



**LAW OFFICES OF  
JOHN A. PILLAR**

680 WASHINGTON ROAD, SUITE B101  
PITTSBURGH, PENNSYLVANIA 15228-1925  
PHONE: (412) 343-0970 FAX: (412) 343-0971  
E MAIL: [japillar@consolidated.net](mailto:japillar@consolidated.net)

September 15, 2010

Re: 88 Transit Lines, Inc. v.  
Mid Mon Valley Transit Authority  
Docket No. C-2009-2116699  
File No. 1987

**RECEIVED**

SEP 15 2010

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

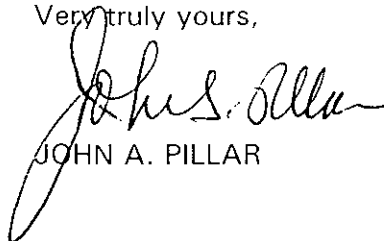
**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

Dear Mr. McNulty:

Enclosed for filing are the original and 9 copies of **Exceptions of Mid Mon Valley Transit Authority to Initial Decision of Administrative Law Judge**, in connection with the above docketed proceeding.

Please acknowledge receipt of the enclosures on the duplicate of this letter of transmittal and return it in the stamped, self-addressed envelope provided.

Very truly yours,



JOHN A. PILLAR

sw

Enclosures

cc: Hon. Mark A. Hoyer, Administrative Law Judge (w/encl.)  
William A. Gray, Esq. (w/encl.)  
Mid Mon Valley Transit Authority (w/encl.)  
David N. Lint, Esq. (w/encl.)

U. S. POSTAL SERVICE CERTIFICATE OF MAILING ENCLOSED

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

---

88 TRANSIT LINES, INC., )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 MID MON VALLEY TRANSIT )  
 AUTHORITY, )  
 )  
 Respondent. )

Docket No. C-2009-211669

**RECEIVED**

SEP 15 2010

---

**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

**EXCEPTIONS OF  
MID MON VALLEY TRANSIT AUTHORITY TO  
INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**

JOHN A. PILLAR  
Attorney for  
MID MON VALLEY TRANSIT AUTHORITY,  
Respondent

John A. Pillar, Esq.  
680 Washington Road, Suite B101  
Pittsburgh, PA 15228  
412-343-0970  
e-mail: [japillar@consolidated.net](mailto:japillar@consolidated.net)

Due Date: September 16, 2010

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

---

88 TRANSIT LINES, INC.,                    )  
  )  
                  Complainant                )  
  )  
                  v.                            )  
  )  
MID MON VALLEY TRANSIT                )  
AUTHORITY,                                )  
  )  
                  Respondent.                )

Docket No. C-2009-211669

**RECEIVED**

SEP 15 2010

---

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**I. STATEMENT OF THE CASE**

By Initial Decision issued August 27, 2010, Administrative Law Judge Mark A. Hoyer sustained the complaint filed by 88 Transit Lines, Inc. (hereinafter "88" Transit) against Mid Mon Valley Transit Authority (hereinafter "MMVTA") and ordered that MMVTA and First Transit, Inc. (hereinafter "First Transit") cease and desist from providing scheduled route service from points in Union Township and the Borough of Finleyville, Washington County, to the City of Pittsburgh, and vice versa. The history of this proceeding is succinctly set forth in Section I of the Initial Decision (hereinafter "ID") of Judge Hoyer and is accepted and adopted for purposes of these Exceptions.

In Section II of the ID, Judge Hoyer makes certain findings of fact which are accepted and adopted by MMVTA for purposes of these Exceptions, except to the extent that additional facts not specifically found by the Administrative Law Judge are referenced in the Exceptions.

MMVTA files the following Exceptions to the ID.

## II. EXCEPTIONS

### Exception No. 1.

Judge Hoyer erred in concluding that MMVTA may not provide regular route service from points in Union Township and the Borough of Finleyville to the City of Pittsburgh, and return, pursuant to its contract with the Washington County Transit Authority, a municipal authority for the County of Washington.

