

SECTION III

LEGAL OVERVIEW OF PARATRANSIT

This section is an attempt to bring together the Federal, State, and local laws and regulations relevant to paratransit systems, to analyze their effect on establishing different types of paratransit systems, and to make recommendations for legislative changes necessary to make paratransit systems legal.

It is important to spend time on such an analysis of the laws because the State laws in particular appear to be extremely cumbersome and vague as to how they apply to paratransit systems. The laws are, therefore, open to various interpretations. In a number of reports issued by local, State and private agencies, conflicting interpretations of the Motor Carrier Laws and the Transportation District Act have emerged. This analysis has therefore been done in the hope of bringing some clarity to the multitude of laws and regulations that currently exist.

FEDERAL LAWS AND REGULATIONS

The Federal legislation regarding paratransit operations is divided into two distinct areas, funding legislation and operating regulations. Funding legislation will be covered in a separate section of this study on financing paratransit systems. The Federal regulations, for operating paratransit systems, fall under the jurisdiction of the Interstate Commerce Commission (ICC). In general all transportation services that cross interstate boundaries must conform to the licensing procedure of the ICC.

Interstate Commerce Commission

Federal regulations should not be an issue in the implementation of paratransit services, because the Washington Metropolitan Area Transit Regulation Compact, under "Consent Legislation", transfers the powers of the Interstate Commerce Commission and the Public Utilities Commission of the District of Columbia to the Washington Metropolitan Area Transit Commission. It is stated that:

Notwithstanding any provision of this section to the contrary, the jurisdiction of the Public Utilities Commission of the District of Columbia and of the Interstate Commerce Commission over all carriers and persons subject to the provision of the Washington Metropolitan Area Transit Regulation Compact are hereby transferred, as and to the extent provided therein, to the Washington Metropolitan Area Transit Commission.^{1/}

Specifically, the regulatory powers over public carriers possessed by the ICC have been transferred to the Commission. The issue of regulatory restrictions on paratransit vehicle use in the Northern Virginia area appears to lie with the State Motor Carrier Laws rather than with ICC regulations.

STATE LAWS AND REGULATIONS

The State of Virginia regulates paratransit activities through the State Corporation Commission (SCC), which is governed by the Motor Carrier Laws. These laws have evolved over the past fifty years from the Code of Virginia and numerous court cases which have interpreted the laws. These interpretations of the law have made many paratransit systems illegal. This section is a system-by-system analysis of how the State Laws effect each system's feasibility.

^{1/} Washington Metropolitan Area Transit Regulation Compact, Consent Legislation, Section 3.

Jitneys

Jitneys are a cross between a taxi, having route deviation capabilities and no fixed stops, and a fixed route transit system, with stops and headways. This puts jitneys under two possible categories in the Motor Carrier Laws. If the jitney is considered a taxi or other vehicle performing a taxi service, it is by definition (see App. VI - Motor Carrier Law Definitions) illegal to operate over a regular route or between fixed terminals and must use a vehicle with a maximum seating capacity of six passengers. If the jitney is considered a common carrier, the possibility of route deviation is eliminated, again by definition, but a larger vehicle could be used. To sacrifice any of these characteristics would negate the inherent flexibility of a jitney system, in effect making it a bus or a taxi. However, if the jitney system operated only in one city or county it would be feasible, since it is not necessary to obtain a license from the SCC if the transportation service does not cross jurisdictional lines. In addition, VDH&T has interpreted the Transportation District Act in a way which allows various paratransit systems to exist if they operate in a Transportation District. This will be discussed further under local laws.

In Virginia under recent legislation (See App. VII, Section 15.1, 1-37.3:3 of the Virginia Code, page A17) taxicabs can now be used as paratransit vehicles in other than normal taxi configurations such as jitneys, DAR shared ride, and point to point. This makes jitneys legal under SCC regulations if a taxi vehicle is used.

Dial-a-Ride

Like the jitney, dial-a-ride operations face problems under the existing Motor Carrier Laws. If they are considered to operate as a taxicab, they are by definition limited to six passenger vehicles. The vehicle which is most appropriate for such DAR operation is a minibus or van. On the other hand, if the dial-a-ride were considered a common carrier, it would be illegal to operate over irregular routes. (See Motor Carrier Law Definitions, App. VI, page A11.) In either case the positive characteristics of a DAR system are negated.

CARTS

It does not appear that there are any legal barriers to overcome to institute a CARTS system. However, should the SCC rule that these vehicles are acting as common carriers, there would be licensing requirements.

