

BEFORE THE FEDERAL TRANSIT ADMINISTRATION

Illinois School Transportation Association,
Complainant,

Charter Service Complaint
49 U.S.C. Section 5323(d)
49 U.S.C. Section 5323(f)
Charter No. 2006-06
School Bus No. 2006-01

v.

Pekin Municipal Bus Service,
Respondent.

DECISION

Summary

On May 19, 2006,¹ the Illinois School Transportation Association (ISTA) filed a complaint with the Federal Transit Administration (FTA) against Pekin Municipal Bus Service (PMBS), a recipient of Section 5309 funds. ITSA alleged violations of FTA's school bus and charter regulations, 49 U.S.C. Sections 5302(a)(10); 5323(d) and 5323(f) as amended and 49 Code of Federal Regulations (CFR) Parts 604 and 605. ITSA alleged that PMBS had directly and unfairly competed against private school bus operators by operating non-public transportation services out of an operating facility/headquarters that utilized FTA funds for operating purposes.

On June 2, 2006, FTA directed the parties to seek informal conciliation of the charter complaint pursuant to 49 C.F.R. Section 604.15. The conciliation was unsuccessful.

On July 24, 2006, FTA received PMBS' response to the complaint filed by ISTA. PMBS claims that while both units of PMBS, School Bus and Municipal Bus, operate out of one facility, the units are separate and distinct from each other. PMBS further claims that they have established and designated separate garages and equipment for each unit as well as a separation of parts and labor used to service the vehicles of the separate units. On August 29, 2006, ISTA filed their rebuttal.

FTA scheduled and conducted a Financial Management Oversight Review and issued a draft report in July 2007. Because a number of issues in the report related to the financial arrangements of the PMBS, FTA was waiting to issue this decision until after the FMO Review was finalized. However, because of continued delays with finalizing the FMO Review, FTA did not want to delay this decision any longer. PMBS has had an initial

¹ Because ISTA filed only one complaint alleging violations of the school bus and charter regulations, FTA has issued two complaint numbers, but is only issuing one decision.

opportunity to respond to the findings and FTA is comfortable that it has enough information at this time to make a determination on this complaint.²

Upon reviewing the allegations in the complaint and the subsequent filings of all the parties, FTA has concluded that PMBS illegally operated school bus and charter service. The remedy in this case is to order PMBS to immediately cease and desist from operating illegal charter and school bus service. However, due to the fact that as of March 5, 2007, the City of Pekin ceased operating its bus services and transferred those responsibilities to the Greater Peoria Mass Transit District, the remedy is now moot.

Complaint History

On May 19, 2006, ISTA filed a complaint with the FTA against PMBS³. ITSA alleged violations of 49 U.S.C. Sections 5302(a)(10); 5323(d) and 5323(f) as amended and 49 CFR parts 604 and 605 as they relate to the operation of prohibited school bus and charter service. ISTA alleges that PMBS bids against private school bus companies and operates home-to school and related charter service. ISTA further alleges that all PMBS FTA-funded public and non public transportation services are fully integrated, operated, and maintained out of a single facility under one management. Complainant provided copies of correspondence and bid documents detailing charter service provided to Pekin Community High School District #303, Boy and Girls Club, and the University of Illinois Extension. In addition, ISTA provided photographs of different vehicles leaving the City of Pekin compound where all the city's vehicles are stored and maintained, including photographs of yellow school buses with the words "Pekin Municipal Bus Department" on the side of the bus.

On May 24, 2006, FTA advised both parties that the Greater Peoria Mass Transit District (GPMTD) would investigate the matter. On June 2, 2006, after reviewing the complaint further, the Region V Administrator informed both parties that FTA would proceed with the investigation and no further action would be required of GPMTD.⁴ FTA directed the parties to seek informal conciliation of the complaint pursuant to 49 CFR Section 604.15. The Parties were unable to successfully conciliate the complaint.

On July 24, 2006, FTA received PMBS' response to the complaint filed by ISTA. PMBS claims that while both units of PMBS, School Bus and Municipal Bus, operate out of one facility, the units are separate and distinct from each other. PMBS further claims that they have established and designated separate garages and equipment for each unit as well as a separation of parts and labor used to service the vehicles of the separate units.

² The draft FMO Review found a number of material weaknesses, including but not limited to charging insurance and payroll to preventative maintenance which are ineligible expenses.

³ PMBS was a recipient of capital and planning funds; therefore, it was required to comply with the charter and school bus regulations.

⁴ PMBS is a subrecipient of GPMTD, who is a direct recipient of its federal grants. FTA has delegated charter violations to recipients for investigation. However, given the combined nature of the school bus and charter violations, as well as the fact that GPMTD has assumed the bus operations for PMBS, FTA chose to handle this case itself.

