

TRANSIT COMPETITION

ISSUE

Private intercity motorcoach operators are facing increasing competition from federally subsidized local transit agencies that violate current federal law. Federal Transit Administration (FTA) regulations prevent transit agencies from using funds to provide charter bus service or regularly scheduled service outside urban areas. Yet some local transit agencies continue to offer these services in direct violation of federal regulations.

BACKGROUND

The Federal Transit Act currently excludes “charter and sightseeing transportation” from the definition of “mass transportation” for which FTA funding is available. In addition, the Act prohibits a recipient of FTA funds from providing intercity charter bus operations if it will foreclose a private bus operator from providing the same service.

A provision in the Act also gives an injured private operator the right to complain to the Secretary of Transportation about subsidized charter competition, and the Secretary is empowered to “correct the violation” under the terms of the offending transit operator’s funding agreement. The FTA has promulgated regulations to enforce the charter prohibition in the Act, but they are regularly ignored by many transit agencies.

This problem exists, in part, because the FTA supports vigorous transit operations by its constituent transit agencies, but it is also responsible for enforcing limits on those same operations under the Federal Transit Act and the charter service regulations.

In SAFETEA-LU ABA was successful in strengthening the laws that pertain to the enforcement of the charter rules. Specifically, we prevailed on Congress to mandate that the Secretary of Transportation investigate charter rule violation complaints and also have the authority to fine publicly funded transit agencies that violate the charter rules. In addition, Congress, at our urging, mandated that FTA begin a negotiated rulemaking proceeding (“Neg. Reg.”) in which the interested parties meet to try and reach consensus on new charter rules and what, if any, “charter” work may be done by publicly funded transit agencies in light of the charter rules.

In addition, ABA has been successful in litigation against publicly funded transit agencies for violation of the charter rules. Specifically, the FTA Regional Counsel has ruled that the Akron, Ohio transit agency must pay \$622,000 for charter rule violations committed over the past several years. The transit agency is appealing this decision to the FTA Headquarters in Washington, D.C. Also pending is the ABA’s suit against the Toledo, Ohio transit agency and its Board of Directors for that agency’s violation of the charter rules.

ABA POSITION

ABA seeks full enforcement of SAFETEA-LU provisions and rationalization of the decision and appeal process. ABA opposes further expansion of charter service by transit agencies. ABA supports strong enforcement by FTA of provisions in SAFETEA-LU that require FTA to impose reasonable financial penalties on transit agencies that have established a pattern of violating the charter rules. ABA opposes expansion of new opportunities for transit agencies to engage in charter work.

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