

July 28, 2005

VIA OVERNIGHT DELIVERY

Fred S. Ridley, President
The United States Golf Association
77 Liberty Corner Road
Far Hills, New Jersey 07931

Re: Charter Bus Service for USGA Events

Dear Mr. Ridley:

As General Counsel to the American Bus Association, Inc. ("ABA"), I am writing concerning the arrangements for bus transportation for patrons of United States Golf Association events across the United States. The ABA is a national trade association located in Washington, D.C., representing the interests of approximately 700 private operators of intercity buses, who provide several types of passenger service, including regular route service, charter service, tour service for sightseeing and recreational purposes, commuter bus services, and special scheduled bus operations.

ABA is aware that, for a number of USGA tournaments over many years, tournament officials have contracted with public transit agencies to conduct charter bus service for patrons of these events. In some cases, the transit agencies have conducted charter bus service through a private bus operator, and in other cases the transit agency has conducted the service directly. ABA wants to ensure that you are aware that federal laws and regulations prohibit public transit agencies from providing these types of charter bus operations either directly or indirectly. ABA actively works to curb the trend of public transit agencies providing charter bus service to specialized events like USGA tournaments when there are willing and able private bus companies available to conduct the service. Recent incidents with other golf tournaments, as well as the long history of illegal charter service for such events, prompts ABA to write now to ask for your support in finding a more comprehensive solution to this serious issue.

Federal law prohibits public transit agencies from providing charter bus service to events like golf tournaments except in very limited circumstances. Public transit agencies are limited to providing "mass transportation" services, defined as service that is regular and continuing general or special transportation to the public, and specifically excludes charter transportation. 49 U.S.C. § 5302(a)(7). Transit agencies wishing to provide charter transportation must follow rules mandated in 49 U.S.C. § 5323(d) and prescribed by the Federal Transit Administration in 49 C.F.R. Part 604.

Under the charter service regulations, a transit agency may not provide charter bus service if there is *any* willing and able private operator who can provide the service in question. *See* 49 C.F.R. § 604.9(a). In addition, a transit agency must meet the notification requirements in 49 C.F.R. § 604.11 to determine if there are any private operators who are willing and able to provide the service in question. This notification must be completed at least 60 days prior to the beginning of the service in question. 49 C.F.R. § 604(a)(1).

The FTA has held previously that bus service to a professional golf tournament constituted charter bus service and thus was subject to federal charter regulations. On September 18, 2002 the FTA Regional Administrator issued a decision in *Kemps Bus Service v. Rochester-Genesee Transportation Authority*, Charter Complaint, 49 U.S.C. Section 5323(d). A copy of the decision is attached. In that decision the Regional Administrator found that shuttle bus service to a Ladies Professional Golf Association tournament was not mass transportation service as defined in 49 U.S.C. § 5302(a)(7) because the service was not provided on a regular and continuing basis, *i.e.*, the service was operated only one week a year when the golf tournament was in session. *Slip op.* at 5.

The Regional Administrator ordered the Rochester-Genesee Regional Transportation Authority (“RGRTA”) to cease and desist providing any further service in violation of the charter regulations, including the shuttle service to the LPGA tournament. *Id.* at 6. Failure to comply with the terms of that order could result in the FTA withholding federal transit funds from the RGRTA. 49 U.S.C. § 5323(d)(2). The FTA Administrator upheld that determination on appeal in a decision dated January 2, 2003. A copy of that decision is also enclosed. The Administrator found that the shuttle service to the LPGA tournament was charter bus service because the routes and schedules were set by the tournament organizers and the service was for the benefit of people attending the golf tournament instead of the public at large. *Charter Service Complaint Docket No. 2002-02, slip op.* at 4-5.

Additionally, ABA is aware that in the past some public transit agencies have engaged in charter service through sham arrangements with private operators, in which the private operator is the contracting party in name only. The FTA has also found such arrangements to be prohibited under the regulations. *See* Decision of the Regional Administrator, Charter Service Complaints No. 2004-16 and No. 2004-18 (Toledo Area Regional Transit Authority) (February 24, 2005); *Allerton Charter Coach, Inc. v. Champaign-Urbana Mass Transit District*, Charter Service Docket No. 2004-10 (“CUMTD could not provide charter service as a subcontractor for [a private operator].”) Copies of these decisions are also enclosed.

The FTA also recently denied a request by the Toledo transit agency to conduct charter bus service for the LPGA Jamie Farr Golf Classic, held in Toledo, Ohio during the week of July 4, 2005.

The decisions in the Rochester and Toledo cases make clear that shuttle bus service provided for professional golf tournaments constitutes charter bus service, and thus is subject to the charter service regulations. The purpose behind the charter service restrictions is simple: public transit agencies are heavily subsidized by the Federal government, and many transit

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agencies receive millions of dollars in assistance to purchase and operate equipment and facilities. That Federal assistance is intended primarily to allow transit agencies to provide mass transportation services to the urban and suburban areas they serve. But because of those subsidies, public transit agencies have an unfair advantage over private sector competitors. When public transit agencies and private bus operators bid on the same service, the transit agencies usually can submit the lowest bid because of their substantial subsidies. The charter service rules are intended to prevent this unfair competitive advantage.

As you know, hundreds of golf tournaments are held every year around the country by the PGA Tour, the LPGA Tour, and the USGA. Charter bus service for these events can be worth tens of thousands of dollars for the charter operator. For private bus companies, charter events of that magnitude can provide an important source of revenue. But it has proven increasingly difficult, if not impossible, for private bus operators to bid successfully on such service because of the disadvantage they face when bidding against subsidized transit agencies.

ABA requests your support in putting a stop to the practice of USGA events using public transit agencies as charter bus operators. We are aware of the USGA's outstanding reputation, and your organization deserves commendation for conducting first-class events. Moreover, perhaps more than any other sport, golf has a rich history of fair play and good sportsmanship, in which players are trusted to police themselves for violations of the rules.

It is in this spirit that ABA asks that you carefully consider the issues raised in this letter. We are confident that the USGA does not want to be complicit in the provision of illegal charter bus service by public transit agencies. We ask that you advise your tournament directors, sponsors, and the golf clubs which host USGA events that the use of public transit agencies for illegal charter operations will not be tolerated by the USGA, and that private bus operators shall have an opportunity to bid on such service in accordance with the governing laws and regulations.

Thank you for your consideration of these issues. Please feel free to contact me if you have any questions or would like additional information.

Sincerely,

Richard P. Schweitzer
General Counsel
American Bus Association, Inc.

cc (w/ enclosures):

Jennifer Dorn, Federal Transit Administrator (via UPS)
Peter J. Pantuso, President and CEO, American Bus Association