, where does the Palisade Avenue line go to? A. To the 42nd Street ferry.

Q. And where does the Hillside line go to? A. To the 14th Street ferry, Hoboken.

Q. So that the destinations of those two lines are different, are they not? A. Yes, the other terminus is different, but reaching the business portion of West New York and Union City, the northern end of Union City, both lines do it within a quarter of a mile apart when they reach 48th Street, Union City.

Q. Now, how do you suppose that the Anderson Avenue service will be increased by the usage of the people coming from Palisade Park on the proposed extension? A. I did not know I said it would be.

Q. You do not know that you testified here that, if anything, the service along Anderson Avenue would be not only not affected adversely, but would be increased? A. I said that, yes, but that was not the question you asked me.

Q. Well, now since you understand the question, answer it. In what way will the Anderson Avenue service be increased? A. Why, the business on Anderson Avenue is now divided up between forty-three buses; with twelve of those buses out there will be thirty-one left, and with the amount of business on Anderson Avenue divided into one-thirty-first instead of into one forty-third, the

thirty-first part of the whole is certainly larger than the forty-third part of the whole.

Q. Will this ten minute headway which you propose to inaugurate, that is only for the summer time, isn't it? A. We planned to put a ten minute headway on this line when it was first talked of and applied to the municipalities up there for, which was some time last winter, and I still say that a ten minute headway would be a proper headway to start with, whether it is started in the summer or in the winter. 10

Q. What was that answer? A. I say, a ten minute headway is a proper headway to start on, regardless of whether it is started in the summer or in the winter.

Q. And, of course, in the summer time it will be increased, I presume, because of the great crowds going to Palisade Park? A. No, I do not think so. 20

Q. You do not think so? A. I do not believe so, because all the buses on that line, if they were filled with Palisade Park people, they could not carry them all. The Palisade Park people have got to depend on the trolley service to be carried in bulk.

Q. Now, of course, during the winter time you will probably reduce it, will you not? A. No, I do not think so. I would start it that way and then if it was found that a ten minute headway was too much the buses would be put back on Anderson Avenue, and if it was found that it was too little we would have to treat it accordingly. It depends on what the traffic over there on Palisade Avenue develops. 30

Q. It would depend particularly on the traffic from Palisade Park; is that what you mean? A. No, sir; this is not an application to reach Palisade Park. Please understand that, because I have handled it very differently. 40

Q. Of course, I understand that that is something that you would be unwilling to admit. A. I will put it very definitely, that this is not an application to reach Palisade Park.

10 Q. I know, but isn't it a fact that the number of people who use any of these lines during the summer time varies greatly, according to the number of people who visit Palisade Park? A. Yes.

Q. Isn't that the greatest single item of traffic? A. Oh, No.

Q. It is not? A. It is not; those lines could not exist on the business to and from Palisade Park; they have got to have the rest of the business.

Q. You mean, not throughout the entire year? A. Not throughout the entire year, no sir, they could not exist on the Palisade Park business.

20 Q. How about in the summer time? A. In the summer time, either, they could not exist without the other business.

Q. Do you know the proportion is between the regular riders and the riders to and from Palisade Park? A. The Palisade Park riders are certainly in the minority.

30 Q. Would you say they were less than half? A. Yes, I would say they are considerably less than half. If you want me to give you a percentage I would say less than twenty per cent.

By Commissioner Gnichtel:

Q. That is, less than twenty per cent comes from the Park? A. Yes, sir; that is, for the whole week through.

By Mr. Schloeder:

40 Q. What about Saturdays and Sundays? A. On Saturdays and Sundays you are carrying more people to and from the Park.

Q. How about Sundays alone? A. On Sundays alone you are carrying more people to and from the Park.

Q. What proportion, would you say? A. I don't know; that depends on whether the Sunday is a rainy one or a sunshiny one.

Q. Suppose it is a nice, beautiful day. A. Then you are going to carry lots of people to and from the Park. 10

Q. You were so free in giving a twenty per cent estimate over the whole week; now lets have a percentage for a nice balmy Sunday. A. Considerably more than fifty per cent.

Q. Considerably more than fifty per cent? A. Yes, sir.

Q. Perhaps about ninety per cent? A. No sir, not ninety per cent. 20

Q. Eighty per cent? A. No, not eighty per cent, either.

Q. What about rainy Sundays? A. You are out of luck then.

Q. Would the twelve buses still be running? A. Yes, sir.

Q. But, of course, if the traffic to Palisade Park becomes heavy it would be necessary to take a few buses off of Anderson Avenue and stick them over on Palisade Avenue, wouldn't it? A. I don't think so. 30

Q. You don't think it would be necessary to do that? A. No, sir. If more buses than the twelve are needed, why, as far as the Palisade Park business is concerned, we would put on more trolley cars.

Q. You would not take off any buses from the Anderson Avenue side? A. To carry the Palisade Park business on Sundays?

Q. Yes. A. No, sir, not if we needed them on Anderson Avenue. 40

Q. Assuming that you did need them on Anderson Avenue. A. Then they would not be taken off, if they were needed on Anderson Avenue.

Q. And if they were not needed on Anderson Avenue? A. If they were not needed on Anderson Avenue we would put them where they were needed.

10 It would be perfectly foolish not to.

Q. So you would put them over on Palisade Avenue? A. We would put them wherever they were needed.

Mr. Schloeder: That is all.

Mr. Blake: That is all I have to offer.

Commissioner Gnichtel: Do you other gentlemen want to put in any testimony?

Mr. Schloeder: I am going to call them as witnesses.

20 Commissioner Gnichtel: All right, call them.

Mr. Schloeder: Before going any further I would like to make a few objections to the proceedings in general.

30 I desire to interpose an objection to the jurisdiction of the Board of Public Utility Commissioners, upon the ground that there are no valid consents before the Board that the Board can act on to determine public necessity and convenience, their public necessity and convenience. The grounds of my objection are:

40 First, that the applications and consents appear to provide for a variable number of buses, which may be changed at the will of the applicant in order to meet the exigencies of the service as they conceive them to be, without any determination of any kind by the Board as to the amount or character of the service;

Secondly, that the applications and con-

sents are indefinite, uncertain and incapable of approval because this Board would be unable to determine what was to be approved;

Thirdly, there has been no evidence introduced of any approval or authorization by the Borough of Fairview for any change in the number of buses which run through that Borough on the present Anderson Avenue line; 10

Fourth, there has been no evidence introduced showing any local consent, by ordinance, resolution or otherwise, from the Borough of Cliffside Park, permitting the reduction of any service on the present Hillside line;

Fifth, there is no consent to any reduction in service granted by the municipality of Cliffside Park nor any reduction in service on the Palisade trolley line, in conformity with the Act of 1928; 20

And I object to the jurisdiction of the Board.

Commissioner Gnichtel: I will take your objections and bring the matter up in conference. If you want to submit a brief on it you may send a copy to the other side and send one to us. 30

Now, suppose you put in whatever testimony you desire to put in.

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PATRICK J. CARNEY, sworn on behalf of objector, Hillside Bus Line.

Direct Examination by Mr. Schloeder:

Q. Where do you live? A. Grantwood.

Q. In respect to the approximate location, where 40

do you reside? A. 230 Columbia Avenue, Grantwood, New Jersey.

Q. Is that east of the proposed Palisade Avenue extension? A. West of it. It is right on the trolley line.

10 Q. Do you have occasion to use the existing public facilities when you are not driving an automobile? A. Yes, sir.

Q. And when you are going down to Hoboken, what line do you use? A. The Hillside line.

By Commissioner Gnichtel:

Q. What do you mean by "the Hillside line?"  
A. The Anderson Avenue line.

By Mr. Schloeder:

20 Q. The Anderson Avenue line? A. Yes, sir; that is the only one at present.

Q. Now, Mr. Carney, what is your position in Grantwood? A. Real estate broker.

Q. Have you any other connection with any public or quasi-public body up there? A. I belong to several organizations, principally the Real Estate Board of the Palisades.

30 Q. What is your position in the Real Estate Board of the Palisades? A. I am Chairman of the Transit Committee.

Q. As Chairman of the Transit Committee have you made any study of the local conditions in Grantwood? A. Yes, sir.

Q. Have you examined and discussed this matter with people? A. Yes, we are working for better transportation all the time.

40 Q. And you have had occasion to interrogate residents of your vicinity, have you, with respect to transportation? A. Nearly every one of them in my vicinity.

Q. And you have discussed it with me, have you not? A. Yes, sir.

Q. You are familiar with the application now being made by the Public Service Coordinated Transport, are you not? A. Only from what I have learned here today.

10

By Commissioner Gnichtel:

Q. I show you a map. Here is where it runs now and here is where it is proposed to run; do you object to that? A. I certainly do.

Q. Why? A. Because it will be of very little benefit to the people of Grantwood.

Q. Where is Grantwood? A. I believe this is where it comes through. Grantwood is half of Cliffside.

20

By Mr. Schloeder:

Q. That is the post office name. The legal name is Cliffside. A. Yes.

Q. What is your objection to that proposed change? A. Our principal objection is that it will tie up Palisade Avenue for service which will be better and more desired by the people there. We want service from ferry to ferry. This proposed line will only clutter up the avenue and preclude any other service from coming in there.

30

Q. This portion along here (indicating on map) is that pretty well settled? A. Very well.

Q. All along here? A. Yes, sir. Private houses.

Q. Have they any transportation facilities there now? A. There is the trolley line here (indicating on map).

Q. I mean, down here (indicating). A. No sir, there is nothing out there.

40

Q. Where these streets appear, are they built up? A. Yes, sir. Private houses.

Q. What transportation have they at the present time. A. The existing Hillside bus line and the trolley line.

10 Q. Nothing nearer than that? A. Nothing nearer than that, no sir.

Q. Where you think it will do injury or won't do any good is down here (indicating on map)? A. Yes, sir. The people want to get to the ferry; they don't want to get to Union Hill.

By Mr. Blake:

20 Q. Your objection is that it is all right as far as it goes, but that it does not go far enough; is that right? A. We feel that if there is any service on Palisade Avenue that we want it to go to some terminal; we don't want the Avenue tied up against any other service just for this little service here. We believe it is being run principally for the Park, that it will be run in the summer time and not in the winter time.

Mr. Schloeder: That is all.

30 Cross Examination by Mr. Blake:

Q. You realize that this line will be under the jurisdiction and supervision of the Board of Public Utility Commissioners, do you not? A. In what respect?

