 KeyCite Yellow Flag - Negative Treatment
Distinguished by [Williams v. Denney](#), Wash., April 22, 1929
141 Wash. 194
Supreme Court of Washington.

INTERNATIONAL MOTOR TRANSIT CO. et al.

v.

CITY OF SEATTLE et al.

No. 19992.

|
Dec. 6, 1926.

Synopsis

Department 1.

Appeal from Superior Court, King County; Jones, Judge.

Suit by the International Motor Transit Company and another against the City of Seattle and others. Judgment for plaintiffs and defendants appeal. Affirmed.

West Headnotes (2)

[1] **Automobiles**

 [License and Registration](#)

Municipal Corporations

 [Concurrent and Conflicting Exercise of Power by State and Municipality](#)

Ordinance for licensing drivers of motor vehicles carrying passengers for hire within corporate limits held proper under state laws. Const. art. 11, § 11; Rem.Comp.Stat. §§ 6312, 6313, 6363 et seq., 8966.

[2 Cases that cite this headnote](#)

[2] **Commerce**

 [Transportation of Passengers](#)

City cannot require licensing of one engaged in carrying passengers for hire by auto stage between points in different states.

Attorneys and Law Firms

*195 **120 Thomas J. L. Kennedy and Ray Dumett, both of Seattle, for appellants.

Guy E. Kelly and Thomas MacMahon, both of Tacoma, for respondents.

Opinion

HOLCOMB, J.

Respondent sued to enjoin the city of Seattle and its officers from enforcing the provisions of sections 103 to 114 inclusive, of the Seattle License Code, Ordinance No. 48022.

A demurrer to the complaint interposed by appellants was overruled, whereupon appellants elected to stand upon their demurrer, and refused to plead further. The trial court thereupon entered judgment permanently enjoining appellants from enforcing or attempting to enforce the provisions of sections 103 to 114 of the ordinance, as against respondents, so long and in so far as respondents are engaged exclusively in carrying passengers for hire by means of motorbusses or auto stages between the city of Seattle and points outside the corporate limits of the city.

Appellants contended that the ordinance is not in conflict with any general laws on the subject, and that its enforcement does not constitute any unlawful interference with interstate commerce.

Respondent International Motor Transit Company is a Washington corporation, engaged in the business of carrying passengers for hire by means of auto stages between Seattle, Wash., and Portland, Or., and respondent Hartman is a driver of one of its auto stages. He had not obtained a 'for hire' driver's license as required by section 103 of the Seattle License Code.

*196 Under the allegations of the complaint, the state had issued a license to respondent Hartman, authorizing him to drive on all highways of the state. The complaint also alleged that respondents are not carrying passengers for hire within the state of Washington, but only between Seattle in this state, and Portland in Oregon.

The sections of the ordinance involved are as follows:
'Sec. 103. It shall be unlawful for any person to drive an automobile or other motor vehicle carrying passengers for hire, within the city of Seattle, without having a valid and

subsisting license so to do, to be known as a 'driver's license' to be obtained from the city comptroller in the manner hereinafter provided.

'Sec. 104. No person shall be issued a driver's license unless he fulfills the following qualifications:

'(a) He must be at least twenty-one (21) years of age.

'(b) He must submit to a medical examination by the commissioner of health and procure from him a certificate showing the applicant free from any infirmity of body or mind which will render him unfit for the safe operation of an automobile, or other motor vehicle, and especially shall such applicant be free from any taint or tendency to epilepsy, vertigo, heart trouble or color blindness.

'(c) He must be able to read and write the English language.

'(d) He must not be addicted to the use of intoxicating liquor or drugs.

'(e) He must be of good moral character.

'(f) He must fill out, upon a blank to be provided for that purpose by the city comptroller, a statement giving his full name, residence address, place of birth, length of time he has resided in the city, citizen or noncitizen, last place of employment, whether he has been previously licensed as a driver and if so, where and whether or not his license has ever been suspended or revoked, and if so, for what cause.

***197** 'He shall give the names and mailing addresses of four (4) persons, not relatives, who have known him for at least two (2) years last past. He shall give his height, weight, color of hair and eyes, and such other information as the city comptroller may deem necessary.