The first defense to the complaint filed by 88 Transit raised by MMVTA at the hearing is that Washington County Transit Authority (hereinafter "WCTA"), a county-wide municipal corporation, contracted with MMVTA to provide scheduled route service within Washington County and, particularly, from points in Union Township and the Borough of Finleyville to the City of Pittsburgh, and return. There is no question that MMVTA, a municipal corporation, has the legal authority to enter into a contract with a service provider, in this case First Transit, to provide scheduled route service from the municipalities within the MMVTA corporate limits to the City of Pittsburgh, and return. The question is whether WCTA may contract with MMVTA to coordinate scheduled route service from and to points in Union Township and the borough of Finleyville which are within Washington County. Judge Hoyer held that it may not and, to this conclusion, MMVTA takes exception.

Under the Public Utility Code, the PUC does not have jurisdiction over service provided by a municipal corporation within its corporate limits. County of Dauphin v. Pa. P.U.C., 159 Pa.Cmwlth.649, 634 A.2d 281 (1993). As such, a municipal corporation may conduct transit and other types of utility services within its defined corporate boundaries without being required to obtain a certificate of public convenience from the PUC. 66 Pa. C.S. § 1102. The Public Utility Code defines municipal corporations to include counties, transit authorities such as WCTA, and other public bodies. 66 Pa. C.S. §§ 1122; 1141; 1171.

WCTA is a municipal corporation as defined in the Municipal Authorities Act of 1945, as amended. As such, it has the legal authority to coordinate mass transportation between points in Washington County, and from points in Washington County to other points in Pennsylvania. Typically an authority, such as WCTA, may provide mass transit service utilizing their own equipment and personnel, or subcontract the work to other service providers. Contracts are generally awarded on the basis of price and quality of service. Passengers are issued trip tickets by the authority to give to the driver in exchange for the trip. Some programs require that the passenger pay for a portion of his ride. The authority establishes various requirements for the contractor, including minimum insurance requirements, vehicle maintenance requirements, vehicle record keeping requirements, emergency equipment requirements, and minimum driver qualifications and behavior standards. The municipal authority may require that all accidents be reported to it and generally forbids the contractor from discriminating against any person on the basis of race, color, creed, ancestry, age or sex. Contractors generally provide all labor and sometimes provide their own equipment. In this case, MMVTA provides the equipment. It is not disputed here that MMVTA coordinates and controls the rates, routes and service provided.

WCTA is a county-wide municipal transit authority. WCTA may conduct, or coordinate through a contractor, mass transportation services between all points in Washington County, and from any point within Washington County to the City of Pittsburgh and return. WCTA entered into a written contract with MMVTA, in effect as its agent, to coordinate transportation from municipalities that are in Washington

County including those not within the corporate boundaries of MMVTA. MMVTA contends that a coordinated transportation service that could be provided by WCTA can be contracted to MMVTA so that it can provide service from areas in Washington County beyond its own corporate limits.

The contract between WCTA and MMVTA provides, in part, as follows:

2. Coordinating Transportation and Planning

\* \* \*

- b. The MMVTA will continue to fix, alter, charge and collect fares, rates and other charges for its facilities at reasonable and uniform rates as long as the services and fees do not conflict with the policies and purposes of the Washington County Transit Authority.
- c. The MMVTA and Washington County Transit Authority may coordinate any additional transportation services mutually agreeable dependent upon available funds as the need arises.

In effect, WCTA has delegated to MMVTA, as its agent, to coordinate transit services to and from Washington County subject to the WCTA's oversight as stated in the agreement.

Under the Restatement of the Law – Agency, and particularly § 2.01, dealing with actual authority, an agent acts with actual authority “when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, \* \* \* that the principal wishes the agent to so act”. In § 2.02 of the Restatement, entitled “Scope of Actual Authority”, the Restatement provides:

- (1) An agent has actual authority to take action designated or implied in the principal's manifestations to the agent and acts necessary or incidental to achieving the principal's objectives, as the agent reasonably understands the principal's manifestations and objectives when the agent determines how to act.