40 Q. In its operation. That is, if its operation is approved it will be subject to the jurisdiction and regulation of the Board of Public Utility Commissioners; you know that, don't you? A. Has any schedule been filed?

Q. Can you answer my question? A. I don't know anything about that.

Q. You don't know whether this line, if approved by the Board of Public Utility Commissioners, would be under the jurisdiction, supervision and regulation of the Board of Public Utility Commissioners? A. I don't know anything about that. 10

Q. So that when you say that this line will probably stop operation when the Park season is over you do not know that this Board has power to compel a public utility to give service if it determines it is necessary and convenient?

Mr. Schloeder: Objected to.

Commissioner Gnichtel: Objection sustained.

Q. The people who live in this area now, you say, walk over and take the trolleys and the Hillside buses? A. Those that go down town do. 20

Q. So by this rerouting they would get the same buses over here without walking, would they not? A. They would get the buses here (indicating on map).

Q. Yes, on the proposed line on Palisade Avenue, without walking all the way over to Anderson Avenue; isn't that so? A. I don't know whether they will or not. 30

Q. Well, if the buses are operating there they will, won't they? A. We don't know when they will be operated; we have no idea of what schedule they are going to operate on.

Q. Isn't it a fact that what you people want is a bus line to run down to the ferry? A. Yes, sir, we want it to end at some terminal.

Q. No concern or individual has municipal consents to operate down to the 42nd Street ferry, 40

have they? A. We know that people are interested—

Q. No, answer my question. Has anyone got consents for that the present time? A. Not that I know of.

10 Q. The only consents for the use of Palisade Avenue are the consents which the Public Service now has and which are before this Board for approval at the present time; isn't that so? A. So it seems.

Q. Are you now testifying, under oath, that this line will not be a convenience and a necessity to the people who live in Grantwood east of Palisade Avenue? A. Not to the extent of the franchise given.

20 Q. I must confess that that is Greek to me.

Commissioner Gnichtel: He has already said that it would be beneficial to the people up here, but not down here (indicating on map).

Q. Why wouldn't it be beneficial to the people in that section? A. Our belief is that it is not beneficial to the extent of tying up Palisade Avenue from service from ferry to ferry.

30 Q. What is the housing condition down in this lower section of the route? A. I am only interested in the Borough of Cliffside Park.

Q. You have testified that you are familiar with this proposed line. Isn't that territory built up from one end of the proposed extension to the other? A. It is about the same.

Q. It is all solidly built up with single family houses from one end of the extension to the other, isn't it? A. Yes, sir.

40 Q. There is no difference in the housing situation

from the northerly end to the southerly end, is there? A. No, it is all about the same.

Q. You say you are Chairman of the Transit Committee? A. Yes, sir.

Q. Of the Real Estate Board of the Palisades? A. Yes, sir.

Q. How long have you held that office? A. About 10  
six months.

Q. Do you know that before application was made to the city fathers of Cliffside that this matter was discussed with the Real Estate Board of the Palisades? A. I believe Mr. Warner attended that meeting.

Q. Did he explain how this would operate? A. He explained to us that there was no business on Palisade Avenue to warrant putting in a bus line up there and he showed us a chart with regard to it. 20

Q. And after telling you that and showing you that chart didn't your Real Estate Board insist upon this extension being operated and wasn't it the result of a demand from the local authorities up there, including your Board and other organizations up there, that the application was made for this extension? A. No, sir. So far as our Real Estate Board is concerned we are not interested in any such extension as that.

30

Mr. Blake: That is all.

Re-direct Examination by Mr. Schloeder:

Q. When you testified as to the situation of the people east of Palisade Avenue did you testify that it was necessary or simply convenient, this proposed extension? A. Convenient?

Q. Yes. In other words, was it necessary to have this proposed extension or was it just convenient? A. Well, it would be very nice, if I were using the 40

Hillside bus line and living east of Palisade Avenue, to be able to get transportation facilities at Palisade Avenue instead of walking over to Anderson Avenue.

Q. It would be convenient? A. Yes, sir.

Q. But it would not be necessary, would it? A.

10 Absolutely not.

Mr. Schloeder: That is all.

I would like to introduce the contents of the bus ordinance of the Borough of Cliffside Park, which I have not got here now.

Commissioner Gnichtel: You can get a certified copy of that and send it in.

Mr. Schloeder: All right, sir.

20 I also want to introduce in evidence the local ordinances of all the municipalities through which this proposed extension would operate.

Commissioner Gnichtel: You can do that by sending certified copies here, and you might also send certified copies to the other side, and then you can prepare your brief on that.

Mr. Schloeder: All right, sir.

30

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HENRY GUBLER, Jr., sworn on behalf of objector, Hillside Bus Line:

Direct Examination by Mr. Schloeder:

Q. Where do you live? A. Cliffside Park.

Q. Have you any official connection with any body, public or quasi-public, up there? A. Yes, sir, the Exchange Club of Cliffside Park.

40 Q. What is your position there? A. At present

I am Acting Chairman of the Transportation Committee.

Q. I suppose you made an investigation of the transit conditions up there? A. I did.

Q. What is the result of your investigation? A. Well, in what respect?

Q. In respect to the application made here by the Public Service Coordinated Transport for approval of rerouting? A. With respect to the rerouting, we object to it being run in the way it is proposed to be run and we feel that it should be run from ferry to ferry, that is, from the Fort Lee Ferry to the 42nd Street Ferry or on to the West Shore Ferry. 10

By Commissioner Gnichtel:

Q. Your objection is practically the same as Mr. Carney's? A. Practically the same, but I don't believe it has been brought out that they want it run to the West Shore Ferry. Other than that there isn't anything more than what Mr. Carney has stated. 20

Q. As I understand it, your objection and Mr. Carney's objection is that this route should be reserved until somebody comes along and runs a route from ferry to ferry; is that right? A. Yes, sir. 30

Cross Examination by Mr. Blake:

Q. In other words, this does not go far enough, but it is all right as far as it goes; is that it? A. Yes, sir.

Q. There is necessity for it as far as it goes through, isn't there? A. Yes, sir.

Q. But it does not go far enough, in your opinion? A. No, sir. We do want to get to the 42nd 40

Street Ferry by other means more than the trolleys and we do not care who runs it.

Mr. Blake: That is all.

Commissioner Gnichtel: Have you any further witnesses, Mr. Schloeder?

10

Mr. Schloeder: That is all I have to offer now.

Commissioner Gnichtel: Then you rest?

Mr. Schloeder: No, sir. I would like to have another week on this.

Commissioner Gnichtel: Only for the purpose of parting in those papers you have mentioned?

Mr. Schloeder: No, I would like to introduce testimony by a transportation expert with respect to the situation up there.

20

Commissioner Gnichtel: I am perfectly willing that you have all the time you need to put in anything which you think is necessary in this case. Now, you say you want to introduce testimony of a transportation expert?

Mr. Schloeder: Yes, sir.

Commissioner Gnichtel: Along what lines?

30

Mr. Schloeder: With respect to the Hill-side line.

Commissioner Gnichtel: I cannot see how this will affect that.

Here the local authorities have given these people the right to withdraw some buses from one side and put them over on the other. I can understand the objection of these other gentlemen; they are looking way ahead and want to see the transportation system run a different way, but what can an expert do in this case?

40

Mr. Schloeder: He can testify as to public convenience and necessity, to the fact that this line is designed solely for the purpose of getting the Palisade Park trade during the summer and thereby injuring the existing facilities of the Independent operators along Anderson Avenue. That would be the extent of his testimony. In fact, it has been admitted here that this is the purpose of the proposed extension. 10

Mr. Blake: No, sir, that was emphatically denied. We started last winter to consider the operation of this line; it has nothing to do with the Park at all.

Commissioner Gnichtel: I cannot see that you can add anything more material than your two witnesses have, from your point of view, and you have had a week to do it in and we want to close up for the summer as soon as we dispose of these cases. 20

Mr. Schloeder: A week would not do any harm. It will only be, perhaps, a single witness.

Mr. Blake: These other witnesses came here voluntarily and testified. He hasn't had a witness here, outside of this gentleman who sits alongside of him. 30

Mr. Warner says that if that is their contention, that we only want to operate this extension for Park business, that he will stipulate on the record that he will agree not to start operating it until after the first of September.

(Informal discussion as to adjournment.)

Commissioner Gnichtel: I will adjourn it until next Wednesday, with the understanding that it is to be closed then, whether your witness is here or not. 40

Mr. Schloeder: All right, sir.

(Adjourned to Wednesday, June 27th, 1928, at the Industrial Building, Newark, N. J., at 11 o'clock A. M.)

10

BOARD OF PUBLIC UTILITY  
COMMISSIONERS.

Newark, N. J., Wednesday, June 27th, 1928.

20

Extension of Hillside Route between Hoboken and Cliffside, via Fort Lee, Application of Public Service Coordinated Transport for approval of local consents.

Before

Commissioner FREDERICK W. GNICHTEL, Esq.

For Public Service Coordinated Transport appears  
C. S. STRAW, Esq.

30

For Independent operators on Hillside Bus Line  
appears NICHOLAS S. SCHLOEDER, Esq.

HARRY BUESSER, sworn on behalf of object-  
ors.

Direct Examination by Mr. Schloeder:

Q. What is your name? A. Harry Buesser.

Q. Where do you live? A. 575-35th Street,  
40 North Bergen.

Q. Are you familiar with the Hillside Bus Line?

A. I am.

Q. Have you any connection with it? A. I am secretary of the Hillside Bus Line.

Q. Any connection with the operation of the buses? A. I am manager of the operation of the buses on the Hillside Line. 10

Q. You are representing whom, the independents? A. The independent bus men.

Q. With respect to the proposed extension of the Hillside line made by the applicant, the Public Service Coordinated Transport, where is the northerly terminus of the present route on Anderson Avenue? A. Lafayette Avenue.

Q. Do you draw any business from the easterly side of Anderson Avenue and Lafayette? A. We do. 20

Q. From what particular portion do riders come from with respect to the easterly side of Anderson Avenue, in the vicinity of your terminus? A. Well, in the summer time a good part of our business comes from Palisade Amusement Park.

Q. A good part; what do you mean, a large part? A. Quite a large part, yes.

Q. What effect would the proposed rerouting in Cliffside have upon the business you do, that you obtain from Palisade Park? A. I don't think we would do any business from the park any more. 30

By Commissioner Gnechtel:

Q. You say you don't think you would do any more business from the park? A. If these buses were rerouted.

Q. In case these buses were run up there? A. Yes. I understood that was the question.

By Mr. Schloeder:

Q. In other words, a large portion of your busi- 40

ness in summer time would be destroyed, is that it?