'(g) He must take a practical examination to be given by the superintendent of public utilities (or some one designated by him for that purpose) and procure from him a certificate showing that the applicant is a safe driver of an automobile or other motor vehicle; that he has a good knowledge of the geography of the city and the laws and ordinances relating to the driving ****121** and operating of motor vehicles for hire within the city of Seattle.

'The application and statement must be signed and sworn to by the applicant, and the certificate from the commissioner of

health and the superintendent of public utilities shall be made part of the application.

'The commissioner of health and superintendent of public utilities having examined an applicant for a driver's license, shall certify to the city comptroller the result of such examination, with their recommendation in relation thereto. Any person having failed to pass a satisfactory examination may be re-examined after a reasonable period of time, and if such subsequent examination be satisfactory the applicant may be recommended for a driver's license.

'Sec. 105. When the application for a driver's license, duly signed and sworn to, has been received by the city comptroller, he shall, within thirty (30) days, investigate the statements contained therein, and may obtain such other information concerning the applicant's character, integrity, personal habits, past conduct, and general qualifications, as will enable the city comptroller to determine whether or not the applicant is a suitable person to drive an automobile or other motor vehicle for hire within the city of Seattle.

'Sec. 106. The applicant for a driver's license having passed a satisfactory examination as to his ability to drive a motor vehicle for hire, and having been certified by the commissioner of health that the ***198** applicant is physically and mentally qualified, and having met all other requirements of this ordinance relating to drivers of motor vehicles for hire, may be issued a driver's license of the class recommended by the superintendent of public utilities, which class shall be determined by the applicant's examination.

'Driver's license, 'first class' shall entitle the holder thereof to drive any kind or class of motor vehicles for hire within the city of Seattle.

'Driver's license, 'second class' shall be limited to stages, sight-seeing cars, or other motor vehicles operating over a specified route and having a fixed terminal.

'Driver's license, 'third class' shall be limited to drivers of taxicabs, for hire cars, or other automobiles not operating on fixed routes, and having a passenger capacity of less than seven (7) persons, not including the driver.

'Sec. 107. Any person holding a driver's license of the second or third class, desiring to obtain a license of a different or higher class may apply to the superintendent of public utilities for re-examination, and on being duly certified to the city

comptroller, such person may be issued a license of another class.

‘Sec. 108. Each applicant for a driver's license of the classes heretofore specified, and before such license can be issued, must furnish to the city comptroller two (2) recent photographs of himself of a size and kind so that one graph of himself of a size and kind so that one (1) of these photographs may be easily attached to his license when the same is issued, and an exact duplicate thereof to be filed together with the application, as a permanent record in the office of the city comptroller. One photograph of the licensee shall be attached to the license in such a manner that it cannot be removed and another photograph substituted without detection.

‘Sec. 109. When all of the conditions and requirements herein prescribed have been complied with by the applicant, he shall be furnished with a driver's license, and at the time of the delivery of said license the city comptroller shall furnish the licensee *199 with a suitable folder containing said license and the photograph and signature of the licensee.

‘Each class of driver's license shall be on paper of a different color, and shall have the figures one (1), two (2) or three (3), as the case may be, printed on said license.

‘Sec. 110. All driver's licenses shall expire on January 31st of each year, and it shall be unlawful for any person whose driver's license has expired to drive an automobile or other motor vehicle carrying passengers for hire within the city of Seattle, unless such driver's license has been renewed. Application for renewal shall be made to the city comptroller on blank forms to be provided by that officer, and shall give the applicant's name in full, residence address, business address, and signature. The city comptroller, on presentation of the city treasurer's receipt, shall then renew the license for a period of one year; provided, however, that if a driver's license is not renewed within thirty (30) days from the date of expiration the applicant must obtain from the superintendent of public utilities and from the commissioner of health, the certification and other requirements necessary for an original license; provided, however, that no driver's license shall be renewed after ninety (90) days from date of expiration thereof.

