

DECISION

Trippler Operations Erie Metropolitan Transit Authority Erie, Pennsylvania

I. INTRODUCTION

This decision confirms an opinion orally given to officials of the Erie Metropolitan Transit Authority (EMTA) concerning its tripper bus operations and resolves the one remaining issue from a Triennial Review of the operations of the EMTA, which was conducted by the Region III Office of the Urban Mass Transportation Administration (UMTA) in 1985. UMTA has concluded that the tripper service provided by EMTA varies substantially with the definition of tripper service found in 49 CFR Part 605 and must be revised in order that funding from UMTA can be continued.

II. ISSUE

Whether the "tripper service" provided by EMTA, in particular its practice of mounting large flip-up signs marked CAUTION THIS BUS CARRIES SCHOOL CHILDREN and of using flashing red and amber lights on its tripper buses is consistent with regulations implementing Section 3(g) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. Section 1602(g) (the Act)? 1/

III. BACKGROUND

In approximately 1982, during the course of a general program review of transit authorities in Pennsylvania, the Office of Inspector General (OIG) reported to UMTA that EMTA was providing exclusive school bus service in UMTA-funded vehicles in violation of 49 CFR Part 605. 2/

Meetings were held in Philadelphia and in Erie between UMTA and EMTA officials during which it was learned that EMTA was providing regular school bus service in vehicles especially delineated as school buses by signs and flashing red and amber lights. Members of the general public were not permitted to board the buses. The buses originated and terminated on school property and operated without published schedules.

EMTA was informed that it was in noncompliance with the tripper regulations and it agreed to take corrective action. This entailed opening the buses to the general public, publishing schedules for the tripper buses and removing school bus signs on the buses.

EMTA, School Board, and County officials, emphasizing their concern for the safety of the school children riding the buses, proposed putting signs on the back of the tripper buses to warn passing motorists to be aware of boarding and alighting school children. Such signs were to be "flipped up" when the buses were carrying school children. The question whether flashing red and amber lights were consistent with the definition of tripper service was left in abeyance while action was taking place in the Pennsylvania legislature on the issue.

A triennial review of EMTA took place in 1985 pursuant to Section 9 of the Act, 49 U.S.C. 1697a. The last issue to be resolved was whether EMTA was in compliance with the tripper regulation.

In February 1988, during the course of discussions concerning EMTA's compliance with Section 504 requirements, UMTA was informed that of a total fleet of 64 vehicles 34 were "dedicated to tripper service." 3/ Twenty-eight buses were needed for peak hour service. EMTA was planning to make 26 of its vehicles lift equipped in order to comply with the Section 504 regulations. 4/

Concerned that EMTA was continuing to operate a fleet of UMTA-funded buses exclusively for school children, UMTA again wrote EMTA to resolve the issue.

A meeting was held in Philadelphia in June 1988 at which time EMTA officials produced photographs of its tripper buses and copies of the schedules. From these documents it can be plainly seen that not only are there the large flip-up signs mentioned earlier at the back of the buses but signs at the front and side stating "school special." There continue to be flashing red and amber lights mounted at the top of approximately seventeen of the thirty-four buses dedicated to tripper service. Separate schedules exist for the tripper buses. They are formatted differently from the other schedules for regular routes and are marked with bold lettering "subject to change without notice." While there are bus stop signs for regular buses throughout the service area, there are no signs for the tripper buses.

EMTA officials explained that EMTA inherited from its predecessor, the Erie Coach Company, the responsibility of providing school transportation in the Erie metropolitan area. Approximately half of EMTA's operating revenues come from transporting school children and students. 5/

EMTA officials appeared to use the term "tripper service" loosely to include as well special transportation for commuters to various businesses in Erie. For purposes of this decision, the words "tripper service" are used as defined in 49 CFR Subsection 605.3 and do not include specially routed service for commuters. 6/

IV. FINDINGS AND DETERMINATIONS

In order to determine whether the (school) tripper service provided by EMTA is permissible, EMTA's description of its tripper operations has been compared with the definition of tripper service in 49 CFR 605.3. UMTA has established the following findings and determinations on the basis of such a comparison.

A. ...REGULARLY SCHEDULED MASS TRANSPORTATION SERVICE WHICH IS OPEN TO THE PUBLIC...

UMTA has no information to indicate that EMTA's school tripper service is not regularly scheduled and from an official standpoint, at least, open to the public.

To reinforce EMTA's official policy that tripper buses are open to the general public, the drivers of the tripper buses have written instructions stating DO NOT REFUSE ANY PASSENGERS A RIDE ON THIS BUS AT ANY TIME.