A. It would.

Commissioner Gnichtel: Is that a large portion of your business, to the park?

Witness: In the summer, yes.

10

Cross Examination by Mr. Straw:

Q. Mr. Buesser, are you an officer of the Nickel Company?

Mr. Schloeder: I object to that as immaterial.

Mr. Straw: I want to show, if your Honor please, a contradictory statement.

20

Commissioner Gnichtel: How is that material? He has admitted he represents the independent bus line.

Mr. Straw: I wanted to show that company applied for the same line on Palisade Avenue.

Commissioner Gnichtel: You may do that.

Q. That company also applied to operate on Palisade Avenue? A. It did.

30

Q. The Nickel Transportation, sixty permits? A. Yes.

Q. Do you say that this application does not meet with the public convenience and is not a public necessity? A. The application of the Nickel Transportation?

Q. Our application, Public Service Transport, is it a public necessity and does it serve the public convenience if the line is granted? A. No.

40 Q. Would the Nickel Transportation Company's line over the same route have served the public convenience?

Mr. Schloeder: I object, as immaterial.

Commissioner Gnichtel: I think that clearly goes to credibility. I will admit it.

Q. Would that have served public convenience and would that have been a public necessity?

10

Mr. Schloeder: Just define what was the Nickel Transportation Company?

Witness: That was a different route.

Q. Wherein is the difference in the route? A. The difference is that route was going to Journal Square.

Q. But how? A. On Palisade Avenue.

Q. The same place that this route is going? A. Yes.

20

Mr. Straw: I repeat the question.

Commissioner Gnichtel: Why do you say that the present application is not based on any necessity and convenience of the public, while yours, which is practically the same route, was based on it?

Witness: Well, the difference is that the two bus lines, while they parallel the same route, the one bus line, the Hillside line goes into Hoboken, and the other line was going to Journal Square. The service rendered there now was sufficient to take the people who wanted to go to Hoboken, but there was no service there to Journal Square.

30

Q. That was going right down Bergenline Avenue and through the same section, although different termini? A. Yes, sir.

Q. As this present route. You wanted sixty buses there? A. Yes, sir.

40

Q. You still say this is not a public necessity, nor will it serve the public convenience? A. It may be convenient.

Q. Do you admit it would serve the public convenience? A. Well, I won't say that.

Q. This present line? A. I said it may be.

10 Q. Don't you know whether it will or whether it won't?

20 Mr. Schloeder: If your Honor please, I do not see what the relevancy is. He has admitted he is an officer of the Nickel Transportation Company. The mere fact that the applicant makes an application for new consent, permit, or rerouting of any bus line does not indicate that he believes himself that public convenience and necessity would be served. I am sure that the Public Service Coordinated Transport and many independents as well make applications which they hope will eventually produce revenues, which if they were ready to admit, they would be willing to concede do not at the present time serve public convenience.

30 Commissioner Gnichtel: I think this is clearly the subject of cross examination. I think those questions are proper.

Mr. Schloeder: In other words the mere fact that there is no indication here that Mr. Buesser, an officer of the Nickel Transportation Company believes that these buses were necessary for public convenience—

40 Commissioner Gnichtel: No. I shall assume that no man who is in the business, seriously engaged in the bus business would make an application unless he believed it was necessary for the public convenience.

Mr. Schloeder: Why not?

Commissioner Gnichtel: Oh, no.

Mr. Schloeder: That does not follow at all.

Commissioner Gnichtel: I do not think he expected to get away with it; I do not think he would want it, because it would not be profitable. 10

Mr. Schloeder: He might, because of the fact that the bus line opened up territory, frequently.

Commissioner Gnichtel: That requires a great deal of capital to run it until it does pay. I shall assume, when a man who is seriously in this business, I mean in the business as a profession or a business—I doubt whether such a man would seek a route unless there is some chance of serving the public and also of making it pay. 20

Mr. Schloeder: Eventually.

Commissioner Gnichtel: Well, eventually is a question. If it did not pay right away, it might still be necessary. But I shall assume when he makes those statements on the witness stand—I think cross examination on that subject is entirely relevant. I will allow the question. 30

A. I did say that it would be convenient to have a bus line on Palisade Avenue.

Q. Do you say that it is or is not the public necessity? A. It is not a necessity.

Q. Then why did you ask for sixty buses over the same route? A. It was the only avenue open to go north through Fort Lee to Englewood Cliffs that we felt we would not be opposed by the Public Service Railway.

Q. Have conditions changed? A. No. 40

By Mr. Schloeder:

Q. What was the schedule of fare on this Nickel Transportation Company? A. Five cents fare.

Q. From where to where? A. From Fort Lee to Journal Square.

10

Commissioner Gnichtel: You rest?

Mr. Schloeder: Yes, I rest.

Mr. Straw: That concludes the case.

Commissioner Gnichtel: Put your brief in the shape of a letter, keep it just on the points you want to bring before the Board.

(MATTER TAKEN INTO CONFERENCE.)

20

### Depositions.

#### NEW JERSEY SUPREME COURT.

HILLSIDE BUS OWNERS ASSOCIATION and JOSEPH NOON, et al,

Prosecutors,

v.

BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY and PUBLIC SERVICE COORDINATED TRANSPORT,

Defendants.

In Certiorari.

30

Depositions in the above entitled cause, taken before me, Harry Schirmer, a Supreme Court Examiner of the State of New Jersey, at the office of Messrs. Levitan & Levitan, 591 Summit Avenue, Jersey City, New Jersey, this twenty-first day of

40

*Deposition of Joseph Noon--Direct.*

September, 1928, pursuant to notice and by agreement of counsel.

## APPEARANCES:

NICHOLAS S. SCHLOEDER, Esq., Attorney for Prosecutors. 10  
LELAND TALIAFERRO, Esq., Attorney for Public Service Coordinated Transport.

It is stipulated that the deposition be taken stenographically and the signature of the witness waived.

State of New Jersey, } ss.: 20  
County of Hudson, }

JOSEPH NOON, being first duly sworn according to law, on his oath deposes and says:

Direct Examination by Mr. Schloeder:

Q. Where do you live, Mr. Noon? A. 92 Anderson Avenue, Fairview.

Q. What is your business? A. Truant Officer. 30

Q. What else do you do? A. Business business, and tenement house.

Q. Do you operate a bus? A. I don't run the bus.

Q. I mean do you own one? A. I get men to ride it for me.

Q. On what line? A. Hillside; from Hoboken to Palisade Park.

Q. Where is the northerly terminus of that line?

A. The end of the line, Lafayette Avenue. 40

- Q. Lafayette Avenue and where? A. Cliffside.
- Q. How many buses do you run? A. One.
- Q. Along what avenue does that bus approach Lafayette Avenue? A. That runs East and West, see, and Anderson Avenue runs North and South, and Lafayette is East and West.
- 10 Q. I know; but I mean, how do you get to Lafayette Avenue from your line? Follow the line South; where does it go; along what streets do you run from Lafayette Avenue? A. We run from Anderson Avenue, you only just cut in on the corner of Lafayette Avenue.
- Q. How far down Anderson Avenue do you go? A. The length of it.
- Q. Where does it stop? A. Until it strikes North Bergen.
- 20 Q. In North Bergen where does it go? A. To Guttenberg.
- Q. What street does it touch upon when it enters North Bergen? A. It doesn't touch any street; it hits the Boulevard.
- Q. Then where does it go; along what avenue? A. It goes along Bergeline Avenue.
- Q. How many buses run on this line? A. Forty-three altogether.
- Q. How many of each? A. Ten independent and thirty-three Public Service.
- 30 Q. Has there been any change in the running of those buses recently along that line? A. Yes; they have switched over to Palisade Avenue.
- Q. Who switched over? A. The Public Service.
- Q. Have you made any checks on that as to how many switched over? A. Yes, I have checked that.
- Q. Describe just what you observed in your checks. A. Well, I began that check now, I like started at four o'clock, the first bus came along at
- 40 four, and twelve after four was the next. I checked

*Deposition of Joseph Noon—Cross.*

for an hour and a half and then ran eleven buses; on the end of an hour and a half they swung three off, and they were running from 12, 14 and 23 was the last, that is when they switched on what I should call it to Anderson Avenue, they took three buses off.

Q. How long has this been operating? A. I 10  
couldn't say; it has been going on about three weeks or a month.

Q. Have you noticed any effect upon your line at all, the operation of your bus? A. I see it has cut us off—

Mr. Taliaferro: I object to that as irrelevant, immaterial and incompetent.

A. —on a Sunday about fifty per cent. of our 20  
business; we are four blocks away from the park, and nobody would walk four blocks over for a bus if they can get one by the door there.

Cross Examination by Mr. Taliaferro:

Q. When was the first date that you made this check? A. Have you got the date on there? About a week ago.

Mr. Schloeder: The 24th of August. 30

Q. Is that the first check that was made? A. That is the first time I checked them on that line; I have been checking them for two years on the other line; checked them every day in my life.

Q. When was the first check you made? A. I don't know when was the first time; it was really the day before that that I made the check, the next day I gave you this (referring to Mr. Schloeder).

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*Deposition of Joseph Noon—Re-direct.*

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Mr. Schloeder: Then that was August 23rd.

Q. Can you say from your own knowledge that it was August 23rd? A. Yes, it was the 23rd of August. The next day I took it down to you, to  
10 your office (referring to Mr. Schloeder).

Re-direct Examination by Mr. Schloeder:

Q. When you refer to the independents, what is the name of the independents? A. Hillside Bus Owners Association.

Re-cross Examination by Mr. Taliaferro:

Q. You made a statement that you now lose about  
20 fifty per cent. A. On a Sunday.

Q. On a Sunday? A. Yes.

Q. You made a statement that you are losing about fifty per cent. of your business. A. Yes.

Q. On what days do you lose that amount of money? A. Well, every day we are losing maybe ten per cent. or fifteen per cent.

Q. But the fifty per cent. doesn't apply all the time? A. Oh, no; on Sunday is our best day; our big ride is to Palisade Park; now we get none of  
30 that.

Q. Let me ask you this question: On what do you base your statement that you are losing fifty per cent. or fifteen per cent.? A. Well, on a Sunday I get about one-half what I should have got.

Re-direct Examination by Mr. Schloeder:

Q. When you say "we", you refer as well to yourself as the other members of the Hillside Bus Association?  
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*Deposition of Joseph Noon—Re-cross.*

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Mr. Taliaferro: I object to that as calling for a conclusion.

