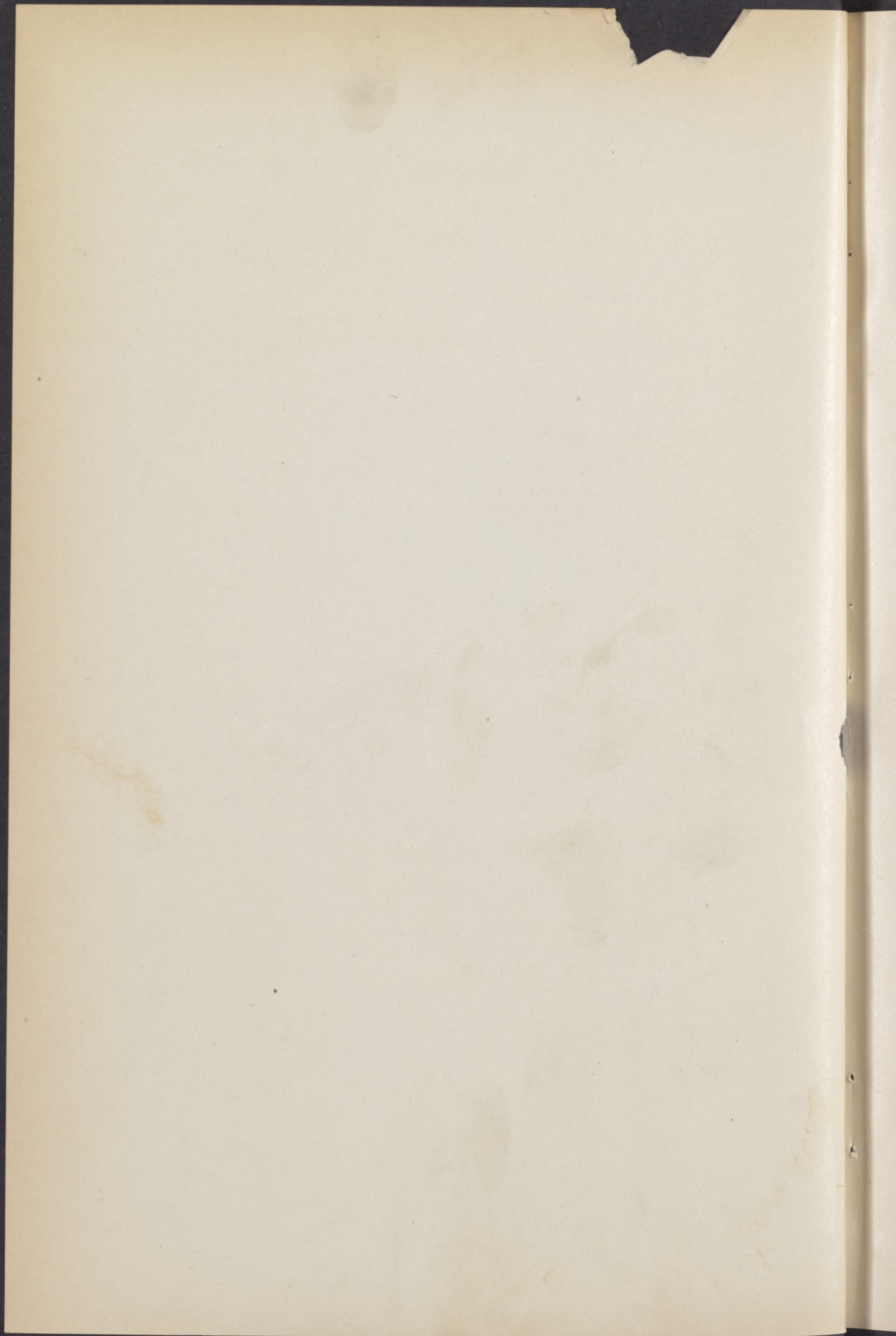


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New Jersey Supreme Court.

PEOPLES RAPID TRANSIT CO. <i>et al.</i> , <i>Prosecutors</i> , <i>vs.</i> ATLANTIC CITY, <i>Respondent.</i>	} On Certiorari.	10
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WRIT AND RETURN.

(Filed March 20, 1928.)

ORDINANCE No. 9.

City of Atlantic City, New Jersey. 20

Introduced by Mayor Ruffu, February 2, 1928.

AN ORDINANCE regulating the operation of auto busses within the City of Atlantic City; providing for operating terminals and the parking of said auto busses; regulating and prohibiting the use of certain streets in said City by said auto busses; and providing penalties for the violation thereof.

The Board of Commissioners of the City of Atlantic City do ordain:

Section 1. That the term or designation "Auto Busses," as used in this ordinance, is declared to mean and include one or more automobiles or one or more other vehicles, propelled by motor power, with a seating capacity of more than seven (7) passengers, and engaged in carrying passengers for hire and pay, to, from, and within the City of Atlantic City. 30

Section 2. That nothing herein contained shall be construed to include taxicabs, hotel busses or busses em-

ployed solely in transporting school children and school teachers to and from public schools in said City, or such omnibusses, stage coaches or other vehicles commonly called "jitneys" as operate solely within the limits of said City, or auto busses operated wholly within the City limits of said City by virtue of a franchise from said City.

Section 3. That it shall be unlawful for any person operating auto busses, as herein defined to receive or discharge passengers on any street or highway in the City of Atlantic City.

Section 4. That it shall be unlawful for any person to park or operate any auto bus, as herein defined, in the City of Atlantic City, unless such person shall first procure, provide and maintain a terminal—on private lands—on which terminal only, such person shall park, accept and discharge any person or persons who may offer themselves for transportation in such auto busses.

Section 5. That it shall be unlawful for any auto bus as herein defined, to operate on or across Atlantic Avenue, in Atlantic City, New Jersey, or to operate on any of such streets, avenues, boulevards, public places or portions thereof, lying between Atlantic Avenue and the Boardwalk, and between Vermont and Jackson Avenues, in said City.

Section 6. That it shall be unlawful to operate at any time within the said City, any auto bus, as herein defined, carrying passengers in excess of the rated seating capacity of said auto bus.

Section 7. That the word "person" is hereby declared to mean and include persons, firms, associations, co-partnerships and corporations, and the employees, agents and servants of such persons, firms, associations, co-partnerships and the officers, employees, agents and servants of such corporations.

Section 8. That this ordinance is hereby declared to be necessary in the interest of the public safety and health of the community, to relieve congestion of traffic on Atlantic Avenue, in the City of Atlantic City, and

on streets lying between Atlantic Avenue and the Boardwalk, and between Vermont and Jackson Avenue, in said City, to lessen fire hazard occasioned by the obstruction due to auto busses on said Avenue and said Streets, and to provide for certain necessary police regulation of said auto busses.

Section 9. That any person, firm, association, co-partnership or corporation violating any of the provisions of this ordinance shall, upon conviction thereof, pay a fine not exceeding Fifty Dollars (\$50.00) for the first offense, and a fine not exceeding One Hundred Dollars (\$100.00) for each and every offense thereafter; and upon default in payment of any first or subsequent fine herein provided, shall be imprisoned in the City or County Jail for a period not exceeding thirty (30) days. 10

Section 10. That if, for any reason, any section or part of any section, or any provision of this ordinance shall be questioned in any Court, and shall be held by any Court to be unconstitutional or invalid, the same shall not be held to affect any other section or any part of any other section or provision of this ordinance. 20

Section 11. That all ordinances or parts of ordinances inconsistent herewith, are hereby repealed to the extent of such inconsistency.

Section 12. This ordinance shall take effect immediately after passage and final publication.

Passed at a Regular Meeting of City Commission, February 9, 1928.

Approved February 9, 1928.

ANTHONY M. RUFFU, JR.,

Mayor. 30

WILLIAM S. CUTHBERT,

LOUIS KUEHNLE,

HARRY T. HEADLEY,

Commissioners of Atlantic City.

Attest:

BERTRAM E. WHITMAN,

City Clerk.

Published February 11, 1928—Press.

Published prior to passage February 3, February 4, February 6, 1928—Press.

CITY OF ATLANTIC CITY

DEPARTMENT OF PUBLIC AFFAIRS

I, Bertram E. Whitman, City Clerk of the City of Atlantic City, in the County of Atlantic, State of New Jersey, do hereby certify, that the foregoing is a true copy of an ordinance passed and approved February 9, 1928, published February 11, February 3, February 4, February 6, in the Atlantic City Press, as taken from the original on file in the office of the City Clerk.

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of the City of Atlantic City, this fourteenth day of March, 1928.

BERTRAM E. WHITMAN,

(SEAL)

City Clerk.

STATE OF NEW JERSEY, To Atlantic City and E. Bertram Whitman, its Clerk, Greeting:

(SEAL)

We being willing, for certain reasons, to be certified of a certain ordinance of Atlantic City, known as Ordinance No. 9, approved February 9, 1928, do command you, that you certify and send to our Justices of our Supreme Court, at Trenton, on the thirtieth day of March, 1928, as well the said ordinance, with all things touching and concerning the same, as fully and entirely as they remain before you, together with this, our writ, that we may cause to be done thereupon what of right and according to law and justice ought to be done.

Witness, Hon. Wm. S. Gummere, Chief Justice of our said Supreme Court, this tenth day of March, in the year of our Lord one thousand nine hundred and twenty-eight.

E. J. KELLEHER,

Clerk.

COLE & COLE,

Attorneys.

To the Honorable Justices of the Supreme Court of
Judicature, Trenton, New Jersey:

Honored Sirs:

Complying with command of Writ of Certiorari:
Peoples Rapid Transit Co., Wm. H. Merz, Parlor
De Luxe Coach Co., Theo. T. Harris, Prosecutor, v.
Atlantic City, Respondent.

I am herewith forwarding you certified copy of Ordinance No. 9 approved February 9, 1928, with all things touching and concerning the same, as fully and entirely as they remain before me together with this writ. 10

In Witness Whereof, I have hereunto set my hand and affixed the official seal of the City of Atlantic City this nineteenth day of March, 1928.

BERTRAM E. WHITMAN,
City Clerk.

(SEAL)

NEW JERSEY SUPREME COURT. 20

PEOPLES RAPID TRANSIT CO.	}	On Certiorari.
<i>et al.,</i>		
Prosecutors,		
<i>vs.</i>		
ATLANTIC CITY,	}	
Respondent.		

REASONS.

(Filed April 7, 1928.)

The Prosecutors assign the following reasons why the ordinance under review should be set aside and voided. 30

1. Atlantic City was without power to enact the ordinance.
2. The ordinance prohibits the conduct of a lawful business, and is not regulatory thereof.
3. The ordinance is arbitrary, unreasonable and discriminates against the business of the prosecutor and in favor of others conducting business akin thereto.

4. The prosecutor is engaged wholly in the business of interstate commerce. The ordinance imposes and casts upon their business a burden in addition to that cast upon those conducting a like business in intrastate commerce.

5. The ordinance deprives the prosecutor of its property, without due process of law, and denies to them the equal protection of the law, in violation of the Fourteenth Amendment to the Federal Constitution.

10

COLE & COLE,
Attorneys of Prosecutor.

NEW JERSEY SUPREME COURT.

20	}	PEOPLES RAPID TRANSIT CO. <i>et al.,</i> <i>Prosecutors,</i> <i>vs.</i> ATLANTIC CITY, <i>Respondent.</i>	} On Certiorari.
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DEPOSITIONS.

Depositions taken before Claude W. Myrose, Supreme Court Examiner, in the City Solicitor's office, City Hall, Atlantic City, New Jersey, on Thursday, April 19th, 1928, at three-thirty o'clock in the afternoon, in the presence of Hon. C. L. Cole, of Messrs. Cole & Cole, attorneys for the prosecutors, and Hon. Joseph B. Perskie, City Solicitor of Atlantic City.

30

It is Stipulated and Agreed by and between the attorneys for the respective parties that the testimony shall be taken stenographically, afterwards reduced to type-writing and the signatures of the witnesses waived.

It is Stipulated and Agreed by and between the attorneys for the respective parties that the testimony taken, in addition to the writ and the return made, shall consti-

tute the state of the case to be used on the argument in the above-entitled cause.

Samuel M. Lippman, a witness produced on behalf of the respondent, being first duly sworn, testified as follows:

Direct examination, by Mr. Perskie.

Q. What is your position in Atlantic City, Mr. Lippman?

A. Inspector of Police. 10

Q. How long have you been connected with the Police Department of Atlantic City?

A. Since 1907.

Q. As a result of your connection with the Police Department of Atlantic City, what, if anything, have you to do with the traffic situation of Atlantic City?

A. I have direct control of the men that are assigned for traffic duty.

Q. How many men does the Police Department of Atlantic City maintain in its traffic department? 20

A. During the winter months about 35 and about 70 in the summer.

Q. Are you in a position to say, Mr. Lippman, what is the average number of cars that are daily on the streets of Atlantic City, exclusive of the summer season and the holiday seasons?

Mr. Cole—That is objected to as irrelevant.

A. Well, a great number of cars, but the amount I couldn't say. We have checked on that and we have had as high as 15,000 cars come in during twenty-four hours from eight A. M. Saturday morning until Sunday morning. 30

Q. During what seasons of the year in particular?

A. That was during the summer season.

Q. Now, Mr. Lippman, what is the main dividing street in the City of Atlantic City?

A. Atlantic Avenue.

Q. And Atlantic Avenue runs from where to where?

A. From Maine Avenue to Jackson.

Q. Within the boundaries of Atlantic City, New Jersey?

A. Atlantic City, yes.

Q. South of Atlantic Avenue to the Boardwalk how many other streets are there intervening?

A. Pacific Avenue runs from Maine Avenue to Albany?

Q. Is there any other street which runs parallel to Atlantic Avenue other than Pacific Avenue for the full
10 length of Atlantic Avenue?

A. No, there isn't.

Q. Is there any other street which runs parallel with Atlantic Avenue other than Pacific Avenue for part of Atlantic Avenue?

A. There is.

Q. What street is that?

A. Oriental Avenue.

Q. Where does that run from?

A. That runs from the Boardwalk to New Jersey
20 Avenue westwardly.

Q. What is there between Pacific Avenue and the Boardwalk with reference to streets running parallel to Atlantic Avenue? Any other streets?

A. None.

Q. So that between Atlantic Avenue and the Boardwalk the only street which runs the full length of Atlantic Avenue, parallel to it, is Pacific Avenue?

