

RICE, CARPENTER AND CARRAWAY

ATTORNEYS AT LAW

ELLIOTT BUNCE
JOHN W. MCFADDEN, JR.+
KIM D. MANN*
ANDREW J. CARRAWAY
JAMES C. BRASHARES+

SUITE 1301
1600 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22209
(703) 522-0900

JOHN H. DUVALL, P. C.
OF COUNSEL

*ADMITTED IN D. C. ONLY
+ALSO ADMITTED IN FLORIDA

ROLAND RICE*
HOMER S. CARPENTER
DREW L. CARRAWAY (1914-1978)

October 9, 1984

Mr. Dennis Toeppen
Overland Travel Club
URH No. 139 - Townsend
1010 West Illinois Street
Urbana, IL 61801

Dear Mr. Toeppen:

This letter responds to your recent request for a legal opinion from our firm concerning certain operations conducted by the Overland Travel Club, Inc. You have requested an opinion from our firm concerning the legality of passenger transportation conducted by the Overland Travel Club, specifically in transporting students between Champaign, Urbana, Chicago, Oak Park, and Schaumburg, IL.

The information you provided indicates that the Overland Travel Club, Inc., has been organized as an Illinois not-for-profit corporation pursuant to the General Not-For-Profit Corporation Act (Ill. Rev. Stat., Ch. 32). The Overland Travel Club contracts with existing bus companies for the charter of buses to transport students at the University of Illinois, Champaign-Urbana campus, for travel to the Chicago area. The Club conducts all of its operations through its own name, and its services are restricted solely to members of the Overland Travel Club. Membership in the Travel Club is available only to University of Illinois students, faculty, and staff with valid University identification. No members of the general public are allowed to ride the transportation arranged by the Club. Upon joining the Overland Travel Club, members are given identification cards identifying them as members of the Club.

You have asked whether the operation conducted by the Overland Travel Club is subject to the jurisdiction of the Illinois Commerce Commission. Section 10.3 of Chapter 111 2/3 of the Illinois Revised Statutes contains the definition of "public utility" over which the Illinois Commerce Commission has jurisdiction. Section 10.3 provides that the term "public utility" does not include:

(7V) Motor vehicles transporting passengers to destinations without following any regular or fixed schedule or route charging upon a time or distance basis, including taxicabs and charter or contract motor buses.

RICE, CARPENTER AND CARRAWAY

ATTORNEYS AT LAW

1000 W. BROADWAY
ARLINGTON, VIRGINIA 22208
(703) 525-2000

1000 W. BROADWAY
ARLINGTON, VIRGINIA 22208
(703) 525-2000

1000 W. BROADWAY
ARLINGTON, VIRGINIA 22208
(703) 525-2000

October 9, 1984

Mr. Dennis Toppen
Overland Travel Club
Unit No. 132 - Townsend
1010 West Illinois Street
Urbana, IL 61801

Dear Mr. Toppen:

This letter responds to your recent request for an opinion from our firm concerning certain operations conducted by Overland Travel Club, Inc. You have requested an opinion from our firm concerning the legality of passenger transportation conducted by the Overland Travel Club, specifically in transportation services between Champaign, Urbana, Chicago, Oak Grove, and Johnsonville, IL.

The information you provided indicates that the Overland Travel Club, Inc., has been organized as an Illinois not-for-profit corporation pursuant to the General Not-For-Profit Corporation Act (Ill. Rev. Stat., Ch. 32). The Overland Travel Club corporation is existing for purposes for the charter of buses to transport students of the University of Illinois, Champaign-Urbana campus, to and from the Chicago area. The Club conducts all of its operations under its own name, and its services are restricted solely to members of the Overland Travel Club. Membership in the Club is available only to University of Illinois students, faculty, and staff with valid University identification. No members of the Club are allowed to ride the transportation services provided by the Club. Upon joining the Overland Travel Club, members are provided identification cards identifying them as members of the Club.

You have asked whether the operation conducted by the Overland Travel Club is subject to the jurisdiction of the Illinois Motor Vehicle Code, Section 10.3 of Chapter 11.3 of the Illinois Motor Vehicle Code. The Illinois Motor Vehicle Code, Section 10.3, states that the term "public utility" does not include:

- (V) Motor vehicles transported passengers or property without following any regular or fixed schedule or route charging upon a ride or distance basis, including contact and charter or contract motor buses.

Mr. Dennis Toeppen
Page 2
October 9, 1984

There have been several important court cases decided in Illinois which involved whether or not passenger transportation was subject to the jurisdiction of the Illinois Commerce Commission as a public utility. One of the leading cases in this area is Illinois Commerce Commission v. Galvin, 194 N.E.2d 374 (1963). In this case the Illinois Commerce Commission brought an action under the Public Utilities Act to restrain a bus operator from operating a bus service without first obtaining authority from the Commission. The bus operator operated five motor buses providing daily transportation for students to and from six different high schools. The Court, in finding that authority from the Illinois Commerce Commission was required, found that the bus company devoted its buses to public use by accepting indiscriminately any student along the route as a passenger for hire which thereby made the bus operation a public utility subject to regulation.

