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Richard R. B. Powell

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Jitney Regulation in New York

BY RICHARD R. B. POWELL¹

With the passage of the Public Service Commissions Law in 1907, the State of New York adopted the policy of regulating and limiting new entries into certain public utility fields which were already occupied by established enterprises. By section 25 of the Transportation Corporations Law as enacted by Chapter 495 of the Laws of 1913 it was provided that "Any person or any corporation who or which owns or operates a stage route or bus line wholly or partly upon and along a highway known as a state route or any road or highway constructed wholly or partly at the expense of the state or in, upon or along any highway, avenue or public place in any city of the first class having a population of seven hundred and fifty thousand or under, shall be deemed to be included within the meaning of the term 'common carrier' as used in the Public Service Commissions Law, and shall be required to obtain a certificate of convenience and necessity for the operation of the route proposed to be operated and shall be subject to all the provisions of the said law applicable to common carriers."

Commissioner Emmet in an opinion dated May 16, 1916, denying the application of T. S. Ashmead et al., says:² "Last year an unexpected situation arose in the business of urban passenger transportation. Large numbers of cheap or second-hand automobiles, mostly of the touring car type, appeared in nearly every city in the State as direct competitors of the existing street railroad. They carried passengers between points within the city for a five cent fare, over regularly designated routes—the same routes, in most cases, as were already being served by the street railways * * * Their losses were so considerable as in some cases to threaten solvency, and in nearly every case to raise the question seriously, whether in the future our street railways would be able to maintain that steady improvement in plant and service which the public expects of them."

"It was this situation which led to the passage of Chapter 667 of the Laws of 1915."

This amendment to section 25 provides that; "Any person or any corporation who or which owns or operates a stage route, bus line or

¹Of the bar of Rochester, N. Y.

²Public Service Commission Reports of New York, Second District, Case No. 5355.

motor vehicle line or route or vehicles described in the next succeeding section of this act wholly or partly upon and along any street, avenue or public place in any city shall be deemed to be included within the meaning of the term 'common carrier' as used in the Public Service Commissions Law, and shall be required to obtain a certificate of convenience and necessity for the operation of the route or vehicles proposed to be operated, and shall be subject to all the provisions of the said law applicable to common carriers."

Section 26 was added to the Transportation Corporations Law in manner and form following by the same amendment: "No bus line, stage route nor motor vehicle line or route, nor any vehicle in connection therewith, nor any vehicles carrying passengers at a rate of fare of fifteen cents or less for each passenger within the limits of a city or in competition with another common carrier which is required by law to obtain the consent of the local authorities of said city to operate over the streets thereof shall be operated wholly or partly upon or along any street, avenue or public place in any city, nor receive a certificate of public convenience and necessity until the owner or owners thereof shall have procured, after public notice and a hearing, the consent of the local authorities of said city, as defined by the railroad law, to such operation, upon such terms and conditions as said local authorities may prescribe, which may include provisions covering descriptions of route, rate of speed, compensation for wear and tear of pavement, improvements and bridges, safeguarding passengers and other persons using such streets, and no such operation upon the streets of any such city shall be permitted until the owner or operator of such vehicles or proposed line or route shall if required by such local authorities have executed and delivered a bond to such city in an amount fixed by said local authorities and in the form prescribed by the chief law officer of said city with sureties satisfactory to the chief fiscal officer of said city, which bond may be required to provide adequate security for the prompt payment of any sum accruing to said city, and the performance of any other obligations, under the terms and conditions of such consent, as well as adequate security for the payment by such owner of any damages occurring to, or judgments recoverable by, any person on account of the operation of such line or route, or any fault in respect thereto."

No one is likely to dispute the dictum of the Commission in the Ashmead case, *supra*, that "The law was hastily drawn and the language is not perhaps as plain as it might be in some particulars." The purpose of this article is to present the interpretations and applications of this law which have been made in the sixteen months since its passage.