A. Pacific Avenue.

Q. With the exception of Oriental Avenue, which runs for only part of it; is that right?

A. Right.
30

Q. What is the distance between Atlantic Avenue and Pacific Avenue?

A. One block.

Q. About how many feet?

A. About 400 feet.

Q. What is the distance between Pacific Avenue and the Boardwalk?

A. That is irregular.

Q. About how much?

A. Well, in some places it is about seven or eight hundred feet, and in some places it is about two hundred feet.

Q. What is the width of Atlantic Avenue?

A. Eighty feet.

Q. What is the width of Pacific Avenue?

A. About thirty-five feet.

Q. What is the average width of the streets intervening between Atlantic and Pacific Avenue?

10

A. Most of them about thirty feet.

Q. And they run that way from Maine Avenue clear down to Jackson?

A. With the exception of States, Virginia, Pennsylvania and North Carolina.

Q. They are a little wider?

A. Yes.

Q. About how wide are they?

A. I judge they are about fifty feet.

Q. At the end of every street from south of Atlantic Avenue and to the Boardwalk is there any method of making a turn from one street to the other?

20

A. There are none. They are all dead-end streets leading to the Boardwalk.

Q. So that if a bus or vehicle of any kind goes by any one street in Atlantic City to the Boardwalk, in order to turn around it must turn around on the same street; is that right?

A. Yes, turn on the same street.

Q. When was it that you made a check and found that in a period of twenty-four hours there were some 15,000 cars which came to Atlantic City?

30

A. I believe that was the summer of 1925.

Q. Has automobile traffic increased or decreased to Atlantic City?

A. Increased.

Q. What has made the increase?

A. The completion of the Delaware River bridge and the improvement of all the roads in Jersey, I believe has caused that.

Q. As a result of those increases, what is the condition of the streets of Atlantic City most of the time by reason of these automobiles being on them?

A. Terribly congested.

Q. And in particular the streets at or near the Boardwalk end?

10 A. All streets leading to the Boardwalk on week-ends and practically during all of the summer months are congested continuously.

Q. Are you familiar with the type of busses that the transportation companies use to carry passengers that come to and from Atlantic City?

A. As to size, yes.

Q. About how many passengers do most of them accommodate?

A. About thirty-five.

20 Q. And about how much more of a street do they occupy than the average five- or seven-passenger automobile?

A. About three to one.

Q. What, if anything, is the result when these busses endeavor to turn at the dead-end streets of Atlantic City?

A. It causes a continuous congestion during the period of time that it takes them to turn.

Q. What, if any, is the effect, in your judgment, of a condition of that kind with reference to ample city fire protection?

30 A. No vehicle could pass in either direction in the area where these busses are turning.

Q. Do you think it jeopardizes fire protection in the community?

A. It certainly does.

Q. Mr. Lippman, on certain streets in Atlantic City steam trains come in in the summer time most every day, do they not?

A. Yes.

Q. What streets are those?

A. At the present time, Georgia Avenue only. Mississippi Avenue has been abandoned entirely.

Q. Where do these trains stop when they come into Atlantic City, these excursion trains, with reference to Atlantic Avenue?

A. The excursion trains arriving on the Pennsylvania Railroad on Georgia Avenue terminate at the westerly side of Atlantic Avenue.

10

Q. That is, on the north side of Atlantic Avenue?

A. Northwest side.

Q. For how long a time have the railroads been operating their trains in that fashion, stopping north of Atlantic Avenue?

A. The Pennsylvania Railroad has been operating, I believe, for the past two years. The Reading has stopped entirely. They don't come in on Mississippi Avenue at all.

Q. Where do they land?

20

A. At the station at Arkansas Avenue.

Q. At their regular terminal?

A. At their regular terminal.

Q. What is your opinion as to the effect on relieving congestion if motor busses transporting passengers to and from Atlantic City will stop north of Atlantic Avenue?

Mr. Cole—That is objected to on the ground that his opinion is not relevant.

A. It would relieve the conditions southerly of Atlantic Avenue a great deal if they weren't to come in south of Atlantic Avenue.

30

Q. Now, Mr. Lippman, with relation to the general condition of Atlantic Avenue, what is the chief type of buildings south of Atlantic Avenue?

A. Frame buildings. Small hotels of various sizes.

Q. They are the largest hotels, too, aren't they, south of Atlantic Avenue?

A. All the large hotels are south of Atlantic Avenue.

Q. And the real large ones are located south of Atlantic Avenue near the Boardwalk, are they not?

A. South of Pacific Avenue on the Boardwalk.

Q. And the side avenue hotels, the smaller hotels are located on side avenues?

A. All on side avenues.

Q. South of Atlantic Avenue?

A. South of Atlantic Avenue.

Q. Are there any hotels of any consequence north of
10 Atlantic Avenue?

A. None whatever.

Q. So that most people who come to Atlantic City have to find a method of transportation to points south of Atlantic Avenue, do they not?

A. Yes, sir.

Q. About how many people would you say, to the best of your recollection, in the summer season in Atlantic City, and the high seasons of the year, come in a day to Atlantic City who have to go south of Atlantic Avenue?

20 A. I would say approximately ninety-five per cent. of all the people coming to Atlantic City go southerly of Atlantic Avenue.

Q. Are you in a position to approximate the numbers that that ninety-five per cent. would represent?

A. The total for the season, do you mean?

Q. Daily.

A. Well, that would be hard.

Q. Would it run into many thousands?

A. On week-ends it would be, I would say, anywhere from two hundred to two hundred and fifty thousand.

30 About two hundred and fifty thousand, according to figures we receive from railroads and what we approximate come in by automobiles.

Q. Most of these large hotels that you have described as being located on the Boardwalk front, and a goodly number of these side avenue hotels, have busses in which they transport their guests to and from the hotels, do they not?

A. They do.

Q. In addition to the bus transportation of guests in the hotels, what other methods of transportation are there provided in Atlantic City which necessitates the user of those side streets to the Boardwalk?

A. Taxicabs.

Q. About how many of them would you say there are in Atlantic City?

A. About four hundred.

Q. What system of transportation is provided on Pacific Avenue for passengers?

10

A. Jitneys.

Q. About how many of those would you say are being operated on Pacific Avenue?

A. One hundred and ninety.

Q. Are they, under the existing laws of Atlantic City, precluded from operating on Atlantic Avenue?

A. They are.

Q. Do you know why that was legislated?

Mr. Cole—I object. That is unimportant.

Q. Do you know whether they were put on Pacific Avenue to relieve the congestion on Atlantic Avenue?

20

A. They were put on Pacific Avenue to relieve congestion.

Cross-examination, by Mr. Cole.

Q. Do you think that the influence of the Pennsylvania Railroad Company, which operates the trolley line up and Atlantic Avenue, had anything to do with putting the jitneys off of Atlantic Avenue?

A. I wouldn't be in a position to answer that question. I don't know.

30

Q. How were you in a position to answer the other, that they were put on Pacific Avenue in order to relieve congestion on Atlantic?

A. Owing to the excessive amount of traffic we have on Atlantic Avenue, with the increased amount of jitneys it was necessary to relieve the conditions.

Q. There was a time when the jitneys were on Atlantic Avenue, wasn't there?

A. They were.

Q. And when they were there they put the trolley company in the hands of a receiver, didn't they?

A. I don't know whether they put it in.

Q. Shortly after it went in the hands of a receiver, didn't it, the trolley company?

A. Yes.

Q. Then after that they took the jitneys off of Atlantic Avenue, didn't they?

10 A. I believe they did.

Q. Then after that the company went out of the hands of the receiver, didn't it?

A. I don't know.

Q. It is out of the hands of the receiver now. You know that, don't you? Have you any suspicion, even a suspicion, that the jitneys were taken off of Atlantic Avenue in order to help the Pennsylvania Railroad?

Mr. Perskie—That is objected to as immaterial, irrelevant and an improper question.

20 Q. When you spoke of the width of the avenues, did you mean the width between the curbs?

A. The curbs, yes.

Q. You have mentioned jitneys and hotel busses and taxis traveling over the streets. Are there also sight-seeing busses that travel around Atlantic City?

A. Yes.

Q. How many of those are there?

A. I presume about fifteen.

Q. Do you know whether they are licensed by Atlantic City?

30 A. They are.

Q. To travel anywhere around the town, and they do, in fact, don't they, use all the streets?

A. Yes. They practically make a tour.

Q. They go across Atlantic Avenue and Pacific to the beach, don't they?

A. Yes.

Q. They turn around at the dead-end streets?

A. Yes.

Q. Now, these hotel busses, they travel to and from the railroad stations, don't they?

A. They do.

Q. Carrying passengers?

A. Yes.

Q. Their guests?

A. Yes.

Q. Charge them for it, don't they?

A. Yes.

Q. Are there freight trucks or trucks carrying freight that cross the avenue and use the streets? **10**

A. Yes.

Q. They go down to the beach front some times?

A. Practically all over. They deliver merchandise.

Q. How many trucks are there, do you think, that carry freight that use the streets of Atlantic City?

A. I couldn't answer that question.

Q. There are men in business here who have trucks to carry their own products, aren't there, across Atlantic Avenue? **20**

A. Yes.

Q. Then there are public trucks that do public hauling of freight that cross all the avenues?

A. Yes.

Q. Eldredge and Company, for example, do they not?

A. Yes.

Q. What other companies do you think of that carry freight across the avenues?

A. Well, there is what they call Harry's Express, I believe, and a few other concerns. I can't just recall.

Q. Now, roughly how many streets are there that run across Atlantic Avenue from Maine to Jackson? **30**

A. Forty-eight. About fifty-five, I judge. Atlantic Avenue or Pacific Avenue?

Q. Atlantic.

A. Forty-eight.

Q. That includes all of the streets at right angles crossing Atlantic Avenue in the area of Atlantic City, doesn't it?

A. Yes.

Q. Under this ordinance there is a prohibition against using any streets other than Maine or New Hampshire; is that correct? Is that your understanding?

A. Yes.

Q. How many streets are there that run parallel with Atlantic Avenue that are north of Atlantic Avenue?

A. You mean the full length of Atlantic Avenue?

Q. Well, the full length or nearly.

10 A. There would be Arctic, Fairmount, parts of it known as Baltic Avenue; Adriatic.

Redirect examination, by Mr. Perskie.

Q. Mr. Lippman, north of Atlantic Avenue, in addition to the streets which you have enumerated, as running parallel to Atlantic Avenue, Atlantic City at some points goes out for eight or nine blocks further, doesn't it?

A. Yes; about nine blocks, in some sections.

20 Q. That is, nine blocks that would run almost parallel to Atlantic Avenue?

A. Yes.

Q. Called the West Side, isn't it?

A. Yes.

By Mr. Cole.

Q. What is the character of the houses north of Atlantic Avenue?

A. Very small frame houses.

Q. Mostly frame, aren't they?

30 A. Mostly frame, yes.

William S. Cuthbert, a witness produced on behalf of the respondent, being first duly sworn, testified as follows:

Direct examination, by Mr. Perskie.

Q. What is your name?

A. William S. Cuthbert.

Q. What position, if any, do you hold in the City of Atlantic City?

A. Director of Public Safety.

Q. How long have you been connected with the City administration of Atlantic City?

A. 1901.

Q. About how long have you had charge of the Fire Department of Atlantic City?

A. What do you mean, the paid and volunteer?

Q. Yes; all of it.

A. I guess about the last thirty or thirty-two years.

Q. You are practically one of the founders of the Fire Department of Atlantic City, are you not? **10**

A. One of the spokes of it, I suppose, yes.

Q. For some time past you have had charge of the Police Department?

A. Yes.

Q. Director, south of Atlantic Avenue what other street is there which runs parallel to Atlantic Avenue between Atlantic Avenue and the Boardwalk?

A. Well, there is Oriental and one little street called Lafferty Place on Ocean Avenue, between Tennessee and Ocean. **20**

Q. What is the main street which runs parallel to Atlantic Avenue?

A. Pacific Avenue.

Q. How far is it between Atlantic Avenue and Pacific Avenue?

A. I would say about 250 or 300 feet.

Q. Is it about the same distance between Pacific Avenue and the Boardwalk?

A. Oh, no.

Q. Is it more?

30

A. More.

Q. What is the general type of the buildings used for south of Atlantic Avenue?

A. Hotels.

Q. The real large hotels are located mostly where?

A. Along the Boardwalk.

Q. And the side avenues have the boarding houses and the smaller type of hotel; is that right?

A. Yes.

Q. What is the condition of the streets of Atlantic City during the summer season and the high seasons throughout the year by reason of the automobiles that are on the streets?

A. Well, it is very congested, on account of having dead-end streets at the end of the Boardwalk, at the foot-end of the streets. You see, the way you go in, you have got to come out the same way, unfortunately.

10 Q. Are you in a position to say approximately how many cars come to Atlantic City daily, in addition to the numbers which are used by residents of Atlantic City?

A. No, I can't answer that.

Q. Do they run into great numbers, Director?

A. Yes.

Q. Do those numbers increase as the seasons of the year increase when people come more frequently to Atlantic City?

20 A. Yes. I would say from the first of July up to Labor Day, and all week-ends.

Q. Are you familiar with the type of bus that is used by companies engaged in transporting passengers to and from Atlantic City?

A. I see a great number of them.

Q. How do they compare in size and weight with the average five- or seven-passenger automobile?

A. No comparison at all, I would say.

Q. Are they at least two or three times as large?

A. I should say so.

30 Q. And at least two or three times as heavy?

A. Yes.

Q. Director, what is the effect on the question of fire protection by reason of the congestion which is brought about on the streets of Atlantic City south of Atlantic Avenues by these automobiles and transportation busses?

A. Well, it is a fire hazard. That is what I would term it, because just as the Inspector has stated, when you turn it takes the whole street up to go across.

Q. You, of course, have charge of the traffic department of the Police Department?

A. Yes.

Q. And are thoroughly familiar with traffic conditions, are you not?

A. I think so. I have experience with them, yes.

Q. In your opinion is it necessary for fire and police protection to relieve the congestion south of Atlantic Avenue in Atlantic City?

A. Yes.

10

Q. And in your opinion will the restriction of transportation busses, keeping them to the north line of Atlantic Avenue, help relieve that fire hazard?

Mr. Cole—That is objected to as irrelevant and immaterial.

A. Not a bit of question about that in my mind.

Q. That is, you think it will relieve it?

A. Yes; there is no question about it.

No cross-examination.

Respondent rests.

20

PROSECUTORS' TESTIMONY.

Cletus G. Haney, a witness produced on behalf of the prosecutors, being first duly sworn, testified as follows:

Direct examination, by Mr. Cole.

