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Supreme Court of Appeals
Richmond, Va.

Record No. 5132

In the Supreme Court of Appeals of Virginia at Richmond

CAROLINA COACH COMPANY

v.

CITY OF NORFOLK, ET AL.

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5132

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 13th day of January, 1960.

CAROLINA COACH COMPANY, Appellant,

against

CITY OF NORFOLK, ET AL., Appellees.

From the Circuit Court of the City of Norfolk

Upon the petition of Carolina Coach Company, a corporation, an appeal and *supersedeas* is awarded it from a decree entered by the Circuit Court of the City of Norfolk, on the 28th day of July, 1959, in a certain proceeding then therein depending wherein the City of Norfolk was plaintiff and the petitioner was defendant.

And it appearing from the certificate of the clerk of the said court that a suspending and *supersedeas* bond in the penalty of twenty thousand dollars, conditioned according to law has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, no additional bond is required.

RECORD

* * * * *

PETITION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF.

To the Honorable Clyde H. Jacob, Judge of the said Court:

Your complainant, City of Norfolk, a municipal corporation of the Commonwealth of Virginia, hereinafter referred to as "City," respectfully represents the following:

1. The jurisdiction of the Court is invoked under Title 8, Chapter 25, Code of Virginia, 1950, as amended (hereinafter referred to as "Code of Virginia"), Sections 8-578 to 8-585, inclusive.

2. Section 124 of the Constitution of Virginia, 1902, as amended, and Section 15-774 of the Code of Virginia both provide that "no street railway * * * nor any other corporation * * * engaged in these or like enterprises, shall be permitted to use the streets * * * of a city * * * without the previous consent of the corporate authorities of such city * * *"; and Section 15-736 of the Code of Virginia provides that "any person or corporation that shall undertake to occupy or use any of the streets * * * in a manner not permitted to the general public, without having first legally obtained the consent thereto of the city council or a franchise therefor, shall be guilty of a misdemeanor * * *"

3. The charter of the City (Va. Acts 1918, c. 34, p. 31 et seq., as amended) confers upon the City the power "to regulate the services to be rendered and rates to be charged by busses * * * and other vehicles for the carrying of passengers" (Section 2 (11)) and said charter further provides that "no public utility franchise, privilege, lease or
page 2 } right of any kind to use any public property or easement of any description * * * shall be granted
except by ordinance" (Section 103).

4. Chapter 26 of the Norfolk City Code of 1950, as amended (hereinafter referred to as "Norfolk City Code"), provides that "the operation of motor bus passenger transportation for hire * * * in the city shall be subject to the conditions, regulations and restrictions set forth in [that] chapter" (Section 26-1), and, further, that "the operation of motor buses under the provisions of [that] chapter shall be along such streets of the city as are * * * designated by the council" (Section 26-4).

5. By ordinance adopted by City Council on December 19, 1944, effective December 29, 1944, Virginia Transit Company, a Virginia corporation (hereinafter referred to as "Transit Company") was granted the exclusive right and privilege to operate motor buses for the transportation of passengers for hire in the City, and Transit Company has continuously rendered intracity bus service over certain streets of the City since December 29, 1944, as duly authorized, from time to time, by City Council; and Transit Company has fulfilled all legal obligations and requirements of the City.

6. The defendant Carolina Coach Company (hereinafter referred to as "Carolina") is a Virginia corporation with its principal office in the City of Richmond, Virginia.

7. Prior to January 1, 1959, Carolina operated certain motor bus lines for the transportation of passengers for hire over certain streets and highways in Princess Anne County, Virginia, pursuant to certain certificates of public convenience and necessity issued by the State Corporation Commission of Virginia, to the Norfolk Southern Bus Line and later transferred to Carolina under the following certificates dated May 6, 1954, and numbered: P-1981, P-1982, P-1983, P-1986, P-1991, P-1992 and P-1995. Carolina also holds and formerly operated under similar certificates numbered P-1985, P-1987 and P-1989, but to the best of your petitioner's belief and knowledge, Carolina entirely abandoned such routes following a decree of your Honor's Court on March 31, 1955, enjoining and restraining Carolina from transporting passengers between points within the then corporate limits of the City of Norfolk. Certificates numbered P-1981, P-1991, P-1992 and P-1995 were also involved in the aforesaid proceedings of page 3 } 1955, and Carolina was similarly enjoined and restrained from operating along such lines within the corporate limits as of the date of that decree. Carolina has, however, since January 1, 1959, continued to transport passengers between points along such routes which are within the corporate limits as extended by annexation effective at Midnight, December 31, 1958. Copies of said certificates, wherein the routes are described, are attached to the City's petition and marked Exhibits 1-10, inclusive, and the locations of such routes in that portion of Princess Anne County which was annexed by the City at Midnight, December 31, 1958 are shown on the map attached to the City's petition marked Exhibit 16. While Carolina also holds certificates numbered P-1984, P-1988, P-1990, P-1993 and P-1994 from the State Corporation Commission (copies of which are attached to the City's petition and marked Exhibits 11-15, inclusive), they are not applicable to these proceedings because P-1988, P-1990,

P-1993 and P-1994 are not within the Annexed Area and certificate P-1984 is for sightseeing service.

8. Effective at Midnight, December 31, 1958, the corporate limits of the City were extended in annexation proceedings by a decree entered by the Circuit Court of Princess Anne County on April 1, 1957, as amended by the Supreme Court of Appeals of Virginia (200 Va. 105) to include an area formerly a part of the Kempsville Magisterial District of Princess Anne County (which area is hereinafter referred to as "Annexed Area") and the streets and highways in the Annexed Area then became the streets of the City.

9. On or before May 29, 1956, Carolina knew of the proposed annexation of a portion of Princess Anne County by the City and that such annexation would "Deprive" Carolina of "its present rights under the State Corporation Commission's franchises" (Exhibit 17, attached to the City's petition) and Carolina was notified by the City on July 2, 1956 (Exhibit 18, attached to the City's petition), and again on January 2, 1959 (Exhibit 19, attached to the City's petition), that Carolina would have to discontinue its operations within the Annexed Area. Carolina has refused to do so; but on the contrary, since January 1, 1959, Carolina has operated on an intracity basis within the Annexed Area, picking up and discharging passengers within the present corporate limits of the City, claiming that it has the right to do so by virtue of the aforesaid certificates issued to Carolina by the State Corporation Commission of Virginia prior to the annexation
page 4 } of such area by the City.

10. On January 1, 1959, the Transit Company, pursuant to its recognized duty so to do, extended its services into the Annexed Area over three routes agreed upon by the Traffic Engineer of the City of Norfolk and said three routes were established on a temporary basis by the Norfolk City Council on January 6, 1959 (Exhibit 20, attached to City's petition). After a trial of these routes and one change therein, on March 3, 1959 (Exhibit 21, attached to City's petition), said routes were determined to provide satisfactory service and were established on a permanent basis by Ordinance of the Norfolk City Council adopted March 17, 1959 (Exhibit 22, attached to City's petition).

11. Carolina is unable to give adequate City-wide bus service under its certificates from the State Corporation Commission of Virginia because such certificates do not permit City-wide service.

12. The continuance of Carolina's intracity operations over the streets of the City within the Annexed Area without authority from the City is unlawful under Section 124 of the

constitution of Virginia, Sections 15-774 and 15-736 of the Code of Virginia, Sections 2 (11) and 103 of the Charter of the City of Norfolk and the provisions of Chapter 26 of the Norfolk City Code.

13. Carolina has no lawful right to continue its intracity operations over the streets of the City within the Annexed Area under the aforesaid certificates issued to Carolina by the State Corporation Commission of Virginia prior to annexation because such certificates do not confer "any proprietary or property rights in the use of the public highways (Va. Code 1950, §56-337) and because "* * * nothing contained in [the Motor Vehicle Carrier Laws of Virginia] shall be construed to mean that the [State Corporation] Commission can issue any such certificate authorizing intracity transportation" (Va. Code 1950, §56-273 (k)).

14. The City has the sole authority to grant to Carolina, or any other carrier, the right to use the streets and highways within its corporate limits for the intracity transportation of passengers for hire, and upon the extension of its corporate limits to include the Annexed Area any rights Carolina may have had under its certificates of public convenience and necessity from the State Corporation Commission of Virginia to take on and discharge passengers upon its bus lines over the streets and highways within the Annexed Area were terminated as to intracity passengers.

page 5 } 15. On March 17, 1959, the City Council adopted a Resolution objecting to the aforesaid unlawful intracity passenger bus operations over the streets of the City by Carolina and authorizing the City Attorney to institute legal proceedings for the purpose of compelling Carolina to discontinue the same (Exhibit 23, attached to City's petition).

16. An actual controversy exists between the City and Carolina as to Carolina's right to continue intracity operations within the Annexed Area and there is accordingly an actual antagonistic assertion and denial of right between the City and Carolina.

WHEREFORE, your complainant prays that this Court will adjudge that Carolina Coach Company has no authority to take on and discharge intracity passengers within the present corporate limits of the City unless and until it is granted such authority by the Council of the City of Norfolk; that this Court will enjoin the Carolina Coach Company from conducting any intracity operation whereby it picks up and discharges intracity passengers for compensation within the present corporate limits of the City of Norfolk; and that your complainant may have such other and further relief in the

premises as the nature of its case may require or to equity shall seem meet.

And it will ever pray, etc.

CITY OF NORFOLK
By LEONARD H. DAVIS
City Attorney

VIRGIL S. GORE, JR.
Assistant City Attorney.
Room 312, City Hall Building
Norfolk, Virginia.

Filed in the Clerk's Office the 17th day of March, 1959.

Teste:

W. A. HANCKEL, Clerk.

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page 5-EE }

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EXHIBIT #17.

CAROLINA COACH COMPANY
1201 South Blount Street
Raleigh, N. C.