This amendment eliminated Public Service Commission regulation of auto bus or stage lines operated wholly outside of the cities of the state even though operated upon state roads. Commissioner Irvine in the *Matter of the Petition of Allen P. Bartholomew*³ said: "By virtue of this amendment, the requirement of a certificate of convenience and necessity for the operation of a route upon or along state routes or roads or highways constructed wholly or partly at the expense of the State was absolutely abolished and a certificate is now required only for routes or vehicles operating wholly or partly upon and along streets, avenues, or public places in any city."

A similar statement of the effect of the amendment is contained in the order made April 4, 1916, in *In re Petition Clyde T. Griffeth* to operate from Albany to Slingerland,⁴ and in the opinion of Commissioner Hodson in the *Matter of the Petition of Leroy D. Becraft*.⁵

At the time of the passage of the Thompson Bill there was no discussion, as far as the writer has been able to ascertain, concerning this decrease in the scope of the regulatory power of the Public Service Commission, and the decrease of power seems to have been a result of inadvertence rather than intention. The fact of the decrease seems undisputed.

At the time the Thompson Bill became a law approximately six hundred jitneys were operating in the City of Rochester. Each of these operators had received a license from the city to operate an automobile for hire for the year ending December 31, 1915. The Thompson Bill became a law May 22, 1915. The question was immediately raised as to whether these licensees must cease operation until they received certificates of convenience and necessity. The corporation counsel of Rochester, Hon. William W. Webb, now a Judge of the Court of Claims, prepared an opinion holding that the licenses, having been issued pursuant to the then existing law, were valid until December 31, 1915, since the Thompson Bill contained no express revocation of them, and could not be construed to cut off an accrued right, if it could be otherwise construed. At about this same time the writer was requested to organize these men in Rochester into a membership corporation in which the members could co-operate for the protection of their mutual interests. This was done and The Rochester Jitney Association, Inc., came into existence. The Public Service Commission did not agree with the local interpretation of the statute. An order directing Elmer G. Booth, one of the operators, to

³Case No. 5362.

⁴Case No. 5325.

⁵Case No. 5263.

show cause before a Special Term held by Mr. Justice Hasbrouck at Kingston, why his further operation should not be enjoined, was obtained and served. This order was returnable on September 4, 1915. As counsel for the Rochester Jitney Association, Inc., the writer argued the motion on behalf of Mr. Booth. This proceeding was brought pursuant to section 57 of the Public Service Commissions Law. On September 28 an injunction was granted with a thirty day suspension to give opportunity for the filing of an application for a certificate. The case was immediately appealed to the Appellate Division and was argued in November. Mr. Justice Kellogg wrote an opinion holding that the licenses did not postpone the requirement of a certificate of convenience and necessity.⁶ The judgment on this order was entered December 16, 1915. Meanwhile the jitneys had continued to operate in Rochester without a certificate. No appeal was taken to the Court of Appeals because the licenses had only fourteen days yet to run. Thus, the courts held that Chapter 667 of the Laws of 1915 applies to vehicles licensed prior to its passage as well as to those unlicensed.

Another very interesting decision concerning the scope of the commission's regulatory power was given in the case of *Public Service Commission v. Hurlgan*.⁷ This case was decided at Erie Special Term in August, 1915, by Mr. Justice Brown. The defendant was operating a bus line of motor vehicles for transportation of persons and property from the International Railway station in Lockport, through the streets of the City of Lockport to the village of Olcott, ten miles distant. No passengers were carried from one point in the city of Lockport to another point in that city. There was a charge of fifty cents for the whole trip but no separate fare for the part of the transportation within the city. The court held that the defendant was a common carrier for hire and that the fact that the charge for the whole trip was fifty cents, i. e., in excess of fifteen cents, did not exempt him from the necessity of obtaining a certificate. This decision, if sustained as the rule of the courts, is very important, since it gives to the commission regulatory power over every vehicle carrying passengers into, through or away from a city, provided the vehicle operates on any highway of the city, even though no local passengers are carried and regardless of the amount charged for the full carriage.

Apparently replying on this decision, the Western New York and Pennsylvania Traction Company secured an order on September 30, 1915, directing Harry Ryder, of Olean, to cease operating or show

⁶Public Service Comm. v. Booth, 155 App. Div. (N. Y.) 586 (1915).