A. Yes.

Q. The operation is the same, isn't it? A. I know they don't ride as good as I do, because they haven't got as big buses or as fast buses; there are only two other buses as large. 10

Re-cross Examination by Mr. Taliaferro:

Q. Have you made checks on other days? A. No, I haven't made checks on money; I have spoken to them. Taken and sworn to before me to them.

Taken and sworn to before me this 21st day of September, 1928. 20

HARRY SCHIRMER,  
Supreme Court Examiner.

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I, Harry Schirmer, a Supreme Court Examiner of the State of New Jersey, do certify that the foregoing is a true and accurate transcript of the depositions in the above entitled cause, taken by and before me at the time and place hereinbefore mentioned; and I believe said transcript fairly and accurately states the testimony given. 30

HARRY SCHIRMER,  
Supreme Court Examiner.

**Decision.**STATE OF NEW JERSEY,  
BOARD OF PUBLIC UTILITY COMMISSIONERS.

10

In the Matter

of

The Application of the PUBLIC SERVICE COORDINATED TRANSPORT for the Approval of Municipal Consents to Extend the Hillside Route Between Hoboken and the Northerly Limit of Cliffside via Palisade Avenue.

20

GEORGE H. BLAKE, for the Petitioner.

NICHOLAS S. SCHLOEDER, for the Hillside Bus Line.

PATRICK J. CARNEY, for the Real Estate Board of Palisade Park.

HENRY GUBLER, for the Exchange Club of Cliffside Park.

30

This is an application by the Public Service Coordinated Transport for approval of municipal consents to extend the Hillside Route between Hoboken and the northerly limits of Cliffside via Palisade Avenue.

The petitioner's application sets forth :

"1. That it is now operating a line of buses on the Hillside route, between Hoboken and Cliffside, as follows:

40

"Beginning at Fourteenth Street terminal, Hoboken, thence via Fourteenth Street, four-

teenth Street Viaduct, Manhattan Avenue, Eighteenth Street, Palisade Avenue, Monastery Place, New York Avenue, Forty-seventh Street, Bergenline Avenue, Anderson Avenue to Lafayette Avenue, Cliffside; returning via same route to Bergenline Avenue and Forty-eighth Street, thence via Bergenline Avenue, Sixteenth Street, Manhattan Avenue, Fourteenth Street Viaduct, and Fourteenth Street to Fourteenth Street Terminal, Hoboken. 10

"2. That it is now desired to operate a portion of the service, as follows:

"Same as above route to Bergenline Avenue and Bulls Ferry Road, thence via Bulls Ferry Road and Palisade Avenue to the Hudson River P. R. W., Fort Lee; returning via same route." 20

Municipal consents from the Borough of Cliffside and the Township of North Bergen were offered in evidence.

The Board has heretofore approved of the operations of forty-three buses on the Hillside Route, thirty-four of which are owned and operated by the Public Service Coordinated Transport, the remaining nine being owned and operated by individual operators. 30

Testimony was offered in support of the application.

The independent operators, known as the Hillside Bus Association, appeared in opposition to the application, and were supported by members of the Real Estate Board of Palisade Park and the Exchange Club of Cliffside Park.

The proofs indicate that the principal objection of the Real Estate Board of Palisade Park and the Exchange Club of Cliffside Park is that the pro- 40

posed service will not operate between Edgewater Ferry and the West Shore Ferry, in Weehawken. There appears to be no objection, however, to providing local service along Palisade Avenue.

10 The proofs further demonstrate that the section through which the proposed line operates is not now afforded convenient transportation, that the proposed line will furnish service to persons who reside east of the Palisade trolley line in Cliffside Park; that persons now seeking transportation facilities in this vicinity are required to proceed either to said Palisade trolley line or the Hillside bus line, which is operated on Anderson Avenue. From the testimony it would further appear that persons residing in Cliffside Park and Palisade Park would be better served with transportation  
20 facilities if this extension is granted as it would provide two avenues through said municipalities upon which buses would be operated; and that such extension, with proper schedules, will not materially effect the service on Anderson Avenue and will be a benefit to persons residing east of the Palisade trolley line.

30 Upon consideration of the evidence, therefore, the Board finds and determines that the municipal consents granted to the petitioner for the extension of the route are necessary and proper for the public convenience and properly conserve the public interest and approves of same upon the following conditions:

1. That said approval shall be subject to such rules, regulations or conditions now in force and as the Board may hereafter impose.

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

3. That all State laws and municipal regulations must be fully complied with before these consents become effective.

4. That the rates of fare charged by the petitioner shall not be changed without the approval of this Board.

10

Dated, August 7th, 1928.

BOARD OF PUBLIC UTILITY COMMISSIONERS,

By

(Signed) JOS. F. AUTENRIETH,

(Seal)

President.

Attest:

(Signed) EMMETT T. DREW,  
Acting Secretary.

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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.

EMMETT T. DREW,  
Acting Secretary. 30

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**Reasons.**

## NEW JERSEY SUPREME COURT,

10	HILLSIDE BUS OWNERS ASSOCIATION, and JOSEPH NOON, et als., <p style="text-align: center;">Prosecutors,</p> <p style="text-align: center;">v.</p> BOARD OF PUBLIC UTILITY COMMISSIONERS of the State of New Jersey, and the PUBLIC SERVICE COORDINATED TRANSPORT, <p style="text-align: center;">Defendants.</p>	} In Certiorari.
20	<p>The prosecutors, Hillside Bus Owners Association and Joseph Noon, by Nicholas S. Schloeder, their attorney, come and pray that the order of the Board of Public Utility Commissioners, approving the application of the Public Service Coordinated Transport, for the approval of municipal consents to extend the Hillside route between Hoboken and the Northerly limits of Cliffside via Palisade Avenue, may be set aside and reversed and for</p>	
30	<p>nothing holden, for the following reasons:</p>	

## REASONS.

1. The Board of Public Utility Commissioners was without jurisdiction to make an order approving the local consents passed and adopted by the Boroughs of Cliffside Park, in the County of Bergen, and the Township of North Bergen, in the County of Hudson.

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2. The said applications and local consents of the said Borough of Cliffside Park, in the County of Bergen, and the Township of North Bergen, in the County of Hudson, were illegal in that they provided for an unascertained number of buses, which might be varied at the will of the applicant in order to meet the exigencies of the service as they conceived them to be. 10

3. The said order of the said Board is indefinite, uncertain, in that it does not determine the kind, amount or character of the service approved.

4. The said local consents are illegal in that they were so uncertain that the board was unable to determine what was to be approved.

5. The said order of the Board of Public Utility Commissioners fails to fix just and reasonable standards, classifications, regulations, practices and services to be furnished, imposed or observed and followed thereafter by the Public Service Co-ordinated Transport, and permits and causes the said corporation to give undue and unreasonable preference and advantages to itself and subjects the prosecutors to prejudice and disadvantage. 20

6. There has been no evidence introduced of any approval or authorization by the Borough of Fairview for any change in the number of buses which ran through that Borough on the present Anderson Avenue line. 30

7. There has been no evidence introduced showing any local consent, by ordinance, resolution or otherwise, from the Borough of Cliffside Park, permitting the reduction of any service on the present Hillside line. 40

*Reasons.*

8. There is no consent to any reduction in service granted by the municipality of Cliffside Park for any reduction in service on the Palisade trolley line, in conformity with the Act of 1928.

NICHOLAS S. SCHLOEDER,  
Attorney for Prosecutors.

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**Exhibit P. S.-1.**

Printed as part of application, page 6 .

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**Exhibit P. S.-2.**

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Printed as part of application, page 5 .

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[48115]

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## Opinion

## NEW JERSEY SUPREME COURT

HILLSIDE BUS OWNERS ASSOCIATION and JOSEPH NOON, et als., Prosecutors,  vs. BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY and THE PUBLIC SERVICE COORDINATED TRANSPORT,  Respondents.	} On Certiorari.	10
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Submitted October Term, 1928; decided January 11, 1929. 20

Before Justices Minturn, Black and Campbell.

For prosecutors, Nicholas S. Schloeder.

For respondents, William H. Speer, John W. Queen.

*PER CURIAM:*

This writ brings before us the judgment of the Board of Public Utility Commissioners approving the consents of the Township of North Bergen and the Borough of Cliffside Park to re-route, in part, a portion of the buses operated by The Public Service Coordinated Transport. 30

Forty-three buses were operating under municipal consents and approval of the Board of Public Utility Commissioners, known as the Hillside line, from 14th Street, Hoboken, to Lafayette and Anderson Avenues, in Cliffside Park. Of these thirty-three were owned and operated by The Public Service Coordinated Transport and the remaining ten by individual operators, called 40

independents, who have associated themselves as the Hillside Bus Owners Association. The prosecutor, Joseph Noon, being one of such individual owners and operators.

10 Consents were obtained from the Township of North Bergen and the Borough of Cliffside Park by The Public Service Coordinated Transport to re-route a portion of its buses so that they should run over the original route from the 14th Street Ferry, Hoboken, to Bergenline Avenue and Hudson County Boulevard, and from such point should operate over Bull's Ferry Road to Palisade Avenue and thence along same to its junction with the Hudson River Trolley line in Fort Lee.

20 The actual change in route is in Bergen County. The old route extending through Anderson Avenue northwardly and the new route through Palisade Avenue, the two avenues paralleling each other; Palisade Avenue being to the east of Anderson Avenue and a trolley line, known as the Palisade line, operating over a right of way between the two avenues.

Prosecutors urge four grounds or reasons for setting aside the judgment or order.

30 The first is that the Board of Public Utility Commissioners was without authority or jurisdiction to make the order in question, because the municipal consents did not particularize or specify the particular buses or specific consents theretofore granted, which were the subjects of the re-routing and that this was necessary to be incorporated in such municipal consents and likewise in the order or judgment under review.