Office of the President

May 29, 1956.

Mr. Thomas F. Maxwell, City Manager
City of Norfolk
Norfolk, Virginia

Dear Mr. Maxwell:

I am writing to explain the position of Carolina Coach Company as it would be affected by the proposed annexation in the City of Norfolk. If the City should make the decision to deprive our company of its present rights under the State Corporation Commission's franchises, a serious situation

would confront us and would unquestionably influence our operations in and out of Norfolk. I would like to submit to you some information pertaining to our company's operations and hope that you will give due consideration in coming to your conclusions as to the rights of bus companies operating in and out of Norfolk, when the annexation matter comes to a head.

Carolina Coach Company has been operating into Norfolk for the past thirty years, and during that time has brought a great many people into your City. We render unusual service and we feel that this should be given every consideration in your deliberations. On an annual basis we handle approximately two million passengers in and out of Norfolk, and this means a great deal to your City. We operate 84 round trip schedules around the clock, and furnish commuter service into Norfolk from such points as Franklin and Suffolk, Virginia, on the west, as well as from Surry, Smithfield and intermediate points on the north, and numerous other schedules from the eastern shore of Virginia into your City. We also have excellent service by two routes from eastern North Carolina cities such as Elizabeth City, Edenton, Hertford, Windsor and the like; and as you well know, this latter area does all of its trading in Norfolk rather than in other sections of the state of North Carolina. This has been the case for many years.

We also have the very best service from Little Creek into Norfolk as well as from Virginia Beach, Oceana and other points in that area and other sections of Princess Anne County. All in all, our short-haul business into Norfolk, bringing people daily into your City, is very complete and would be greatly affected by any change in your attitude toward our company.

page 5-FF } In addition to the above, of course we have through service interstate from New York, Philadelphia, Wilmington, Baltimore and Washington on the north, and from all southern cities and from the west, including Texas, Oklahoma, Chicago and other points. It would make this letter entirely too long if I attempted to outline all the different points which enjoy our service. As you probably know, we are a large segment of the National Trailways Bus System; in fact, I happen to be Chairman of the Board of that organization as well as president of our own company.

In order to handle all of this business, Carolina Coach Company has invested a large sum of money in modern, uptodate stations in towns adjoining the Norfolk area, as well as in other cities. This has been done chiefly for the benefit of our

commuter passengers so that they would be given proper facilities in their daily travels. We have also purchased several other bus lines coming into Norfolk and our total investment, which may be regarded as contingent on Norfolk's business, amounts to $2,522,631, which I think you will recognize is a sizable sum. If we were to be deprived of the lines which now operate outside the City of Norfolk but which would be in the proposed annexation area, the loss of revenue would be a serious matter to our company and would unquestionably result in a reduction of a number of our schedules now enjoyed by your citizens and those living outside of Norfolk but entering that City each day. This loss of revenue would be in the neighborhood of at least $75,000 a year.

In your City Council deliberations I hope you will give serious consideration to this situation and not take the same position adopted in the previous annexation procedure. I feel sure that you are well aware that cities are much concerned with their public transportation, particularly that segment which brings people from the outside in and gives city dwellers the proper service in reverse. The bus lines have far more frequent service than that renderd by competitive transportation companies.

In addition to the passenger angle, bus lines have during the past ten years developed a very sizable light express business which has been most helpful to the merchants in the cities affected. In the case of Norfolk this growing business would be much curtailed if our schedules were reduced, and it would prevent your merchants from having the frequent and fast service for their package express which they now enjoy.

In view of all the factors submitted above, we would like very much to have a conference with you and your City Council if you so desire. We will be only too glad
page 5-GG } to meet with you and discuss this matter further if you will let us know when it is convenient.

Very truly yours,

CAROLINA COACH COMPANY
R. C. HOFFMAN, JR.
President.

RCH GW

page 5-HH }

* * * * *

EXHIBIT #18.

CARBON COPY.

Transportation
Buses
Carolina Coach Co.

July 2, 1956.

Mr. R. C. Hoffman, Jr.
President
Carolina Coach Company
1201 South Blount Street
Raleigh, North Carolina

Dear Mr. Hoffman:

In view of the attached copy of communication from the City Attorney I do not see how the City could possibly accede to the request contained in your letter of May 29 unless the Virginia Transit Company consented thereto. I suggest that you contact the Virginia Transit Company to determine their position in the matter, and if they are willing to consent to your request, I will be glad to pursue the matter further. This has been discussed with the City Council and they are in agreement that we cannot act favorably on your request without the consent of the Virginia Transit Company.

If under the circumstances you still desire a conference with Council, I will be glad to arrange for you to attend one of our informal sessions on Monday morning upon notification of the date you would like to appear.

Sincerely yours,

THOMAS F. MAXWELL
City Manager.

TFM:mc

enclosure

Mailed Jul 1, 1956.

page 5-II } (Seal)

CITY OF NORFOLK
Virginia

June 28, 1956.

Mr. T. F. Maxwell
City Manager

Dear Sir:

Replying to your letter of June 15, 1956 to which was attached the letter of Carolina Coach Company pertaining to its operations, I advise as follows:

As I understand the letter of Carolina Coach Company, that Company wishes the City to permit it to continue to operate intracity motor bus passenger transportation for hire in any area of Princess Anne County in which it now operates which is annexed by the City. Stated another way, after annexation by the City of any area of Princess Anne County in which Carolina Coach Company now operates, Carolina Coach Company wishes the City to permit it to continue to pick up passengers in such area and discharge them in such area or in another section of the City and to pick up passengers in another section of the City and discharge them in such area.

Chapter 26 of the City Code regulates motor bus passenger transportation for hire in the City. Section 26-12 of said Code provides, among other things, that any company operating under the provisions of said chapter shall pay to the City for the use of its streets 5% of the gross revenue from its bus operations in the City which payment shall be in lieu of City license taxes.

Virginia Transit Company is now the only company operating motor bus passenger transportation for hire in the City under the provisions of said chapter and I am advised that it makes its 5% of gross revenue payments to the City monthly.

Said Section 26-12 provides further that in the event, during the continuance of the operation of buses under said chapter, the City should, without the consent of any company operating thereunder, issue license for or authorize the operation of any other motor buses or other motor vehicles in like service, for the transportation of passengers for hire, then the company operating thereunder, upon written notice to the City of its objection thereto, shall have the right to cease paying the 5% of its gross revenue to the City during such time as such other motor buses or other motor vehicles in like

service are licensed or are authorized and are operated, and the company operating thereunder shall have the right to discontinue the whole operation conducted by it after giving to the City 6 months' notice of its purpose so to do.

page 5-JJ } Therefore, the City cannot authorize Carolina Coach Company to operate intracity motor bus passenger transportation for hire, unless Virginia Transit Company consents to such operation, without giving to Virginia Transit Company the right to cease its payments of 5% of its gross revenue and the right to discontinue its whole operation.

Yours very truly,

LEONARD H. DAVIS
City Attorney.

LHD/vcs

File returned herewith.

page 5-KK } EXHIBIT #19.

(Draft of letter—
Mailed as drafted)

COPY.

January 2, 1959.

Transportation
Buses
Carolina Coach Co.

Carolina Coach Company
119 E. Plume Street
Norfolk, Virginia

Attention: Mr. L. C. Hansborough,
Supt.

Gentlemen:

I am advised that you are operating on an intracity basis in that you are picking up passengers within the limits of the City of Norfolk, as they existed prior to Midnight, December 31, 1958 and discharging such passengers in the area of Prin-

cess Anne County which became a part of the City of Norfolk at Midnight, December 31, 1958, and in that you are picking up passengers in said former area of Princess Anne County and discharging them within said former limits of the City of Norfolk. With the exception hereinafter mentioned, the City of Norfolk will not permit such intracity operations and they must cease immediately.

The exception is the bus which transports school children to and from Sacred Heart Catholic School, about which the City Attorney wrote to Captain Edmund G. Conrad under date of December 23, 1958, a copy of which letter was sent to Mr. L. C. Hansborough.

Very truly yours,

THOMAS F. MAXWELL
City Manager.

TFM/dw

cc—Mr. W. G. Womack
Vice President and General Manager
Virginia Transit Company
509 East 18th Street
Norfolk, Virginia

Mailed Jan. 2, 1958.

page 5-LL } EXHIBIT #20.

THE COUNCIL

Seal CITY OF NORFOLK
VIRGINIA

January 6, 1959.

21
Transportation
Virginia Transit Co.
Bus Service—Council .....

To the Honorable Council
City of Norfolk, Virginia

Gentlemen:

After several months of study and a number of conferences with officials of the Virginia Transit Company, the Director of Public Works has submitted a recommendation for bus routes to serve the area of Princess Anne County, which was annexed January 1, 1959, and advises that the Virginia Transit Company approves the proposed routes. The Director's recommendations are as follows:

I. LITTLE CREEK

There is a need for transit service along Little Creek Road, between Tidewater Drive and the Little Creek Amphibious Base. This route should also continue to the downtown section. It is proposed to extend the Willard Park route from its present terminal at Tidewater Drive and Stanley Street to Little Creek Road and thence eastwardly to the Amphibious Base. This would furnish transportation from the Amphibious Base to a major shopping center and also give a transfer connection to Granby Street and Hampton Boulevard. When this change in the Willard route is made it would mean that the Willard Park line would become a major bus line serving a large portion of the City and offering more frequent service than at present. The new route is as follows:

BEGINNING AT CITY HALL AVENUE AND MONTICELLO AVENUE, THENCE ALONG CITY HALL AVENUE TO BANK STREET TO MONTICELLO AVENUE TO VIRGINIA BEACH BOULEVARD TO GRANBY STREET TO 26TH STREET TO LAFAYETTE BOULEVARD TO NORWAY PLACE TO ALSACE AVENUE TO DUNKIRK AVENUE TO CROMWELL ROAD TO TIDEWATER DRIVE TO WAUKESHA AVENUE TO SANGAMON AVENUE TO MUSKOGEE AVENUE TO TIDEWATER DRIVE TO LITTLE CREEK ROAD TO SHORE DRIVE AND INTO THE NAVAL AMPHIBIOUS BASE RETURNING VIA THE SAME ROUTE TO GRANBY STREET TO CITY HALL AVENUE TO MONTICELLO AVENUE, THE POINT OF BEGINNING.