Q. What is your connection with the Peoples' Rapid Transit Company, one of the prosecutors here?

A. President of that company.

Q. Does that company have a private station in Atlantic City?

30

A. It does.

Q. Where is it located?

A. Virginia Avenue and the Boardwalk.

Q. Where are the passengers that you bring in to Atlantic City discharged?

A. At that private terminal.

Q. Where are they taken on?

A. At that terminal.

Q. Do you discharge passengers anywhere in Atlantic City other than at that station?

A. No, sir.

Q. Do you take passengers on anywhere in Atlantic City other than at your station?

A. No, sir.

Q. Where do you take on the passengers that you discharge at your station in Atlantic City?

10 A. Philadelphia.

Q. Do you take on any passengers after you arrive in New Jersey, for Atlantic City?

A. No, sir.

Q. Do you take on any passengers in Atlantic City that you discharge short of Philadelphia?

A. No, sir.

Q. The property you have for your station, is it owned or leased by you?

A. Leased.

20 Q. For how many years?

A. Five years.

Q. What is your rent?

Mr. Perskie—That is objected to as irrelevant and immaterial and on the ground that vested rights, if any, play no part when the question of public safety is involved.

A. Ten thousand dollars per year?

Q. How many trucks do you operate?

A. How many busses?

Q. I mean busses.

30 A. Fifty.

Q. What is your investment, roughly?

Mr. Perskie—I make the same objection to all that line of questioning, for the same reason.

A. Eight hundred thousand dollars, approximately.

Q. How long have you been operating in Atlantic City?

A. Since August twenty-ninth, 1925.

Q. When you approach Atlantic City what avenue do you use to get to your station?

A. Virginia.

Q. Do you know where Maine and New Hampshire Avenues are?

A. I am not very well acquainted there, no.

Q. They are at the Inlet section, the first two avenues from the Inlet.

A. I am familiar with that locality.

Q. Now, assuming that you were to discharge your passengers north of Atlantic Avenue, and there were passengers for hotels south of Atlantic Avenue, how would they get to the hotels? 10

A. We would deliver them there by taxicabs.

Q. Now, having in mind the size of your own cars and the size of the taxicabs, tell us the difference in the space that you would use.

A. Do you mean to carry that bus load of passengers?

Q. Yes.

A. It would require more than six times as much space. 20

Q. When you go down Virginia Avenue with your passengers which you discharge in your station, do you have to turn your bus around on the street or turn it around at the station?

A. Turn it around in at the station.

Q. When you come out of the station do you have to turn around, or do you simply come right out on the street, like any other automobile?

A. Come right out on the street and proceed.

Q. Do you have more than one station here? 30

A. No, just that one station.

Q. You are a corporation of what State?

A. New Jersey.

Q. Do you pay the State of New Jersey any tax or license fees for operation?

Mr. Perskie—That is objected to as immaterial and irrelevant.

A. Yes, sir.

Q. What do you pay?

A. We pay a license fee for each bus.

Q. Is that under the State statute?

A. Yes, and we also pay a road tax in the State of New Jersey.

Q. Also under the statute?

A. Yes, sir.

Q. Now, speaking of opinions, as to the effect of your busses, what have you to say as to whether the use of the busses in the way that you do, apart from the question of taxicabs, congests the streets any more than other vehicles do?

A. To carry that same number of passengers, the busses would cause much less congestion than the number of taxicabs to carry that number of passengers, that is, the number of taxicabs required.

Q. Less congestion the way you are doing it now than by taxis?

A. Much less, yes.

20 Q. How often do your cars run?

A. We have a varied schedule. We have them running now on an hour and a half schedule.

Q. What is the type of your busses?

A. The gas-electric type. De Luxe type bus.

Q. Standard?

A. I would say yes.

Q. Well constructed?

A. Well constructed.

Q. What about your men who drive, as to their ability?

30 A. We use all thoroughly trained men, having passed through a period of instruction composed of about six months, well inspected and found to be O. K. before they start out.

Q. Suppose your company should be obliged to abandon the carrying of passengers across Atlantic Avenue if this ordinance is made effective, what would be the effect on your business?

Mr. Perskie—That is objected to as irrelevant and immaterial.

A. It would result in a total loss of our investment down here.

Q. Is it feasible for you to conduct your business and discharge your passengers north of Atlantic Avenue?

A. No, sir.

Cross-examination, by Mr. Perskie.

Q. Mr. Haney, have you been on Virginia Avenue? **10**

A. Yes, sir.

Q. How wide a street is Virginia Avenue, about?

A. Oh, I don't know the width.

Q. Approximately.

A. Approximately sixty feet.

Q. There are automobiles parked on both sides of the curb of that street usually, are there not?

A. Usually? I am not down there usually.

Q. You have never seen the street?

A. I have seen the street.

20

Q. You have seen automobiles parked on both sides of Virginia Avenue?

A. I have seen cars parked there.

Q. So you know that cars park along both sides of Virginia Avenue along the curb?

A. Yes.

Q. In addition to that, there is a trolley track in the center of that street, isn't there?

A. Yes, I believe there is.

Q. On which there are operated trolley cars?

A. Yes.

30

Q. The full length of that street from the Boardwalk all the way out as far north as Virginia Avenue runs in Atlantic City; isn't that right?

A. I am not familiar, but I think it is. I wouldn't say for sure, because I don't very often travel it myself.

Q. How wide is one of your busses?

A. Eight feet.

Q. How long is it?

A. Approximately twenty-nine feet.

Q. And about how heavy are they?

A. Fully loaded, they are about sixteen thousand pounds.

Q. So that when your bus turns out of your private terminal on Virginia Avenue to go out on the main street, it has to go almost twenty some odd feet before it can make a turn, doesn't it?

A. No.

10 Q. At least half that distance, doesn't it?

A. I would say not. Due to the width of the driveway coming out there, it could start to turn as soon as it gets off of private property.

Q. Now, Mr. Haney, if a trolley car was running on Virginia Avenue, isn't it a fact that your bus has got to wait until the trolley car passes before it can proceed in either one direction or the other on Virginia Avenue?

A. Well, it is a noted fact that—

Q. Just answer that yes or no.

20 A. They would wait, yes.

Q. They would have to, wouldn't they, in order to be able to pass?

A. Two vehicles can't pass in the same point at the same time.

Q. They can if the street is wide enough, can't they?

A. Not at the same point.

Q. No, but you could swerve either to the left or the right if you had ample room in the street, couldn't you?

A. That is true.

30 Q. Now, Mr. Haney, when you take passengers in Pennsylvania, do you make a contract with them to deliver them in Atlantic City or at Virginia Avenue and the Boardwalk in Atlantic City?

A. We advertise Virginia Avenue and the Boardwalk.

Q. You don't advertise to take them to Atlantic City but you covenant to take them to Virginia Avenue and the Boardwalk?

A. Yes, sir.

Q. You answered Judge Cole that if you brought them to a point north of Atlantic Avenue you would have to deliver them by taxicabs to their respective hotels. If you make a contract only to deliver them to Virginia Avenue and the Boardwalk, why would there be any obligation on your part to take them by taxicab to some of the hotels in Atlantic City?

A. We wouldn't make that kind of a contract.

Q. Didn't you tell Judge Cole that if you stopped at a point north of Atlantic Avenue, that then you would have to hire a taxicab to deliver the passengers to their respective hotels in Atlantic City? **10**

A. Yes, sir, in view of the fact that—

Q. All right. If you make a contract to deliver them to Virginia Avenue and the Boardwalk, why do you say you would be obliged to deliver them to their respective hotels in Atlantic City?

A. Because the hotels are located in the immediate vicinity of Virginia Avenue, and we take them now reasonably close to many of the big hotels. **20**

Q. Do you deliver them from Virginia Avenue and the Boardwalk to their respective hotels in Atlantic City?

A. No.

Q. So that was just put in to make it a little harder; is that it, Mr. Haney?

A. You said I answered the Judge's question, and you will have to ask him why it was put in.

Q. I didn't ask him about the question. I asked you about the answer you gave. Is that your explanation to that situation, Mr. Haney?

A. That is what I gave. **30**

Q. Now, Mr. Haney, I want you to explain how you reach the conclusion that if you had to stop at a point north of Atlantic Avenue, you would lose your eight hundred thousand dollar investment, or whatever it is, here in Atlantic City?

A. I didn't testify we would lose eight hundred thousand dollars. I said we would lose the money invested at the Virginia Avenue terminal.

Q. What have you got invested at the Virginia Avenue terminal?

A. We have got a five-year lease there; we have got a building there cost cost us approximately ten thousand dollars. A total of sixty thousand dollars.

Q. Which I presume you carry to amortize during the period of your five-year lease, do you not?

A. Not exactly during that period, no. We didn't contemplate getting any earnings out of it in the early
10 periods of the business.

Q. How far a distance is it, Mr. Haney, from a point immediately north of Atlantic Avenue to Virginia Avenue and the Boardwalk?

A. I couldn't say exactly. I never measured it.

Q. Would you say it is more than six or seven hundred feet?

A. I would say it is about half a mile.

Q. It is two blocks, isn't it? Between Atlantic Avenue and Pacific, and between Pacific Avenue and the
20 Boardwalk; isn't that right?

A. I don't know about the blocks down there. I couldn't tell you. It is about half a mile. Blocks vary in different cities.

Q. We are talking about Atlantic City.

A. I am not familiar enough with Atlantic City to describe the blocks.

Q. How often do you come to Atlantic City?

A. When I do come down here I either spend my time at the bus terminal or the Boardwalk, and I am not looking over the blocks.

30 Q. How long have you been engaged in transportation facilities?

A. This particular type?

Q. Altogether.

A. Twenty-four years.

Q. I suppose before you came down to Atlantic City you gave the matter considerable thought, did you not?

A. I would say yes.

Q. Invested eight hundred thousand dollars in busses and about sixty thousand dollars for terminal facilities, and you can't tell us the approximate distance between Atlantic Avenue and the point where you land?

A. I told you half a mile.

Q. How many feet are there in a mile, do you know, Mr. Haney?

A. Fifty-two hundred and—

Q. Eighty, isn't it?

A. Yes.

10

Q. You have heard it testified here that a block in Atlantic City is about three hundred and fifty feet long, have you not?

A. I didn't know that made it so, though.

Mr. Cole—I object to all this testimony as being irrelevant and immaterial and I think it is not cross-examination.

Q. From a practical standpoint, Mr. Haney, what effect, if any, do you think it would have on your business if you advertised that you carry your passengers 20 from Philadelphia to Atlantic City, as against the advertisement that you carry them from Philadelphia to Virginia and the Boardwalk in Atlantic City?

A. It would have a bad effect.

Q. How?

A. Lessen our business.

Q. How?

A. People wish to go to the Boardwalk.

Q. Isn't it a fact that a goodly number of the passengers you carry have never been in Atlantic City before?

Mr. Cole—I object. How could this man possibly tell? 30

A. I don't know.

Q. That is your standpoint as to how it would affect your business, is that it?

A. Yes.

Q. Do you know of any other transportation agency that comes into Atlantic City, other than transportation

busses, which advertises to deliver its passengers to the Boardwalk in Atlantic City?

Mr. Cole—I object to that as irrelevant and immaterial as to what other companies do.

A. I am not familiar with it.

Q. You said, Mr. Haney, that you operated on a schedule of about an hour and a half? What schedule do you operate on in the summer time?

A. A varied schedule.

10 Q. With reference to time.

A. About an hour schedule, regular schedule. We operate quite a number of busses in addition to that regular schedule.

Q. About twenty-five busses at the height of the season run each way, to and from Atlantic City, all the time, do they not?

A. We operate fifty busses on this run.

Q. You say you have some very careful drivers, and that you only use those which you train?

20 A. The best we are able to get.

Q. Have you any record as to how many times those careful drivers were arrested in Atlantic City for violation of the traffic laws?

Mr. Cole—That is objected to.

A. I am not familiar with that record.

Q. You pay nothing to Atlantic City for the privilege of doing business in Atlantic City, do you, Mr. Haney?

A. We pay tax, yes, for our building down there.

Q. I mean for the transportation business.

A. State tax.

30 Q. Atlantic City, I said.

A. Not to my knowledge.

Redirect examination, by Mr. Cole.

Q. Mr. Haney, I am not sure that it is clear—which side of Virginia Avenue is your station on?

A. On the right side going down.

Q. Going toward the Boardwalk?

A. Yes.

Q. How near to the Boardwalk?

A. I have never measured it.

Q. Roughly.

A. I would say seventy-five feet, approximately.

Robert Stamper, a witness produced on behalf of the prosecutors, being first duly sworn, testified as follows:

Direct examination, by Mr. Cole.

Q. Mr. Stamper, what is your relation with the Parlor De Luxe Coach Company? 10

A. President.

Q. Under what State is that company incorporated?

A. Delaware.

Q. What is its business?

A. Transportation.

Q. Where do you carry passengers?

A. Philadelphia to Atlantic City.

Q. Do you have a private station in Atlantic City?

A. Yes.

Q. Where is it located? 20

A. 180 South Virginia Avenue.

Q. Where do you discharge your passengers?

A. 180 South Virginia Avenue, on a lot.

Q. Where do you take them on?

A. 180 South Virginia Avenue, on the lot.

Q. The passengers that you take on in Atlantic City where do you discharge them?

A. Philadelphia.

Q. Where do you get your passengers that you discharge in Atlantic City?

A. 180 South Virginia Avenue? 30

(Question repeated.)

A. That I discharge in Atlantic City?

Q. Yes.

A. Philadelphia.

Q. Do you discharge any passengers within the State of New Jersey?

A. No, sir, unless it is a case of some one taken sick and has to have a doctor.

Q. How long have you been conducting business in Atlantic City?

A. I think around April, 1926.

Q. Do you lease your property?

A. Yes, sir.

Q. For how long a term?

A. Four years more to go.

Q. What is your rental?

10 Mr. Perskie—I object to all that on the ground it is irrelevant and immaterial and that no vested rights rise any higher than police power.

Q. What is your investment?

A. Do you mean in equipment?

Q. What is your rent?

A. Rent is about twenty-four hundred dollars a year.

Q. What is your investment outside of that?

A. One hundred and eighty-five thousand.

20 Q. What, in your opinion, would be the effect on the business of your company if this ordinance is made effective and you are prohibited from carrying your busses across Atlantic Avenue?

A. I would think at the present time it would put us out of commission.

Q. Is it feasible, in your opinion, to carry on your business and discharge your passengers north of Atlantic Avenue?

A. No, sir.

Q. Does your company pay any tax to the State?

A. No, sir.

Q. Does it pay any road tax of any kind at all?

30 A. No. We pay gas tax.

Q. You pay the gas tax?

A. Yes, sir.

Q. Under the statute?

A. Yes, sir.

Cross-examination, by Mr. Perskie.

Q. How many cars do you operate to and from Atlantic City?

A. Do you mean at present or in the busy season?

Q. During the season.

A. Twelve.

Q. How big are your cars?

A. It is the regular Mack bus. I judge they are twenty-seven or twenty-eight feet long. Twenty-nine passengers.

Q. How wide?

A. Less than eight feet, I think.

Q. What is its weight?

10

A. That I don't know exactly.

Q. Is it as heavy as the cars operated by the Peoples' Rapid Transit?

A. No, it is a lighter car; a smaller bus.

Q. You also go on the same street that is used by the other company?

A. Yes, sir.

Q. They have about twenty-five to and from Atlantic City all the time on that street, and you have about twelve coming on that street, do you not?