40 We do not reach this result, but on the contrary conclude that the point is legally not well taken.

The second is that the judgment under review fails to fix just and reasonable standards, classifications, regulations, practices and services to be furnished, imposed or observed, and permits The Public Service Coordinated Transport to give undue and unreasonable preference and advantage to itself and subjects the prosecutors to prejudice and disadvantage. 10

The contention here seems to be that there is nothing to prevent The Public Service Coordinated Transport from re-routing, from time to time, such number of buses as it may desire to take the large travel from Palisade Amusement Park, and when that travel falls off or does not exist to cut down the number of buses it will operate on Palisade Avenue and send them back into operation on Anderson Avenue, to the disadvantage and loss of the prosecutors. 20

As a matter of fact, from the proofs, this would seem unlikely. Anderson Avenue is some considerable distance from the entrance to the amusement park and the bulk of the travel, north and south, to and from it, is by means of the Palisade trolley line. The park is open only three months in each year. 30

The further answer against this contention is that it would be difficult at the outset for the Board to determine how many buses it would be necessary to operate on Palisade Avenue to meet the convenience and necessity of the traveling public. Time and operation alone can safely and properly determine that question. 30

It will be noted that the judgment, by its terms, is "revocable for violation of the Board's rules, regulations or conditions, or for other good cause," and without this reservation the situa- 40

tion anticipated, although not presently existing, if it does arise will present a proper ground for appeal to the Board and a regulation in that direction.

- 10 The third ground is that there was before the Board no approval of such re-routing by the Borough of Fairview.

Of this, however, prosecutors cannot complain. They are not affected thereby. At least the record before us does not show how in any manner they are injured.

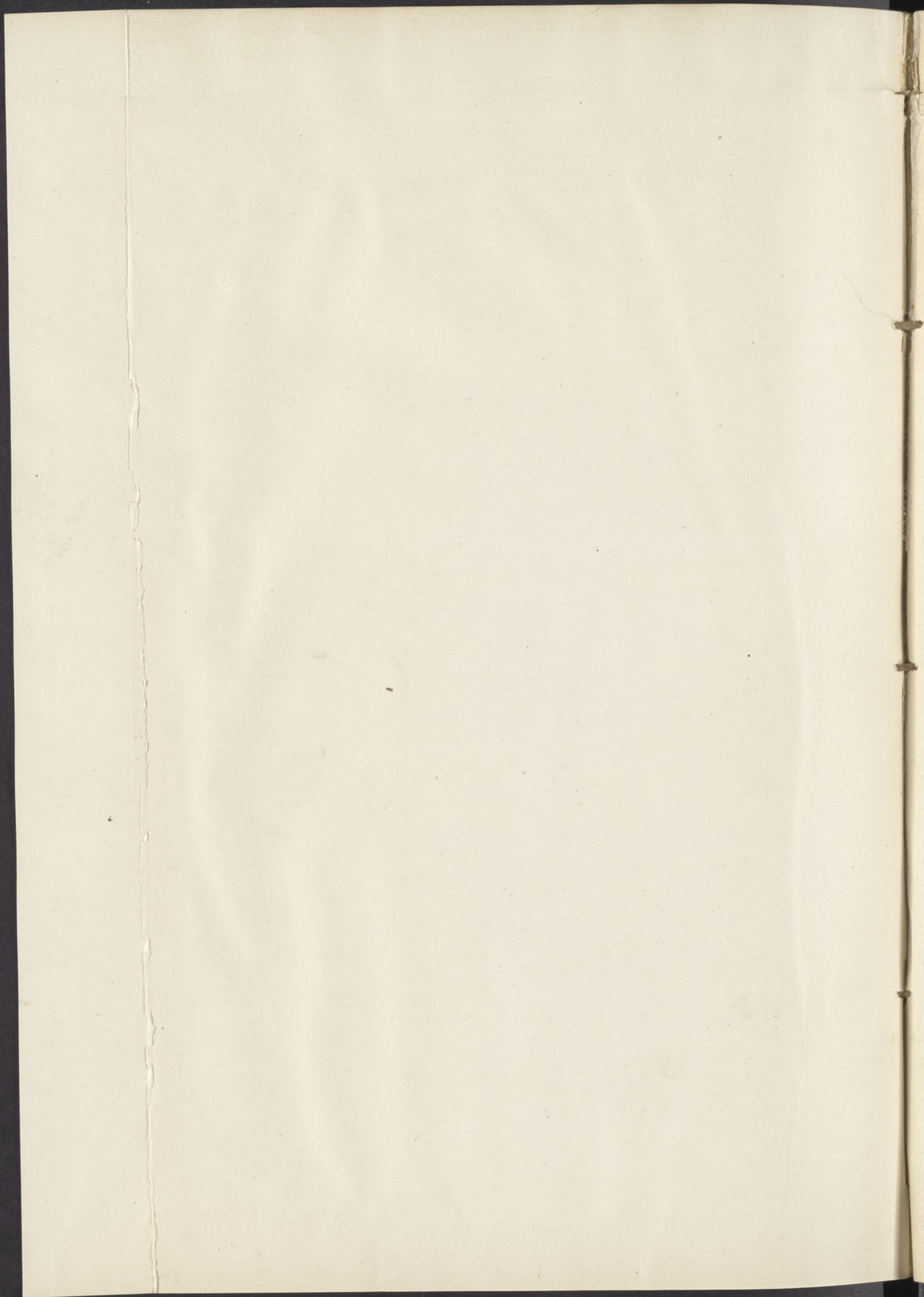
The fourth and last ground is that there was not presented any consent by the Borough of Cliffside Park to a reduction of service on the Palisade trolley line.

- 20 We are unable to see how this has any bearing upon the matter before us. In fact, we find nothing in the record before us suggesting such reduction of service.

The judgment under review is affirmed and the writ of certiorari is dismissed, with costs.



— HILLSIDE BUS ROUTE  
- - - PROPOSED EXTENSION



# 58  
May term, 1928

**New Jersey Court of Errors and Appeals**

HILLSIDE BUS OWNERS ASSO-  
CIATION, *et al*,  
Prosecutors,

vs.

BOARD OF PUBLIC UTILITY COMMIS-  
SIONERS OF THE STATE OF NEW  
JERSEY, AND THE PUBLIC SERVICE  
COORDINATED TRANSPORT,  
Defendants.

On Appeal  
from the  
Supreme  
Court.

**MEMORANDUM FOR PROSECUTORS.**

**Statement.**

This is an appeal from judgment of the Supreme Court dismissing a writ of certiorari which brought up for review a certain Order of the Public Utility Commissioners made on August 7th, 1928, approving the application of the Public Service Coordinated Transport for the approval of municipal consents to extend and reroute the Hillside bus route, between Hoboken and the Northerly limits of Cliffside via Palisade Avenue.

The prosecutors are operators of auto busses along the route known as the Hillside Bus line, which operates between the Fourteenth Street Ferry, Hoboken, and Lafayette Avenue, in the Borough of Cliffside Park, in Bergen County. Forty-three busses operate over this line. Of these, thirty-five consents are owned by the Public Service Coordinated Transport, and eight by certain independent operators, who collectively, are organized into

the Hillside Bus Owners Association, a voluntary common law association. The Public Service application seeks to reroute a portion of the busses from a point on the present route at Bergenline Avenue and Bulls Ferry Road, which is approximately at the intersection of Bergen and Hudson County. The Public Service Coordinated Transport desires to turn East at this point along Bulls Ferry Road to Palisade Avenue and then proceed Northerly along Palisade Avenue to the Borough of Fort Lee. The present route continues North-erly and South along Anderson Avenue from this point, to the Northerly terminus. By reference to the map it will be observed that Anderson Avenue and Palisade Avenue, parallel each other, the Palisade Avenue however, being to the East.

The testimony discloses that along the Palisade Avenue route, at its Northerly terminus, there is the Palisades Amusement Park. This, according to the admissions of Mr. Warner, was responsible for considerably more than 50% of the business on Sundays and holidays, when the weather was favorable. It would follow that it would be most advantageous to a bus operator to be able to reroute the busses along Palisade Avenue in order to get this business on such days, for in such case the patrons of such amusement park, which faces Palisade Avenue, would be able to secure a bus at the entrance instead of walking West several blocks to Anderson Avenue, the present route. The Public Service, by rerouting its busses along Palisade Avenue would thus deprive the operators on the original route of more than one-half of their business and this has been tested by actual experience. (Deposition of Joseph Noon, Case, p. 47).

This condition is created or permitted by the nature of the applications of the Public Service, both to the local municipalities concerned and the

Board of Public Utility Commissioners. The application to the Board reads,

“that it is now desired to operate a portion of the service as follows.”

Nothing is said as to *what* portion of the service is intended to be operated along the new route. Neither in the local consents granted nor in the Order of the Public Utility Commissioners, is such service identified in any way. The local consents simply provides as follows:

“NOW THEREFORE, BE IT RESOLVED, that municipal consent be and is hereby granted to Public Service Coordinated Transport to extend a portion of the busses now operating on the Hillside line between Fourteenth Street, Hoboken, and Lafayette and Anderson Avenue, Cliffside, to operate as follows.”

It does not say *what* portion of the busses should be so extended nor *which* of them.

Further facts appear in the argument.

### **Introduction.**

In order to properly understand the points made by the prosecutors, a preliminary discussion as to the true nature of bus consents is necessary, particularly in view of the fact that the opinion of the Supreme Court, I respectfully submit, wholly misconceives their true character. These consents arise out of the act commonly known as the Kates Act and the latest legislative expression may be found in Chapter 144 of the Laws of 1926, page 219, an amendment to the original act. Excerpts from Section 2 of said act, as amended, say:

“\* \* \* No auto busses \* \* \* 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 \* \* \*"

"\* \* \* any such consent heretofore granted and now in effect or hereafter granted and in effect shall continue in effect until revoked, as herein provided \* \* \*"

"\* \* \* any such consent, heretofore granted and now in effect or hereafter granted and in effect may be transferred by the holder thereof upon obtaining the approval of the Board of Public Utility Commissioners upon application to it by either the transferrer or the transferee."

"\* \* \* a holder of any such consent heretofore granted and now in effect or hereafter granted and in effect may replace any auto bus operated under such consent with another auto bus and may substitute one auto bus for another and may operate such other or substituted auto bus under such consent provided such other or substituted auto bus conforms with lawful regulations and specifications \* \* \*."

It will be observed from the reading of these provisions of Section 2 of the Kates Act that such consent is something separable and distinct from the use of a motor vehicle along public streets; that such use is not inherent in the possession or ownership of an auto bus, but rather in the possession and ownership of a consent. This consent, it is clearly indicated, was intended by the legislature to be something definite, fixed and having an entity inhering in itself and capable of sale or transfer.

The difficulty in connection with auto busses arises out of the fact that unlike most franchises of this character, the auto bus itself is mobile. A pipe line, or trolley tracks, is something in its very nature fixed in location and extension. The physical concomitant of a consent under the Kates Act is an auto bus, which may be physically moved about in almost any manner that the nature of a motor vehicle will permit. However, this fact does not deprive the consent under the Kates Act of a definite character, as definite as if such consent pertained to a water pipe or a gas main.