II. LANSDALE

At the moment Trailway Bus Company is offering service along Kempsville Road principally to the Municipal Hospital and the residential area east of the Lansdale traffic circle. It

is proposed to extend the present Lansdale page 5-MM } route to serve this area.

"BEGINNING AT ATLANTIC STREET AND OVER ITS PRESENT ROUTE TO LANSDALE TRAFFIC CIRCLE, THENCE VIA KEMPSVILLE ROAD TO A TURN AROUND POINT AT THE MUNICIPAL HOSPITAL. RETURNING VIA KEMPSVILLE ROAD TO THE MILITARY HIGHWAY TO CARNARVON DRIVE TO ELTHAM ROAD TO RHONDA ROAD TO ALMEDA ROAD TO CARNARVON DRIVE AND OVER ITS PRESENT ROUTE TO THE POINT OF BEGINNING AT CITY HALL AVENUE AND ATLANTIC STREET.

"The extension of the existing Lansdale route is necessary since the present Trialways service will be discontinued in January 1, 1959.

"III. VIRGINIA BEACH BOULEVARD

"This will be a completely new line offering service along the Virginia Beach Boulevard as far east as Davis Corner, the new City limit as of Januuary 1, 1959. The route will be as follows:

"BEGINNING AT PLUME AND ATLANTIC STREETS VIA PLUME STREET TO BANK STREET TO CITY HALL AVENUE TO TIDEWATER DRIVE TO VIRGINIA BEACH BOULEVARD TO DAVIS CORNER RETURNING VIA VIRGINIA BEACH BOULEVARD TO MONTICELLO AVENUE TO CITY HALL AVENUE TO ATLANTIC STREET TO PLUME STREET THE POINT OF BEGINNING.

"While the Virginia Beach Boulevard underpass is under construction the line will have to detour along Brambleton and Park Avenues. On certain trips in the morning this route would be extended to Glenrock via Kempsville Road to Hoggard Road to Clark Street to Glenrock Road to Virginia Beach Boulevard.

"Since the termini of all these lines are in the Princess Anne County area, zone fare points in all cases would be established at the present City limits thus, the fare from downtown to any point in the Princess Anne County annexation territory would be twenty-five cents. This would conform to the existing fare and zone which are in effect on the Granby-Cottage line route at the East Ocean View line. The

present fare on Trailways bus furnishing service into Princess Anne County is higher and without transfer privilege.

"It is recommended that this service be established on a temporary basis. We have requests from other section which do not have service at the moment, but further studies will have to be made before any new routes can be established."

I am in agreement with the Director's recommendation that the foregoing routes be established on a temporary basis.

Respectfully submitted,

THOMAS F. MAXWELL
City Manager.

MOTION—Recommended bus routes established on a temporary basis.

ADOPTED:
January 6, 1959
Ayes 7 Nays —

THE COUNCIL

LOUIS S. HUDGINS
Clerk
By MARY M. RANDOLPH
Deputy City Clerk

page 5-NN } EXHIBIT #21.

Seal CITY OF NORFOLK
VIRGINIA

March 4, 1959.

14

To the Honorable Council
City of Norfolk, Virginia

Gentlemen:

On January 6, 1959, Council approved the establishment on a temporary basis certain bus routes to serve the area of Princess Anne County, which was annexed January 1, 1959. Among those approved was the following route for the Lansdale bus:

Beginning at Atlantic Street and over its present route to Lansdale Traffic Circle, thence via Kempsville Road to a turn around point at the Municipal Hospital. Returning via Kempsville Road to the Military Highway to Carnarvon Drive to Eltham Road to Rhonda Road to Almeda Road to Carnarvon Drive and over its present route to the point of beginning at City Hall Avenue and Atlantic Street.

Now that the crossing of Kilmer Lane over the Norfolk and Southern Railway tracks has been completed, the Director of Public Works recommends the routing of the Lansdale bus, as follows:

Outbound: Along its present route via Princess Anne Road to Kempsville Road, The Welfare Center, returning along Kempsville Road, Military Highway, Carnarvon Drive, Eltham Street, Almeda Avenue, Kilmer Lane to Princess Anne Road and via its existing route to the point of beginning.

I concur in the recommendation of the Director of Public Works that the new route be established on a temporary basis.

Respectfully submitted,

THOMAS F. MAXWELL
City Manager.

MOTION—Recommended bus routes established on a temporary basis.

ADOPTED:
March 3, 1959
Ayes 6 Nays —

THE COUNCIL

LOUIS S. HUDGINS, Clerk
By MARY M. RANDOLPH
Deputy City Clerk.

page 5-00 } EXHIBIT #22.

ORDINANCE NO. 19,819.

AN ORDINANCE DESIGNATING ROUTES FOR THE OPERATION OF THE LITTLE CREEK, LANSDALE

AND VIRGINIA BEACH BOULEVARD BUS LINES, PROVIDING THAT THE ROUTE DESIGNATED FOR THE OPERATION OF THE LITTLE CREEK BUS LINE SHALL TAKE THE PLACE OF AND SUPERSEDE THE ROUTE HERETOFORE DESIGNATED FOR THE WILLARD PARK BUS LINE, AND PROVIDING THAT THE ROUTE DESIGNATED FOR THE OPERATION OF THE LANSDALE BUS LINE SHALL SUPERSEDE THE ROUTE HERETOFORE DESIGNATED THEREFOR.

WHEREAS, by motion adopted January 6, 1959, the Council designated, on a temporary basis, the routes for the Little Creek, Lansdale and Virginia Beach Boulevard bus lines; and

WHEREAS, after a trial of said routes, the Council, by motion adopted March 3, 1959, made a change in and redesignated, on a temporary basis, the route for said Lansdale bus line; and

WHEREAS, after a further trial thereof, the routes for said Little Creek, Lansdale and Virginia Beach Boulevard bus lines, as hereinafter set forth, have proved adequate and satisfactory; and

WHEREAS, it is necessary for the usual daily operation of the Department of Public Works that provision be immediately made to designate the routes for the Little Creek, Lansdale and Virginia Beach Boulevard bus lines as hereinafter set forth, an amergency is set forth and declared to exist, pursuant to Section 15 of the Norfolk Charter of 1918; now, therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:—That pursuant to Section 26-4 of The Code of the City of Norfolk, Virginia, 1950 the following routes are hereby designated as the routes for the operation of the Little Creek, Lansdale and Virginia Beach Boulevard bus lines, in connection with the operation of motor buses under the provisions of Chapter 26 of The Code of the City of Norfolk, Virginia, 1950:

LITTLE CREEK: Beginning at City Hall Avenue and Monticello Avenue, thence along City Hall Avenue to Bank Street, to Monticello Avenue, to Virginia Beach Boulevard, to Granby Street, to 26th Street, to Lafayette Boulevard, to Norway Place, to Alsace Avenue, to Dunkirk Avenue, to

page 5-PP } Cromwell Road, to Tidewater Drive, to Waukesha Avenue, to Sangamon Avenue, to Muskogee Avenue, to Tidewater Drive, to Little Creek Road, to Shore Drive and into the Naval Amphibious Base, returning via the same route to Granby Street, to City Hall Avenue, to Monticello Avenue, the point of beginning.

LANSDALE: Beginning at City Hall Avenue and Atlantic Street, thence along Atlantic Street to Plume Street, to Bank Street, to Monticello Avenue, to High Street, to Granby Street, to 26th Street, to Lafayette Boulevard, to Ballentine Boulevard, to Princess Anne Road, to Kempsville Road, to the Welfare Center, returning along Kempsville Road, to Princess Anne Road, to Military Highway, to Carnarvon Drive, to Eltham Street, to Ronda Road, to Almeda Avenue, to Kilmer Lane, to Princess Anne Road, to Ballentine Boulevard, to Lafayette Boulevard, to 26th Street, to Granby Street, to City Hall Avenue, to Atlantic Street, the point of beginning.

VIRGINIA BEACH BOULEVARD: Beginning at Plume and Atlantic Streets via Plume Street to Bank Street, to City Hall Avenue, to Tidewater Drive, to Virginia Beach Boulevard, to Davis Corner, returning via Virginia Beach Boulevard, to Monticello Avenue, to City Hall Avenue, to Atlantic Street, to Plume Street, the point of beginning, provided, that while the Virginia Beach Boulevard Underpass is under construction said route will detour from Tidewater Drive to Virginia Beach Boulevard via Brambleton and Park Avenues, and provided that on certain morning and afternoon trips said route will be extended from Davis Corner to Glenrock via Virginia Beach Boulevard to Kempsville Road, to Hoggard Road, to Clark Street, to Glenrock Road and back to Virginia Beach Boulevard.

Section 2:—That the route for the Little Creek bus line hereinabove designated shall take the place of and supersede the route heretofore designated for the Willard Park bus line.

Section 3:—That the route hereinabove designated for the Lansdale bus line shall supersede the route heretofore designated for said bus line.

Section 4:—That this ordinance, being an emergency ordinance, shall be in effect from and after its adoption.

Adopted by the Council March 17th, 1959.

True Copy—Teste:

Seal

MARY M. RANDOLPH
LOUIS S. HUDGINS, City Clerk.
By MARY M. RANDOLPH,
Deputy City Clerk.

page 5-QQ } EXHIBIT #23.