‘Sec. 111. For each original license, two and 50/100 (\$2.50) dollars; for each renewal thereof one (\$1.00) dollar; for reissuing license and folder, in case of loss, destruction or condemnation, one and 50/100 (\$1.50) dollars. No charge shall be made by the commissioner of health for examining

applicants for driver's licenses, nor by the department of public utilities for any written or practical examination given drivers.

‘Sec. 112. When the license folder furnished by the city comptroller is worn out, damaged or otherwise unfit for use, the city comptroller may destroy such folder and the licensee shall be required to buy a new folder and furnish two (2) recent photographs of himself.

‘When a photograph used with the license becomes *200 faded, damaged or otherwise useless for proper identification, the city comptroller may require that the licensee furnish two (2) recent photographs of himself; one of them to be put into the license folder, the other one to be filed with the original application. The faded, damaged, or otherwise useless photograph removed from the license folder shall immediately be destroyed.

‘Sec. 113. In addition to other reasons set forth in this ordinance for revocation of licenses, or for the suspension of the same, a driver's license may be suspended for not less than ten (10) days nor more than sixty (60) days by the police judge for violation of any of the provisions of this ordinance relating to drivers of vehicles carrying passengers for hire, or upon conviction in any court under any law or ordinance relating to speeding, reckless driving, drunkenness, possession or sale of intoxicating liquor, use, sale or possession of narcotic drugs, or for violation of any law or ordinance relating to overcharge for carrying for hire, or for fraud or the commission of an act involving moral turpitude.

‘Any driver of an automobile for hire, whose **122 driver's license has been suspended in police court, must surrender his license for the period of suspension to the city comptroller.

‘Sec. 114. It shall be unlawful for any licensed driver to fail, neglect or refuse to exhibit his license, on request, to any passenger or to any peace officer.’

Appellants contend that power is derived to enact this ordinance from the state Constitution, art. 11, § 11, reading:

‘Any county, city, town, or township, may make and enforce within its limits all such local, police, sanitary, and other

regulations as are not in conflict with general laws.’

And also section 8966, Rem. Comp. Stats., providing that any city of the first class shall have power to ‘lay out, establish, * * * streets, * * * and * * * regulate [and control] the use thereof.’

*201 They also contend that the Motor Vehicle Act (Rem. Comp. Stats. § 6312 et seq.), and the Motor Vehicle Operator's Act (Rem. Comp. Stats. § 6363 et seq.) are not violated by the provisions of this ordinance, and cite our cases of [Allen v. Bellingham](#), 95 Wash. 12, 163 P. 18; [State ex rel. Schafer v. Spokane](#), 109 Wash. 360, 186 P. 864; [In re Sound Transit Co.](#), 119 Wash. 684, 206 P. 931; [Seattle v. Rothweiler](#), 101 Wash. 680, 172 P. 825; [Schoenfeld v. Seattle \(D. C.\)](#) 265 F. 726; [White v. Turner](#), 114 Wash. 405, 195 P. 240, 197 P. 609; [State ex rel. Seattle & Rainier Valley R. Co. v. Superior Court](#), 123 Wash. 116, 212 P. 259.

[1] We have no doubt that under our statutes and the cases above cited the ordinance is not in conflict with the state laws when applied wholly within the city of Seattle, and that it is manifest that the ordinance was so intended. It is intended to apply to ‘for hire’ vehicles as distinguished from auto stages. ‘For hire’ vehicles, as provided in section 6313, Rem. Comp. Stats., are defined to mean all motor vehicles other than automobile stages used for the transportation of persons for which transportation remuneration of any kind is received, either directly or indirectly.

[2] On the question of interference with interstate commerce, the Supreme Court of the United States has very definitely decided the matter.