This case recognized that whether a defendant's bus operations can be defined as a public utility depends upon whether the bus company operates its buses "for public use." In Galvin it was found that the defendant devoted its buses to a public use by accepting indiscriminately any student along the route as a passenger for hire which made its business a public utility subject to Illinois state regulation. In reaching its decision, the Court found that there was no restriction by the defendant concerning who, among the thousands of students attending the schools served by the defendant, could use its buses. Due to its indiscriminately accepting any student requesting transportation, the Court found that the operation was a public utility.

Another significant case involving passenger transportation is Illinois Highway Transp. Co. v. Hantel, 55 N.E.2d 710 (1944). In this case, the Illinois Court was presented with a situation where during wartime gas rationing, factory workers from one factory made specific contractual arrangements for bus transportation between their homes and their common factory destination. No persons other than employees of a certain factory were ever carried on the two buses used. The Court held that the bus company's activities in the transportation of individual employees did not render the company subject to the jurisdiction of the Illinois Commerce Commission as a public utility.

The Illinois Highway Transp. case discussed directly above has many of the attributes possessed by the operation of the Overland Travel Club. This Court case recognized that whether a given business or industry is a public utility depends upon the public character of the business or service rendered which makes regulation a matter of public consequence and concern because it affects the whole community. Concerning private and common carriers, the Court

There have been several important court cases decided in Illinois which involved whether or not passenger transportation is subject to the jurisdiction of the Illinois Commerce Commission. One of the leading cases in this area is Illinois Commerce Commission v. Galvin, 194 N.E.2d 774 (1963). In this case, the Illinois Commerce Commission brought an action under the Public Utilities Act to restrain a bus operator from operating a bus service without first obtaining authority from the Commission. The bus operator operated five motor buses providing daily transportation for students to and from six different high schools. The court, in affirming the authority of the Illinois Commerce Commission, found that the bus company derived its power to provide use by accepting indiscriminately any student along the route as a passenger for hire which thereby made the bus operator a public utility subject to regulation.

This case recognized that whether a defendant's bus operator is to be defined as a public utility depends upon whether the bus company operates its buses "for public use." In Galvin it was found that the defendant favored its buses to a public use by accepting indiscriminately any student along the route as a passenger for hire which made the business a public utility subject to Illinois regulation. In reaching its decision, the court found that there was no restriction by the defendant concerning who, among the thousands of students attending the schools served by the defendant, could use the buses. Due to its indiscriminately accepting any student requesting transportation, the court found that the defendant was a public utility.

Another significant case involving passenger transportation is Illinois Highway Transit Co. v. Harrel, 82 N.E.2d 710 (1944). In this case, the Illinois Court was presented with a situation where a bus operator was operating a bus transportation service for factory workers as rationing, factory workers from one factory would travel to their common factory destination. The bus operator had employees of a certain factory were even carried on the bus. The court held that the bus company's activities in the transportation of individual employees did not render the company subject to the jurisdiction of the Illinois Commerce Commission as a public utility.

The Illinois Highway Transit case discussed above is a part of the principles possessed by the operation of the public utility. This Court case recognized that whether a given business or industry is a public utility depends upon the nature of the business or service rendered which may be of a character of public consequence and concern because it affects the general community. Concerning private and common carriers, the court

Mr. Dennis Toeppen
Page 3
October 9, 1984

found that private carriers as ordinarily defined are those who, without being engaged in such business as a public employment, undertake to deliver goods or passengers for hire or reward. A common carrier of passengers was defined as one who undertakes for hire to carry all persons indifferently who may apply for passage so long as there is room and there is no legal excuse for refusal. Illinois Highway, supra, stands for the proposition that a distinct group of persons may be served by a private or contract carrier without the requirement of obtaining operating authority from the Illinois Commerce Commission.

From my review of the materials submitted and our understanding of the operations of the Overland Travel Club, it is our opinion that the Club's operations in arranging transportation between the University of Illinois, Champaign-Urbana campus, and points in the Chicago area are not subject to regulation by the Illinois Commerce Commission as a public utility. The Overland Travel Club has structured its program so that it does not serve the general public indiscriminately. All of the Club's operations are conducted through a prearranged or predetermined affinity group which consists solely of members of the Travel Club. The Travel Club is open only to students, faculty, and staff of the University of Illinois. Operations conducted by the Overland Travel Club are not offered or available to the public, and its operations are confined only to serving individual members of the Club. The Travel Club undertakes to charter buses in its own name from authorized companies operating in the State of Illinois.

After reviewing the structure and operations of the Overland Travel Club, Inc., it is our opinion that operations conducted by the Club for its members are exempted from the term "public utility" as that term is defined by Illinois law. Further, it is our opinion that these operations are not subject to regulation by the Illinois Commerce Commission and do not require possession of a Certificate of Public Convenience and Necessity issued by such Commission to be lawfully conducted.

RICE, CARPENTER AND CARRAWAY

By



Andrew J. Carraway

AJC:mcm