A RESOLUTION OBJECTING TO THE OPERATIONS OF THE CAROLINA COACH COMPANY WITH REFERENCE TO TRANSPORTING INTRACITY PASSENGERS FOR COMPENSATION, AND DIRECTING THE CITY ATTORNEY TO INSTITUTE AND CONDUCT THE NECESSARY LEGAL PROCEEDINGS TO COMPEL SAID CAROLINA COACH COMPANY TO DISCONTINUE THE SAME.

WHEREAS, the Carolina Coach Company was duly notified that the City would not permit it to pick up and discharge intracity passengers within the corporate limits of the City as the same would be extended by the annexation of a portion of the Kempsville Magisterial District of Princess Anne County, which annexation was effective at midnight, December 31, 1958; and

WHEREAS, the Carolina Coach Company, notwithstanding the aforesaid notification, has continued since January 1, 1959 and still continues to operate in the annexed portion of Kempsville Magisterial District of Princess Anne County as it did before the annexation of said area; and

WHEREAS, it is necessary for the usual daily operation of the Department of Law that provision be immediately made to authorize the City Attorney to institute and conduct legal proceedings as hereinafter set forth for the purpose of compelling said Carolina Coach Company to discontinue its unlawful operations within the City, an emergency is set forth, defined and declared to exist, pursuant to the provisions of Section 15 of the Norfolk Charter of 1918; now, therefore.

BE IT RESOLVED by the Council of the City of Norfolk:

Section 1:—That this Council objects to the Carolina Coach Company taking on and discharging passengers for transportation for compensation from one point to another within the present corporate limits of the City.

page 5-RR } Section 2:—That the City Attorney is hereby authorized and directed to institute and conduct

the necessary legal proceedings to compel said Carolina Coach Company to cease taking on and discharging passengers for transportation for compensation from one point to another within the present corporate limits of the City.

Section 3:—That this resolution, being an emergency resolution, shall be in effect from and after its adoption.

Adopted by the Council March 17th, 1959.

True Copy—Teste:

Seal

MARY M. RANDOLPH
LOUIS S. HUDGINS, City Clerk.
By MARY M. RANDOLPH,
Deputy City Clerk.

page 6 }

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ORDER GRANTING VIRGINIA TRANSIT COMPANY LEAVE TO FILE ITS PETITION TO INTERVENE.

This day came Virginia Transit Company, by counsel, and tendered its petition to intervene in the above styled proceeding for declaratory judgment and injunctive relief and requested leave to file the same.

Upon consideration of said petition, the Court doth grant to Virginia Transit Company leave to file its petition to intervene in the above styled proceeding for declaratory judgment and injunctive relief and doth ORDER that the same shall be matured as to the City of Norfolk, Virginia, a municipal corporation, and Carolina Coach Company, a Virginia corporation.

Dated: March 19, 1959.

Enter this:

T. M. J., Judge.

We ask for this:

LEIGH D. WILLIAMS
RALPH H. FERRELL, JR.
Counsel for Virginia Transit Company.

page 7 }

• • • • •

Filed 3-19-59.

HELEN M. ROMULUS, D. C.

PETITION OF VIRGINIA TRANSIT COMPANY TO INTERVENE.

To the Honorable Clyde H. Jacob, Judge of the said Court:

Your petitioner, Virginia Transit Company, a corporation organized and doing business under the laws of the Commonwealth of Virginia, having its principal office in the City of Richmond, Virginia, hereinafter called "Transit Company," respectfully represents:

1. There is now pending in your Honor's Court a chancery proceeding for declaratory judgment and injunctive relief under the style of *City of Norfolk, Virginia, a municipal corporation,* v. *Carolina Coach Company, a Virginia corporation.*

2. The object of said proceeding is to have this Court adjudge that Carolina Coach Company, hereinafter called "Carolina," has no authority to take on and discharge intracity passengers within the present corporate limits of the City of Norfolk, hereinafter called "City," unless and until Carolina is granted such authority by the Council of the City and to have this Court enjoin Carolina from conducting any intracity operations whereby Carolina picks up and discharges intracity passengers for compensation within the present corporate limits of the City.

page 8 } 3. Section 124 of the Constitution of Virginia, 1902, as amended, and Section 15-774 of the Code of Virginia both provide that "[n]o street railway * * * nor any other corporation * * * engaged in these or like enterprises, shall be permitted to use the streets * * * of a city * * *, without the previous consent of the corporate authorities of such a city * * *"; and Section 15-736 of the Code of Virginia provides that "[a]ny person or corporation that shall undertake to occupy or use any of the streets * * * in a manner not permitted to the general public, without having first legally obtained the consent thereto of the city council or a franchise therefor, shall be guilty of a misdemeanor * * *"

4. The charter of the City [Va. Acts 1918, c. 34, p. 31 et seq., as amended] confers upon the City the power "to regulate the services to be rendered and rates to be charged by busses * * * and other vehicles for the carrying of passengers * * *" [Section 2(11)], and said charter further provides that "[n]o public utility franchise, privilege, lease, or right of any kind

to use any public property or easement of any description * * * shall be granted except by ordinance * * *'' [Section 103].

5. Chapter 26 of the Norfolk City Code of 1950, as amended (hereinafter referred to as ''Norfolk City Code''), provides that ''[t]he operation of motor bus passenger transportation for hire * * * in the city shall be subject to the conditions, regulations and restrictions set forth in [that] chapter'' [Section 26-1], and, further, that ''[t]he operation of motor buses under the provisions of [that] chapter shall be along such streets of the city as are * * * designated by the council'' [Section 26-4].

page 9 } 6. By ordinance adopted by City Council on December 19, 1944, effective December 29, 1944, Transit Company was granted the exclusive right and privilege to operate motor buses for the transportation of passengers for hire in the City, and Transit Company has continuously rendered intracity bus service over certain streets in the City since December 29, 1944, as duly authorized, from time to time, by City Council; and Transit Company has fulfilled all legal obligations and requirements of the City, including the payment to the City of five per cent of the gross receipts from its intracity operations as required by Section 26-12 of the Norfolk City Code.

7. Prior to January 1, 1959, Carolina operated certain motor bus lines for the transportation of passengers for hire over certain streets and highways in Princess Anne County, Virginia, pursuant to certain certificates of public convenience and necessity issued by the State Corporation Commission of Virginia, to the Norfolk Southern Bus Line and later transferred to Carolina under the following certificates dated May 6, 1954, and numbered: P-1981, P-1982, P-1983, P-1986, P-1991, P-1992 and P-1995. Carolina also holds and formerly operated under similar certificates numbered P-1985, P-1987 and P-1989, but to the best of your petitioner's belief and knowledge, Carolina entirely abandoned such routes following a decree of your Honor's Court on March 31, 1955, enjoining and restraining Carolina from transporting passengers between points within the then corporate limits of the City of Norfolk. Certificates numbered P-1981, P-1991, P-1992 and P-1995 were also involved in the aforesaid proceedings of 1955 and Carolina was similarly enjoined and restrained from operating along such lines within the corporate limits as of the date of that decree.

page 10 } Carolina has, however, since January 1, 1959, continued to transport passengers between points along such routes which are within the corporate limits as

extended by annexation effective at Midnight, December 31, 1958. Copies of said certificates, wherein the routes are described, are attached to the City's petition and marked Exhibits 1-10, inclusive, and the locations of such routes in that portion of Princess Anne County which was annexed by the City at Midnight December 31, 1958, are shown on the map attached to the City's petition marked Exhibit 16. While Carolina also holds certificates numbered P-1984, P-1988, P-1990, P. 1993 and P-1994 from the State Corporation Commission (copies of which are attached to the City's petition and marked Exhibits 11-15, inclusive), they are not applicable to these proceedings because P-1988, P-1990, P-1993 and P-1994 are not within the Annexed Area and certificate P-1984 is for sightseeing service.

8. Effective at Midnight, December 31, 1958, the corporate limits of the City were extended in annexation proceedings by a decree entered by the Circuit Court of Princess Anne County on April 1, 1957, as amended by the Supreme Court of Appeals of Virginia [200 Va. 105] to include an area formerly a part of the Kempsville Magisterial District of Princess Anne County (which area is hereinafter referred to as "Annexed Area") and the streets and highways in the Annexed Area then became the streets of the City.

9. On or before May 29, 1956, Carolina knew of the proposed annexation of a portion of Princess Anne County by the City and that such annexation would "deprive" Carolina of "its present rights under the State Corporation Commission's franchises" [Exhibit 17, attached to the City's petition] and Carolina was notified by the City on or before
page 11 } July 2, 1956 [Exhibit 18, attached to City's petition], and again on January 2, 1959 [Exhibit 19, attached to the City's petition], that Carolina would have to discontinue its operations within the Annexed Area. Carolina has refused to do so; but on the contrary, since January 1, 1959, Carolina has operated on an intracity basis within the Annexed Area, picking up and discharging passengers within the present corporate limits of the City, claiming that it has the right to do so by virtue of the aforesaid certificates issued to Carolina by the State Corporation Commission of Virginia prior to the annexation of such area by the City.

10. On January 1, 1959, the Transit Company, pursuant to its recognized duty so to do, extended its services into the Annexed Area over three routes agreed upon by the Traffic Engineer of the City of Norfolk and said three routes were established on a temporary basis by the Norfolk City Council on January 6, 1959 (Exhibit 20, attached to City's petition). After a trial of these routes and one change therein, on March

3, 1959 (Exhibit 21, attached to City's petition), said routes were determined to provide satisfactory service and were established on a permanent basis by Ordinance of the Norfolk City Council adopted March 17, 1959 (Exhibit 22, attached to City's petition).