However, as a practical matter, the question can be legitimately asked whether the public KNOWS that the tripper buses are open to the public and whether the buses are actually used by the public. Regular route numbers are indicated at bus stops. But there is no indication at bus stops where both regular and tripper buses stop that tripper buses stop there. EMTA officials advised that the tripper buses either precede or follow the regular buses and the public knows that a regular bus will be available instead of a tripper bus. There is no cross referencing on the schedules indicating where tripper and regular bus routes overlap nor, apparently, any deliberate effort to make it known to the public that the tripper buses are open to the public.

The existence of signs on the front and side saying SCHOOL SPECIAL, the flashing red and amber lights on top, the absence of notation on regular bus stop signs that tripper buses stop there as well (discussed below) further render EMTA's claim that the service is open to the public unpersuasive.

B. ...AND WHICH IS DESIGNED OR MODIFIED TO ACCOMMODATE THE NEEDS OF SCHOOL STUDENTS AND PERSONNEL, USING VARIOUS FARE COLLECTIONS AND SUBSIDY SYSTEMS

As mentioned before, EMTA took over the operations of the Erie Coach Company which provided school transportation as part of its regular operations. This essentially has not changed. As mentioned, school transportation brings in approximately one half of EMTA's operating revenues. School students have special passes that permit them to ride on tripper buses but not on the regular routes.

It is UMTA's belief - based on statements by EMTA officials that of a total of 64 buses, 27 buses are needed during the peak for tripper service and 28 for line service - that the tripper buses are only used to transport school children and are not used in regular mass transit service. If this is true, the question can be asked whether modification of mass transportation service includes operation of a separate fleet of tripper buses. Read narrowly, "modification of regularly scheduled mass transportation service to accommodate the needs of school students and personnel" means using different fare collections and subsidy systems. In practice, "modification of mass transportation service" has been broadened to include minor modifications in route or frequency of scheduling to accommodate the extra passengers that may be expected to use particular routes at particular times of the day. However, it was not intended that grantees operate a completely separate service for school children as appears to be the case in Erie.

C. BUSES USED IN TRIPPER SERVICE MUST BE CLEARLY MARKED AS OPEN TO THE PUBLIC AND MAY NOT CARRY DESIGNATIONS SUCH AS "SCHOOL BUS" OR "SCHOOL SPECIAL."

In spite of the fact that EMTA's drivers have been advised in writing that they should not prevent anyone wishing to board a tripper bus from doing so, the exterior of the tripper buses clearly indicates to pedestrians and motorists alike that the buses are school buses. There are signs on the front and side that say SCHOOL. There are the flashing red and amber lights on the top of the buses and there are large flip up signs on the rear of the buses which read CAUTION THIS BUS CARRIES SCHOOL CHILDREN.

EMTA officials agreed to remove the SCHOOL signs from the front and curb side of the tripper buses. They claim that the large CAUTION signs at the back of the tripper buses are a safety feature intending to warn motorists behind the bus to be careful of children getting on and off the buses which are not in violation of the tripper definition since they are not seen by pedestrians at the bus stop.

Furthermore, EMTA officials claim that the flashing red and amber lights are not prohibited; in fact, that they are a necessary safety feature. This is discussed further below in Part V.

E. THESE BUSES MAY STOP ONLY AT A GRANTEE OR OPERATOR'S REGULAR SERVICE STOP

There is no indication that EMTA is in violation of this requirement. However, EMTA orally advised UMTA that regular routes but not tripper routes are marked at bus stops. UMTA's response was that if any routes are indicated at bus stops, then all the routes that stop there should be indicated.

Parenthetically, in the first school bus complaint the auditors complained that tripper buses were letting students board and alight from school buses on school property. EMTA was advised that regular stops may be located on school property if they are clearly marked as open to the public and physically accessible to the public. 7/ There is no allegation that the public is denied access to any bus stops.

F. ALL ROUTES TRAVELED BY TRIPPER BUSES MUST BE WITHIN A GRANTEE'S OR OPERATOR'S REGULAR ROUTE SERVICE AS INDICATED IN THEIR PUBLISHED ROUTE SCHEDULES

EMTA has published schedules for its tripper service. The vehicles are identified by a number with the letters TRI. The tripper schedules show diagrams of the routes of the buses indicating the time the tripper bus is scheduled to be at certain points along the route. Names of schools are not indicated on the tripper schedules.

The tripper schedules per se are acceptable and were not discussed with EMTA.

However, the tripper schedules are formatted very differently from the regular schedules, indicating by line diagrams the route of the tripper bus, while the regular schedules describe the routes in words (instead of diagrams) and indicate the times of departure and arrival at each end in columns divided between weekdays and Saturdays. The existence of such different schedules tends to reinforce the impression that EMTA's tripper service is operated separate and distinctly from EMTA's regular service and is not "open to the public."