\* \* \*

- (3) An agent's understanding of the principal's objectives is reasonable if it accords with the principal's manifestations and the inferences that a reasonable person in the agent's position would draw from the circumstances creating the agency.

As to capacity to act as principal, § 3.04 of the Restatement of the Law – Agency provides:

- (1) An individual has capacity to act as principal in a relationship of agency as defined in §1.01 if, at the time the agent takes action, the individual would have capacity if acting in person.

MMVTA submits that since WCTA had the capacity to provide service directly or by a contractor to and from Union Township and Finleyville Borough, it could delegate this action to another municipal corporation acting as its agent, here MMVTA. MMVTA in controlling rates, routes and service between Union Township and Finleyville Borough and other points, stands in the shoes of WCTA as its agent. This is similar to the situation that exists in Allegheny County where Port Authority delegates to MMVTA the right to transport passengers within Allegheny County along Route 88 to and from the City of Pittsburgh. 88 Transit does not question the validity of the service MMVTA provides in Allegheny County.

Under its contract with WCTA, MMVTA has been authorized to extend its mass transit coordination to and from other points in Washington County. Since MMVTA has the equipment and management to coordinate such service, the public interest is served by permitting WCTA to delegate the coordination of mass transit to MMVTA. The ridership in Union Township and Finleyville Borough will thereby continue to receive mass transit service coordinated by the agent for the WCTA.

On the basis of the foregoing argument, it is submitted that Judge Hoyer erred in failing to conclude that MMVTA may coordinate service from Union Township and the Borough of Finleyville to the City of Pittsburgh, and return, under its contract with WCTA. This exception should be granted.

**Exception No. 2.**

**Judge Hoyer erred in concluding that the PUC does not have discretionary power to authorize service by a municipal corporation beyond its corporate boundary where the service is clearly in the public interest, is non-discriminatory, and would result in undue hardship if the service were discontinued.**

MMVTA relies upon the case of Borough of Phoenixville v. Pa. P.U.C., 3 Pa.Cmwltth.56, 280 A.2d 471 (1971), for its second defense to the complaint, namely that the PUC may permit a municipal corporation to extend its service beyond its corporate limits where the service is clearly in the public interest, is non-discriminatory, and would result in undue hardship to the residents of Union Township and the Borough of Finleyville if discontinued, particularly since there is no other regular route service currently available. Judge Hoyer cites the following language in the Borough of Phoenixville case for his conclusion:

As soon as a borough holds itself out to render uncertificated extraterritorial service and renders such service, it is within the jurisdiction of the commission to determine whether extension of such service should be granted. In effect, if a municipality decides that it will not apply to the commission for a certificate of public convenience to delineate its utility service area outside its boundaries, then as each new proposed extension is presented to the Commission, the Commission has jurisdiction to determine the extent of the extraterritorial utility service area for the municipality.



Municipal corporations provide various services that are not subject to PUC regulation. In addition to transportation services as previously noted, municipalities also provide water and sewage services within the confines of the municipal corporation boundaries which are beyond Commission regulation.

In the Borough of Phoenixville case, the question presented was “whether the Commission may order a municipality to extend utility service to customers located outside its governmental boundaries, where the municipality, without a certificate of public convenience issued by the Commission, has held itself out to render such service and does render such service to others outside its boundaries”. 280 A.2d at 472. The Court held that the PUC had the power to order extraterritorial service where a municipal corporation holds itself out to render uncertificated extraterritorial service. The Borough of Phoenixville had extended its water and sewer service lines beyond the service area it was permitted to serve as a municipal authority. The Court held that the PUC had jurisdiction to determine whether the extension of such service should be continued, even though the Borough did not seek a certificate of public convenience to extend such service. The Court held that Phoenixville may not unilaterally refuse to continue to supply water and sewer service at points beyond the limits of its territory where such service will not result in undue physical or financial hardship to Phoenixville Borough or to its water and sewage plants. 280 A.2d at 474.