11. Carolina is unable to give adequate City-wide bus service under its certificates from the State Corporation Commission of Virginia because such certificates do not permit City-wide service.

12. The continuance of Carolina's intracity operations over the streets of the City within the Annexed Area without authority from the City is unlawful under Section 124 of the Constitution of Virginia, Sections 15-774 and 15-736 of the Code of Virginia, Sections 2(11) and 103 of the
page 12 } Charter of the City of Norfolk, and the provisions of Chapter 26 of the Norfolk City Code.

13. Carolina has no lawful right to continue its intracity operations over the streets of the City within the Annexed Area under the aforesaid certificates issued to Carolina by the State Corporation Commission of Virginia prior to annexation because such certificates do not confer "any proprietary or property rights in the use of the public highways" [Va. Code 1950, §56-337] and because "* * * nothing contained in [the Motor Vehicle Carrier Laws of Virginia] shall be construed to mean that the [State Corporation] Commission can issue any such certificate authorizing intracity transportation" [Va. Code 1950, §56-237(k)].

14. The City has the sole authority to grant to Carolina, or any other carrier, the right to use the streets and highways within its corporate limits for the intracity transportation of passengers for hire, and upon the extension of the corporate limits to include the Annexed Area, any rights Carolina may have had under its certificates of public convenience and necessity from the State Corporation Commission of Virginia to take on and discharge passengers upon its bus lines over the streets and highways within the Annexed Area were terminated as to intracity passengers.

15. On March 17, 1959, the City Council adopted a Resolution objecting to the aforesaid unlawful intracity passenger bus operations over the streets of the City by Carolina and authorizing the City Attorney to institute legal proceedings for the purpose of compelling Carolina to discontinue the same (Exhibit 23, attached to City's petition).

16. If adequate City-wide passenger bus service as provided under Chapter 26 of the Norfolk City Code
page 13 } is to be made available to the residents of the Annexed Area by the extension therein of the City-

wide bus service of Transit Company, it would be unreasonable, hazardous, economically unsound, against sound public policy, and contrary to the purposes and reasons for the exclusive rights granted by and the obligations imposed under Chapter 26 of the Norfolk City Code, to require Transit Company to do so in competition with the intracity operations of Carolina within the Annexed Area, which Carolina is now conducting therein without payment to the City of the five per cent gross receipts tax for Carolina's use of said streets, and which tax is required of and paid by Transit Company.

17. By reason of the aforesaid, Transit Company has a claim germane to the subject matter of this proceeding.

WHEREFORE, your petitioner, Virginia Transit Company, prays that it may be permitted to intervene in the above-styled proceeding for declaratory judgment and injunctive relief; that Virginia Transit Company be made a co-complainant therein with the City of Norfolk; that this Court will adjudge that Carolina Coach Company has no authority to continue to take on and discharge intracity passengers within the corporate limits of the City unless and until it is granted such authority by the Council of the City of Norfolk; that this Court will order the Carolina Coach Company to cease its intracity operations of picking up and discharging intracity passengers within the corporate limits of the City of Norfolk; and that your petitioner may have such other and further relief in the premises as the nature of its case may require or to equity shall seem meet.

VIRGINIA TRANSIT COMPANY
By LEIGH D. WILLIAMS
RALPH H. FERRELL, JR.
Counsel.

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page 15 }

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Filed 4-7-59.

VIRGINIA MANNING, D. C.

MOTION TO DISMISS.

Now comes the Carolina Coach Company, respondent herein, and respectfully moves this Court to dismiss the Petition

for Declaratory Judgment and Injunctive Relief filed against it by reason of the following:

1. On January 20, 1959, Carolina Coach Company filed its Petition, Exhibit 1, with the State Corporation Commission of Virginia naming the City of Norfolk as respondent, raising the same points and questions presented by the Petition for Declaratory Judgment and Injunctive Relief. In its Petition to the State Corporation Commission, Carolina Coach Company asked the Commission to (1) receive its petition and institute a proceeding to hear and determine all matters properly pertinent, (2) make the City of Norfolk a party respondent and (3)

"* * * after appropriate hearing and arguments, this Commission determine and adjudge the rights, duties and obligations of your Petitioner (Carolina Coach Company) with regard to the continuance of its existing passenger bus service between points and places within the area recently annexed by the City of Norfolk as aforesaid and various points and places within the City of Norfolk as it existed prior to said annexation."

page 16 } On January 20, 1959, the State Corporation Commission entered an Order, Exhibit 2, instituting said proceeding, assigning it as Case No. 14194 and setting the matter for hearing before the State Corporation Commission on April 21, 1959.

On January 20, 1959, the City of Norfolk was properly served in the proceeding before the State Corporation Commission.

Section 156(d) of the Constitution of Virginia provides that:

"* * * No court of this Commonwealth (except the Supreme Court of Appeals, by way of appeal as herein authorized) shall have jurisdiction to review, reverse, correct or annul any action of the Commission, within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its official duties; provided, however, that the writs of mandamus and prohibition shall lie from the Supreme Court of Appeals to the Commission in all cases where such writs, respectively, would lie to any inferior tribunal or officer."

The matter presented to the State Corporation Commission by Carolina Coach Company raises the very same question

presented by the Petition for Declaratory Judgment and Injunctive Relief. The Corporation Commission has acted upon such question by receiving the Petition of Carolina Coach Company and instituting a proceeding to:

"* * * determine and adjudge the rights, duties and obligations of the petitioner with regard to the continuance of its passenger bus service under Certificates of Public Convenience and Necessity issued by the State Corporation Commission between points and places within the area recently annexed to the City of Norfolk and the City of Norfolk as it existed prior to said annexation."

As the Corporation Commission has instituted a proceeding and set the matter raising said question for hearing, any action by this Court to determine the same question page 17 } or to give injunctive relief would obviously be contrary to actions already taken by the Commission in the previous granting of Certificates of Public Convenience and Necessity and the Commission's approval of schedules and tariffs involving the newly annexed territory as set forth in Carolina Coach Company's petition, (Exhibit 1), and would interfere with the Commission in the performance of its official duties. As pointed out in said petition, (Exhibit 1), said schedules and tariffs cannot lawfully be changed without prior approval of the Commission.

2. As the question presented by the Petition for Declaratory Judgment by the City of Norfolk is the same question previously presented to, and now pending before the State Corporation Commission in a proceeding in which the Commission has previously acquired jurisdiction of the issue and of the City of Norfolk and Carolina Coach Company, a Declaratory Judgment proceeding is not appropriate or proper. If the City of Norofolk feels that the State Corporation Commission is not the proper forum to determine this question, the City should move the Commission to dismiss the proceeding or ask the Supreme Court of Appeals for a writ of prohibition, the relief permitted under Section 156(d) of the Constitution.

With respect to the Virginia Transit Company, there is no allegation in its Petition to Intervene of any actual controversy existing between it and the Carolina Coach Company, and, consequently, the Virginia Transit Company alone cannot maintain the action in this Court. Furthermore, the Virginia Transit Company is free to Petition to Intervene in the pending proceeding before the Corporation Commission and

move to dismiss the same, or seek a writ of prohibition from the Supreme Court of Appeals.

3. As the controversy between the City of Norfolk and Carolina Coach Company presented to this Court page 18 } by the Petition for Declaratory Judgment and Injunctive Relief is the identical controversy previously presented to the State Corporation Commission and now pending before said Commission, this Court, even if not prohibited by Section 156 (d) of the Constitution from acting upon the controversy, should, in the exercise of its discretion refuse to entertain the Petition for Declaratory Judgment.

4. Neither the City of Norfolk nor the Virginia Transit Company in their lengthy Petitions disclosed to this Court the pending proceeding before the State Corporation Commission raising the identical question presented in said Petitions. Neither the City of Norfolk nor the Virginia Transit Company has alleged to this Court that the State Corporation Commission should not determine this question.

5. The allegation in Paragraph 16 of the Petition to Intervene of the Virginia Transit Company that Carolina Coach Company does not pay to the City the five per cent gross receipts tax for use of the City streets, which tax is required of and paid by the Virginia Transit Company, is not included in the Petition of the City of Norfolk, is not sufficient by itself to justify this Court to intrude upon a matter presently before the State Corporation Commission, and is not factually correct, as the Carolina Coach Company has, since January 1, 1959, withheld five per cent of its gross receipts derived from purely intracity operations and has tendered said sum to the City of Norfolk.

WHEREFORE, it is submitted that the Petition for Declaratory Judgment and Injunctive Relief should be dismissed.

CAROLINA COACH COMPANY
By JOHN D. WICKER, JR.
Of Counsel.

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page 19-A }

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EXHIBIT 1.

Commonwealth of Virginia At the Relation of Carolina Coach Company, a Virginia Corporation, Petitioner,

v.

City of Norfolk, a Municipal Corporation, Respondent.

PETITION.

To the State Corporation Commission of Virginia:

Carolina Coach Company, a Virginia corporation, represents unto the State Corporation Commission, as follows:

1. Your Petitioner is a common carrier of passengers by motor vehicle, as defined by Title 56, Chapter 12 of the 1950 Code of Virginia, and is a public service corporation within the meaning of Section 153 of the Constitution of Virginia and Section 56-1 of the Code of Virginia.

2. The City of Norfolk is a municipal corporation, located within the Commonwealth of Virginia, into and through which your Petitioner, and formerly its predecessor and transferor—the Norfolk Southern Bus Corporation—has conducted operations as a common carrier of passengers for many years with the consent of the corporate authorities of the City, pursuant to "Certificates of Public Convenience and Necessity" granted by the State Corporation Commission as hereinafter alleged.