20

A. You see, that varies. Holidays, Saturdays and Sundays it is increased.

Q. How wide would you say Virginia Avenue is?

A. From curb to curb?

Q. Yes.

A. About sixty feet.

Q. Automobiles on both sides of the street?

A. Yes, sir.

Q. Alongside of the curb?

A. Yes, sir.

Q. Trolley line running in the center of the street?

30

A. Yes, sir.

Q. The whole length of the street?

A. Yes, sir.

Q. Can you pass while the trolley car is running on the street, with automobiles standing on both sides?

A. Yes, there is enough room between trolley car and the curb. I venture to say there can be four cars abreast and two trolley cars.

Q. Even when there are automobiles parked alongside of the curb?

A. I think so.

Q. Did you ever pass them that way yourself?

A. No.

Q. And twelve busses cost you one hundred and eighty thousand dollars?

A. No; I have seventeen.

10 Q. Are there times of the year when you operate seventeen?

A. Yes, sir.

Q. Now, you operate twelve and during the summer you operate seventeen?

A. Yes, sir.

Q. Now, Mr. Stamper, you said that if you were compelled to stop north of Atlantic Avenue it would seriously interfere with your business, as I understood it; is that right?

A. Yes, sir.

20 Q. Would you still say the same if all transportation companies that brought passengers to Atlantic City stopped north of Atlantic Avenue, that the result would be the same?

A. Well, I don't know about that. It might be all right if we had an ample terminal for all busses to run into.

30 Q. So that the only time it would affect your individual business would be that if one competing concern was permitted to run to the Boardwalk end and you had to stop on the north side of Atlantic? Then it would affect your business, and that is natural, isn't it?

A. I suppose so.

Q. But if all companies which operated buses for transporting passengers to Atlantic City stopped at Atlantic Avenue, it would be equal competition, wouldn't it?

A. Yes.

Q. Do you advertise you take them to Virginia Avenue and the Boardwalk?

A. Yes, sir.

Q. Do you as a matter of fact take them to Virginia Avenue and the Boardwalk?

A. Yes, sir.

Q. Do you call 180 South Virginia Avenue Virginia Avenue and the Boardwalk?

A. Yes, sir.

Q. How far is 180 South Virginia Avenue from the Boardwalk?

A. From my location?

10

Q. Yes.

A. Possibly one hundred and fifty feet.

Q. And you are of the opinion that if there was a proper terminal provided, proper terminal facilities provided north of Atlantic Avenue, and used by all transportation companies, that would be all right, wouldn't it?

A. Yes, sir, I think as a whole all the bus people would.

Q. So this matter is just merely a matter of finding a convenient spot north of Atlantic Avenue in order to arrange for proper terminal facilities; isn't that right? 20

A. Yes, sir, and it will take some time to do it.

Q. But eventually it could be done?

A. No doubt.

Q. Without any serious effect on your business or anybody else's engaged in the business?

A. I think if the City was to cough up a little bit and build a nice, great big terminal, we would all welcome it.

Q. So far the only thing you pay for is the gas you use to operate those busses which the State gets anything out of; isn't that right? 30

A. We pay what is asked and what is right?

Q. That is all you pay?

A. What is the use of a man coming along and paying something he isn't asked to pay?

Q. That is right.

A. You wouldn't?

Q. No, indeed. How frequently do you come to Atlantic City?

A. Possibly once a week.

Q. How long has that been going on?

A. For the last two years.

Q. Do you know of any street in Atlantic City that is more congested than Virginia Avenue, the one on which you operate?

A. Of course, I have never made a personal survey of any. My business is always to come here to look after the business I am carrying on.

10 Q. That is your answer to that question?

A. In the summer time it is all congested. Everybody is trying to get to Atlantic City to spend their money and we are all out to get some of it.

Q. So the Director of Public Safety and the Captain of Police, when they said the streets of Atlantic City were highly congested, were telling the honest-to-goodness truth about it?

A. Yes, but not wholly from busses.

20 Q. The busses certainly don't help to relieve the congestion, do they?

A. It takes all as a whole to make this congestion, you know; not only busses.

William H. Merz, a witness produced on behalf of the prosecutors, being first duly sworn, testified as follows:

Direct examination, by Mr. Cole.

Q. Mr. Merz, are you individually engaged in the transportation business?

A. Yes, sir.

30 Q. From what point and to what point do you transport passengers?

A. Delaware Avenue and the Boardwalk to Philadelphia, and also to New York City.

Q. Do you have your private terminal?

A. Yes, sir.

Q. Do you discharge passengers that you bring into Atlantic City at any point other than at your terminal?

A. Only at the terminal.

Q. Where do you take on your passengers?

A. At the terminal.

Q. Where do you take on the passengers in Philadelphia?

A. 1225 Market Street.

Q. Do you take on any passengers in New Jersey after you leave Philadelphia for Atlantic City?

A. Never.

Q. Do you have a lease or do you own the property?

A. I lease it.

10

Q. For how long a period?

A. For one year.

Q. What is your rental?

A. Eighty-five hundred a year.

Q. What is your investment?

Mr. Perskie—I object to that on the ground it is irrelevant and immaterial and no investment can rise any higher than the police power of Atlantic City.

A. Two hundred thousand.

20

Q. How far are you from the Boardwalk?

A. The driveway on the lot is about seventy-five feet.

The lot itself is about fifty.

Q. What is your opinion as to the effect on your business if you are prevented from crossing Atlantic Avenue?

A. I think our business would drop considerably.

Q. Why do you think that?

A. Persons wish to get transportation right up to the Boardwalk, rather than back at Atlantic Avenue.

Q. Is it feasible, in your opinion, to conduct your business if you discharge your passengers north of Atlantic Avenue?

30

A. Not so well.

Q. Do you advertise to carry your passengers to the Boardwalk?

A. We have that printed on our tickets, Delaware Avenue and the Boardwalk.

Q. How long have you been in business transporting passengers?

A. Philadelphia and Atlantic City service, March 1st, 1926. I have been sight-seeing down here for seven years.

Q. What do you pay to the State and Atlantic City in the conduct of your business?

A. Gasoline tax, road tax, tags for the busses.

10 Q. Have you observed whether or not there are motor trucks that carry freight across Atlantic Avenue toward the ocean?

A. Yes, sir.

Q. Do you know whether they carry for hire?

A. Yes, sir.

Q. Do you have to turn your bus around when you go down Delaware Avenue in order to get to your terminal?

A. We go down Delaware Avenue and run right up on the lot and discharge.

20 Q. Do you have to turn it around when you come out?

A. We don't have to. We can go straight through to States Avenue and out States Avenue.

Q. Is that the course you pursue?

A. Sometimes on Sunday, when things are congested, we will go right through. During the week we turn around on the lot and come out on Delaware Avenue.

Q. Does your lot run between the two avenues?

A. Goes from one street to the other; drive right through.

30

Cross-examination, by Mr. Perskie.

Q. Do you know of any other agencies that are employed in Atlantic City for the transportation of passengers to Atlantic City other than the busses?

A. The railroads.

Q. Do any of the other agencies bring their passengers to the Boardwalk in Atlantic City?

A. Not at the present time.

Q. How many busses do you operate in Atlantic City?

A. Twenty-five.

Q. At the height of the season?

A. Yes.

Q. Are they of the same type and size that are used by the other companies?

A. They average about twenty-eight feet in length.

Q. How wide?

A. Ninety inches wide.

Q. What is the weight capacity?

10

A. Some of them will average fourteen thousand; some will run up to sixteen thousand.

Q. You are talking about pounds?

A. Yes.

Q. How far is Delaware Avenue from Virginia Avenue, do you know?

A. Two blocks?

Q. You said in reply to a question of Judge Cole on the taxes you paid, that you paid for tags and you paid for gasoline tax. When was the last time you paid for any of those things to the City of Atlantic City?

20

A. I don't pay anything to the City of Atlantic City outside of my rental.

Q. Do you pay that to the City of Atlantic City?

A. I pay that to my landlord.

Q. So that you don't pay anything to the City of Atlantic City; is that right?

A. Oh, for mercantile tax down there, I believe, and giving them one of my gas houses.

Q. Mr. Merz, if all the transportation companies that carry passengers to Atlantic City from points from without Atlantic City stopped north of Atlantic Avenue, it wouldn't affect your business in any wise, would it?

0

A. I think it would.

Q. Do you think people would cease riding in busses?

A. I daresay if it wasn't for the Boardwalk we wouldn't get but half of our traffic.

Q. Is that the alluring element that brings them to Atlantic City?

A. I really think so.

Q. So that you think in spite of the alluring element of the Boardwalk in Atlantic City, that they wouldn't walk from Atlantic Avenue to the Boardwalk, which is a distance of about seven or eight hundred feet? You think that would stop them from coming to Atlantic City?

A. Not all, but I daresay a considerable number of them.

10 Q. It would stop?

A. Yes.

Q. Are they such a poor type of patrons that you bring to Atlantic City that they wouldn't spend the extra dime or quarter or walk the couple of blocks to get to the Boardwalk?

A. No, but there would be so many of them that wouldn't know there were busses in operation if they didn't see something about them from the Boardwalk.

20 Q. You think the first intimation they get of the Boardwalk is what you transportation men give them?

A. No, I don't think that.

Q. What do you mean? They want to come to Atlantic City because of the Boardwalk?

A. I say if it wasn't for the busses being so close to the Boardwalk, we wouldn't get so much traffic, if we were away from the Boardwalk.

Q. You think if a given man or woman wanted to come to Atlantic City and they knew they had to get off at Atlantic Avenue, they wouldn't use the bus method of transportation?

30 A. No, I wouldn't say that.

Q. What would you say?

A. I would say that the busses being so close to the Boardwalk gives us more trade. If they weren't up there, people, I daresay, a good many of them, wouldn't know that busses were in existence, if they hadn't seen them down there, or if they had to walk two or three squares to the Boardwalk.

Q. In other words, you think the fact that you can advertise that you bring people right to the Boardwalk in Atlantic City is an added inducement for your business?

A. Positively.

Q. And that is the reason you don't want to give it up?

A. Positively.

Q. But if all transportation companies had to stop north of Atlantic Avenue, that competitive feature 10 wouldn't exist, would it?

A. Yes, it would. I don't think there would be so many bus riders.

Q. You don't agree with Mr. Stamper about the condition of a terminal north of Atlantic Avenue?

A. No, sir.

Q. Whether the City provided one or not?

A. No, sir.

It is stipulated and agreed by and between counsel for the respective parties that Maine Avenue 20 does not run through to Pacific Avenue from Atlantic Avenue.

It is stipulated and agreed by and between counsel for the respective parties that the avenues beginning at the Inlet and running down to Virginia Avenue run as follows: Maine, New Hampshire, Vermont, Rhode Island, Massachusetts, Connecticut, New Jersey, Delaware, States, Maryland and Virginia.

Redirect examination, by Mr. Cole.

30

Q. Do you have sight-seeing busses around Atlantic City?

A. Yes, sir.

Q. Where do you travel?

A. We go from Delaware Avenue to Pacific Avenue; out Pacific Avenue to the Inlet; cruise around out there taking in the Inlet, and back Atlantic Avenue to—well,

some of the trips go all the way down through Ventnor; some of them go over to Ocean City.

Q. Do you charge for that?

A. Yes, sir.

Q. Do you cross Atlantic Avenue to the Boardwalk?

A. Yes, sir.

Q. How long have you been doing that business?

A. I started, I believe it is six or seven years ago.

Q. How many busses do you use for that?

10 A. Well, at the height of the season we use about six or seven busses.

Q. Do you get a license from Atlantic City to do that?

A. Yes, sir.

Q. Do you pay for that?

A. Yes, sir.

Q. You are not included in this ordinance?

Mr. Perskie—I object to that. The ordinance speaks for itself.

A. No, sir.

20 Q. Your sight-seeing busses are not included within this prohibition, are they?

A. No, sir.

Q. What about the size of those busses?

A. They are practically the same size.

Q. As the others that you use outside of the State?

A. Yes, sir.

By Mr. Perskie.

Q. Do you object because they are not included? Do you want them included, too?

30 Mr. Cole—I object to that.

(Question repeated.)

A. I think they ought to be included.

Testimony closed.

I hereby certify that the foregoing is a full and accurate transcript of the testimony taken before me in the before-entitled cause.

CLAUDE W. MYROSE,
Supreme Court Examiner.

OPINION.

PEOPLES RAPID TRANSIT COMPANY, ET
AL., PROSECUTORS, v. ATLANTIC CITY,
RESPONDENT.

Argued May 3, 1928—Decided February 4, 1929.

1. The regulaiton of motor vehicles on particular streets, even to the complete exclusion therefrom, when deemed necessary in the public interest, is within the police power delegated to municipalities, and while such regulation may be considered drastic in its operation, a Court is not at liberty to substitute its judgment for that of the municipality as to the best methods of relieving traffic congestion in a specified area in the interest of the public welfare. 10

2. In the absence of a federal prohibition or regulation upon the subject, it is competent for the state, by legislative enactment and delegation to state agencies, to regulate the operation of motor driven vehicles within the State, even those engaged in interstate commerce. 20

3. An ordinance of a municipality which applies to all auto buses within its provisions, whether engaged in interstate, intercity or intrastate transportation for hire, but which excludes from its operation hotel buses and school buses, is not invalid because of such exclusion as the differentiating features of the use of such buses forms a reasonable basis for a separate classification. 30

4. The fact that the prosecutors have made a

substantial investment in the business of motor transportation, which may be affected by the provisions of a municipal ordinance, does not concede to them vested rights which can interfere with the power of the municipality, under statutory authority, to protect the public in the use of the public highways.

10

ON WRIT OF CERTIORARI.

Before Justices MINTURN, BLACK and CAMPBELL.

20

For the prosecutors, COLE & COLE and S. PAUL
RIDGWAY.
For the respondent, JOSEPH B. PERSKIE.

The opinion of the Court was delivered by
MINTURN, J. The facts in the case brought up by
this writ are as follows:

30 Atlantic Avenue, in the City of Atlantic City, is one of the main thoroughfares, if not the main thoroughfare, of that municipality, and extends the full length of the city. Pacific Avenue parallels Atlantic Avenue from Maine to Albany Avenues; and Oriental Avenue extends from the Boardwalk to New Jersey Avenue, parallel with Atlantic Avenue. The main thoroughfare running parallel with Atlantic Avenue, along the ocean front of the city, is Pacific Avenue.

The distance between Atlantic Avenue and the Boardwalk is between seven hundred and fifty and eight hundred feet, and that avenue is a street about eighty feet in width, Pacific Avenue being about thirty-five feet in width.