In the early development of auto busses, it was generally deemed that such legislation, as the Kates Act (P. L. 1916, p. 283), was primarily, not a license, but to regulate and control busses in the crowded streets of the city for the public benefit and safety and for revenue. (See *Public Service vs. Reinhardt*, 92 N. J. E. 365, 371; *West vs. Asbury Park*, 89 N. J. L. 402.) However, with the great development of this art, which promises to be the sole mode of urban surface transportation in the future, and with the entrance of immense Public Utility Companies into the field of bus operation, accompanied by an expenditure of vast sums of money for the acquisition of consents from individual operators, a change in law, took place. In recognition of the capital invested in such enterprises, the legislature caused the amendments of 1926 to be enacted (*supra*).

The effect of this legislation was revolutionary. In the first place, it made local consents irrevocable except for cause and then only by pursuing the methods outlined in the act. Secondly, it placed the regulation of auto busses under the Board of Public Utility Commissioners, whereas, theretofore, the board had not even been mentioned in the Kates Act. Thirdly, it made the ownership and opera-

tion of a consent separable from that of a physical auto bus itself. As a result, such consents, today, are universally treated as franchises and all local consents which are now granted must be approved under Section 24 of the Public Utility Act.

Bearing in mind these preliminary considerations as to the true nature of a consent to operate an auto bus, the points about to be made will be more easily understood. It is necessary in the development of this modern form of transportation to preserve the fixed identity of consents under the Kates Act and the legislature undoubtedly had this in mind. These consents are now purchased, sometimes, for large sums of money, and the legislature undoubtedly desired to preserve vested rights acquired in this modern form of transportation.

Indeed, at a time when bus consents did not possess the quality which inheres in them today, the Supreme Court has remarked:

“Assuming for the purpose of the decision that the extension of a route does not change its inherent characteristics (a proposition which, we think, is at least doubtful), the prosecutors do not come within the protection of the amendment unless they can show that they are running their busses over the extended route, under a consent of the municipal authorities granted prior to the date declared in the statute.”

*Bechman vs. Bd. Public Utility Commissioners*, 2 N. J. Misc. 100, 102.

**POINT ONE.**

**The order of the Board of Public Utility Commissioners approving the local municipal consents herein involved is illegal, because (A) the said consents were too indefinite to give the board jurisdiction to approve them, and (B) the said order itself is indefinite in that it fails to identify the consents so approved.**

The basis of this contention lies in the fact that if the local consents obtained from the municipalities in the matter now under review were in effect illegal or so indefinite as to be incapable of approval there was nothing before the board upon which the order of the board could operate. In order for the board to acquire jurisdiction of an approval of a franchise, such franchise must, at least in its incipient stage, be in some tangible, legal form.

Examining the applications and consents in the instant case, we find that the consent of North Bergen simply provided as follows:

“NOW THEREFORE BE IT RESOLVED, that municipal consent be and is hereby granted to the Public Service Coordinated Transport to extend a portion of the busses now operating on the Hillside line between 14th Street, Hoboken and Lafayette and Anderson Avenues, Cliffside to operate as follows:

From 14th Street Ferry, Hoboken, via the present Hillside bus route to Bergenline and Hudson County Boulevard, North Bergen, thence via Bull's Ferry Road, to Palisade Avenue into Cliffside, continuing on Palisade Avenue to the junction of Palisade Avenue and the Hudson River trolley line, Fort Lee.”

The language of the consent granted by the Borough of Cliffside Park is substantially the same:

“BE IT RESOLVED, that municipal consent be and is hereby granted to Public Service Coordinated Transport subject to approval of schedule to extend a portion of the busses now operating on the Hillside line between 14th Street, Hoboken and Lafayette and Anderson Avenues, Cliffside Park, to operate as follows:

Bearing in mind that Public Service operates under 33 consents, each consent a separate entity, permitting the operation of a bus along a fixed and definite route, there is nothing in these resolutions by the municipalities named, indicating *which* consents are permitted to be changed in their character, nor *how many* of these consents should be so changed.

The language of the order of the board approving the consents is as follows:

“Upon consideration of the evidence, the Board therefore finds and determines that the municipal consents granted to the petitioner for the extension of the route are necessary and proper for public convenience and properly conserve the public interest and approves of same upon the following conditions \* \* \*”.

In this situation it is difficult to understand just what the Board of Public Utility Commissioners approved. The language of the order simply approves the municipal consents granted to the petitioner without defining their number, or identifying them in any way.

The Board obtains jurisdiction of the approval of the local consents by virtue of Section 24 of the Act concerning Public Utilities, which provides as follows:

“No privilege or franchise hereafter granted to any public utility as herein defined, by

any political subdivision of this 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 interest and the board shall have power in so approving to impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interests may reasonably require."

2 N. J. Cum. Supp. 1924—page 2892.

Thus it is incumbent upon the Board to determine that such privileges and franchises are necessary and proper for the public convenience and properly can conserve the public interest. I am unable to see how the Board can determine this question unless it has before it an application concerning a definite number of busses together with resolutions granting local consents for such definite number, and identifying the local consents to be approved. It may well be that the public interest and convenience may require, say, five definite local consents to be rerouted, but that 10 or 15 may be wholly unnecessary and against the public interest. In other words the board passed on something definite without having anything definite before it, upon which to predicate its determination.

In speaking of this point, the Supreme Court brushes aside the argument without stating any of the reasons for its conclusion.

It was suggested by the defendants in the court below that an evolution in the law has occurred whereby bus operation seems now to be considered from the viewpoint of routes rather than separate consents, and that it has now become a question of groups of consents.

In other words, the Public Service Coordinated Transport believes that the legislation recently

adopted intended to disregard the rights of hundreds of individual operators operating independently owned busses in this state. This notion seems to arise out of its belief that group operation under a complete monopoly by it, is most desirable for the people of New Jersey.

Lastly, much of the argument of the defendant in the court below treated this question as if it arose under the general power of the Board of Public Utility Commissioners to supervise and regulate public utilities embraced in Sections 16 and 17 of the Public Utility Act, 2 C. S. N. J. Cum. Supp. Pg. 2881.

However, these proceedings were clearly under Section 24 of that act, *supra*, providing for the approval of municipal franchises. In fact, the board itself treated it as such and in the exact language of Section 24, says:

“therefore the board finds and determines that the municipal consents granted to the petitioner for the extension of the route are necessary and proper for the public convenience and properly conserve the public interest and approves the same \* \* \*”.

Furthermore, at the end of this brief, I will endeavor to show that the board had no power to deal with the question in any other way than as a proceeding to approve the municipal consents granted by North Bergen and Cliffside.

## POINT TWO.

**The said order of the Board of Public Utility Commissioners fails to fix just and reasonable standards, classifications, regulations, practices, and services to be furnished, imposed or observed and followed thereafter by the public service coordinated transport, and permits and causes the said corporation to give undue and unreasonable preference and advantages to itself and subjects the prosecutors to prejudice and disadvantage.**

This point assumes *but does not concede* that the Utility Board either dealt with, or had any right to deal with the local consents under its general power to supervise and regulate public utilities.

Section 16-E provides as follows:

### Powers of the Board

“The Board shall have power after hearing, by order in writing to fix just and reasonable standards, classifications, regulations, practices, measurements or services to be furnished, imposed, observed and followed thereafter by any public utility as herein defined.” 2 C. S. N. J. Cum. Sup. 2881.

Section 18-D provides as follows:

### Prohibitions

“No Public Utility as herein defined shall make or give, directly or indirectly, any undue or unreasonable preference or advantage to any person or corporation or to any locality or to any particular description of traffic in any respect whatsoever, or subject any particular person or corporation or locality or any particular description of traffic to any prejudice or disadvantage in any respect whatsoever.” 2 C. S. N. J. Cum. Supp. 2886.

These two sections must be read in *pari materia*. The order of the Board in failing to comply with the provisions of the Section 16 permits and even invites the violation by the Public Service of the prohibition of Section 18-D. As previously indicated, this ~~order~~ decision permits the Public Service to subject its competitors on the Hillside line to prejudice and disadvantage by being enabled to change the route of its busses at will and to get the "cream" of the business, so to speak, whenever it exists on Palisade Avenue. Needless to say, it is up to the courts to protect existing facilities from destructive competition.

*Hunter v. Public Utility Commissioners*,  
1 N. J. Misc. 408;  
*Motor Transport Co. vs. Public Utility  
Commissioners*, 6 N. J. Adv. Rep. 582.

The testimony discloses, as is shown in the preliminary statement of this brief, that along the rerouting of Palisade Avenue, a large amusement park, the Palisades Amusement Park exists. Under the local consents and the order of the board approving them, there is nothing to prevent the Public Service from rerouting busses at their will in order to meet the conditions existing at that park in respect to the number of prospective riders. On Sundays and holidays and clear days it is permissible for them to reroute any number of busses to meet these conditions. On the other hand, if conditions are such that patrons are not attracted by this amusement park, they are not required to operate busses along Palisade Avenue, but may continue along the original route where the business would be more profitable. It is inconceivable that such a situation could find legal justification to the prejudice and disadvantage of the prosecutors' business.

The testimony of Joseph Noon, discloses that on Sundays and holidays he is compelled to lose half of his revenues. He also shows that the Public Service has rerouted a variable number of busses under no apparent schedule.

The Supreme Court in rejecting this point assigns three reasons therefor. In the first instance, it says:

“As a matter of fact, from the proofs, this would seem unlikely. Anderson Avenue is some considerable distance from the entrance to the amusement park and the bulk of the travel, north and south, to and from it is by means of the Palisade trolley line. The park is open only three months in each year.”

In the first place, I do not think this finding is justified by the evidence, but I will concede that I may well be concluded by such finding in this court. The answer to this, it seems to me, is that the Supreme Court erroneously assumes that the lightness of an injury is an argument when the law seeks to enforce remedy therefor. In other words, it is perfectly all right to punch my opponent provided I do not hit him too hard.

Secondly, the Supreme Court says:

“The further answer against this contention is that it would be difficult at the outset for the Board to determine how many busses it would be necessary to operate on Palisade Avenue to meet the convenience and necessity of travelling public. Time and operation alone can safely and properly determine that question.”

I find no recognition in the law for this method of trial and error. Under Section 24 of the Utility Act, *ubi supra*, a bus franchise before it becomes valid must be first approved, to quote,

“When, after hearing, said board determines that such privilege or franchise is necessary and proper for the public convenience \* \* \*”.