⁷154 N. Y. Supp. 897.

cause.⁸ The minimum fare charged in this case was twenty-five cents. Mr. Ryder carried many passengers at that rate from the Erie Railroad station to the hotel along the route of the traction company. The commission dismissed the proceeding January 20, 1916, saying in the opinion: "If then he is violating the law it must be because he is operating vehicles carrying passengers in competition with another common carrier which is required by law to obtain consent of the local authorities of the city. To construe this operation as falling within the last designation would bring within the operation of the law in every city in which street railways operate, every liveryman, every operator of taxicabs and even private vehicles, because under this construction the rate of fare or the existence of fare would be unimportant—the only test being competition. The Legislature could not have so intended."

Thus, it would seem to be established that operation *wholly* within a city at a rate of fare exceeding fifteen cents is permissible without a certificate but that operation partly within and partly without a city requires a certificate regardless of the rate charged.

During the summer of 1916, in the City of Rochester, a membership corporation was organized under the name of the "Social Club of Rochester, Inc." This club was organized, according to its certificate of incorporation, to provide its members with amusement and social entertainment together with conveniences not obtainable through the individual effort of any member therein. The club then made arrangements with certain automobile owners to hold the cars in readiness for the use of the members of the club.

The transportation of members of the club only in these cars has raised the question whether they require a certificate of convenience and necessity. This perhaps is the most interesting question concerning the scope of the Thompson Bill which is now pending decision. In the police court of the City of Rochester two drivers of Social Club cars were convicted of operating in violation of sections 25 and 26 of the Public Service Commissions Law. An appeal from these convictions is pending undecided in the county court of Monroe County. This appeal squarely raises the issue as to whether such cars are within the purview of the Thompson Bill.

A very large number of applications for certificates of convenience and necessity under the 1915 statute have been passed upon by the Public Service Commission of the Second District, and from these cases a large number of rules can be deduced as the established practice of the commission governing applications hereafter made. One

⁸Case No. 5219.

of the most important of these rules was laid down in the *Matter of the Petition of Wm. B. Gray* for a certificate to operate in the City of New Rochelle.⁹ This was the first decision given by the Public Service Commission upon any application. The Westchester Electric Railroad Company contended that the consent obtained from the local authorities of the City of New Rochelle was invalid because the public hearing, which by law must precede the granting of such consent, had not been advertised daily for fourteen days in the newspapers of the City of New Rochelle. The railroad company further contended that the local consent as finally granted permitted the operation upon certain streets not mentioned in the notice for public hearing. Commissioner Emmett in writing the opinion in this matter says: "It surely was not intended that the Public Service Commissions (which may or may not be composed in whole or in part of men who are lawyers) should suspend the consideration of the question whether a motor bus system such as the applicant proposes to inaugurate in New Rochelle will be a convenience and necessity to the people of New Rochelle, until it first deals, perhaps inexpertly, with such technical objections to the validity of the franchise as have here been raised. * * * We do not consider that this is such a case. Therefore, we shall leave such questions as have been raised affecting the validity of the franchise which was granted by the New Rochelle authorities to be subsequently determined by a proper tribunal, and shall proceed to discuss the pending application upon what we conceive to be its merits." This rule was repeated by Commissioner Hodson in the *Becraft* case in the following succinct language: "And this Commission holds that the regularity of the proceedings in obtaining a permit, and the legality of the permit itself, should be left for the courts to determine, in case the same shall be assailed."

This rule that the commissions will disregard technical objections to the validity of the consent of the local authorities does not mean that the commissions will disregard such defects as obviously vitiate that consent. Thus, in the application of the Troy Auto Car Company,¹⁰ the corporation making the original application had been organized under the Business Corporations Law. The commission upon learning of this fact refused to consider the application until the corporation had been reorganized under Article 4, section 20, of the Transportation Corporations Law, holding that corporations making an application for a certificate of convenience and necessity under Chapter 667 of Laws of 1915 must have been organized in accordance

⁹Case No. 5138.