All the streets in the city leading to the Boardwalk are what are known as dead-end streets. There are forty-eight streets running across Atlantic Avenue from Maine to Jackson Avenue, and the inhibition contained in the ordinance covers all streets so crossing Atlantic Avenue, with the exception of Maine and New Hampshire Avenues. 10

During the summer and holiday seasons as many as fifteen thousand additional automobiles use the streets.

On Virginia Avenue two of the prosecutors operate. There is a double trolley track on the street, extending its full length, upon which track is operated trolley cars.

Three of the prosecutors in this case own approximately one hundred of the buses, which carry about thirty thousand passengers, and are about eight feet wide, twenty-nine feet long, and weigh approximately sixteen thousand pounds. 20

Under these conditions the board of commissioners of the City of Atlantic City passed an ordinance, which was approved on the 9th of February, 1928, entitled "An ordinance regulating the operation of auto buses within the City of Atlantic City, providing for operating terminals, and the parking of said auto buses, regulating and prohibiting the use of certain streets in said city by said auto buses, and providing penalties for the violation thereof." 30

Section 1 of the ordinance provides that the term or designation "auto buses," as used in the ordinance, is declared to mean and include one or more

automobiles, or one or more other vehicles propelled by motor power, with a seating capacity of more than seven passengers, and engaged in carrying passengers for hire and pay, to and from and within the City of Atlantic City.

10 The second section provides that nothing contained in the ordinance should be construed to include taxicabs, hotel buses or buses employed solely in transporting school children and school teachers to and from the public schools in said city, or such omnibus and stage coaches and other vehicles commonly called jitneys, as operate solely within the limits of said city, or auto buses operated wholly within the city limits of the city by virtue of a franchise from said city.

Section 3 provides that it shall be unlawful for any person operating auto buses as therein defined to receive or discharge passengers on any street or highway in the city.

20 The fourth section provides that it shall be unlawful for any person to park or operate any auto bus as therein defined in the City of Atlantic City, unless such person shall first procure, provide and maintain a terminal, on private land, on which terminal only such person shall park, or shall accept and discharge any person or persons who may offer themselves for transportation in such auto buses.

30 Section 3 provides that it shall be unlawful for any auto bus as therein defined, to operate on or across Atlantic Avenue, or to operate on any streets, avenues, boulevards, public places or portions thereof, lying between Atlantic Avenue and the Boardwalk, and between Vermont and Jackson Avenues.

Section 6 provides that it shall be unlawful to operate at any time within the said city any auto

bus, as therein defined, carrying passengers in excess of the rated seating capacity of the bus.

Section 7 provides that the word "person" is thereby declared to mean and include persons, firms, associations, co-partnerships and corporations, and the employes, agents and servants of such persons, firms, associations or co-partnerships and the officers, employes, agents and servants of such corporations.

Section 8 provides that the ordinance is declared 10
to be necessary in the interest of the public safety and health of the community and to relieve congestion of traffic on Atlantic Avenue, and on streets lying between Atlantic Avenue and the Boardwalk, and between Vermont and Jackson Avenues, to lessen the fire hazard occasioned by the obstruction due to auto buses on said avenue and said streets, and to provide for certain necessary police regulation of such buses.

Section 9 provides that any person, firm, associ- 20
ation, co-partnership or corporation violating any of the provisions of the ordinance shall, upon conviction thereof, pay a fine not exceeding \$50 for the first offense, and a fine not exceeding \$100 for each and every offense thereafter, and upon default in payment of any first or subsequent fine therein provided, such offender shall be imprisoned in the city or county jail for a period not exceeding thirty days.

Section 10 provides that if for any reason any 30
section or part of any section, or any provision of this ordinance shall be questioned in any court, and shall be held by any Court to be unconstitutional or invalid, the same shall not be held to affect any other section or any part of any other section or provisions of the ordinance.

By Section 11 all ordinances or parts of ordi-

nances inconsistent therewith are thereby repealed to the extent of such inconsistency.

The twelfth section provides for the immediate taking effect of the ordinance.

There are four prosecutors to the writ, who seek the judgment of the Court touching the validity of the ordinance under review, insofar as it provides for operating terminals, and the parking of auto buses, and regulating and prohibiting the use of
10 certain streets in said city by said auto buses, and providing penalties for the violation thereof.

The prosecutors are engaged in interstate commerce, transporting passengers to and from Atlantic City, and to and from points outside of the State of New Jersey. Each has a terminal in Atlantic City, and none of them takes on passengers in New Jersey except at its terminal in Atlantic City, nor does any of them discharge any passenger within the limits of New Jersey, except at its
20 city terminal; and no question is made but that the said prosecutors have paid whatever tax or fee is required by the law of the State or the ordinance of Atlantic City.

The insistence is that the ordinance is prohibitive and not regulatory, that it is unreasonable, and that it unjustly discriminates against the prosecutors, and that it unduly burdens interstate commerce, and denies to the prosecutors the equal protection of the law, and deprives them of their property without due process of law; while the respondent contends that the ordinance is a proper and
30 expedient police regulation in the interest of the welfare, comfort and safety of the inhabitants of the city.

It will be observed that, among other things, the ordinance in question prohibits the operation of auto buses on the streets of a specified congested

area of the city, adjacent to the Boardwalk, and this is sought to be done in the interest of the welfare, the lives, persons and property of the people of the city and of those who frequent the same.

It is settled in this State that the regulations of motor vehicles on particular streets, even to their complete exclusion therefrom, when deemed necessary in the public interest, is with the police power delegated to municipalities. *West v. Asbury Park*, 89 N. J. L. 402; 99 Atl. Rep. 190. And while such regulation may be considered drastic in its operation, the Court is not at liberty to substitute its judgment for that of the municipality as to the best methods of relieving traffic congestion in the specified area, in the interest of the welfare of the inhabitants and frequenters of the city. Such a regulation bears a direct relationship to the public safety, and we do not find in this instance, and under the circumstances of this case, that the prescribed municipal action is either unreasonable or arbitrary in its provisions or general tendency, or that it militates against the public policy necessarily conceded to the municipality for the preservation of the general public welfare.

The cases are numerous, both in the United States court and in the State courts, where it has been held as a general principle that in the absence of a federal prohibition or regulation upon the subject, it is competent for the State, by legislative enactment and by delegation to State agencies, to regulate the operation of automobiles in the interest of the general traveling public, as well as to enhance the security of the life, limb and property of those who find it necessary to use the public thoroughfares.

We are not pointed in this instance to any act of federal legislation which deprives the State, or

the municipality in this instance, of the right to exercise this power in the general public interest. We therefore are relegated entirely to the question as to whether or not, in the absence of such a federal prohibition or act of regulation, the ordinance in question is reasonable and necessary under the circumstances. The cases upon this subject are numerous and diversified. A reference to them would include Chapter 152 of the laws of 1917, known as the Home Rule Act, which seems to concede that necessary power to the municipality. Also *Dreyer v. Union City*, 4 N. J. Mis. R. 835, where a question not unlike that involved in the present instance was discussed and determined. In that case it was observed: "We are unable to perceive wherein the ordinance is in violation of any statute under which the city is governed, nor do we think the ordinance is an abuse of discretion vested in the council of the city by statute." By the very nature of the business conducted by the prosecutor, the city council must possess a liberal legal discretion in controlling and regulating the business thus operated on the public streets of the city, for the safety and convenience of the traveling public.

Cases to the same general purport are *Bergen Bus Line v. The Hackensack Improvement Commission*, 4 N. J. Mis. R. 167; *Independent Oil Co. v. City of Gloucester*, 102 N. J. L. 502, in which latter case it was observed: "The Court will not interfere unless it is clearly shown that the ordinance, either upon the face of its provisions or by reason of its operation in the circumstances under which it is to take effect, is unreasonable or oppressive."

Following this general line of legal adjudication it has been settled in the United States Supreme Court that reasonable police regulations by a State

or municipality, applicable to interstate motor bus traffic, are valid and will not constitute a direct or undue burden on interstate commerce.

The above legal proposition is supported by such cases as *Buck v. Kuykendall*, 267 U. S. 307; *Hendricks v. Maryland*, 235 Id. 610; *Kane v. New Jersey*, 242 Id. 160; *Clark v. Poor*, 274 Id. 554; *Morris v. Doby*, 274 Id. 135, and other cases of a like character, involving similar or cognate questions, such as *Michigan Public Utilities Commission, et al., v. Duke*, 266 Id. 570, wherein it was declared: "This Court has held that, in the absence of national legislation governing the subject, a State may rightfully prescribe uniform regulations necessary for public safety and order, in respect to the operation upon its highways of all motor vehicles, those moving in interstate commerce, as well as others." 10

In these cases the rule has been specifically declared that it is within the power of the State agency to specify the route over which buses may operate, the number of passengers they may carry, or the service they may render, if such power be reasonably exercised for the public safety and order, and the general conservation of the highways, and that such regulations are not antagonistic to the provisions of the commerce clause of the federal constitution, and are therefore clearly within the police power of the State. 20

The ordinance in question, in our judgment, has gone no further than to extend the exercise of the police power to the mere question of regulation, of licensing motor buses, and prescribing their use over certain routes of the city, and restricting their use upon certain other streets of the city, as well as regulating their parking and loading and unloading within the limits of the city, in the interest of the public safety. 30

If a power of regulation of this character were not to be accorded to the municipality, it would be difficult to apprehend by what *modus operandi* intelligently exercised the public safety could be properly conserved; and, within reasonable limitations in its exercise, such a power has generally been conceded to all municipalities.

10 The ordinance in question applies to all civil service auto buses within its provisions, whether engaged in the business of interstate, intercity, or intrastate transportation of passengers for hire. Hotel buses are used as an incident of the hotel business, and school buses are a facility in connection with the schools, which serve a vital public interest; whereas the buses included within the terms of the ordinance use the public streets solely and exclusively for commercial gain; and in our judgment these differentiating features of the ordinance form an ample basis for a separate classification.

20 The depositions taken in the case show that other excepted motor vehicles are already regulated in the public interest as to routes which may be used by them. For the purposes of legislation motor vehicles operating without any definite routes properly form a class distinct from those operating over particular routes; and the ordinance is not objectionable, because it exempts vehicles included under another ordinance by the provisions of which such

30 vehicles are already regulated. The ordinance substantially therefore is a police regulation of local concern, and devoted entirely to the regulation of public traffic within the boundaries of the municipality, and incidentally only affects interstate commerce.

The fact, as is insisted, that the prosecutors have made a substantial investment in their business,

which might be affected by these local regulations, does not of itself concede to them vested rights which can militate against the power of the municipality to protect, by proper and reasonable regulation, the vested rights of the public in the public thoroughfares. *Statts v. Washington*, 45 N. J. L. 321. Nor does such a contention come within the reason of the due process of law clause of the federal constitution, as against the public right to exercise the police power within reasonable regulations 10 and limitations. *Pennjersey Rapid Transit Co. v. Camden*, 142 Atl. Rep. 821; *Welsh v. Morristown*, 98 N. J. L. 630.

We have therefore reached the conclusion that there is no discriminatory classification of motor buses in the ordinance brought up for review, which would in anywise be violative of the provisions either of the State or federal constitution, and that the said ordinance in all its provisions is a reasonable exercise of the police power, and should be 20 affirmed.

JUDGMENT.

NEW JERSEY SUPREME COURT.

No. 232.

May Term, 1928.

10

PEOPLES RAPID TRANSIT
 Co., *et al.*,
 Prosecutors,
 v.
 ATLANTIC CITY,
 Respondent.

In Certiorari.
 Judgment.

20

The above entitled cause was argued at the May Term, 1928, by Messrs. Cole & Cole, and S. Paul Ridgway, attorneys for prosecutors, and Joseph B. Perskie, attorney for the respondent; the Court having considered the arguments and briefs submitted by respective counsel, and being of the opinion that the ordinance brought up for review should be affirmed, as more fully appears in the opinion of the Court filed in the January Term, 1929,

30 It is, on this 7th day of February, 1929, ordered that the ordinance passed by the City of Atlantic City on February 9, 1928, entitled:

“AN ORDINANCE regulating the operation of auto buses within the City of Atlantic City; providing for operating terminals and the parking of said auto buses; regulating and prohibiting the use of certain streets in said city

by said auto buses; and providing penalties for the violation thereof,"
be and the same is hereby affirmed; and that the writ of certiorari be and the same is hereby dismissed.

Entered Feb. 9, 1929.

On motion of

JOSEPH B. PERSKIE,
Attorney for Respondent.

10

NOTICE AND GROUNDS OF APPEAL.

NEW JERSEY SUPREME COURT.

PEOPLES RAPID TRANSIT Co., <i>et al.</i> , <i>Prosecutors,</i>	} On Certiorari. Notice and Grounds of Appeal.	20
v. ATLANTIC CITY, <i>Respondent.</i>		

To the Within Named Respondent:

Notice that the prosecutors appeal from the judgment of the Supreme Court to the Court of Errors and Appeals on the following grounds: 30

1. The Court erred in affirming and holding the ordinance under review to be a reasonable exercise of the police power. It should have set aside the ordinance.

2. The Court erred in determining that the ordinance was not discriminatory. It should have determined that it was.

3. The Court determined that the ordinance did not violate any rights of the prosecutors under the Federal Constitution; that it did not violate the interstate commerce clause or any provisions of the 14th Amendment of the Constitution.

10

4. The Court determined that the ordinance was regulatory and not prohibitive when it should have determined that it was prohibitive and unduly burdens interstate commerce.

20

5. The Court determined that the ordinance did not deny to the prosecutors equal protection of the law and deprives them of their property without due process of law when it should have determined that it did.

6. The Court determined that the ordinance was reasonable when it should have determined that it was unreasonable.

COLE & COLE,
Attorneys for Prosecutors.

30

24 OCT.T.1929

New Jersey Court of Errors and Appeals

PARLOR DELUXE COACH Co., *et al.*,
Prosecutors-Appellants,

v.

ATLANTIC CITY,
Respondent.

ON APPEAL FROM SUPREME COURT.

APPELLANTS' BRIEF.

STATEMENT.

This proceeding was begun by the allowance of a writ of certiorari to review an ordinance of Atlantic City entitled:

“An Ordinance regulating the operation of autobuses within the City of Atlantic City; providing for operating terminals and the parking of said autobuses; regulating and prohibiting the use of certain streets in said City by said autobuses; and providing penalties for the violation thereof.”

The reasons assigned by the prosecutors for setting aside the ordinance are as follows:

1. Atlantic City was without power to enact the ordinance.

2. The ordinance prohibits the conduct of a lawful business, and is not regulatory thereof.

3. The ordinance is arbitrary, unreasonable and discriminates against the business of the prosecutor and in favor of others conducting business akin thereto.