Subscription Bus

The future of the subscription bus is a little more encouraging, at least when applied as a high density home-to-work carrier. Section 56-274, paragraph (5) of the Motor Carrier Laws covers serviced used exclusively for transporting employees directly to and from the plant, factory, or place of like nature where all are employed, provided a permit is obtained from the SCC (See Appendix VI for Section 56-274, page A11). This is exactly the type of arrangement which companies have instituted in Northern Virginia so successfully, and described in Section I of this report. One example of this service is run by Colonial Transit, Inc., a privately owned and operated bus company

which currently provides an "employee-haul" subscription service to the Pentagon and downtown from several Virginia communities.

Another attractive aspect of this section of the Law is that the SCC does not require the operator of the vehicle to secure insurance to cover personal injury and property damage for the persons being transported. This means that the operator is relieved of the great expense of purchasing high premium insurance. It does, however, leave the patron of the service in the position of having to collect Workmen's Compensation monies, if he or she is injured while riding in the bus or van, instead of collecting from the operator's insurance company.

Taxi

The taxicab faces no such identity problems, for it is a well established form of public transit. It is not, however, without its organizational drawbacks, the primary ones being user cost and inefficiency. Since the cab companies are privately owned, they must pass on the ever increasing cost of equipment and overhead to their clientele. Consequently, the fares are beyond the means of many prospective users, particularly if on a regular basis. In suburban neighborhoods with low ridership densities and diffuse travel patterns, the choice is not between taxicabs and transit service, but taxicabs or no service. In some cases, even the taxicab is not available. Also the physically handicapped are sometimes spurned by the taxi driver who is unwilling or unable to provide the individual attention necessary.

LOCAL LAWS AND REGULATIONS

Because of the embryonic nature of most paratransit operations, the local jurisdictions have only recently begun to deal with the complexities involved in trying to authorize and regulate paratransit systems.

The notable exception to this is taxi operations. Each of the major jurisdictions in Northern Virginia has taxi regulations and procedures for the operation of taxicabs in their locality. These regulations are outlined in the taxi section of this report.

Based on the Transportation District Act of 1964,^{1/} NVTC, as well as the separate jurisdictions has transportation related responsibilities and regulating authority over paratransit systems. As stated in the Transportation District Act, under Article 4, Section 15.1-1357 "Regulations of Fares, Schedules, Franchising Agreements and Routing of Transit Facilities", NVTC has the authority to authorize jitneys and demand responsive systems by public and private operators. On the other hand, it is the opinion of the SCC that NVTC does not have this regulatory authority over private operators, but does have the authority to run and contract for such systems.

The SCC's position is based on court rulings which interpret jitneys and DAR operations as illegal competition to established fixed route systems. It does, however, remain hazy as to exactly what regulatory authority NVTC actually does have.^{2/}

To add to the complexity of the situation, recent legislative changes to the Sanitary District Act give these districts the power to authorize, contract for, or operate any form of transportation system when they are acting as a Sanitary District. (See Appendix IX, Chapter 161 of the Acts of Assembly, as amended, March 2, 1977.)

^{1/} See Appendix VIII Transportation District Act of 1964, Excerpts.

^{2/} See Appendix XIII Attorney General's Position on Transportation Commissions' Powers.

WHERE DOES THIS LEAVE PARATRANSIT?

In order to have paratransit services, it is necessary for NVTC and the local jurisdictions to cooperate in exercising their collective authority, as stated in the Transportation District Act, Sanitary District Act, and local regulations, and authorize paratransit systems by private operators contract for service, or run the systems themselves.

This is not to say this would not cause conflict with the SCC, WMATA and the taxi operators. The SCC might well institute litigation under the instigation of WMATA or the taxi operators, if they are not involved. One way around this problem would be to have each of the jurisdictions involved authorize jitney and/or demand responsive service and at that point request SCC approval to cross jurisdictional boundaries. This action would make it difficult for the SCC to disapprove it, and relieve NVTC from regulatory control of the operation. NVTC could, however, retain control over routing and fares, which appears to be possible under its enabling legislation.

The other alternative is to request substantive legislative changes in the Motor Carrier Laws to specifically authorize and regulate paratransit service. This would include dial-a-rides, jitneys, and variable routing of buses. In this way the SCC, which has the mechanism established for licensing and regulation could set up standard procedures for such operation.

In addition, the Transportation District Act of 1964 needs to be amended to specifically define what NVTC's powers and responsibilities are in the field. As was stated earlier, there exist hazy

areas of jurisdiction over paratransit activities, which can only lead to agency conflicts.

The probable result of inaction will be actions similar to allowing Sanitary Districts to establish transportation systems. This is merely coming through the back door when the front door has been locked.