

U.S. Department
of Transportation
Federal Transit
Administration

REGION VII
Iowa, Kansas,
Missouri, Nebraska

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May 18, 2000

By Facsimile: 515-683-8671

Ms. Pam Ward, Administrator
Ottumwa Transit Authority
Ten Fifteen Regional Transit
105 E. Third Street
Ottumwa, Iowa 52501

**Re: Charter and School Bus Complaint –
Unfair Competition**

Dear Ms. Ward:

On February 15, 2000, Mr. Jerry Kjer, General Manager of Southern Iowa Transit, Inc. ("SIT"), filed a complaint alleging that Ottumwa Transit Authority ("OTA") and Ten Fifteen Regional Transit ("10-15 Transit") performed illegal charter service on a number of occasions listed in the written complaint from April 1998 to April 2000. In addition, Mr. Kjer claimed that OTA transported students to school-sponsored sports activities.

Following receipt of the complaint, OTA and 10-15 Transit were invited to submit a written rebuttal of the complaint. You have chosen not to do so.

On April 24, 2000, Leah Russell, Director of Operations, and Paula Schwach, Regional Counsel, made a site visit to Ottumwa to ascertain what the routes in question were like, what services were being provided, and what was the rationale of OTA and 10-15 Transit for the services in question.

FTA's conclusions are as follows:

1. 10-15 Transit has on two occasions as described in the complaint provided bus service to school age children for trips to Pioneer Ridge(a nature center) from and to a public school site using FTA-funded equipment/rolling stock. This service was provided without charge and in order to prevent a deadhead bus. The service was under a verbal contract with the school district. This service was previously provided by SIT. We find that such service constitutes charter service and competes with the private sector. This is a violation of 49 USC 5323(d) of the Federal Transit Laws and under 49 CFR Part 604, FTA's implementing regulations, because a private operator, SIT, in 10-15 Transit's geographic area of operations is willing and able to provide the service, and none of the exceptions listed at 49 CFR 604.9 apply.

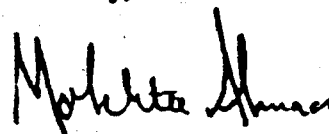
2. OTA operates a bus referred to as the Mid-Day Circulator. The destination of the Mid-Day Circulator is a water recreational/teaching facility called "the Beach." The riders are school age children and or school staff going to a common destination (the Beach) from a single point of pick up (the school) for a common purpose (swimming lessons offered by the school district) under a single contract between the school district and OTA. This description contains all of the elements of the very definition of charter service save one: clientele.

The only item in issue is whether this clientele has the exclusive use of the vehicle. Practically speaking, while the service is advertised as open to the public on the public access television channel, the route changes so frequently depending on which school is currently participating in the swim program offered by the local school district that the schedule is not reliable. The public access channel is arguably a niche market and not a medium designed for broad, general audiences. No schedule is available in paper format as are the fixed route and tripper service schedules. While drivers have been advised to allow members of the general public access to the Mid-day Circulator and have done so on at least one occasion, such ridership is so rare as to be merely incidental if not co-incidental. This appears to violate the spirit of the charter regulations. This is not to say that a Mid-day Circulator could not be designed which would accommodate some school children as well as the general public. However, we find that as currently designed, the service is charter service.

Accordingly, FTA requests that OTA and 10-15 Regional Transit cease providing service to Pioneer Ridge immediately. The Mid-Day Circulator is more problematic because of the potential ramifications of breach of contract with the school district. Therefore, FTA requests that OTA present this office with an exit plan or otherwise advise us as to how the service will be modified to meet the requirements of the Federal Transit Laws within 30 days. Any such plan must be implemented with all due speed but not later than 60 days from the date of this letter. Please provide the complainant, SIT, with a copy of any response to FTA.

If either party has any questions, please contact Ms. Paula L. Schwach, Regional Counsel, at 816-329-3935.

Sincerely,



Mokhtee Ahmad
Regional Administrator

Enclosure

cc: Mr. Jerry Kjer, SIT
Mr. Samil Sermet, IDOT