4. The prosecutors are engaged wholly in the business of interstate commerce. The ordinance imposes and casts upon their business a burden in addition to that cast upon those conducting a like business in intrastate commerce.

5. The ordinance deprives the prosecutors of their property, without due process of law, and denies to them the equal protection of the law in violation of the Fourteenth Amendment to the Federal Constitution.

The opinion of the Supreme Court sweeps aside all the reasons assigned and justifies the ordinance upon the ground of a proper police regulation, which is the ground contended for by the respondent. From the judgment upon said opinion, this appeal was taken.

The appeal was taken on behalf of all the prosecutors to the writ, but since that time the Peoples Rapid Transit Company and Quaker City Bus Line withdrew their appeal, and an order has accordingly been entered in this court. This accounts for the case and the brief being entitled Parlor DeLuxe Coach Co., *et al.*, appellants.

ARGUMENT.

I.

THE ORDINANCE IS UNREASONABLE, PROHIBITIVE AND
DISCRIMINATORY.

The opinion of the Supreme Court, we think, treats these aspects of the ordinance too lightly. By its title, the ordinance regulates all autobuses operating within the City of Atlantic City and then uses this language, "regulating and prohibiting the use of certain streets in said City by said auto (all) buses." It will thus be seen that the title speaks of regulating and prohibiting the use of certain streets and applies to all autobuses.

The body of the act nowhere attempts to regulate the use of certain streets, but absolutely prohibits the use of one street only, to wit, Atlantic Avenue, to certain autobuses, which, in the instant case, affects only those engaged in interstate commerce.

The first section provides:

"That the term or designation 'Autobuses,' as used in this ordinance is declared to mean and include one or more automobiles or one or more other vehicles, propelled by motor power, with a seating capacity of more than seven passengers, and engaged in carrying passengers for hire and pay, to, from, and within the City of Atlantic City."

Here is a distinct paring down of the title of the ordinance and an obvious limitation thereof.

By the quoted language, the autobuses to be affected must have a seating capacity of more than seven passengers and must be engaged in carrying passengers for hire and pay, to, from and within the City of Atlantic City, all other autobuses are excluded.

Section two provides:

“That nothing herein contained shall be construed to include taxicabs, hotel buses or buses employed solely in transporting school children and school teachers to and from public schools in said City, or such omnibuses, stage coaches or other vehicles commonly called ‘jitneys’ as operate solely within the limits of said City, or autobuses operated wholly within the City limits of said City by virtue of a franchise from said City.”

Here we have at least five types of autobuses not affected by the ordinance, whose sole purpose, according to its title, is to regulate and prohibit the use of certain streets to autobuses.

Section three reads:

“That it shall be unlawful for any person operating autobuses, as herein defined to receive or discharge passengers on any street or highway in the City of Atlantic City.”

This provision prohibits autobuses, as defined, from receiving or discharging passengers, but leaves all other autobuses free to do so.

Section four, without quoting, prohibits the defined autobuses from operating at all within the limits of Atlantic City without maintaining a terminal on private lands for the acceptance and discharge of passengers.

Section five reads:

“That it shall be unlawful for any autobus as herein defined, to operate on or across Atlantic Avenue, in Atlantic City, New Jersey, or to operate on any of such streets, avenues, boulevards, public places or portions thereof, lying between Atlantic Avenue and the Boardwalk and between Vermont and Jackson Avenues, in said City.”

This is plain prohibition against the defined autobuses and an implied permission of user in favor of all other types.

Section eight reads:

“That this ordinance is hereby declared to be necessary in the interest of the public safety and health of the community, to relieve congestion of traffic on Atlantic Avenue, in the City of Atlantic City, and on streets lying between Atlantic Avenue and the Boardwalk, and between Vermont and Jackson Avenue, in said City, to lessen fire hazard occasioned by the obstruction due to autobuses on said Avenue and said Streets, and to provide for certain necessary police regulation of said autobuses.”

Taxicabs which carry passengers for hire and pay are at liberty to use any of the streets in Atlantic City, or, at all events, are not prohibited by the ordinance. This is likewise true with respect to hotel buses and buses employed for transporting school children; also jitneys; also omnibuses as operate solely within the limits of Atlantic City, or autobuses operated wholly within the city limits by virtue of a franchise from said city.

The proof is that hotel buses carry their patrons to and from their hotel and railroad stations for

hire; that there are sight-seeing buses licensed, without number, to use all the streets of Atlantic City.

All the appellants are engaged wholly in interstate commerce. They receive their passengers outside of the State of New Jersey and discharge them at a terminal in Atlantic City; and the passengers who are accepted at the terminal in Atlantic City are discharged in the State of Pennsylvania. They are the only persons or corporations who are affected by the ordinance, and there can be no question, if read between the lines, that was the plain intent and purpose of the ordinance.

There is no limitation upon any type of autobus and no prohibition affecting them unless they have a seating capacity of more than seven passengers, and are engaged in carrying passengers for hire and pay to, from and within the City of Atlantic City. With the foregoing limitations, exceptions and discriminations, it seems quite natural to inquire what reason exists for such limitations, exceptions and prohibitions, if the ordinance was passed in the interest of public safety and health, and to relieve congestion, as section eight declares.

There are forty-eight streets in Atlantic City that run at right angles with Atlantic Avenue (p. 15). The ordinance prohibits the defined autobuses from using any one of these forty-eight streets lying between Atlantic Avenue and the Boardwalk, and between Vermont and Jackson Avenues. This permits only two avenues, to wit, Maine and New Hampshire, which are the first and second avenues beginning at the head of Atlantic Avenue. It also prohibits the use of all the right angle streets, except Maine and New Hampshire, even though the defined autobuses might not have to cross Atlantic Avenue to approach right angle streets oceanward therefrom.

The opinion of the Supreme Court fixes the distance between Atlantic Avenue and the Boardwalk as 750 feet. This is inaccurate. It is at least 400 feet from Atlantic to Pacific Avenue, and from Pacific Avenue to the Boardwalk, on Virginia Avenue, it must be at least 1,000 feet.

To except Maine and New Hampshire Avenues out of the forty-eight is a mere pretext. Maine Avenue does not run to Pacific Avenue, so that the apparent permission to use that avenue to reach the Boardwalk is a sham. The only avenue left open therefore, is New Hampshire Avenue. It will be noticed that the supposed regulation (which we say is prohibition) to prevent congestion prohibits not only the crossing of Atlantic Avenue, except at Maine and New Hampshire, but the use of any of the remaining forty-six streets which run at right angles to Atlantic Avenue. At least, that is our interpretation of the ordinance.

No proof was offered in the case on behalf of the respondent to show any congestion on the streets northward of Atlantic Avenue. The proof of congestion is limited largely to a few avenues, prominently Virginia Avenue, and the opinion stresses that avenue because of the existence of trolley tracks. So it will be seen that the defined autobuses are practically excluded from operating on any of the right angle streets that cross Atlantic Avenue, while all other autobuses are free to use all the streets, or all freight carrying vehicles. Here, then, is the picking out of a specific class, without rime or reason, and discriminating against them in favor of several other classes above enumerated. The ordinance is in no sense one regulating the use of the streets but is clearly one prohibiting their use entirely by a defined type.

It is approximately three miles between the northeast and southwest boundary of Atlantic City. Appellants are prohibited from operating their vehicles on any part of Atlantic Avenue for this distance, or crossing Atlantic Avenue for said distance, except Maine and New Hampshire Avenues, at the most northeasterly end of said avenue.

The power to regulate the use of its streets is not challenged but, aside from the use of the word "regulation" in the ordinance, there is no pretense of "regulation"; it is baldly prohibition. If the purpose was to regulate rather than to prohibit, it could have done so by requiring all motor vehicles to use certain streets one way, if you please; in a certain way, between certain hours, and under certain conditions. This would be treating all alike and discrimination could not be claimed.

We contend, therefore, that the ordinance is arbitrary, unreasonable and discriminatory, as far as the appellants are concerned. If this be so, it cannot be defined as a proper police regulation.

See

Morgan v. Orange, 60 Law page 391;
Young-McShea v. Atlantic City, 60 Law
 125;
Long v. Mayor, &c., 37 Law page 348.

II.

THE ORDINANCE VIOLATES THE FEDERAL CONSTITUTION.

(a)

It unduly burdens interstate commerce.

We need not attempt a lengthy discussion as to

what is meant by unduly burdening interstate commerce, nor contend that a proper police regulation, that applies to all, unduly burdens such commerce.

In the instant case, it is conspicuous that interstate commerce is unduly burdened in that it is prohibited from using certain streets that are open to all other vehicles, and the effect of closing such streets to interstate commerce means to practically destroy it.

Appellants had established terminals between Atlantic Avenue and the Boardwalk before the enactment of the ordinance, and had made a heavy financial investment. The proof is that to enforce the ordinance means to practically destroy their business and their investment.

There are many cases in the U. S. Supreme Court upon the subject of power of States and municipalities to enact legislation touching the use of highways and it is not our purpose to attempt to cite all the cases. The bottom principle seems well established. The most recent case is *Sprout v. City of South Bend, Indiana*, 277 U. S. 163, 48 Supreme Court Reporter, page 502. There is a citation of many cases. In that case, the municipal ordinance was held invalid as unduly burdening interstate commerce. The facts of that case are not identical with the facts in the instant case, but the opinion does state the principle involved, and we contend that when applied to the ordinance under review, it is manifest that it cannot be upheld.

Touching the commerce clause provision, the Court said:

“The claim that the ordinance violates the commerce clause presents questions requiring serious consideration. Sprout did not carry passengers from one point in South Bend to another. He was not a local carrier. Prima-

rily his business was interstate." (Such are the facts in the instant case.) "But the agreed facts show that he was not engaged exclusively in interstate commerce. The distance from the north city limits of South Bend to Niles is about nine miles. Half of this distance lies within Indiana. Along the highway traversed within that State lie many suburban residences and one village tributary to South Bend. Sprout purported to offer transportation from that city only to persons destined to points in Michigan. He required that all passengers from South Bend pay the fare to some Michigan point. But, in fact, he served suburban passengers. He made stops habitually at points within Indiana in order to permit passengers from South Bend to leave the bus before the State line was reached. The legal character of this suburban bus traffic was not affected by the device of requiring the payment of a fare fixed for some Michigan point or by Sprout's professing that he sought only passengers destined to that State. The actual facts govern, &c."

We have pointed out that here the commerce was purely interstate. In the cited case the attempt was to impose a tax upon all motor vehicles using the public highways in the State. After discussing the questioned act liberally and citing numerous authorities, the Court said:

"But in order that the fee or tax shall be valid, it must appear that it is imposed solely on account of the intrastate business; that the amount exacted is not increased because of the interstate business done; that one engaged exclusively in interstate commerce would not be

subject to the imposition; and that the person taxed could discontinue the intrastate business without withdrawing also from the interstate business."

Interstate commerce may be unduly burdened without the imposition of license fees, or taxes. An undue burden may be placed where there is discrimination. This is well settled by numerous cases, some of which are cited in the *Sprout v. South Bend* case.

Already, we have attempted to show that the ordinance is arbitrary and discriminatory against appellants engaged solely in interstate commerce. The ordinance exempts from its operation buses which are licensed by Atlantic City and obtain a franchise for the use of its streets (section two). One of the appellants here, William H. Merz, has such a license. His testimony shows that he has had such a license for six or seven years, operates on all avenues indiscriminately and operates a bus on a license to that end. He uses six or seven buses during the season and they are of the same size and capacity as the interstate buses, which are prohibited (pp. 39-40).

From this, it will be seen that the appellants ought to be entitled to the same license and use the streets in the same way, if they would submit to the payment of license fee. Certainly, the city cannot license Mr. Merz and refuse to license others who are willing to pay the fee. To refuse to do so would be a clear discrimination. The effect of permitting some persons and corporations to use the streets indiscriminately and exempt them from the provisions of the ordinance under attack, and prohibit interstate buses absolutely from using the highways, is to indirectly impose upon them a license fee to use the streets and thus unduly burden interstate commerce

and draw the case squarely within the principle of the *Sprout v. South Bend* case.

Moreover, there is prohibition against operating any autobus with a seating capacity of more than seven passengers, or which carries passengers in excess of the rated seating capacity. The size and weight of the autobus is not considered. If the question of congestion of highways was the one really in mind, why not deal with the subject from the standpoint of size and weight, rather than seating or carrying capacity, and why permit jitneys, as defined, to use the prohibited area, without regard to their size, seating capacity or number? And why require the autobuses to provide and maintain a terminal on private lands, and prohibit such buses from accepting or discharging passengers except at such terminals, when all other motor vehicles are exempt from this provision? This is clearly discriminatory, and directly affects the interstate commerce conducted by appellants.

See *City of Hammond v. Schappi Bus Line, Inc.*, 275 U. S. 164—48 Supreme Court Reporter, page 66.

In this case, Section 1 of the ordinance reads:

“Be it ordained by the common council of the City of Hammond, Indiana, that in order to promote public safety and order and to diminish the congestion of vehicular travel within said city, from and after the taking effect of this ordinance, it shall be unlawful for any person, firm, or corporation owning or operating any motor vehicle engaged in transporting passengers for hire, to move or run such vehicle on, upon, or over any of the following parts of streets within said City of Hammond, to wit:”

Then follows a list of streets.

Section 3 provides:

“But nothing in this ordinance shall be construed to impair the obligation of any contract to which the city is a party under which such motor vehicles are now operated for hire within said city. Nothing herein shall apply to taxicabs.”

The United States District Court denied the injunction asked by the bus line company to enjoin the City of Hammond from enforcing the ordinance; the Circuit Court of Appeals reversed with directions to enter a decree granting the injunction. The Supreme Court felt the case should be remanded for further facts, but directed an injunction pending the suit.

The commerce clause was involved. A number of cases are cited. The fact that the Schappi Bus Line was engaged chiefly in interstate commerce was given attention by the Court.

The Court then proceeds to say:

“The contentions made in the briefs and arguments suggest, among other questions, the following: Where there is congestion of city streets sufficient to justify some limitation of the number of motor vehicles to be operated thereon as common carriers, or some prohibition of stops to load or unload passengers, may the limitation or prohibition be applied to some vehicles used wholly or partly in interstate commerce while, at the same time, vehicles of like character, including many that are engaged solely in local, or intrastate, commerce are not subjected thereto? Is the right in the premises to which interstate carriers would otherwise be entitled, affected by the fact that, prior to the establishment of the interstate lines, the city had granted to a local carrier, by contract or franchise, the

unlimited right to use all the streets of the city, and that elimination of the interstate vehicles would put an end to the congestion experienced? May the city's right to limit the number of vehicles, and to prohibit stops to load or unload passengers, be exercised in such a way as to allocate streets on which motor traffic is more profitable exclusively to the local lines and to allocate streets on which the traffic is less profitable to the lines engaged wholly, or partly, in interstate commerce? Is limitation of the number of vehicles, or prohibition of stops to load or unload passengers, of carriers engaged wholly, or partly, in interstate commerce, justifiable, where the congestion could be obviated by denying to private carriers existing parking privileges or by curtailing those so enjoyed? Are the rights of the interstate carrier in the premises dependent, in any respect, upon the dates of the establishment of its lines, as compared with the dates of the establishment of the lines of the local carrier?