3. Prior to February 27, 1954, there existed in Virginia, in accordance with the laws thereof, a corporation known as Norfolk Southern Bus Corporation, which corporation was also a common carrier of passengers by motor vehicle and a public service corporation, and which also operated in Virginia pursuant to "Certificates of Public Convenience and Necessity" granted to it by the State Corporation Commission.

page 19-B

4. Prior to February 27, 1954, Norfolk Southern Bus Corporation was the holder of a number of "Certificates of Public Convenience and Necessity" issued by the State Corporation Commission, after public hearing authorizing service between various points and places within the City of Norfolk and points and places then outside the City of Norfolk. Among such "Certificates" issued between August 10, 1926 and July

28, 1952 to Norfolk Southern Bus Corporation were those designated by number, as follows: No. 454-A, No. 645-A, No. 806-A, No. 810-A, No. 827-A, No. 979-A, No. 1034-A, No. 1035-A, No. 1036-A, No. P-1212, No. P-1489, No. P-1563, No. P-1705, No. P-1707, No. P-1718, No. P-1730, No. P-1934, No. P-1935, and No. 22-B. Although these "Certificates," at least in part, concerned points and places within territory adjoining the City of Norfolk, and although the notice required by the Commission was given in all such cases, either by service upon the City of Norfolk or by publication in a newspaper of general circulation in the area, nevertheless the City of Norfolk offered no objection thereto and subsequently consented to the operations involved therein.

5. On February 27, 1954, your Petitioner merged with Norfolk Southern Bus Corporation with the result that it became the surviving corporation and as such entitled to all of the rights, privileges, franchises and property of Norfolk Southern Bus Corporation. Thereafter, on April 22, 1954, your Petitioner filed its petition with the State Corporation Commission requesting that the "Certificates of Public Convenience and Necessity" held by the Norfolk Southern Bus Corporation be formally transferred to your Petitioner. The State Corporation Commission set the matter for public hearing and directed your Petitioner to give notice of said proposed transfer by publication in some newspaper having general circulation in the territory affected at least ten days before the date of hearing. Said notice was given by publication on April 25, 1954, in the "Norfolk Virginian-Pilot," a daily newspaper published in the City of Norfolk. On May 6, 1954, the State Corporation Commission, after a public hearing in which the City of Norfolk offered no objection, issued an order approving the transfer of the "Certificates of Public Convenience and Necessity" of Norfolk Southern Bus Corporation to your Petitioner. (Case No. 12076)

page 19-C

Pursuant to that order, new "Certificates" were issued to your Petitioner in substitution for the "Certificates of Public Convenience and Necessity," transferred from Norfolk Southern Bus Corporation to your Petitioner by operation of law. The "Certificates" issued to your Petitioner pursuant to said order covered the same service and points and places theretofore served by Norfolk Southern Bus Corporation pursuant to its "Certificates of Public Convenience and Necessity," and these new "Certificates" were designated as Certificates P-1981, P-1982, P-1983, P-1984, P-1985, P-1986, P-1987, P-1988, P-1989, P-1990, P-1991, P-1992, P-1993, P-1994, and P-1995.

6. Subsequent to its merger with Norfolk Southern Bus Corporation and the acquisition of the operating rights of said Corporation, your Petitioner has been satisfactorily and adequately providing regular passenger bus service between various points and places within the City of Norfolk and the various points and places designated in said "Certificates" in accordance with schedules and tariffs duly filed with, and approved by, the State Corporation Commission. In providing such service, your Petitioner has invested large
page 19-D } amounts of time and money in developing and serving passenger traffic between various points and places within the City of Norfolk and the points and places designated in said "Certificates."

7. On January 1, 1959, the City of Norfolk acquired, by annexation, certain areas in Princess Anne County. Within said annexed areas are a number of points and places between which and the City of Norfolk, as it existed prior to the January 1, 1959 annexation, your Petitioner had been providing passenger bus service under the said "Certificates of Public Convenience and Necessity" acquired as aforesaid from Norfolk Southern Bus Corporation and by order of the State Corporation Commission on May 6, 1954. Said annexation, effective January 1, 1959, came about as a result of certain annexation proceedings instituted and prosecuted in the Circuit Court of Princess Anne County by the City of Norfolk. Although the City of Norfolk was fully aware of the existing common carrier service—between various points and places in the area sought to be annexed and various points and places within the City limits—provided by your Petitioner to the public, pursuant to "Certificates of Public Convenience and Necessity" theretofore granted, as aforesaid to your Petitioner by the State Corporation Commission; and although said City of Norfolk was also fully aware of the fact that the schedules and tariffs of your Petitioner, theretofore, officially approved as aforesaid included and required service by your Petitioner between various points and places within the City of Norfolk and various points and places in the area sought to be annexed,—said City did not make your Petitioner a party to said annexation proceedings, and made no reference in such pleadings to Petitioner or to its service and rights and responsibilities in the area sought to be annexed. Furthermore, the annexation decree, effective January 1,
page 19-E } 1959, made no reference to Petitioner or to its said service and rights and responsibilities.

8. The City of Norfolk has benefited substantially from Petitioner's service of furnishing adequate and economical public passenger transportation to persons residing in the

recently annexed territory adjacent to the former city limits. This service enables such persons to travel to and from Norfolk in connection with their employment, business, shopping and pleasure. And it has been rendered for years by your Petitioner with the full knowledge and consent of the City of Norfolk.

9. The laws of Virginia require your Petitioner to continue said service without change of schedules or rates and to make no change therein without the prior approval of the State Corporation Commission. Any changes in such service which substantially affect the traveling public are not customarily authorized by the Commission except after a public hearing with adequate notice to the public.

Ignoring the lawful rights and obligations of your Petitioner to continue its aforesaid service, withoout interruption or change of schedule or rates unless authorized by the Commission, and despite the fact that your Petitioner and its predecessor have satisfactorily and adequately provided such service under said "Certificates of Public Convenience and Necessity" for many years as aforesaid, to the great benefit of the City of Norfolk and with its acquiescence and consent, said City now demands that your Petitioner cease operating between various points and places within the former City limits of Norfolk and those points and places, served for years by your Petitioner, pursuant to said "Certificates" and in accordance with said approved schedules and tariffs, within the area annexed to the City of Norfolk on January 1, 1959, with one exception where the said City has in-
page 19-F } dicated approval of temporary service for a special part of the public). Copies of letters from the City Attorney and City Manager of Norfolk with respect to such demand and exception are attached hereto as Exhibits A and B, respectively.

10. Your Petitioner is advised that, despite said annexation by the City of Norfoolk, your Petitioner has a lawful right and, in fact, is obligated by law to continue to provide, under its "Certificates" from the State Corporation Commission, and its said approved schedules and tariffs, service between points and places within that area annexed to the City of Norfolk on January 1, 1959, and various points and places within the City of Norfolk as it existed prior to said annexation.

Petitioner is further advised that, if it acceded—without previous authorization by the State Corporation Commission—to the demands of the City of Norfolk that it cease operations between the newly annexed area and the City of Norfolk as it existed prior to said annexation, and if

it abandoned its service in the territory affected, it would be forfeiting its rights under said "Certificates" and violating the laws of Virginia.

Consequently, Petitioner is continuing to render the public service authorized by said "Certificates" and said approved schedules and tariffs, and required of it by law.

11. Your Petitioner is further advised that any action of the City of Norfolk preventing your Petitioner from continuing to render its aforesaid service or seeking to compel or enforce your Petitioner to abandon its aforesaid service, in furtherance of said City's demand as aforesaid, would deprive your Petitioner of its property without due process of law contrary to Section 11 of the Constitution of Virginia and Section 1 of the Fourteenth Amendment to the Constitution of the United States of America.

WHEREFORE, YOUR PETITIONER PRAYS THAT:—

1. This petition be received and a proceeding instituted to hear and determine all matters properly per-
page 19-G } tinent thereto;

2. The City of Norfolk, be made a party respondent in this proceeding and served with a copy of this petition and all Orders entered in connection therewith in the manner provided by law;

3. After appropriate hearing and arguments, this Commission determine and adjudge the rights, duties and obligations of your Petitioner with regard to the continuance of its existing passenger bus service between points and places within the area recently annexed by the City of Norfolk as aforesaid and various points and places within the City of Norfolk as it existed prior to said annexation.

CAROLINA COACH COMPANY,
A VIRGINIA CORPORATION
By JOHN J. WICKER, JR.
Of Counsel.

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page 19-J } EXHIBIT 2.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, VIRGINIA, JANUARY 20, 1959.

Commonwealth of Virginia at the relation of Carolina Coach Company, a Virginia Corporation,

v.

The City of Norfolk, a Municipal Corporation.

CASE NO. 14194.

On January 20, 1959, came Carolina Coach Company, a Virginia corporation, by counsel, and filed its petition against the City of Norfolk, a municipal corporation, in which it prayed that the State Corporation Commission determine and adjudge the rights, duties and obligations of the petitioner with regard to the continuance of its passenger bus service under Certificates of Public Convenience and Necessity issued by the State Corporation Commission between points and places within the area recently annexed to the City of Norfolk and the City of Norfolk as it existed prior to said annexation.

Upon consideration of which,

IT IS ORDERED:

1. That this proceeding be instituted, assigned Case No. 14194, docketed and set for hearing at 10:00 A. M. on April 21, 1959, in the Courtroom of the State Corporation Commission, Blanton Building, Richmond, Virginia; that proper process issue against the City of Norfolk, the respondent, and together with a copy of the petition filed herein page 19-K } and of this order be served upon the said respondent requiring it to appear and show cause, if any it can, why the relief prayed for in said petition should not be granted.

2. That an attested copy hereof be sent to counsel for the petitioner.

A True Copy—Teste:

N. W. ATKINSON
Clerk of the State Corporation Commission.

page 20 }

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Filed 6-16-59.

W. R. HANCKEL, Clerk.

MOTION TO STRIKE BY VIRGINIA TRANSIT COMPANY.