Respondent provided copies of FTA's Triennial Reviews in 1999, 2002, and 2005 which found that PMBS was in compliance with both school bus and charter bus requirements. PMBS also provided audits relating to the operation of the municipal busses and the funds associated with them and an Affidavit of James Warning, a Certified Public Accountant, who attests to the separate accounting systems for the municipal and school bus funds and to the fact that all federal grant money received from the FTA was used solely for the operation and maintenance of the municipal bus service.

On August 29, 2006 ISTA filed a rebuttal to PMBS's response. The complainant reiterated that the two systems, the school bus and municipal bus systems, commingled their operations, stored the buses in the same facility, and were managed by the same individual. Attached to the rebuttal is a spreadsheet showing the City of Pekin's budget for Fiscal Year 2008.

In January 2007, FTA began an on site Financial Management Oversight (FMO) Review of PMBS. The draft report was issued on July 3, 2007. On September 25, 2007, the City of Pekin responded to the draft report. Because FTA was not satisfied with the City of Pekin's response, on October 4, 2007, asked for additional time to provide a supplemental response. However, FTA believes it has enough information to rule on the pending charter and school bus complaints at this time.

Discussion

The issue before FTA is whether PMBS has adequately separated FTA-funded public bus service and non-public transportation services. Under 49 CFR Parts 604 and 605 and 49 U.S.C. Sections 5302 and 5323, recipients of FTA funds are prohibited from providing charter service or school bus transportation service unless the service falls under a specific exception. PMBS is not alleging that the service falls under a regulatory exception, but rather that it was operating a completely separate system.

FTA must make a fact-based determination of whether PMBS' FTA-funded public and non-public transportation services are integrated, operated and maintained out of a single facility under one management as the Complainant alleges or was two separate operating bus systems as PMBS alleges. While the FMO was able to determine that there were two units or divisions of bus service operating and that in all likelihood its operations and maintenance were kept separate, the two services were both operated under the City of Pekin umbrella. The buses were stored on City of Pekin property and the two services had the same manager overseeing operations. The fact that the school buses had printed on the side of the bus, "Pekin Municipal Bus Department" and the website stated that the City of Pekin's Vehicle Maintenance Division was responsible for maintaining all Pekin city vehicles, including school and municipal bus makes it difficult to find that the two systems were completely separate.

FTA considers a number of factors in determining whether a recipient of FTA funds is able to operate two separate services. These factors include, but are not limited to, insurance, salaries, workers compensation, training, supplies, labor, distribution of funds,

and other resources. Looking at the totality of the evidence, FTA does not believe that PMBS was operating two completely separate systems.

Under 49 C.F.R. Part 604, a recipient of FTA operating assistance is prohibited from providing charter service unless one of the regulatory exceptions applies. PMBS is not alleging an application of a regulatory exception.

Under 49 CFR Section 605, a recipient shall enter into an agreement with FTA that it will not engage in school bus operations exclusively for the transportation of students and school personnel, in competition with private school bus operators unless it operates a separate and exclusive school bus program. The regulations allow a recipient to provide "tripper" service, but the service provided by PMBS was exclusive school bus service in direct competition with private school bus operators, not regular fixed route "tripper" service.

Conclusion

FTA based on a review of all the evidence concludes that for all intents and purposes, there really was only one bus service operated by PMBS. As a recipient of federal assistance, PMBS violated the charter and school bus regulations by operating a bus service that included both charter and school bus. Therefore, FTA finds that PMBS violated both 49 CFR Part 604 and 605.

Remedy

PMBS terminated Municipal Bus Service on March 2, 2007, and is no longer a recipient of FTA funds. Therefore, although FTA orders PMBS to immediately cease and desist providing charter and school bus service, the impact of the cease and desist order is essentially moot.

Appeal

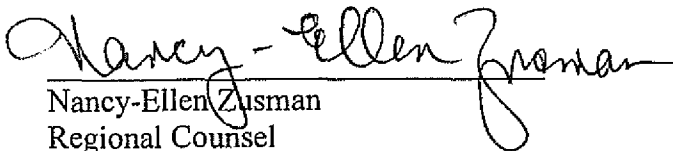
In accordance with 49 C.F.R. § 604.19, the losing party may appeal this charter decision within ten days of receipt of the decision. The appeal should be sent to James Simpson, Administrator, FTA, 1200 New Jersey Avenue, SE, 5th Floor- East Building, Washington, D.C. 20590.

In accordance with 49 C.F.R. § 605.35, this school bus decision is final and conclusive on all parties, but is subject to judicial review pursuant to title 5 U.S.C. 701-706.



Marisol Simon
Regional Administrator

10-16-2007
Date



Nancy-Ellen Zusman
Regional Counsel

10/16/07
Date