These questions have not, so far as appears, been considered by either of the lower courts. The facts essential to their determination have not been found by either court. And the evidence in the record is not of such a character that findings could now be made with confidence. The answer denied many of the material allegations of the bill. The evidence consists of the pleadings and affidavits. The pleadings are confusing. The affidavits are silent as to some facts of legal significance, lack definiteness as to some matters, and present serious conflicts on issues of facts that may be decisive. For aught that appears, the lower courts may have differed in their decisions solely because they dif-

ferred as to conclusions of fact. Before any of the questions suggested, which are both novel and of far reaching importance, are passed upon by this Court, the facts essential to their decision should be definitely found by the lower courts upon adequate evidence."

(b)

The practical effect of the enforcement of the ordinance is to deny to appellants the equal protection of law. What has been said in (a) is applicable to this feature.

(c)

The ordinance deprives the prosecutors of their property without due process of law.

What has been said under (a) is equally applicable here.

If the ordinance can be sustained as a police regulation under the facts undisputed, then no argument presents itself to us that could deny to the city the right to say that no person or corporation engaged in transportation of passengers, or freight, for hire from points without the State of New Jersey, shall be allowed to use any of the streets of the city except those that make business impracticable, and non-paying.

The ordinance is void for all the reasons advanced, and the judgment of the Supreme Court should be reversed and the ordinance declared invalid.

Respectfully submitted,

COLE & COLE,

*Attorneys of Prosecutors-
Appellants.*

APPENDIX

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

PARLOR DELUXE COACH Co., a Corporation, *et als.*,
Prosecutors-Appellants,

v.

ATLANTIC CITY,
Respondent-Appellee.

ON CERTIORARI.

ON APPEAL FROM SUPREME COURT.

BRIEF OF RESPONDENT.

The State of Case in the above entitled cause discloses the following facts:

1. That Atlantic Avenue, in the City of Atlantic City, New Jersey, is the main dividing street. That it runs the full length of the city—that is, from the extreme point east of Maine Avenue to the extreme point west of Jackson Avenue. That south of Atlantic Avenue, to the Boardwalk, Pacific Avenue runs parallel with Atlantic Avenue, from Maine Avenue to Albany Avenue; and that for a short distance in the upper section of the city, Oriental

Avenue runs from the Boardwalk to New Jersey Avenue, westwardly and parallel with Atlantic Avenue. That between Pacific Avenue and the Boardwalk there are no intervening streets; so that with the exception of a short portion of a few blocks the only other street which runs parallel with Atlantic Avenue between Atlantic Avenue and the Boardwalk, which is the extreme promenade running along the ocean front of the city, there is but one street, namely, Pacific Avenue. That the distance between Atlantic Avenue and the Boardwalk is about 750 to 800 feet and that Atlantic Avenue is a street about eighty feet in width, and that Pacific Avenue is about thirty-five feet in width. That all streets leading to the Boardwalk are dead-end streets. That there are forty-eight (48) streets that run across Atlantic Avenue from Maine to Jackson Avenue. That the inhibition contained in the ordinance (#9-1928) covers all streets so crossing Atlantic Avenue with the exception of two (2) streets: Maine and New Hampshire Avenues. That during the summer season and high holiday seasons of the year, as many as fifteen thousand (15,000) additional automobiles use the streets to those used by the inhabitants. That on Virginia Avenue—on which street two of the prosecutors operate their stations—there is a double trolley track, on which is operated trolley cars running the full length of said street. That both the Inspector of Police, as well as the Director of Public Safety, testify that the ordinance is necessary as a police regulatory measure, and in order to relieve congestion and lessen the fire hazard.

2. That three of the prosecutors operate, in all, approximately one hundred (100) of these buses.

That the said buses carry about thirty (30) passengers, are about 8 feet wide, 29 feet long, and weigh approximately sixteen thousand (16,000) pounds.

3. That one of the prosecutors, Robert Stamper, admitted that if all of the companies operating buses to and from Atlantic City would have a terminal north of Atlantic Avenue, that it would be quite all right and would not affect their business.

4. That the Board of Commissioners of the City of Atlantic City have declared that the said ordinance is necessary in the interest of public safety and health of the community, to relieve congestion of traffic on Atlantic Avenue in the City of Atlantic City, and on streets lying between Atlantic Avenue and the Boardwalk, and between Vermont Avenue and Jackson Avenue in said city, to lessen fire hazard occasioned by the obstruction due to auto-buses on said avenue and said streets, and to provide for certain necessary police regulation of said auto-buses.

5. From the foregoing facts, the question presented is: Did the city have the authority to enact the ordinance in question, and, if so, is it a valid and enforceable ordinance?

ARGUMENT.

I.

Paragraph 2, of Article 14 (general regulations) of Chapter 152 of the Laws of 1917, p. 357 (Home Rule Act) provides as follows:

“2. Every municipality shall have power to make, enforce, amend and repeal such other ordinances, regulations, rules and by-laws not contrary to the laws of this State or of the United States, as they may deem necessary and proper for the good government, order, protection of persons and property, and for the preservation of the public health, safety and prosperity of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this Act or by any law of this State.”

Ordinances similar to the one in question have received the favorable consideration of our Courts. In the case of *Dreyer v. Union City*, N. J. Miss. Reports, page 835, Volume 4, No. 43, submitted May term, 1926, and decided October 7, 1926, in a *per curiam* opinion, the Court held:

“We are unable to perceive wherein the ordinance is in violation of any statute under which the city is governed. Nor do we think the ordinance is an abuse of discretion vested in the council of the city. By the statute and by the very nature of the business conducted by the prosecutor the City Council must have a large discretion in controlling and regulating

the business of auto-buses, operating on the public street of the city, for the safety and convenience of the traveling public. Our discussion of the reasonableness of an ordinance in case of No. 271 of the present May term, 1926, is pertinent although the case is not directly in point."

Further, in the case of *West v. Asbury Park*, 89 N. J. L. 402, in which a writ of certiorari was filed, questioning among other things the validity of an ordinance passed by the municipality, pursuant to express legislative authority, prescribing the routes of jitneys within the municipality. It was held by *Swayze, J.*:

"It is well settled in this State that the regulation of motor vehicles on particular streets, even to their complete exclusion therefrom, when deemed necessary in the public interest, is within the police power delegated to the municipalities."

And, again, a similar license received the consideration of our courts in the case of *Bergen Bus Line, Incorporated, v. Hackensack Improvement Commission*, N. J. Miss. Reports, p. 167, Volume 4, No. 11, decided January 15, 1926.

Although the resolution was set aside, the principle of giving the municipality the right to legislate on the subject was reiterated.

Again, in the case of *Independent Oil Company against the City of Gloucester*, N. J. Adv. Report, p. 1532, Volume 4, No. 42, Mr. Justice Parker, in an opinion, considering the validity of an ordinance regulating the use, storage, sale and disposal of inflammable and combustible materials, held:

“1. The question of the reasonableness of an ordinance is a question of fact, and the burden of proof is on those who attack it.

“2. The Court will not interfere unless it is clearly shown that the ordinance, either upon the face of its provisions or by reason of its operation in the circumstances under which it is to take effect, is unreasonable or oppressive.”

Section 544 of Elliott—on Roads and Streets, third edition, page 602, provides as follows:

“Cities usually have authority over the use of vehicles, and may, therefore, prescribe the routes to be followed by omnibuses, and the stands to be occupied by hacks, express wagons or other vehicles used for hire.”

And at page 604 of said section, it is further provided:

“The use of automobiles may be regulated, and it has been held that it may even be excluded from particular roads.”

Section 1113 of the same edition (Elliott—on Roads and Streets) page 654, provides as follows:

“Power to regulate is one thing and power to entirely prohibit is another. But power to regulate may include power to prohibit the use of a thing at a certain particular time or place. When the power is exercised in this way, however, the question is even more apt to arise than in ordinary cases of regulation, as to whether the regulation is reasonable or unjustly discriminates without any proper basis. For these reasons two recent decisions, to which attention is about to be called, may be deemed to not only

support the propositions already laid down in preceding sections as to the right to regulate the use of automobiles on highways, but also to go almost to the extreme in upholding such regulations. They are well considered, however, and seem to be well founded in principle, at least in the absence of a constitutional provision prohibiting special laws. In the first case it is held that the Legislature may determine that there are highways on which automobiles shall not be allowed and may delegate to boards of aldermen or councilmen or selectmen the power to designate roads and streets on which automobiles shall not be used. In the second case certain general propositions supported by authorities there cited are stated, as shown in the official syllabus, as follows: 'It is fundamental law that no constitutional guaranty is violated by an exercise of the police power of the State when manifestly necessary and tending to secure general and public benefits. A law is not to be regarded as class legislation simply because it affects one class, and not another, provided it affects all members of that same class alike, and the classification involved is founded upon a reasonable basis. Such a law is general, and not special. When the Legislature has constitutional authority to enact a law to promote the public safety, and does not enact it, the expediency of its enactment is not to be passed upon by the Court. In such case the Legislature determines by the enactment that the law is reasonable and necessary.' It is then shown that in certain sections of Maine highways have been constructed along precipitous mountain sides, through circuitous defiles, over

deep ravines and on the edges of ocean cliffs, so that the use of automobiles on such ways would endanger all who travel thereon. Applying the general principles to the facts, it is then held that the ordinance in question being passed under a legislative law the reasonableness of the ordinance was conclusively determined by the Legislature, and that there was no constitutional objection either to the law or to the ordinance closing to the use of automobiles certain streets in the town passing it."

And, further, in *McQuillin Municipal Corporations*, Vol. 3, p. 2038 (Section 936), it is provided as follows:

"936. It is entirely competent for the Legislature to prohibit automobiles from passing over designated streets or public highways. And an ordinance passed by virtue of express legislative power closing to the use of automobiles certain public streets was sustained in Maine against the contention that it was unconstitutional being in violation of the Fourteenth Amendment of the Constitution of the United States.

"The reasons for such regulations have been well stated in Massachusetts and in Maine, which appear in the note."

In the case of *North Jersey Street Railway v. Jersey City*, 75 N. J. L. 349, it was held that it was within the police power of the municipality to regulate the running and operating of trolley cars within the municipality.

And in the case of *Welsh v. Morristown*, 98 N. J. L. 630, in which the town of Morristown passed an

ordinance regulating parking and traffic on a public driveway, girdling the station, it was held by *Trenchard, J.*:

“There can be no doubt that the town has power by ordinance to regulate traffic when reasonably necessary for public safety and good order, and to enact that no automobile or other vehicle shall be parked or allowed to stand for a longer time than is necessary to take on and let off passengers or baggage, and in no case longer than two minutes, in a designated public place.”

The ordinance in question has gone no further than to extend the exercise of the police power to the mere question of regulation, of licensing motor buses and prescribing their use over certain routes of the city, and restricting their use upon certain other streets of the city, as well as regulating their parking and loading and unloading within the limits of the city, in the interest of public safety.

II.

Does the ordinance regulating the operation of motor-buses—both INTRAstate and INTERstate—providing for operating terminals and parking, and prohibiting the use of certain streets in order to protect the public safety and lessen a serious fire hazard, constitute a direct and undue burden on interstate commerce?

CHARACTER OF THE ORDINANCE.

A.

The ordinance, as stated therein, was passed in the interest of the public safety and health to relieve congestion of traffic on Atlantic Avenue and on streets south of Atlantic Avenue, and to lessen fire hazard occasioned by the obstruction due to auto-buses on these streets. In general, it provides for the maintenance on private lands of terminals for the loading and discharge of passengers, and forbids the stopping of buses on the streets for this purpose. Buses are not allowed to cross Atlantic Avenue, and are excluded from the streets south of Atlantic Avenue. The crowding of buses by carrying passengers in excess of the seating capacity is forbidden.

There can be no question of the serious danger to the public on account of traffic conditions in Atlantic City. Not only is this a danger due to possible collisions between vehicles, running down of pedestrians, and great inconvenience to the public in the retarding of vehicular traffic, but the movement of fire engines through the streets in case of fire presents a most difficult and alarming problem. To be convinced of the seriousness of this situation, one has but to take a glance at the heavy traffic on Atlantic and Pacific Avenues as disclosed by the testimony, to observe the character of the development on the streets south of Atlantic Avenue, and to recall many serious fires in Atlantic City, and the recent disaster in the neighboring city of Ocean City.

B.

THE LAW IS WELL SETTLED THAT REASONABLE POLICE REGULATIONS BY A STATE OR MUNICIPALITY APPLICABLE TO INTERSTATE MOTOR-BUS TRAFFIC ARE VALID, AND DO NOT CONSTITUTE A DIRECT OR UNDUE BURDEN ON INTERSTATE COMMERCE.

In *Buck v. Kuykendall*, 267 U. S. 307, the Supreme Court of the United States, while deciding that a State may not prohibit the competition of interstate buses on its highways, since a regulation of competition constituted a regulation of interstate commerce, pointed out very clearly that such operation would be subject to regulation in the interest of the public safety. The Court says that it may be assumed

“that appropriate State regulations, adopted primarily to promote safety upon the highways and conservation in their use, are not obnoxious to the commerce clause, where the indirect burden imposed upon interstate commerce is not unreasonable.” Compare *Michigan Pub. Utilities Commission v. Duke*, No. 283, decided January 12, 1925 (266 U. S. 570, *ante*, 445, 36 A. L. R. 1105, 45 Sup. Ct. Rep. 191).

In *Hendricks v. Maryland*, 235 U. S. 610, a case sustaining the constitutionality of State licenses, the United States Supreme Court states:

“In the absence of national legislation covering the subject a State may rightfully prescribe uniform regulations necessary for public safety

and order in respect to the operation upon its highways of all motor vehicles—those moving in interstate commerce as well as others. And to this end it may require the registration of such vehicles and the licensing of their drivers, charging therefor reasonable fees graduated according to the horse-power of the engines—a practical measure of size, speed and difficulty of control. This is but an exercise of the police power uniformly recognized as belonging to the State and essential to the preservation of the health, safety and comfort of their citizens; and it does not constitute a direct and material burden on interstate commerce. The reasonableness of the State's action is always subject to inquiry insofar as it affects interstate commerce, and in that regard it is likewise subordinate to the will of Congress." *Barbier v. Connolly*, 113 U. S. 27, 30, 31; *Smith v. Alabama*, 124 U. S. 465, 480; *Lawton v. Steele*, 152 U. S. 133, 136; *N. Y., N. H. & H. R. R. v. New York*, 165 U. S. 628, 631; *Holden v. Hardy*, 169 U. S. 366, 392; *Lake Shore & Michigan Southern Railway v. Ohio*, 173 U. S. 285, 298; *Chicago, B. & Q. R. R. v. McGuire*, 219 U. S. 549, 568; *Atlantic Coast Line v. Georgia*, 234 U. S. 280, 549, 568; *Atlantic Coast Line v. Georgia*, 234 U. S. 280, 291.