In [Barrett v. New York](#), 232 U. S. 14, 34 S. Ct. 203, 58 L. Ed. 483, a suit to restrain the enforcement against the Adams Express Company of ordinances of the city of New York upon the ground that, as applied to that company, the ordinance constituted an interference with interstate commerce, and denied to it the equal protection of the laws. The express company had been engaged in interstate commerce for many years, and transacted business in many states; in the city of New York it *202 handled daily about 50,000 interstate shipments, employing 341 wagons and 68 automobiles. It also did a small local business in New York City, and in addition received packages for transportation between that city and such points within the state of New York as were on the

line of the New York, New Haven & Hartford Railway. The interstate business, in the number of packages, comprised 98 per cent. of the total business transacted in New York City, and it was impracticable to effect a separation of local and other intrastate shipments being handled in the same vehicles, and in the same manner that was employed in connection with the interstate business. The ordinance provided for a license fee of \$5 for each vehicle, and 50 cents for each driver. During a strike, the city, through its officers, undertook to enforce the ordinance with respect to all the vehicles and drivers of the company, threatening to arrest unlicensed drivers of unlicensed vehicles, notwithstanding they may have been engaged in interstate commerce, and to remove, if necessary, unlicensed vehicles from the streets. The Supreme Court held that sections 305 and 306 of the New York ordinance were invalid in so far as they required the express company to obtain local licenses for transacting its interstate business, and that the ordinances could not be upheld under the exercise of the police power. Among other things, the court said:

‘The requirements [of the ordinance] cannot be regarded as imposing a fee, or tax, for the use of the streets; if they were such, the question would at once arise as to the validity of the discrimination involved in such an exaction. Nor can they be considered as a regulation in the interests of safety in street traffic. Other ordinances provide for the ‘rules of the road’ to which wagons of express companies, as well as those of other persons, are subject. *203 * * * The right of public control, in requiring such a license, is asserted by virtue of the character of the employment, but, while such a requirement may be proper in the case of local or intrastate business, it cannot be justified as a prerequisite to the conduct of the business that is interstate. * * * It would seem to follow, necessarily, that the annual license fees prescribed by [the ordinance] cannot be exacted, so far as the interstate business is concerned.’

The Supreme Court of the United States, also, in [Buck v. Kuykendall](#), 267 U. S. 308, 45 S. Ct. 324, 69 L. Ed. 623, 38 A. L. R. 286 reversed the decision of this court involving

chapter 111, laws of 1921, requiring common carriers for hire, using state highways by auto vehicles between fixed termini over regular routes, to first obtain a certificate of public convenience and necessity

The court in that case held that the provision of the Washington statute is a regulation, not of the use of its own highways, but of interstate commerce; that its effect upon such commerce is not merely to burden, but to obstruct it; that such state action is forbidden by the commerce clause (Const. U. S. art. 1, § 8, subd. 3).

If the state may not so regulate, as was ****123** held by the last-cited case, certainly the city, an inferior public

corporation, having merely delegated powers from the state, cannot do so.

The judgment is affirmed.

TOLMAN, C. J., and MITCHELL, MAIN, and FULLERTON, JJ., concur.

All Citations


141 Wash. 194, 251 P. 120

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Negative Treatment**Negative Citing References (1)**

The KeyCited document has been negatively referenced by the following events or decisions in other litigation or proceedings:

Treatment	Title	Date	Type	Depth	Headnote(s)
Distinguished by	1. Williams v. Denney MOST NEGATIVE 276 P. 858 , Wash. Department 1. Appeal from Superior Court, King County; Robert M. Jones, Judge. Action by George B. Williams and another against John C. Denney, Director of Public Works of...	Apr. 22, 1929	Case		1 P.

Citing References (30)