There is no question that the residents of Union Township and Finleyville Borough will be adversely impacted if this complaint is sustained and if MMVTA must discontinue service to passengers along Route 88 who board buses in those municipalities. The service provided by MMVTA in Union Township and Finleyville

Borough does not adversely impact the municipalities which are part of MMVTA. In fact, the municipalities actually benefit from the revenues MMVTA generates from serving Union Township and Finleyville Borough. Moreover, it would be unreasonable to deny the residents of Union Township and Finleyville Borough service which has been provided to them continuously since 1985.

There is no other service available, including service from the Complainant. While Complainant may argue that it holds operating authority from the PUC to conduct scheduled route service along the routes in question, the fact is that 88 Transit did not provide service over the entire route as a common carrier. 88 Transit did not charge its tariff rates and paid no assessment for revenues received by contract from MMVTA except for revenues received from service in Union Township and Finleyville Borough. 88 Transit provided the service under its agreement with MMVTA and was paid from the subsidies MMVTA received from PennDOT, WCTA, the Port Authority, and MMVTA's member municipalities. Moreover, in 2009, 88 Transit placed its operating authority in suspension and has no equipment.

The continuation of service along Route 88, including service to Union Township and Finleyville Borough, is a natural extension of the authorized service of MMVTA. The residents of Union Township and Finleyville Borough are not discriminated against in any way, such as by paying higher rates. The two municipalities have established natural and special locations for the buses to stop, including a large park-and-ride lot located in Union Township directly across the street from the boundary of Carroll Township, which is a member municipality. In County of Dauphin v. Pa. P.U.C., *supra*, the Court held that "the reason for regulating

extraterritorial service is so that the municipality cannot discriminate against users who are outside the corporate limits". 634 A.2d at 282.

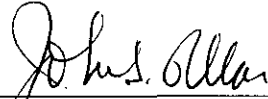
MMVTA submits that the continuation of its service in Union Township and the Borough of Finleyville may be permitted in the Commission's discretion based on the fact that the service is clearly in the public interest, is non-discriminatory, and would result in an undue hardship if discontinued.

Based on the foregoing argument, MMVTA submits that Judge Hoyer erred in concluding that the Commission may not authorize MMVTA to extend its service to the Borough of Finleyville and the Township of Union and this exception should also be granted.

### **III. CONCLUSION**

On the basis of the foregoing argument, MMVTA respectfully requests that Exceptions 1 and 2 be granted, and that the Commission conclude that: (1) WCTA, a municipal corporation, may contract with MMVTA to provide mass transit service within the corporate boundary of WCTA, including Union Township and the Borough of Finleyville; (2) that MMVTA may continue to pick up and discharge passengers in Union Township and Finleyville Borough, Washington County, under MMVTA's contract with WCTA; (3) that the Commission may exercise its discretion to permit extraterritorial service by a municipal corporation which has held itself out to provide such service and which is in the public interest, is non-discriminatory and would

prevent hardship to ridership; and (4) that the complaint of 88 Transit Lines be dismissed.



---

JOHN A. PILLAR  
Attorney for  
MID MON VALLEY TRANSIT AUTHORITY,  
Respondent

Due Date: September 16, 2010

**RECEIVED**

SEP 15 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of the within  
**Exceptions of Mid Mon Valley Transit Authority to Initial Decision of the  
Administrative Law Judge**, upon the following parties as indicated, this 15<sup>th</sup> day  
of September, 2010:

HON. MARK A. HOYER (1 copy via first-class mail)  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Piatt Place, Suite 220  
301 Fifth Avenue  
Pittsburgh, PA 15222

WILLIAM A. GRAY, ESQ. (2 copies via first-class mail)  
Vuono & Gray, LLC  
2310 Grant Building  
310 Grant Street  
Pittsburgh, PA 15219-2382

**RECEIVED**

SEP 15 2010

**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

  
\_\_\_\_\_  
JOHN A. PILLAR