¹⁰Case No. 5095.

with the Transportation Corporations Law of the state. This requirement was later complied with by the Troy Auto Car Company and the certificate was granted to it. The only other application by a corporation which has been made was that of the Watertown Transportation Company.¹¹ This corporation was organized under the Transportation Corporations Law.

There is one other type of defect in the papers relating to the local consent upon which has been based a denial of an application to the commission. In the *Matter of the Petition of Bedell*¹² to operate in the City of Beacon the local consent permitted the operation of the bus line from the railroad and ferry terminal through Main Street in that city to Mount Beacon. The petition to the Public Service Commission asked for a certificate to operate generally upon the streets of the City of Beacon. This petition was denied by an order made October 20, 1915, because of the discrepancy.

Thus, the rule seems well established that alleged technical defects in the obtaining of the consent of the local authorities will not be considered by the Public Service Commission in passing upon an application for a certificate, but that any gross and obvious defect in the consent obtained from the local authorities will cause dismissal of the application until the defect is cured.

It might seem that the objection made in the Gray case, *supra*, might come within the class of gross and obvious defects, but the commission in *Matter of the Woodlawn Improvement Association Transportation Company*¹³ expressly held that the consent of a city to operate, which consent is required by section 26 of the Transportation Corporations Law, is not a franchise and, hence, the requirement of section 37 of the Second Class Cities Law regarding advertisement and sale to the highest bidder did not apply. This same holding would make it unnecessary to advertise the public hearing for fourteen days because the argument of the Westchester Electric Railroad Company in the Gray case, *supra*, was based upon the assumption that the consent of the local authorities was a franchise.

The question of the proposed route paralleling or coinciding with an established trolley line has been argued in most of the cases that have been before the commission for decision. The decision in the Gray case concerning the City of New Rochelle was the earliest opinion expressing the attitude of the commission. Commissioner Emmet said in the course of that opinion: "Inevitably, of course, each of

¹¹Case No. 5459.

¹²Case No. 5122.

¹³Case No. 5426.

these six routes contemplates the use of a street already occupied by the trolley for a certain distance in the neighborhood of the station. There is no street in that neighborhood that is not so occupied. In other respects, however, four out of the six proposed new routes have been laid out so as not to come into any actual conflict at all with the present trolley routes. They leave the trolley tracks at the nearest free street, or substantially so, and thereafter traverse highways which have no trolley service, and often at points so far removed from the present trolley lines as to make the idea of competition between the old and the proposed new system a very far-fetched one indeed. * * * As already mentioned, the first four routes have been laid out with the intention of avoiding direct competition with the existing trolley as much as possible. Their incidental paralleling of the trolley tracks for short distances near the New Rochelle station is, under the circumstances, unavoidable, and does not of itself seem to warrant a rejection of the routes."

This decision seems to state the rule that the paralleling or coinciding with an established trolley line is not fatal to the application, provided the paralleling or coinciding exists along only a small part of the whole proposed route. The facts presented in the Becraft application for the operation of a route from Corning to Painted Post showed that the proposed auto route paralleled the traction company's route for a distance of approximately one mile, but it appeared that the distance between the two routes varied from 548 to 805 feet throughout this distance and that the main line of the tracks of the Erie Railroad made it difficult for persons residing near the highway, along which the auto line was to operate, to reach the tracks of the electric line. It also appeared that only a forty-eight minute schedule was provided by the electric railroad, and, while the commission holds that the granting of a certificate was made irrespective of the character of the service rendered by the trolley line, the decision in the case seems to proceed upon the theory that the paralleling or coinciding of an established trolley line is immaterial, if the service given by the parallel electric line is not adequate.

The effect of running along the same or adjacent streets was very fully discussed in *Matter of the Petition of T. S. Ashmead et al*¹⁴ to operate in the City of Rochester. Most of the routes proposed to be operated were upon streets already occupied by existing trolley systems. Commissioner Emmet, commenting upon the function of the jitney, says: "What, then, is the proper function of the jitney? Our answer is that, except in cases where the existing street railway

¹⁴Case No. 5355.

system obviously can not or will not supply the reasonable requirements of a community, the use of jitneys, for the present at least, ought to be confined to streets and neighborhoods which now have no electric railway readily available."