Virginia Transit Company, intervenor herein, respectfully moves the Court to strike the Motion to Dismiss by the respondent Carolina Coach Company, for the following reasons:

1. This Court has jurisdiction of the subject matter of this proceeding.

2. The State Corporation Commission does not have concurrent jurisdiction of the subject matter of this proceeding, which is the City's authority over the use of its streets for intracity transportation of passengers for hire.

3. The State Corporation Commission has not acquired jurisdiction of the controversy involved in the instant case but, on the other hand, upon Carolina's petition to the Commission, the Commission has entered an order for the City to "show cause if any it can, why the relief prayed for in said petition should not be granted." On April 21, 1959, the City and Transit Company filed motions to dismiss Carolina's petition to the Commission and a copy of Transit Company's said motion is attached, marked "Exhibit 1." Copies of Carolina's Certificates Nos. 979-A (now P-1992), P-1489 (now P-1991) and P-1563 (now P-1986) referred to therein are also attached marked "Exhibit 2." The Commission has deferred consideration of such motions to dismiss, has fixed the time for filing briefs therein and has set the argument
page 21 } thereon for December 14, 1959.

4. Under the Constitution and laws of Virginia, the State Corporation Commission has no authority to consider or determine the matters requested in Carolina's petition to the Commission and lawful jurisdiction to do so cannot be acquired by the Commission or bestowed upon the Commission by the parties involved or any of them.

5. The State Corporation Commission does not have authority to review, reverse, correct or annul the decree of this Court of March 31, 1955(from which Carolina took no appeal) in a proceeding for declaratory judgment and injunctive relief under the style City of Norfolk and Virginia Transit Company *v.* Carolina Coach Company, Chancery No. 9095, wherein Carolina's contentions that this Court lacked jurisdiction and that, under Section 156 of the Constitution, the State Corporation Commission was the proper and only authority to handle and decide the controversy were rejected and Carolina was perpetually enjoined and restrained from conducting any public service transportation business whereby passengers are transported for compensation from one point

and discharged at another point within the then corporate limits of the City of Norfolk. Yet in its petition to the Commission, Carolina seeks to have another adjudication of its rights under those certificates, which were determined in the foregoing proceedings by this Court in 1955.

6. Carolina's unilateral action of setting aside five per centum of the gross receipts of its unlawful intracity operations and tendering that sum to the City does not confer any authority for Carolina's use of the City's streets for intracity transportation of passengers for hire under the Constitution and laws of Virginia and the Code of the City of page 22 } Norfolk, Carolina has not complied with Chapter 26 of the Code of the City of Norfolk, entitled "Motor Buses," a copy of which is attached, marked "Exhibit D" to the City's motion to strike filed herein. Carolina has not received a permit from the City nor filed the required bond, as has Transit Company, as shown by Exhibits E, F, G and H attached to the City's aforesaid motion to strike Carolina's motion to dismiss these proceedings. Further, Transit Company provides service within the City along routes approved by the City, which are shown on the map attached, marked "Exhibit 3."

7. Neither comity nor judicial discretion justifies the dismissal or deferment of this proceeding pending the State Corporation Commission's consideration of Carolina's petition to the Commission or the aforesaid motions to dismiss such petition.

VIRGINIA TRANSIT COMPANY
By RALPH H. FERRELL, JR.
Counsel.

* * * * *

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* * * * *

EXHIBIT 1.

Virginia:

In the State Corporation Commission.

Commonwealth of Virginia at the relation of Carolina Coach Company,

v.

City of Norfolk, Virginia, a municipal corporation.

CASE NO. 14194.

MOTION TO DISMISS THE PETITION OF CAROLINA COACH COMPANY BY VIRGINIA TRANSIT COMPANY, INTERVENOR.

Virginia Transit Company ("Transit Company"), a corporation organized and doing business under the laws of the Commonwealth of Virginia and the holder of the exclusive right and privilege to operate motor buses for the transportation of passengers for hire in the City of Norfolk ("City") under the ordinance adopted by City Council on December 19, 1944, effective December 29, 1944 (a certified copy of said ordinance and photocopies of Transit Company's acceptance, bond, and the application for and grant of the permit to Transit Company are attached marked "Exhibit 1"), intervenor in these proceedings as provided in Rule 11 of the Commission's Rules of Practice and Procedure, respectfully moves the State Corporation Commission ("Commission") to dismiss the petition by Carolina Coach Company ("Carolina") for the following reasons:

1. The Commission does not have jurisdiction of Carolina's application for declaratory judgment under Rule 13 of the Commission's Rules of Practice and Procedure because Carolina has another adequate remedy in the courts of record of Virginia, more specifically, in the declaratory judgment proceeding under Sections 8-578 to 8-585, inclusive, of
page 24 } the Code of Virginia, now pending in the Circuit Court of the City of Norfolk, under the style City of Norfolk and Virginia Transit Company *v.* Carolina Coach Company, Chancery No. 2853-C, as will appear from the copies of the papers therein which have been filed as Exhibit C with the City's motion to dismiss these proceedings, which exhibit is incorporated in Transit Company's motion to dismiss by this reference.

The aforesaid declaratory judgment proceedings in the Circuit Court of the City of Norfolk does not involve any matter over which the State Corporation Commission has sole jurisdiction under Section 156 (d) of the Constitution of Virginia, because (a) the certificates granted by the State Corporation Commission to Carolina, or its predecessor company, cannot, as a matter of law, authorize the transportation of passengers within the City of Norfolk and, further, in certain of such certificates the State Corporation Commission stated that "It is expressly understood that no authority is granted hereunder for the transportation of passengers within the City of Nor-

folk" (Certificates Nos. 979-A [now P-1992], P-1489 [now P-1991] and P-1563 [now P-1986]); and (b) Section 156(b) of the Constitution of Virginia specifically excludes from the authority of the Commission the City's right to prescribe rules, regulations or rates for any public service corporation in connection with any service performed by it under a municipal franchise granted by the City for services wholly within the limits of the City.

2. The Commission is without jurisdiction to review, reverse, correct or annul the decree of the Circuit Court of the City of Norfolk of March 31, 1955 (from which Carolina took no appeal) in a proceeding for declaratory judg-
page 25 } ment and injunctive relief under the style City of Norfolk and Virginia Transit Company *v.* Carolina Coach Company, Chancery No. 9095, wherein Carolina's contention that said court had no jurisdiction and that the State Corporation Commission was the proper and only authority to handle and decide the controversy under Section 156 of the Constitution of Virginia was denied and Carolina was perpetually enjoined and restrained from conducting any public service transportation business whereby passengers are transported for compensation from one point and discharged at another point within the then corporate limits of the City of Norfolk, as will appear from an examination of the copies of the aforesaid decree of March 31, 1955, and the papers in that proceeding which have been filed as Exhibit A with the City's motion to dismiss filed herein, which exhibit is incorporated in Transit Company's motion to dismiss by this reference. The aforesaid 1955 declaratory judgment proceeding involved Carolina's entire operations under Certificates Nos. P-1985, P-1987 and P-1989, which operations were then discontinued by Carolina. That case also involved Carolina's operations under Certificates Nos. P-1981, P-1991, P-1992 and P-1995 within the Tanners Creek Magisterial District of Norfolk County, which had been annexed by the City on January 1, 1955, which operations within the City were then discontinued by Carolina. In its petition to this Commission, Carolina now seeks to have the Commission determine its rights, duties and obligations under the aforesaid certificates Nos. P-1985, P-1987, P-1989, P-1981, P-1991, P-1992 and P-1995. The following certificates, also listed in Carolina's petition in this case, do not involve any operations within the City of Norfolk: P-1988, P-1990, P-1993 and P-1994; and certificate No. P--1984 is for the operation of sightseeing service
page 26} only. Therefore, none of those certificates affords any proper basis for this proceeding.

3. The Commission does not have jurisdiction of the subject matter involved in these proceedings under Sections 124 and 156 of the Constitution of Virginia; Sections 12-14, 15-736, 15-774 and 56-273(k) of the Code of Virginia; and Sections 1, 2(11) and 103 of the Charter of the City of Norfolk (Chapter 34, Acts of Assembly 1918, page 31, as amended).

4. Any rights which Carolina may have had under its certificates from the State Corporation Commission for the transportation of passengers were subject to the provisions of Sections 15-152.2 to 15-152.28, inclusive, of the Code of Virginia, 1950, as amended, and their predecessor statutes, providing for the annexation of adjacent territory by cities. Upon the City's annexation of the area which was formerly a part of Kempsville Magisterial District, Princess Anne County ("Annexed Area") under the decree entered by the Circuit Court of Princess Anne County on April 1, 1957, as amended by the Supreme Court of Appeals of Virginia, in *City of Norfolk* v. *County of Princess Anne,* 200 Va. 105, the streets and highways in the Annexed Area became the streets of the City, over which the City has sole jurisdiction of intracity bus operations under the Constitution and laws of Virginia.

VIRGINIA TRANSIT COMPANY
By RALPH H. FERRELL, JR.
Counsel.

ARCHIBALD G. ROBERTSON
RALPH H. FERRELL, JR.
THOMAS L. CLARK
Hunton, Williams, Gay, Moore & Powell
1003 Electric Building
Richmond 12, Virginia
Of Counsel.

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page 26-L } EXHIBIT 2.

Judicial Case No.
Certificate No. 979-A

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE OPERATION OF MOTOR VEHICLE CARRIERS.

Norfolk Southern Bus Corporation, Norfolk Virginia, is hereby authorized to furnish passenger service, by means of motor propelled vehicles.

Between Corporate Limits of City of Norfolk and Shore Drive, via Diamond Springs, dest. Little Creek Terminals, in accordance with Time Schedule and Tariff of Rates on file with the Commission, and the conditions and limitations noted hereon:

Conditions:

All motor vehicles operated by virtue of this Certificate must be operated in accordance with Chapter 161, Acts of 1923 as amended March 11, 1924, and the Rules and Regulations of this Commission.