V. OTHER MATTERS - SAFETY FEATURES

EMTA has always maintained that it is in compliance with UMTA's tripper regulations. While admitting that the tripper regulations prohibit school bus signs at the front of the tripper buses, EMTA argues that the large flip up signs at the back of the buses and the flashing red and amber lights are on the tripper buses for safety purposes and are not per se prohibited by the tripper regulations.

We disagree.

Although the definition of "tripper service" in 49 CFR Subsection 605.3 does not specifically mention flashing red and amber lights on tripper buses, it is UMTA's opinion that mounting flashing red and amber lights on a vehicle is tantamount to putting up a sign which reads THIS VEHICLE IS A SCHOOL BUS.

UMTA would argue that there is no surer way to indicate to the public - pedestrians, motorists - children, adults - that a vehicle is reserved for school children than to install red and amber lights on it which flash when the vehicle is stopped to let passengers on or off. It is UMTA's view that marking vehicles in this manner is not consistent with the tripper regulations.

Secondly, EMTA's tripper vehicles as modified appear to be as required under Highway Safety Program Standards for "Pupil Transportation Safety."

49 CFR Subsection 605.3 defines (prohibited) "school bus operations" as:

transportation by bus exclusively for school students, personnel and equipment in Type I and Type II school vehicles as defined in Highway Safety Program Standard No. 17.

Highway Safety Program Standard No. 17 requires that Type I school vehicles which are operated by a privately or publicly owned local transit system and which are used for regular common carrier service as well as the transportation of school students, when they are transporting children to and from school, carry temporary signs located conspicuously on the front and back of the vehicle. The buses need not be painted yellow and black but they may, at the option of the state have flashing warning signal lamps while loading or unloading pupils. 8/

Under Pennsylvania law, a transit authority that elects to transport school students may, at its option, put flashing red and amber lights on the buses. If they do, under the Pennsylvania Motor Vehicle Code the buses are deemed to be yellow school buses. 9/

Short of painting the buses yellow and black, EMTA has done everything possible to indicate that the buses are school buses.

VI. CONCLUSION

The intent of the tripper regulations is to ensure that the vehicles which carry school children are not to be otherwise differentiated from regular buses.

In this case the buses which carry school children have been physically modified so that under state law they are to be regarded as yellow school buses by motorists. Under Federal safety regulations they meet the definition of Type I school vehicles in the definition of "school bus operations."

Even though EMTA has adopted a policy which permits members of the general public to ride on the tripper buses, they are unlikely to do so for several reasons: The signs that exist at the bus stops do not indicate that tripper buses stop there but that only regular route buses do. The vehicles themselves have red and amber lights on them which flash when they are stopped at the bus stop, and motorists treat them as school buses by stopping in both directions when the buses are stopped to discharge or admit passengers.

VII. ORDER

EMTA is hereby ordered to cease and desist provision of tripper service in violation of 49 CFR Subsection 605.3 "tripper service."

If EMTA wishes to continue to provide tripper service, it shall be entirely in compliance with the tripper regulation. This will require removing the red and amber lights that are mounted on the top of its tripper buses and all other signs or symbols that indicate that the buses are school buses. (With regard to the "flip-up" signs at the back of the buses, if the signs themselves are not removed, then they should be altered to remove the word "school" from them.) Furthermore, at bus stops where regular routes are indicated, tripper routes must be indicated as well.

Alternatively, if EMTA believes it is eligible to engage in school bus operations pursuant to an exception in the school bus regulations, 49 CFR Subsection 605.11, it should provide justification and a plan showing how it will do so.

Within 30 days of the date of this order, EMTA must advise the UMTA Chief Counsel, with a copy to the Regional Manager of UMTA Region III, of specific steps EMTA will take to comply with this order and provide a timetable.

Failure to comply with the terms of this order will be construed by UMTA as a violation of 49 CFR Part 605, and may result in action by UMTA which would bar EMTA from receipt of future Federal transportation assistance.

EMTA shall obtain the concurrence of UMTA on all modifications made to satisfy the changes mandated by this decision.

Submitted by *Nancy A. Greens*
for Nancy A. Greens
Regional Counsel, Region III

April 13, 1989
Date

Approved by *Theodore A. Munter*
Theodore A. Munter
Deputy Chief Counsel

April 13, 1989
Date

FOOTNOTES

1/ Section 3(g) of the Urban Mass Transportation Act of 1964, 49 U.S.C. 1602(g), states in relevant part:

No Federal financial assistance shall be provided under this Act for the construction or operation of facilities and equipment for use in providing public mass transportation service to any applicant for such assistance unless such applicant and the Secretary shall have first entered into an agreement that such applicant will not engage in schoolbus operations, exclusively for the transportation of students and school personnel, in competition with private schoolbus operators....