The generality of this proposition weakens its assistance as a guide, but the meaning which has been attached to it by the commission is made more definite by the decision in *Matter of the Petition of the Woodlawn Improvement Association Transportation Co.*¹⁵ The consent granted in that case allows the grantee to carry passengers in the City of Albany along the following route: from Broadway north to Orange St. to North Pearl St. to South Pearl St. to Hudson St. to Wellett St. to Madison St. to New Scotland Ave. to the city line. This route clearly does compete with the electric railway in its downtown section, but in the more remote part of the route the nearest street railway is from 2500 to 4000 feet distant. The granting of this consent illustrates what is meant by the commission by saying that the existing street railway system must be shown not to supply the reasonable requirements of the community.

The commission has granted consent to carry local passengers in only five cities of the state. Two of these have already been considered, namely, New Rochelle and Albany. The third consent was granted in *Matter of the Application of the Watertown Transportation Co.*,¹⁶ on April 18, 1916. The route for which this consent was granted was located in a section of the city not at all served by the traction company and was not opposed by that company. The fourth city in which the consent was granted by the commission is the city of Oneonta. The route runs from that city to the village of Stamford.¹⁷ The part of the city traversed by the auto route is not touched by the street railway and the certificate of convenience and necessity was granted by the commission on Nov. 18, 1915, with the right of local carriage.

The fifth city in which persons may be carried from one point to another point within the same city under a certificate granted by the commission is Ogdensburg. Certificates have here been granted to two persons. Both of the routes run from the City of Ogdensburg to points outside the city, one of them going to Winthrop and the other to Alexandria Bay. Each of these certificates was granted on condition that local passengers be charged hackmen's rates. Thus, the right of carrying local passengers has been granted with great

¹⁵Case No. 5426.

¹⁶Case No. 5459.

¹⁷Case No. 5246.

infrequency and under stringent conditions by the commission.

Closely akin to the problem which has just been discussed is the weight to be given to proof that the granting of the certificate will result in financial injury to the existing transportation system. It is necessarily true that people must be transported and that they will suffer the inconvenience of going to a distant electric railway route, if nothing more convenient is offered. Thus, there are many situations which would not come clearly within the prohibition of the rule in the Ashmead case which would involve a material decrease in the revenues of the existing traction system. The Gray case again contains the earliest statement of the opinion of the commission in the following language: "It was not the intention of the Legislature to forbid *all* competition between utility companies. That is made perfectly clear by the wording of the law. And certainly it was not intended, either, to place the Public Service Commissions in the position of apparently preventing the people of any locality from enjoying, to the fullest extent consistent with the general good, all new improvements and conveniences as fast as these might appear."

The rule guiding the action of the commission is stated later in the same opinion: "Broadly speaking, what must guide the Commission in all such cases is an enlightened view of what will best, in the long run, serve the public at large. Such other duties as we may have in this connection—such a duty, for instance, as that of protecting existing investments, under certain circumstances, against competition—must be regarded as subordinate to our primary duty to the public, if (as may sometimes happen) these duties should appear to clash." The general rule laid down by the commission, therefore, seems to be that proof of financial injury to the existing transportation system through competition is not necessarily an insuperable objection to the granting of the certificate.

An application of the foregoing rule was made in *Matter of the Petition of Becraft*¹⁸ to operate between Corning and Painted Post. The railroad presented evidence that during the operation of this route by the applicant the income and expenses of the company had been so modified that instead of showing an annual profit of over \$20,000 the company was operating at an actual loss. In commenting upon this proof Commissioner Hodson says in the opinion: "Under all these circumstances it would be a denial of justice to say to the people of this locality that, because the Commission is clothed with discretion in the matters of this kind, we should withhold approval of

¹⁸Case No. 5263.

a proper, lawful and inexpensive means of public transportation into and through a city, after the officials and people of such city have declared in favor of the same, simply because another existing public utility might not reap the same rewards for its enterprise as it would if competition should be prevented. True, it is the function of the Commission to prevent to the full extent of its power all unjust competition with, and all unfair assaults upon, the business and invested capital of a public service corporation; but this rule cannot be so extensive in its application that all competition shall be considered unjust, or that for one to engage in a perfectly legitimate undertaking shall be considered an invasion of the vested rights of another."