Treatment	Title	Date	Type	Depth	Headnote(s)
Distinguished by NEGATIVE	1. Williams v. Denney 276 P. 858, 862 , Wash. Department 1. Appeal from Superior Court, King County; Robert M. Jones, Judge. Action by George B. Williams and another against John C. Denney, Director of Public Works of...	Apr. 22, 1929	Case		1 P.
Cited by	2. Petition for Writ of Certiorari Sullivan v. State of North Carolina 2010 WL 4382025, *4382025+ , U.S. (Appellate Petition, Motion and Filing)	Sep. 16, 2010	Petition		1 2 P.
Cited by	3. Brief Scott D. RICHARDSON, Plaintiff -- Appellee, v. Darren MARSACK et. al, Defendant -- Appellant. 2017 WL 4513361, *1+ , 5th Cir. (Appellate Brief)	Oct. 03, 2017	Brief		—
Cited by	4. Scott Damon Richardson Appellate Brief Scott D. RICHARDSON, Plaintiff - Appellee, v. Darren MARSACK et. al, Defendant - Appellant. 2017 WL 6447569, *1+ , 5th Cir. (Appellate Brief)	2017	Brief		—
Cited by	5. Appellant's or Petitioner's Informal Brief Djehuty MA'AT-RA, Appellant/Petitioner, v. Ben BATEMAN, officer Xzavia Atkins, officer Robert Morris, tow truck co. owner, Appellee/Respondent. 2006 WL 2982067, *2982067 , 9th Cir. (Appellate Brief)	Apr. 05, 2006	Brief		—
Cited by	6. Brief by Appellant Monica Chavez Barber Monica Chavez BARBER, v. STATE OF ALABAMA. 2010 WL 4313567, *4313567 , Ala.Crim.App. (Appellate Brief)	Sep. 17, 2010	Brief		—
Cited by	7. All Rights Writ Percival Charles FERRIS, Jr., Petitioner, v. STATE OF FLORIDA, Respondent. 2016 WL 3466995, *1 , Fla. (Appellate Brief)	June 17, 2016	Brief		—
Cited by	8. Brief in Support of Notice for Dismissal for Lack of Jurisdiction STATE OF MAINE, Plaintiff, v. Daniel H. PELLETIER Jr., Defendant. 2015 WL 9899914, *1 , Me. (Appellate Brief)	May 27, 2015	Brief		—
Cited by	9. Brief for Appellant CITY OF EAST CLEVELAND, Plaintiff, v. DONALD RIVERS GOOLSBY, Defendant-Appellant. 2012 WL 8134186, *1 , Ohio App. 8 Dist. (Appellate Brief)	May 17, 2012	Brief		—
Cited by	10. Brief of Appellant COMMONWEALTH OF PENNSYLVANIA, Appellee, v. John M. DILIBERTO, Appellant. 2016 WL 8606907, *1+ , Pa.Super. (Appellate Brief)	Sep. 26, 2016	Brief		—
Cited by	11. Brief for Appellant COMMONWEALTH OF PENNSYLVANIA, Appellee, v. Joseph Ronald GREENBERG, JR., Appellant. 2012 WL 7985515, *1+ , Pa.Super. (Appellate Brief)	Oct. 02, 2012	Brief		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	12. Reply Brief of Appellant COMMONWEALTH OF PENNSYLVANIA, v. David WATTIE. 2008 WL 6109898, *6109898+, Pa.Super. (Appellate Brief)	June 13, 2008	Brief		—
Cited by	13. Brief for Appellant & Rep Record COMMONWEALTH OF PENNSYLVANIA, v. Kimberly S. MINDEK. 2005 WL 3968602, *3968602, Pa.Super. (Appellate Brief)	Aug. 08, 2005	Brief		—
Cited by	14. Brief of Geoffrey Mitchell Bengtson COUNTY OF PIERCE, Honorable Robert Wing-Respondent Julia Gehring-Respondent, v. Geoffrey Mitchell BENGTON, Defendant-Appellant. 2006 WL 6140921, *6140921, Wis.App. III Dist. (Appellate Brief)	Nov. 21, 2006	Brief		—
Cited by	15. Appellant's Brief FOND DU LAC COUNTY, Plaintiff-Respondent, v. Kevin C. DERKSEN, Respondent-Appellant. 2001 WL 34357488, *34357488+, Wis.App. II Dist. (Appellate Brief)	Oct. 14, 2001	Brief		—
Cited by	16. Complaint For Violations of Civil Rights, Violations of United States Constitutional Rights, Denial of Due Process of Law, Oppression Resulting from C... Jerry VIERRA, Plaintiff, v. Cochise COUNTY, State of Arizona, Officer B. W. Berry as Agent of Cochise County Sheriffs Department, and B. W. Berry, Ind... 2006 WL 4028409, *4028409, D.Ariz. (Trial Pleading)	Dec. 18, 2006	Petition		—
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Cited by	18. Plaintiff's Answer to Defendants Mt Pleasant City Corp., Jim Wilberg Kay Larsen, Chad Wooley, Ivo Ray Peterson Motion for Judgement on Pleadings Philip-james: ROBERTS, Plaintiff, v. Kevin BRADSHAW Et al. 2005 WL 1989186, *1989186, D.Utah (Trial Pleading)	May 05, 2005	Petition		1 2 P.
Cited by	19. Memorandum in Support of Complaint We The People Noble Asad Hajur Bey Moorish National Preamble Citizen Of The United States General Governmant Plaintiff, v. Officer MIKESELL et. al., D... 2003 WL 23774762, *23774762, M.D.Fla. (Trial Motion, Memorandum and Affidavit)	July 21, 2003	Motion		—