If such method of trial and error is recognized as a part of the law, a great deal of useless time is now being daily taken up by the Board of Public Utility Commissioners. So, too, large sums of money are being wasted by the Public Utilities in hiring counsel and traffic experts to determine *a priori* whether a proposed route will meet the demonstration of public convenience and necessity.

Lastly, the court says:

“It will be noted that judgment, by its terms, is ‘irrevocable for violation of the Board’s rules, regulations or conditions or for other good cause’, and without this reservation the situation anticipated, although not presently existing, if it does arise will present a proper ground for appeal to the Board and a regulation in that direction.”

This assumes that the Board of Public Utility Commissioners is possessed of powers which it does not possess. There is a distinction between the powers by municipalities and the Board of Public Utility Commissioners in creating that privilege which finally results in a bus franchise. The municipality, in the first place, retains the right to say whether, when or where a bus shall be operated over its streets. This is so both by virtue of the traditional right of control vested in municipalities over vehicular traffic, and by the express provision of the Kates Act which expressly prohibits bus operation of any kind without the consent of the municipality. While such right does not become effective unless it is approved by the Board of Public Utility Commissioners, the board cannot, in the first instance, create such right. Neither can it,

in the first instance, abrogate such right. A consent, once effective and valid, can be revoked only in the manner prescribed by the Kates Act which is set forth therein as follows:

“Any such consent heretofore granted and now in effect or hereafter granted and in effect, shall continue in effect until revoked, as herein provided. Any such consent, heretofore or hereafter granted, may be revoked by the board or body of the municipality granting the same after notice and hearing whenever it shall appear that the holder of such consent has failed to furnish and keep in force the insurance and the power of attorney herein required, or to comply with any lawful regulation imposed by the board or body granting such consent and approved by the Board of Public Utility Commissioners or any law of the State of New Jersey, but no such revocation shall become effective until the Board of Public Utility Commissioners, after hearing, shall approve same.” P. L. 1926, page 221.

I respectfully submit that the Supreme Court misconceives the significance of the references made in the order of the board to “rules” and “regulations”. These rules and regulations apply only to the appurtenances of a consent. These appurtenances include regulations regarding the size of the bus, the fare permitted, etc., within which field the board has been held to have exclusive jurisdiction, even so far as to deny that right to municipalities.

*Morrison vs. West New York*, 5 N. J. Misc.  
222.

In other words, the control of the right to run over public streets, which is the basis of a consent, reposes, in the first instance, in the municipalities. The control of the super-structure, so to speak, of

such a consent, reposes exclusively in the Board of Public Utility Commissioners.

In other words, so far as a single bus consent is concerned, the only charter it possesses is the right to run over a particular street in a municipality, and the general power of the Utility Board to supervise and regulate a Public Utility does not include the right to revoke or modify its charter, once the charter has been granted. Hence, the appeal suggested by the Supreme Court would be futile.

### **CONCLUSION.**

**The judgment of the Supreme Court should be reversed and the order of the Board of Public Utility Commissioners should be set aside, vacated and for nothing holden.**

Respectfully submitted,

NICHOLAS S. SCHLOEDER,  
Attorney and of Counsel for Prosecutors.

## New Jersey Court of Errors and Appeals

HILLSIDE BUS OWNERS ASSOCIATION, *et al.*,

*Prosecutors,*

*vs.*

BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, and the PUBLIC SERVICE COORDINATED TRANSPORT,

*Defendants.*

*On Appeal  
from the  
Supreme  
Court.*

#58

*May Term 1929*

### BRIEF FOR PUBLIC SERVICE COORDINATED TRANSPORT.

On April 1, 1928, Public Service Coordinated Transport was operating a line of buses on the Hillside Route between Hoboken and Cliffside, as follows: Beginning at the Fourteenth street terminal, Hoboken, thence via Fourteenth street, Fourteenth street viaduct, Manhattan avenue, Eighteenth street, Palisade avenue, Monastery Place, New York avenue, Forty-seventh street, Bergenline avenue, Anderson avenue to Lafayette avenue, Cliffside; returning via same route to Bergenline avenue and Forty-eighth street, thence via Bergenline avenue, Sixteenth street, Manhattan avenue, Fourteenth street viaduct, and Fourteenth street to Fourteenth street terminal, Hoboken. At the same time and over the same route, the Hillside Bus Owners also ran buses. The number of buses operated by both together was forty-three. Of these Public Service operated thirty-three and the Hillside Bus Owners nine; and there was one to which the title was at that time in dispute.

Public Service Coordinated Transport thereupon made application to the Township of North Bergen and to the Borough of Cliffside Park to re-route and extend a portion of its said buses operating on the Hillside line, which application was granted by the said municipalities. Application was then made by Public Service to the Board of Public Utility Commissioners for approval of said municipal consents to operate a portion of the above-mentioned service as follows: Same as above route to Bergenline avenue and Bulls Ferry Road, thence via Bulls Ferry Road and Palisade avenue, to the Hudson River P. R. W., Fort Lee; returning via same route. And on August 7, 1928, after an exhaustive hearing, the Board of Public Utility Commissioners handed down its decision, found on pages 50, 51, 52 and 53 of the State of Case, as follows:

“This is an application by the Public Service Coordinated Transport for approval of municipal consents to extend the Hillside Route between Hoboken and the northerly limits of Cliffside via Palisade Avenue.”

(Present and proposed routes as set forth above are then inserted.)

“Municipal consents from the Borough of Cliffside and the Township of North Bergen were offered in evidence.

“The Board has heretofore approved of the operation of forty-three buses on the Hillside Route, thirty-four of which are owned and operated by the Public Service Coordinated Transport, the remaining nine being owned and operated by individual operators.

“Testimony was offered in support of the application.

“The independent operators, known as the Hillside Bus Association, appeared in opposition to the application, and were sup-

ported by members of the Real Estate Board of Palisade Park and the Exchange Club of Cliffside Park.

“The proofs indicate that the principal objection of the Real Estate Board of Palisade Park and the Exchange Club of Cliffside Park is that the proposed service will not operate between Edgewater Ferry and the West Shore Ferry, in Weehawken. There appears to be no objection, however, to providing local service along Palisade Avenue.

“The proofs further demonstrate that the section through which the proposed line operates is not now afforded convenient transportation, that the proposed line will furnish service to persons who reside east of the Palisade trolley line in Cliffside Park; that persons now seeking transportation facilities in this vicinity are required to proceed either to said Palisade trolley line or the Hillside bus line, which is operated on Anderson avenue. From the testimony it would further appear that persons residing in Cliffside Park and Palisade Park would be better served with transportation facilities if this extension is granted as it would provide two avenues through said municipalities upon which buses would be operated; and that such extension, with proper schedules, will not materially affect the service on Anderson avenue and will be a benefit to persons residing east of the Palisade trolley line.

“Upon consideration of the evidence, therefore, the Board finds and determines that the municipal consents granted to the petitioner for the extension of the route are necessary and proper for the public convenience and properly conserve the public interest and approved of same upon the following conditions:

“1. That said approval shall be subject to such rules, regulations or conditions now in force and as the Board may hereafter impose.

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

"3. That all State laws and municipal regulations must be fully complied with before these consents become effective.

"4. That the rates of fare charged by the petitioner shall not be changed without the approval of this Board."

Attorney for prosecutors-appellants has annexed to the State of Case as Exhibit P. 3, on page 61 thereof, a map or print showing the character of the so-called re-routing or extension accomplished by the municipal consents and the approval thereof by the Board of Public Utility Commissioners. It will appear from an inspection thereof and from the illustrative testimony in the cause that the re-routing or extension is a small change in the original route, of which the Board accurately says (p. 52 of Case)—  
"The proofs further demonstrate that the section through which the proposed line operates is not now afforded convenient transportation, that the proposed line will furnish service to persons who reside east of the Palisade trolley line in Cliffside Park; that persons now seeking transportation facilities in this vicinity are required to proceed either to said Palisade trolley line or the Hillside bus line, which is operated on Anderson avenue," etc. (See Decision of Board, *supra*.)

It will be noticed upon reading the testimony that the application was not to put additional buses on the line, but that the diversion asked for was to carry a portion of these buses up Palisade avenue instead of Anderson avenue in Cliffside; that such a diversion or division of the bus service would be greatly to the advantage of the public convenience and in the public inter-

est was not seriously and effectively denied in the testimony of the witnesses for the prosecutors; and the memorandum for prosecutors in this court does not challenge the finding of the Board of Public Utility Commissioners in this particular nor offer a single word in contradiction thereto.

The prosecutors—who like to call themselves the “independents”—have never applied to the municipalities involved for consents to re-routing their buses over this route, and there is not the slightest evidence in the case that if such application had been made by them to the appropriate municipal authorities the same would not have been granted, for the rule of law is *omne rite esse acta praesumuntur*. It certainly will not be assumed that the public authorities, if applied to, would have decided the matter so as to accomplish either wrong or injustice.

The obvious reason why they did not apply was in all likelihood because they were satisfied to retain their route on Anderson avenue, and to have the service of the buses of Public Service on that avenue diluted and diminished. This is clear from the testimony of Arthur T. Warner (p. 12 of Case) where, in response to the question “Does it divert any of the revenue from the existing bus line, Mr. Warner?” he replied, “A No, sir, I do not think it would. If anything, it would leave more business to the buses that are on Anderson avenue in that section because some of that business on Anderson avenue which is now being divided between forty-three buses is not going to be divided between forty-three buses, because part of them will not be there, so those that are left will gain by it.”

It is also to be borne in mind that the evidence establishes without contradiction that the business which it is contended will go to Public Service from the process of re-routing—namely, that from Palisade Amusement Park—is of an extremely variable kind. It is greater on Sundays and holidays, is infinitely less on other days, is affected by rain and other inclement weather conditions, and is seasonal, inasmuch as the Amusement Park remains open for only three months in the year. It could not, therefore, with accuracy be determined in advance by the municipalities involved and by the Board of Utility Commissioners, whose approval of municipal consents is necessary before the same become effective, what and how much service would be required on each day in each week, and during each week in the month, and during every month in the year.

This subject was adverted to pertinently in the opinion of the Supreme Court now under review when it said:

“The contention here seems to be that there is nothing to prevent the Public Service Coordinated Transport from re-routing, from time to time, such number of buses as it may desire to take the large travel from Palisade Amusement Park, and when that travel falls off or does not exist to cut down the number of buses it will operate on Palisade avenue and send them back into operation on Anderson avenue, to the disadvantage and loss of the prosecutors.

