



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION I
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Massachusetts,
New Hampshire,
Rhode Island, Vermont

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June 5, 2000

Mr. Daniel J. Leonas
President
Hauberk, Inc.
369 Lisbon Street
Lewiston, ME 04240

Dear Mr. Leonas:

This responds to your complaint alleging that the Western Maine Transportation Services, Inc. (WMTS), a subrecipient of the Maine Department of Transportation (MDOT), engaged in impermissible school bus service. Specifically, you claim that WMTS, a private nonprofit organization, provided exclusive school transportation for the Lewiston School Department during the 1996-97 and 1997-98 school years using vehicles funded by the Federal Transit Administration (FTA).

We forwarded your complaint to WMTS which claimed that it did not participate in regular school bus transportation. Rather, WMTS maintained that the service in question was provided to transport students with special needs to a variety of day programs both within the Lewiston school system and to facilities throughout western Maine. WMTS stated that "the vehicles were always open to the public and the vehicles transported all different types of riders including Lewiston Special Ed students, public riders, and Human Services clientele all during the course of the day." Furthermore, WMTS' published schedule states that it provides transportation to area residents with disabilities and senior citizens lunch programs, as well as transportation to the general public.

Subsequently, FTA requested additional information from WMTS regarding its operations and asked whether the service was ever provided exclusively for the special needs students. In a second response, WMTS stated that it operated fixed route and demand-response service and claimed that it did not provide service exclusively for the special needs students who were transported by its demand response system. WMTS explained that whenever possible the company combined rides taking small groups in one of WMTS' vans to a common destination such as the Governor Baxter School for the Deaf in Portland, but at times, "an individual vehicle had to be used one-on-one for a student because of behavioral problems."

Some of the vehicles used in this service were funded with Federal assistance while others vehicles were locally funded or privately owned.

WMTS noted that it stopped performing this service for the Lewiston special needs students after the 1997-98 school year and verbally advised FTA that another company would be providing the transportation through the school year ending in 2006. Although the issue has become moot, it might be helpful to explain the applicable FTA requirements.

Federal transit law specifically prohibits FTA recipients from using FTA-funded equipment and facilities for exclusive school service. 49 U.S.C. 5323(f). This prohibition applies regardless of whether the service is fixed route or demand response.

WMTS' reply, however, indicates that some of the demand response transportation for special needs students falls within the definition of "mass transportation" set forth at § 5302(a)(7), which Congress extended in 1968 to include special service in addition to general service. Special service includes service exclusively for the elderly and persons with disabilities. However, the service must be open to all elderly or disabled persons in a particular geographic service area and not restricted to a particular group.

Accordingly, WMTS demand response service which is open to the public and does not exclude any riders falls within the definition of general mass transportation. Furthermore, WMTS transportation that is exclusively for the elderly and disabled, including the special needs students, and that is open to all elderly and disabled persons in its geographic service area meets the definition of special service and is mass transportation. WMTS is required, however, to ensure that vehicles transporting disabled students be open to all elderly and disabled passengers and not restricted to the special needs students unless the transportation is permissible under FTA's Charter Service regulation at 49 CFR 604.9.

I hope this information is helpful. Please contact me at (617) 494-2409 if you have any questions.

Sincerely yours,

Margaret E. Foley
Regional Counsel

Cc: Eugene Skibitsky, WMTS
Barbara Donovan, MDOT