2/ 49 CFR Part 605 - School Bus Operations. Subsection 605.3(b) defines "school bus operations" as:

transportation by bus exclusively for school students, personnel and equipment in Type I and Type II school vehicles as defined in Highway Safety Program Standard No. 17.

3/ At a meeting in June 1988, EMTA advised that of the total fleet of 64 buses, 28 were required for peak line service and 27 were required for trippers. That left 9 buses as spares.

4/ 49 CFR Part 27

5/ EMTA has submitted information that indicates that EMTA might be eligible to engage in school bus operations under 49 CFR Subsection 605.11(c). That section states:

A grantee or applicant may not engage in school bus operations in competition with private school bus operators unless it demonstrates to the satisfaction of the Administrator as follows:

(c) That it is a state or local public body or agency thereof (or a direct predecessor in interest which has acquired the function of so transporting schoolchildren and personnel along with facilities to be used therefor) who was engaged in school bus operations:

(1) In the case of a grant involving the purchase of buses - anytime during the 12-month period immediately prior to August 13, 1973.

(2) In the case of a grant for construction or operating of facilities and equipment made pursuant to the UMT Act as amended (49 U.S.C. 1601 et seq.), anytime during the 12-month period immediately prior to November 26, 1974.

However, even if EMTA were eligible to engage in school bus operations under this subsection, it would be prohibited, under the terms of the regulation, from using UMTA-funded facilities and equipment in doing so.

6/ 49 CFR Part 605 - School Bus Operations. Subsection 605.3(b) defines "tripper service" as:

regularly scheduled mass transportation service which is open to the public, and which is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems. Buses used in tripper service must be clearly marked as open to the public and may not carry designations such as "school bus" or "school special". These buses may stop only at a grantee or operator's regular service stop. All routes traveled by tripper buses must be within a grantee's or operator's regular route service as indicated in their published route schedules.

7/ See UMTA administrative decision on tripper operations: R.W. Harmon & Sons, Inc. v. Decatur Public Transit System (1982)

8/ Highway Safety Program Standard No. 17 PUPIL TRANSPORTATION SAFETY states in pertinent part:

III. Definitions. "Type I school vehicle" means any motor vehicle with motive power, except a trailer, used to carry more than 16 pupils to and from school. This definition includes vehicles that are at any time used to carry schoolchildren and school personnel exclusively, and does not include vehicles that only carry schoolchildren along with other passengers as part of the operations of a common carrier.

IV. B. 1. Type I school vehicles shall:

a. Be identified with the words, "School Bus," printed in letters not less than 8 inches high, located between the warning signal lamps as high as possible without impairing visibility of the lettering from both front and rear, and have no other lettering on the front or rear of the vehicle....

IV. B. 2. Type I school vehicles that are operated by a privately or publicly owned local transit system, and used for regular common carrier transit route service as well as special school route service, shall meet all of the requirements of this standard, except as follows:

a. Such vehicles need not be painted yellow and black as required by paragraphs 1(b) and 1(c) of this section.

b. In lieu of the requirements of paragraph 1(a) of this section, such vehicles shall, while transporting children to and from school, be equipped with temporary signs, located conspicuously on the front and back of the vehicle. The sign on the front shall have the words "School Bus" printed in black letters not less than 6 in high, on a background of national school bus glossy yellow, as specified in paragraph 1(b) of this section. The sign on the rear shall be at least 10 ft 2 in size and shall be painted national school bus glossy yellow, as specified in paragraph 1(b) of this section, and have the words "School Bus" printed in black letters not less than 8 in high.

IV. C. 3. b. Use of flashing warning signal lamps while loading or unloading pupils shall be at the option of the State....

9/ 75 Pa. C.S.A. Subchapter C - VEHICLES FOR TRANSPORTATION OF SCHOOL CHILDREN, Section 4553 - General Requirements for Other Vehicles Transporting School Children:

(a) Buses operated by urban mass transportation systems.-

(1) Buses, other than school buses, operated by urban mass transportation systems for the exclusive transportation of school children shall comply with Federal safety standards and such other safety regulations as the Pennsylvania Public Utility Commission and the department shall provide for such buses.

(2) Buses, other than school buses, operated by urban mass transportation systems for the exclusive or nonexclusive transportation of school children may, at the option of the urban mass transportation system, be equipped with flashing red and amber lights and may be identified by appropriate labeling as carrying school children. This equipment and identifying labels shall conform to those regulations which may be issued by the department under this paragraph. Notwithstanding any other provision of law, buses which are operated by urban mass transportation systems and which are equipped and identified in accordance with the paragraph, shall be considered school buses for purposes of section 3345(a), (b), (c), (d), (e), (f), (g) and (j) (relating to meeting or overtaking school bus). The department may issue those regulations it deems appropriate to implement this paragraph.