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Cited by	20. Memorandum of Points and Authorities in Support of Notice of Removal and Petition to Remove PEOPLE OF THE STATE OF FLORIDA, Plaintiff, v. Quentin Izel BESSENT Sovereign Accused. 2000 WL 34578617, *34578617, M.D.Fla. (Trial Motion, Memorandum and Affidavit)	May 08, 2000	Motion		—
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Mentioned by	22. Towns v. Sioux City 241 N.W. 658, 661, Iowa Appeal from District Court, Woodbury County; Robt. H. Munger, Judge. An action in equity to enjoin the appellant defendant, City of Sioux City, from enforcing an ordinance which...	Mar. 08, 1932	Case		1 P.
—	23. State regulation of carriers by motor vehicle as affected by interstate commerce clause 49 A.L.R. 1203 This annotation is supplementary to the annotations in 36 A.L.R. 1110; 38 A.L.R. 291; and 47 A.L.R. 230. Since the last annotation on this question, the Supreme Court of the United...	1927	ALR	—	1 2 P.
—	24. Licensing tax on forwarding or local agency rendering services incidental to interstate shipments 34 A.L.R. 912 This annotation is supplemental to one on the same subject in 27 A.L.R. 1139, to which reference should be made for the holdings of the earlier cases. There seems to have been no...	1925	ALR	—	1 P.
—	25. McQuillin The Law of Municipal Corporations s 21:32, § 21:32. Ordinance or statute as superseding the other It is a general requisite to the validity of an ordinance that it conform to, and not violate, general statutes. Consistently, a general statute repeals an earlier ordinance to...	2019	Other Secondary Source	—	—
—	26. McQuillin The Law of Municipal Corporations s 24:56, § 24:56. Requisites for validity—Conformity or conflict with state law The general rule that ordinances must conform, and not conflict, with the constitution, general laws, and public policy of the state is fully applicable, of course, to police...	2019	Other Secondary Source	—	—

Treatment	Title	Date	Type	Depth	Headnote(s)
—	<p>27. McQuillin The Law of Municipal Corporations s 24:678, § 24:678. State law and regulation</p> <p>The rule that ordinances must conform to, and not conflict with, governing state statutes and policy in order to be valid is applicable with respect to the regulation of vehicles...</p>	2019	Other Secondary Source	—	<p>1</p> <p>P.</p>
—	<p>28. McQuillin The Law of Municipal Corporations s 26:170, § 26:170. Generally</p> <p>Municipal corporations generally have power, subject to the terms and conditions of franchises or franchise laws, to license and to impose a license fee or tax on buses or jitneys...</p>	2019	Other Secondary Source	—	<p>1</p> <p>P.</p>
—	<p>29. Ordinance Law Annotations Streetcars and Buses s 22, § 22. Licensing of drivers</p> <p>Ordinance Law Annotations Streetcars and Buses</p> <p>An ordinance requiring a motor bus chauffeur to obtain a city license to operate within the city does not vest judicial power in executive officers of the city, since the...</p>	2019	Other Secondary Source	—	<p>1</p> <p>P.</p>
—	<p>30. CJS Motor Vehicles s 7, § 7. Automobile for hire</p> <p>CJS Motor Vehicles</p> <p>"Automobiles for hire" have been defined by statute as all motor vehicles, other than automobile stages, used for the transportation of persons for compensation. The term "motor..."</p>	2019	Other Secondary Source	—	<p>1</p> <p>P.</p>

Filings

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History

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