This case is quoted in *Kane v. New Jersey*, 242 U. S. 160, where the United States Supreme Court declared:

"The power of a State to regulate the use of motor vehicles on its highways has been recently considered by this Court and broadly sustained. It extends to non-residents as well

as to residents. It includes the right to exact reasonable compensation for special facilities afforded as well as reasonable provisions to ensure safety. And it is properly exercised in imposing a license fee graduated according to the horse-power of the engine. *Hendrick v. Maryland*, 235 U. S. 610."

A very recent pronouncement of the United States Supreme Court, reaffirming the right of a State to subject interstate bus traffic to regulation under the police power, is *Clark v. Poor*, 274 U. S. 554. The Ohio Motor Transportation Act required motor transportation companies to apply to the Public Utilities Commission for a certificate of public convenience and necessity before operating, and to pay the tax graduated according to the number and capacity of the vehicles. Clark and Riggs operated as common carriers exclusively in interstate commerce, and without applying for a certificate or paying the tax. The Public Utilities Commission recognized that under *Buck v. Kuykendall*, 267 U. S. 307, and *Bush v. Maloy*, 267 U. S. 317, it was allowed to exercise no discretion in the granting of the certificate.

The Supreme Court sustained the District Court in dismissing a bill for an injunction filed by the operators of the bus line against the Public Utilities Commission to restrain the enforcement of the tax provisions of the Act, stating:

"The plaintiffs claim that, as applied to them, the Act violates the commerce clause of the Federal Constitution. They insist that, as they are engaged exclusively in interstate commerce, they are not subject to regulation by the State; that it is without power to require that before using its highways they apply for and

obtain a certificate; and that it is also without power to impose, in addition to the annual license fee demanded of all persons using automobiles on the highways, a tax upon them, under PP 614-94, for the maintenance and repair of the highways and for the administration and enforcement of the laws governing the use of the same. The contrary is settled. The highways are public property. Users of them, although engaged exclusively in interstate commerce, are subject to regulation by the State to insure safety and convenience and the conservation of the highways. *Morris v. Doby*, No. 372, decided April 18, 1927 (274 U. S. 135, ante, 966, 47 Sup. Ct. Rep. 548). Users of them, although engaged exclusively in interstate commerce, may be required to contribute to their cost and upkeep. Common carriers for hire, who make the highways their place of business, may properly be charged an extra tax for such use. *Hendrick v. Maryland*, 235 U. S. 610, 59 L. Ed. 385, 35 Sup. Ct. Rep. 140; *Kane v. New Jersey*, 242 U. S. 160, 61 L. Ed. 222, 37 Sup. Ct. Rep. 30; *Hess v. Pawloski*, No. 263, decided May 16, 1927 (274 U. S. 352, ante, 1091, 47 Sup. Ct. Rep. 632). Compare *Packard v. Banton*, 264 U. S. 140, 144, 68 L. Ed. 596, 607, 44 Sup. Ct. Rep. 257." Pages 556, 557.

In *Morris v. Doby*, 274 U. S. 135, the United States Supreme Court had before it the question of the constitutionality of an order of the Highway Commission of Oregon, made under authority of a statute of the State of Oregon, finding that the Columbia River Highway was being damaged on account of the character of traffic, and that loads of

maximum weight theretofore permitted being moved at maximum speed were breaking up the road, and that it would be for the best interests of the State highway that the maximum weight be reduced from 20,000 pounds to 16,500 pounds, and that changes be made with respect to tires and their width. The complainants operated motor-trucks in interstate commerce over this highway and applied for an injunction, which was refused by the District Court. The Supreme Court in affirming states:

“An examination of the Acts of Congress discloses no provision, express or implied, by which there is withheld from the State its ordinary police power to conserve the highways in the interest of the public and to prescribe such reasonable regulations for their use as may be wise to prevent injury and damage to them. In the absence of national legislation especially covering the subject of interstate commerce, the State may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use applicable alike to vehicles moving in interstate commerce and those of its own citizens. *Hendrick v. Maryland*, 235 U. S. 610, 622, *et seq.*, 59 L. Ed. 385, 390, 35 Sup. Ct. Rep. 140; *Kane v. New Jersey*, 242 U. S. 160, 167, 61 L. Ed. 222, 226, 37 Sup. Ct. Rep. 30. Of course, the State may not discriminate against interstate commerce. *Buck v. Kuykendall*, 267 U. S. 307, 69 L. Ed. 623, 38 A. L. R. 286, 45 Sup. Ct. Rep. 324. But there is no sufficient averment of such discrimination in the bill. In the *Kuykendall* case this Court said, p. 315:

‘With the increase in number and size of the vehicles used upon a highway, both the danger

and the wear and tear grow. To exclude unnecessary vehicles—particularly the large ones commonly used by carriers for hire—promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce, in the absence of legislation by Congress which deals specifically with the subject. *Vandalia R. Co. v. Public Serv. Commission*, 242 U. S. 255, 61 L. Ed. 276, P. U. R. 1917B, 1004, 37 Sup. Ct. Rep. 93; *Missouri P. R. Co. v. Larabee Flour Mills Co.*, 211 U. S. 612, 52 L. Ed. 352, 29 Sup. Ct. Rep. 214. Neither the recent Federal Highway Acts, nor the earlier Post Road Acts, Rev. Stat. at L. PP 3964, U. S. C. title 39, PP 481, Act of March 1, 1884, Chap. 9, 23 Stat. at L. 3, U. S. C. title 39, PP 482, do that.' ”

In *Interstate Buses Corporation v. Holyoke Street Railway Company, et al.*, 273 U. S. 45, the Supreme Court says:

“Undoubtedly the State has power in the public interest reasonably to control and regulate the use of its highways so long as it does not directly burden or interfere with interstate commerce.” Page 52.

In *Michigan Public Utilities Commission, et al., v. Duke*, 266 U. S. 570, the Supreme Court of the United States says:

“This Court has held that, in the absence of national legislation covering the subject, a State may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles—those moving in interstate commerce as well as others.”

In *American Transit Company v. City of Philadelphia* and *American Motor Coach System v. City of Philadelphia*, 18 Fed. (2 D.) 991, the Federal District Court in Philadelphia sustained the constitutionality of an ordinance requiring motor-buses to be licensed, to pay an annual license fee of \$50, and to furnish to the city authorities certain information, such as the name, age and residence of the person or persons applying, or if a corporation, the name and place of incorporation, with the names and residences of the officers, whether the applicant is owner, lessee or bailee, and a statement of the experience and qualifications of the driver; the routes over which it is proposed to operate; together with such other information as the Bureau of Police may require. A separate application was required for each car, giving the make of the car, factory number, motor number, State license number, together with the number of persons to be carried. A separate application was required for a license for each driver, stating certain necessary facts bearing on his qualifications and identification. Judge Thompson, after adverting to the traffic situation in Philadelphia, the congestion due to the endless procession of motor vehicles, increasing number of automobiles and the size and weight of motor-buses, and the menace to pedestrians and other vehicles, found that the ordinance was a reasonable exercise of the police power. He states:

“It is surely essential to the orderly supervision of traffic of this nature that the streets to be traversed in Philadelphia in the route of the buses and their starting point and terminus shall be designated. And there are good reasons also for requiring that in the identification of buses licensed to traverse certain streets,

each bus shall have placed upon it the city license plate or tag. How else would the officers assigned by the Bureau of Police be able to supervise the operation of any particular line of buses? Public buses cannot be operated to the advantage of their operators and the public, unless they traverse designated routes, so that the public will know where they may be taken on as passengers and where they may alight. These routes being, therefore, necessarily fixed, it is not unreasonable to require their designation to be filed for immediate reference in the appropriate office. Such requirements of information for the identification of the buses and their routes and their owners are considered by councils and the police authorities, necessary, in the exercise of the police power of supervision and inspection, for the general purpose of public safety and of maintenance of good order in traffic. The power claimed is analogous to the right of inspection, for the safety of the public, of food stuffs, and dangerous articles of commerce, which has been sustained as a lawful exercise of the police power. *Savage v. Jones*, 225 U. S. 501, 32 Sup. Ct. 715, 56 L. Ed. 1182; *Standard Stock Food Co. v. Wright*, 225 U. S. 540, 32 S. Ct. 784, 56 L. Ed. 1197; *Red 'C' Oil Co. v. North Carolina*, 222 U. S. 393, 32 S. Ct. 152, 56 L. Ed. 240."

In *Newport Electric Company v. Oakley*, 129 Atlantic Reporter 613 (Supreme Court of Rhode Island), an Act of Rhode Island provided for obtaining a certificate of public convenience from the Public Utilities Commission, specifying the route over which the bus would operate, the number of

passengers, and the service to be furnished and that the public convenience and necessity required its operation.

After commenting on the Buck case, and holding that the certificate could not be withheld on the ground of public convenience and necessity, the Court says:

“But regulation for public safety and order, and for the conservation of the highways are local in their nature and are equally necessary whether the public service motor vehicles are engaged in interstate or intrastate business, and there is nothing in the Act to indicate that such regulations were not intended to apply to persons and motor vehicles engaged in interstate commerce.”

The provisions authorizing the Public Utilities Commission to specify the route over which the buses might operate, the number of passengers, and the service rendered, if reasonably exercised for the public safety and order and conservation of the highways, were held to be regulations not prohibited by the commerce clause.

In *Northern Kentucky Transportation Company v. Bellevue*, 285 Southwestern 241, the Court of Appeals of Kentucky, affirming the right of a State to prescribe uniform regulations for the use of its highways by motor vehicles engaged in interstate as well as intrastate traffic, sustained a \$50 license fee.

In *Comas Stage Company v. Kozler*, 104 Oregon 600, cited with approval in *Hendrick v. Maryland*, license fees ranging from \$15 to \$97, according to the weight of the vehicles, were declared not to be an unreasonable burden on interstate commerce.

C.

THE ORDINANCE UNDER REVIEW IS A REASONABLE POLICE REGULATION.

The police regulations sustained in the cases above cited have included requirements for licensing, paying license taxes, regulation of weight of vehicles, regulation of routes, number of passengers and service, and other measures in the interest of the public safety. It is submitted that the cases sustaining the license fees go much farther than is necessary to sustain the present ordinance, since the restriction of certain streets and of parking, loading and unloading are much farther from being regulations of interstate business than is the requirement of a license fee. Since it is clear that license fees, reasonably based on the cost of maintaining the roads and of enforcing necessary regulatory measures, are within the police power of the State, *a fortiori* are regulations of traffic within the police power of the State. No one would seriously raise a question as to the right of the State to require interstate buses to stop in obedience to a red light signal at a crossing—yet, if the present ordinance were not sustained, the logical, but awful consequence would be that all regulatory measures would be beyond the power of the State, and interstate buses would not be required to observe the speed laws, laws relating to right- and left-hand turns, to stop at crossings, blowing horns, parking rules, use of one-way streets, etc. Such a situation is inconceivable, and is mentioned merely to show the absurdity of the attack upon the present ordinance.

III.

Counsel for the prosecutors has raised the fact that his clients have made substantial investments, and suggests by inference, that probably this ordinance might in some way affect those investments; that is, affect their vested rights. The Court's attention is directed to the case of *Staats v. Washington*, 45 N. J. Law, page 321, wherein the Court held:

“That the ordinance tends to so greatly diminish prosecutors' profits is not a ground for imputing unreasonableness to it, * * *” etc.

And, our Courts have repeatedly held that vested rights can have but little significance when used in connection with the police power. The very essence of this power is that no individual rights of any nature can prevent its operation, once the situation has been indicated as a proper one for its exercise and the means of this exercise are reasonable.

A resumé of this subject can be found in the Harvard Law Review, Volume 41, Number 5, under date of March, 1928, pages 667-668.

IV.

OPINION OF SUPREME COURT IN THE
ABOVE ENTITLED CAUSE.

The opinion of the Supreme Court in this cause was written by Justice Minturn. It presents a comprehensive and most thorough discussion of all the questions involved. The soundness and the logic thereof presents an unanswerable legal conclusion.

Nothing that counsel could possibly say could be of any further aid to the Court in deciding this case. It clearly and forcibly sustains the validity of the ordinance attacked. The following quotations of said opinion summarize the questions presented, and give the answers to said questions:

“The ordinance in question, in our judgment, has gone no further than to extend the exercise of the police power to the mere question of regulation, of licensing motor buses, and prescribing their use over certain routes of the city, and restricting their use upon certain other streets of the city, as well as regulating their parking and loading and unloading within the limits of the city, in the interest of the public safety.

“If a power of regulation of this character were not to be accorded to the municipality, it would be difficult to apprehend by what *modus operandi* intelligently exercised the public safety could be properly conserved; and, within reasonable limitations in its exercise such a power has generally been conceded to all municipalities.

“The ordinance in question applies to all civil service auto buses within its provisions, whether engaged in the business of interstate, intercity, or intrastate transportation of passengers for hire. Hotel buses are used as an incident of the hotel business, and school buses are a facility in connection with the schools, which serve a vital public interest; whereas the buses included within the terms of the ordinance use the public streets solely and exclusively for commercial gain; and in our judgment these differentiating features of the

ordinance form an ample basis for a separate classification.

“The depositions taken in the case show that other excepted motor vehicles are already regulated in the public interest as to routes which may be used by them. For the purposes of legislation motor vehicles operating without any definite routes properly form a class distinct from those operating over particular routes; and the ordinance is not objectionable, because it exempts vehicles included under another ordinance by the provisions of which such vehicles are already regulated.

“The ordinance substantially, therefore, is a police regulation of local concern, and devoted entirely to the regulation of public traffic within the boundaries of the municipality, and incidentally only affects interstate commerce, etc.

“We have therefore reached the conclusion that there is no discriminatory classification of motor buses in the ordinance brought up for review, which would in any wise be violative of the provisions either of the State or Federal Constitution, and that the said ordinance in all its provisions is a reasonable exercise of the police power, and should be affirmed.”

For the reasons above set forth, it is most respectfully submitted that the judgment of the Supreme Court should be affirmed with costs.

Respectfully submitted,

JOSEPH B. PERSKIE,
*Attorney of Respondent-
Appellee.*

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