The true rule applied by the commission seems to be that proof of financial injury to the existing transportation system is immaterial, unless it be shown that that injury will result in an ultimate detriment to the community itself. This situation was found by the commission to exist in the case of the Rochester application, *T. S. Ashmead et al, supra*. The evidence in this case showed large inroads upon the income of the local company and the evidence established to the satisfaction of the commission that these inroads would mean arrested development of the railroad system in the City of Rochester. The commission expresses its conclusion in the following language: "And since arrested development, in the case of any business enterprise usually means slow death, such a decision could only be taken to mean that in our opinion the traffic needs of Rochester would best be served by a gradual replacement of the old, with the new, method of transportation. Now, as a matter of fact, the Commission believes nothing of the sort. Electric street railway transportation has by no means outlived its usefulness in cities like Rochester. On the contrary, we are of the opinion that the electric railway must for many years be regarded as the backbone of any dependable transportation system in such a city. To arrest the development of electric railways in Rochester would be to injure greatly the City's growth and future prospects."

In the decision of the many cases that have been before the commission the commission has considered, not merely the problems of parallel lines and of financial injury to the existing system, but has also considered the factor of personal preference of persons to be transported. "We have a feeling, too, that the widely differing points of view which people have upon the question whether traveling in a motor bus is as pleasant as traveling in a trolley, or *vice versa*, is a relevant consideration for us to give at least a little weight to in

determining a matter of this kind. The two methods of transportation seem to appeal, loosely, to different publics. People 'react' from them, as the saying is, differently. One commuter, to whom riding in a trolley is mere pain and penance, may feel an anticipatory glow at the thought of making the last stage of his homeward journey in one of Mr. Gray's motor busses. The sentiments of his neighbor, confronted by such a prospect, may be diametrically the opposite of these. He may prefer the trolley. From a utilitarian standpoint the two kinds of travel have precisely the same purpose, but ought not people be allowed a *little* latitude in using the kind of transportation facility they like best, when business men stand ready to furnish either kind?"¹⁹

As has been stated, jitneys are operating with the consent of the Public Service Commission in only five cities of the state. New Rochelle, Albany (along one route), Watertown, Oneonta and Ogdensburg. The most curious fact about the 1915 amendment is that it took from the commission all jurisdiction over state highways outside of the cities, but most of the applications filed with the commission have been for the operation of routes from a city to some point outside the city, the major part of such route being outside the city and no local passengers being carried within the city. Under the rulings of the commission and the decisions of the courts, an application must be made by any person operating a route along any public highway in a city even though no passengers are carried from one point within the city to another point within the city. This question was brought before the Erie Special Term of the Supreme Court in August, 1915.²⁰ In that case the route operated from the City of Lockport to Olcott, a distance of about 10 miles. No local passengers were carried in the City of Lockport. The court held that the petitioner could not operate without securing a certificate of convenience and necessity. The result of this decision was an immediate influx of applications from persons in all parts of the state desiring to operate automobile lines from points within a city to suburban points. These applications have been granted almost as a matter of course, with the express understanding that no local passengers were to be carried within the city, the streets of which were traversed. Commissioner Irvine discusses this situation in the *Matter of the Petition of Bartholomew et al.*²¹ "It would be a usurpation of authority, which so far as it ever existed the Legislature has taken away, for the Commission to use its power

¹⁹Case No. 5355.

²⁰Public Service Comm. v. Hurtgan, 154 N. Y. Supp. 897 (1915).