“As a matter of fact, from the proofs, this would seem unlikely. Anderson avenue is some considerable distance from the entrance to the Amusement Park and the bulk of the travel, north and south, to and from it, is by means of the Palisade trolley line. The park is open only three months in each year.

“The further answer against this contention is that it would be difficult at the outset for the Board to determine how many buses it would be necessary to operate on Palisade avenue to meet the convenience and necessity of the traveling public. Time and operation alone can safely and properly determine that question.

“It will be noted that the judgment, by its terms, is ‘revocable for violation of the Board’s rules, regulations or conditions, or for other good cause,’ and without this reservation the situation anticipated, although not presently existing, if it does arise will present a proper ground for appeal to the Board and a regulation in that direction.”

I think it is clear that the so-called franchise which is possessed by Public Service Coordinated Transport to run its thirty-three buses over this extended route must be held to consist of the original consents granted by the municipalities and approved by the Board of Public Utility Commissioners to run those buses over the original route, plus the consents and approval thereof to run the same over the so-called extension thereof permitted by the consents and the approval which form the basis of the objections urged in this case.

Furthermore, there are limitations upon the right of Public Service to operate buses over the extended route, since it is clear that the buses thus operated must be operated under the consents originally granted as modified by the consents authorizing the so-called extension. There cannot, therefore, be operated any more than the thirty-three buses thus authorized by the original consent, and these buses by the very language of the consent granted by the Borough of Cliffside Park are “subject to approval of

schedule," and this is confirmed by the third condition attached to the approval of the Board of Utility Commissioners to the effect that "all State laws and municipal regulations must be fully complied with before these consents become effective."

These considerations completely dispose of Point One of brief of prosecutors-appellants, which is that "The order of the Board of Public Utility Commissioners approving the local municipal consents herein involved is illegal, because (A) the said consents were too indefinite to give the Board jurisdiction to approve them, and (B) the said order itself is indefinite in that it fails to identify the consents so approved."

\* \* \* \* \*

The second point of prosecutors-appellants is that "The said order of the Board of Public Utility Commissioners fails to fix just and reasonable standards, classifications, regulations, practices, and services to be furnished, imposed or observed and followed thereafter by the Public Service Coordinated Transport, and permits and causes the said corporation to give undue and unreasonable preference and advantages to itself and subjects the prosecutors to prejudice and disadvantage."

What has been heretofore said in answer to Point One completely disposes of Point Two, but it cannot escape notice that prosecutors' attorney seems to misunderstand the purpose and purport of section 18d of the public utility act, which he not only misinterprets but entirely misquotes. Section 18d as it appears in the Cumulative Supplement to the Compiled Statutes of New Jersey, at page 2886, is as follows: "18. No public utility as herein defined shall: (d)

Make or give, directly or indirectly, any undue or unreasonable preference or advantage to any person or corporation or to any locality or to any particular description of traffic in any respect whatsoever, or subject any particular person or corporation or locality or any particular description of traffic to any prejudice or disadvantage in any respect whatsoever." Counsel for prosecutors has left out a considerable portion thereof in his attempted quotation thereof in his brief, as will be apparent from a comparison of the attempted quotation in the brief with the actual law as it is found in the Cumulative Supplement.

(I here pause to state that although several statutes are attempted to be quoted by prosecutors' attorney in his brief, each and every quotation of a statute therein is garbled and erroneously set forth. This applies to excerpts in the brief on page 11, pages 8 and 9, and especially to the attempted quotation on pages 3 and 4 of an excerpt from Section 2 of Chapter 144 of the Laws of 1926, page 219. I have mentioned this not in criticism of counsel, for I presume the mistakes will in all likelihood prove to have been of clerical origin, but merely to indicate to the Court the unsafety of relying thereon in the consideration of the case.)

It surely could not have escaped his observation in reading section 18d that the prohibition therein set out is directed against the public utility and not against the Board of Public Utility Commissioners; consequently the statute which he invokes is without any application whatever to the case now *sub judice*. He attempts to show a relevancy by stating that section 16e, which confers upon the Board power to impose just and reasonable standards, classifications,

etc., and which he says the Board failed to comply with, permitted and even invited the violation by Public Service of the prohibition of section 18d. He is charmingly indefinite as to what the Board should have done under section 16e, or what it did not do thereunder in the way of fixing just and reasonable standards, classifications, etc., and consequently leaves his opponent and the Court to speculate as to what the Board should have done or did not do in the premises. And then, to make the matter still more grotesque, on page 15 of the brief he denies the power of the Board to make any rule or regulation which could by any possibility have accomplished what in his brief he complains of. He there says, "I respectfully submit that the Supreme Court misconceives the significance of the references made in the order of the Board to 'rules' and 'regulations.' These rules and regulations apply only to the appurtenances of a consent. These appurtenances include regulations regarding the size of the bus, the fare permitted, etc., within which field the Board has been held to have exclusive jurisdiction, even so far as to deny that right to municipalities."

A conclusive answer, however, to his arguments is found on page 12 of his brief, where he says that "As previously indicated, this provision permits the Public Service to subject its competitors on the Hillside line to prejudice and disadvantage by being enabled to change the route of its buses at will and to get the 'cream' of the business, so to speak, whenever it exists on Palisade avenue. Needless to say, it is up to the courts to protect existing facilities from destructive competition." Sections 18d and 16e, *supra*, are conspicuously inapplicable to the case now under consideration. Public Service Co-

ordinated Transport submits that the Board has fixed just and reasonable classifications and standards and respectfully points out that the prohibition directed by prosecutors against actions by the Utility Board is by the sections of the act cited directed only against utilities such as the prosecutors or defendant Transport Company. Such sections prohibit references by utilities in favor of particular clients or persons using its buses, such as granting them reduced rates of fare or special service. The prohibition does not at all have the effect alleged by prosecutors, and Point Two in the memorandum becomes valueless. This section is obviously intended to apply to discrimination by public utilities, and has no bearing on actions by the Utility Board.

Furthermore, even if this statute were applicable or the common law were invoked, it is entirely obvious that there is no possible ground for the charge of discrimination. If the so-called independent operators had decided to raise that point against the Board of Public Utility Commissioners or any other body they should themselves have made an application for permits to re-route their buses over the line indicated, and then if permission had been denied, have charged that the same was denied by reason of discrimination. There is no evidence in this case that any application was ever made by the so-called independent operators for permission to re-route their buses, and consequently there is no evidence that any permission had ever been denied to them to so re-route. In this state of the record it is quite clear that no charge of discrimination can be made against the Board. It does not appear that if they desire to re-route their buses and run over the same route which

they now challenge, the appropriate municipal board would not grant them permits to so operate and so regulate the service by both Public Service and independents that there could be no ground for complaint. The negligence or lack of desire on the part of the independents to make such application should not be considered by this Court a substantial ground upon which to revoke the permits which have already been granted and thereby cause the public to suffer the inconvenience of walking four blocks to patronize the line of prosecutors, who have shown no desire by application or otherwise to furnish such greater convenience to the traveling public.

A consideration of the logical consequence of the adoption of the rule contended for by prosecutors would be this: Public Service would apply for a permit to re-route its buses and the independents would neglect to make application therefor. If the permission were granted, the independents would declare that the grant of such permission was discrimination, and if this point were held good, the situation would be that unless and until everyone else who might by chance desire to make application for a permit had done so, the Utility Board would be powerless to act and grant such a permit to those who made application for the same. Such a situation is too utterly ridiculous to contemplate, and without the support of any case or legal principle. The fact is that the prosecutors have by their inaction placed themselves in a position where they have not the legal capacity to challenge the order or approval of the Board of Public Utility Commissioners in the respects indicated.

\* \* \* \* \*

Before closing this brief, I desire to recur for a moment to the utter insufficiency of Point One in prosecutors' brief, where it is contended that the consents were too indefinite and that the order itself is indefinite in that it fails to identify the consents so approved.

The Board of Public Utility Commissioners is the sole judge of the public necessity and convenience for operation of buses. If the Board, after the proposed operation had been demanded and approved by the municipalities affected, felt that the public would be better served by having a part of the buses on the Hillside line operate over the new route, that must settle the question. In fact the prosecutors admit that that part of the public which would use the new service would be saved a walk of four blocks to the line of the old route. See deposition of Joseph Noon, State of Case, page 47, line 20. This admission of the prosecutors is clear and conclusive evidence of the existence of public necessity and convenience, and that the re-routing is in the public interest.

The demand for this service may vary. The demand for service over the old route may at times require that the greater proportion of the line operate there. It may be that the Board could not at this time determine how many buses were needed over this new route, but it did settle that buses were needed there and there was sufficient evidence to support such a decision.

On this point the attention of the Court is directed to pages 38 to 43 of the State of Case, testimony of Harry Buesser. It is stated that he was secretary and manager of Hillside Bus Owners Association, which appears to be an

association of the independent operators on the Hillside line. After admitting that he was also an officer of the Nickel Transportation Company, Mr. Buesser disclosed the fact that the latter company had asked for 60 permits to operate over the route in question. His testimony then goes on to show that he believed that the public would be well served by this operation; and now in the instant case, an operator on the Hillside line, representing his associates, complains of the operation of the defendant Coordinated Transport and bases his attack on the fact that the word "portion" and not "8" or "10" or "12" is used in the consent, when it is admitted that the line is needed and will better the service to the public. This technical objection, even though it were well founded, becomes of no importance when it is realized that a maximum and a minimum number of buses can be here operated, for the number cannot exceed or be less than the consents already issued to the defendant Coordinated Transport to operate on the Hillside line, and such objection becomes of less than no importance when it is realized that the body governing the operation of buses is not governed by the technical rule advanced by the prosecutors.

The cogency and incontestability of this argument is demonstrated by the fact that the action of the Utility Board is entirely in accord with the legislative intent and purpose as indicated by Chapter 52 of the Laws of 1928, at page 112, wherein the legislature has said, in authorizing substitution of buses for trolley service, that the party substituting may substitute "*such number of auto buses as may be necessary from time to time to furnish the public safe, adequate*

and proper service over such route as has been or may be approved by said Board in substitution for such railway service.”

\* \* \* \* \*

It is therefore respectfully contended that the Judgment of the Supreme Court should be affirmed.

Respectfully submitted,

WILLIAM H. SPEER,  
Attorney for and of Counsel with Defendant  
Public Service Coordinated Transport.