²¹Case No. 5326.

of granting or withholding a certificate to operate along city streets for the purpose of thus indirectly regulating competition over or along rural highways." The Commissioner closes his opinion with these words: "With the element of rural competition eliminated, it follows necessarily that each applicant should be permitted for the convenience of his patrons to bring them into the city and to take them up within the city for the purpose of carrying them over the highway after he reaches the city limits. For the foregoing reasons both certificates must be granted."

Thus, the position of the Commission is that, while it has a technical jurisdiction to grant or withhold a certificate in cases where the route is from a point within the city to a point outside the city, that control will be exercised very rarely when local authorities have granted the consent. Certificates have been granted for such intercommunity connection in eleven instances²² with the provision that no local passengers in the city are to be carried.

In each of these eleven cases the certificate was granted by the Public Service Commission upon the express condition that no passengers should be carried from a point within the city to any other point within the same city by the grantee. Thus, we have the commission granting certificates for the operation of routes which traverse the city streets but do not carry local city passengers. This anomaly is the most curious feature of the hastily drawn Thompson Bill.

In each of the certificates of convenience and necessity granted provisions have been made so that the certificates are subject to all the terms and conditions of the consent of the local authorities, subject to the present and future ordinances of the city, and subject to all provisions of the statutes and requirements of the State of New York. The certificates contain the further provision that they are not assignable without the consent of the Public Service Commission. There has been only one case in which an application has been made for the consent of the commission to such an assignment. This was made concerning the City of New Rochelle²³ and the consent of the commission was granted to the assignment of the certificate from Wm. D. Gray to the New Rochelle Auto Bus Corporation on March 14, 1916. As hereinbefore noted,

²²Corning to Painted Post, Cases Nos. 5263-5282; Corning to Keuka Landing, Case No. 5480; Albany to Slingerland, Cases Nos. 5325-5452; Albany to Guilderland Center, Case No. 5404; Geneva to Penn Yan, Cases Nos. 5326-5376; Geneva to Bushville, Case No. 5349; Gloversville to the Lakes, Case No. 5437; Batavia to Leroy, Case No. 5418; Batavia to Attica, Case No. 5448; Batavia to Warsaw, Case No. 5481; Elmira to Ithaca, Case No. 5390.

²³Case No. 5138.

the right which is granted by the local authorities has been interpreted not to be a franchise.²⁴

The regulation of the jitneys by the local authorities under power granted by section 26 of the Transportation Corporations Law has been extremely varied. All the cities except Troy have required a bond of some sort. The condition of the bond has in some cases been that the grantee would pay damages sustained by any person having a cause of action against the grantee by reason of his operation of the proposed route. The amount of the bond has varied from a blanket bond of \$50,000 for the operation of not more than five hundred automobiles in the City of Rochester to a nominal bond such as is required of hackmen in the City of Ogdensburg. In other cities there has been a tax or money exaction from the grantee. In New Rochelle this requires the grantee to pay three per cent. of the gross earnings to the city. In Ogdensburg the fee is \$25 a year for each car. In Batavia \$10 a year for a car has been assessed upon each grantee. In Rochester the tax varied from \$50 for a five passenger car to \$75 for any vehicle carrying more than ten passengers. Some cities have specified the type of vehicle which must be used. Thus New Rochelle requires that the vehicles operated be the pay-as-you-enter type seating from ten to seventeen persons and that they be equipped with pneumatic tires. The ordinance in Rochester provides even greater detail, to wit, that the operator must wear a coat and cap and must not smoke while on duty. In New Rochelle and Ogdensburg policemen and firemen must be carried without charge.

It can thus be seen that the municipalities of the state have imposed upon the persons seeking to operate jitneys quite rigorous conditions and requirements. The query has often suggested itself to the writer whether there would be any street railways now in existence, if the authorities had placed upon the street railway companies within the first sixteen months of their existence conditions similar to those which have been imposed upon the jitneys operating in this state. Regulation of enterprises affected with a public interest is undoubtedly necessary. The purpose of this article is to present the regulations which have in fact been imposed, so that all may have an opportunity to consider whether such regulations are justified by the facts.

²⁴*In re* Woodlawn Improvement Ass'n Transportation Co., Case No. 5426.