Accident insurance or bond required in sum of $5,000/$25,000/$1,000.

Limitations: It is expressly understood that no authority is granted hereunder for the transportation of passengers within the City of Norfolk or over the Pennsylvania Railroad's property from the Shore Drive to Little Creek Terminals.

This Certificate is issued upon finding by the Commission, that Public Convenience and Necessity require such operation, in accordance with Chapter 161, Acts of Assembly, 1923, as amended March 14, 1924.

Dated at Richmond Va., August 4, 1933.

STATE CORPORATION
COMMISSION,
By LESTER HOOKER,
Commissioner.

page 26-M } COPY.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

CERTIFICATE NO. P-1489.

Norfolk Southern Bus Corporation Norfolk, Virginia by this Certificate of Public Convenience and Necessity is hereby authorized to furnish Common Carrier passenger service,

by means of motor propelled vehicles between Corporate Limits of Norfolk, Va. and Junction of U. S. Highway No. 60 & Virginia Highway No. 351 over Virginia Highway No. 165 to Virginia Highway No. 351, thence over Virginia Highway No. 351 to U. S. Highway, in accordance with Time Schedules and Tariffs of rates or fares and charges on file with the Commission, and subject to conditions and limitations noted below:

CONDITIONS:

All motor vehicles operated under and by virtue and authority of this Certificate must be operated in accordance with Chapter 129, Acts of General Assembly, 1936, and the Rules and Regulations of this Commission applicable to Common Carriers by Motor Vehicles.

It is expressly understood that this certificate does not authorize any service within the corporate limits of the City of Norfolk.

LIMITATIONS:

No passenger will be picked up between Old Ocean View Road and Granby Street, Norfolk, to be discharged between these two points.

Dated at Richmond, Va., June 8, 1945.

STATE CORPORATION
COMMISSION
By H. LESTER HOOKER
Commissioner.

page 26-N } COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

CERTIFICATE NO. P-1563.

Norfolk Southern Bus Corporation Norfolk, Virginia by this Certificate of Public Convenience and Necessity is hereby authorized to furnish Common Carrier Passenger service, by means of motor propelled vehicles between Portsmouth, Virginia and Junction of U. S. Highways Nos. 13 and 58, over routes described in Amended Exhibit "A" filed in this matter, in accordance with Time Schedules and Tariffs of rates or fares and charges on file with the Commission, and subject to conditions and limitations noted below:

CONDITIONS:

All motor vehicles operated under and by virtue and authority of this Certificate must be operated in accordance with Chapter 129, Acts of General Assembly, 1936, and the Rules and Regulations of this Commission applicable to Common Carriers by Motor Vehicles.

It is expressly understood that this certificate does not authorize any service within the corporate limits of the City of Norfolk.

LIMITATIONS:

No passenger shall be taken on at Portsmouth, Virginia, to be discharged at Norfolk, Virginia, and no passenger shall be taken on at Norfolk, Virginia, to be discharged at Portsmouth, Virginia.

Dated at Richmond, Va., April 18, 1946.

STATE CORPORATION
COMMISSION
By H. LESTER HOOKER,
Commissioner.

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Filed 6-16-59.

W. R. HANCKEL, Clerk.

MOTION TO STRIKE BY THE CITY OF NORFOLK.

Your complainant, City of Norfolk, hereby moves the court to strike the motion to dismiss by the respondent, Carolina Coach Company, on the following grounds:

1. Under the Constitution and laws of Virginia, the State Corporation Commission has no authority to adjudicate the questions raised in Carolina Coach Company's petition to the Commission. The City has taken this position before the State Corporation Commission in its motion to dismiss Caro-

lina's petition, which motion was filed with the State Corporation Commission on April 21, 1959. A copy of the City's motion is attached hereto and marked Exhibit "A." The Commission has deferred consideration of this motion and has fixed the time for filing briefs thereon and has set the argument thereon on December 14, 1959.

2. This Court has jurisdiction of the subject matter of this proceeding in accordance with the previous ruling of this Court of March 31, 1955 in an identical proceeding for declaratory judgment and injunctive relief styled City of Norfolk and Virginia Transit Company *v.* Carolina Coach Company, Chancery No. 9095. The identical questions raised in this proceeding were raised in the aforesaid proceeding and the majority of the certificates of public convenience and necessity involved in the current proceeding were involved in and the rights thereunder adjudicated in the aforesaid proceeding. The State Corporation Commission has no authority to review or change the order of this Court of March 31, 1955. There is no propriety or justification for this Court in the exercise of its discretion to allow the proceedings before the State Corporation Commission to be completed prior to proceeding in the instant case.

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3. The City of Norfolk since 1925 has enacted a comprehensive legislative program to regulate intracity transportation, which legislation was embodied first in Ordinance No. 3480 adopted June 30, 1945 (Exhibit B), and later embodied as Chapter 21 of The Code of the City of Norfolk, 1944 (Exhibit C), and now contained in Chapter 26 of The Code of the City of Norfolk, 1950 (Exhibit D). Pursuant to this legislation the Virginia Transit Company made application for and was granted the necessary permit to operate an intracity bus service (Exhibits E and F). They posted the required bond (Exhibit G) and agreed to be bound by the legislation regulating the intracity bus service (Exhibit H). In addition they have paid to the City of Norfolk five per cent of their gross receipts pursuant to said legislation.

Carolina Coach Company has not complied with the legislation of the City of Norfolk regulating motor buses. It has not made any application for a permit to operate its buses. It does not propose to and is not in a position to operate a comprehensive intracity bus service. It has not posted any bond with the City and has not agreed to subject itself to the legislation regulating motor buses. While Carolina did purport to tender to the City of Norfolk five per cent of its gross receipts for the months of January and February, 1959, this

money in the amount of $119.87 was immediately
page 29 } returned to Carolina Coach Company by the City
since the City had in no manner whatsoever authorized Carolina Coach Company to engage in any intracity transportation after January 1, 1959.

CITY OF NORFOLK
By LEONARD H. DAVIS
City Attorney.

VIRGIL S. GORE, JR.
Assistant City Attorney
Room 312, City Hall Building
Norfolk, Virginia.

* * * * *

page 29-A } EXHIBIT A.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

Commonwealth of Virginia at the relation of Carolina Coach Company, a Virginia Corporation,

v.

The City of Norfolk, a municipal corporation.

CASE NO. 14194.

MOTION TO DISMISS THE PETITION OF CAROLINA COACH COMPANY.

Now comes the defendant, City of Norfolk, a municipal corporation, and respectfully moves the State Corporation Commission (hereinafter called "Commission") to dismiss the petition of Carolina Coach Company (hereinafter called "Carolina") for the following reasons:

1. The questions raised by Carolina's petition have heretofore been decided in the Circuit Court of the City of Norfolk on March 31, 1955, in a proceeding for declaratory judgment and injunctive relief styled City of Norfolk, Virginia *v.* Carolina Coach Company, Chancery No. 9095. The Commission is barred by the doctrine of *of res adjudicata* from considering

the questions raised in Carolina's petition since the Commission is without jurisdiction to review or change the aforesaid decree of the Circuit Court of the City of Norfolk. Certified copies of the entire proceedings in the aforesaid case are herewith attached and marked Exhibit A.

2. The Commission does not have the power and is without jurisdiction to grant the relief sought in Carolina's petition, namely, to allow Carolina to engage in intracity transportation within the corporate limits of the City of Norfolk where the City has not granted permission to Carolina so to operate and where the City expressly objects to said operation as evidenced by the resolution adopted by the Norfolk City Council, a certified copy of which is attached hereto and marked Exhibit B. The right to grant or withhold permission to a public service corporation to engage in intracity transportation is reserved absolutely and exclusively to the City of Norfolk by the Constitution of Virginia (principally Section 124), the Code of Virginia, 1950 (principally Sections 15-736 and 15-774) and the Charter of the City of Norfolk (Sections 2(11) and 103) (Chapter 34, Acts of Assembly 1918, page 31, as amended).

page 29-B } 3. Upon the annexation to the City of Norfolk of a certain portion of Princess Anne County, which annexation became effective at Midnight, December 31, 1958, the streets and highways of said annexed area of Princess Anne County became streets of the City of Norfolk and subject to the control of the City of Norfolk. Carolina's petition seeks to have the Commission adjudge that it has the right to engage in intracity transportation in the aforesaid area by virtue of certain certificates of public convenience and necessity which have heretofore been issued to Carolina by the Commission. However, Carolina acquired no proprietary interest in the use of the streets and highways of the aforesaid area by virtue of said certificates and since said certificates are in the nature of a permit the authority of Carolina to operate thereunder automatically terminated when the power of the Commission to grant said permit ceased as it did when the aforesaid annexation became effective.

4. The Commission does not have jurisdiction to consider Carolina's petition because Carolina has an adequate remedy which it may pursue in the Virginia courts of record. This is evidenced by the action of the Circuit Court of the City of Norfolk in the case styled City of Norfolk, Virginia *v.* Carolina Coach Company (Exhibit A) decided March 31, 1955, involving the exact questions now raised in Carolina's petition. In addition, there is now pending in the Circuit Court of the

City of Norfolk a case styled City of Norfolk, Virginia *v.* Carolina Coach Company, Chancery No. 2853G, which involves the identical questions and the identical certificates of public convenience and necessity which Carolina's petition seeks to have the Commission consider. A certified copy of the proceedings in this latter case are attached hereto and marked Exhibit C. See Rule 13 of the Commission's Rules of Practice and Procedure in connection herewith.

For the foregoing reasons, it is respectfully submitted that Carolina's petition should be dismissed.

CITY OF NORFOLK
By LEONARD H. DAVIS
City Attorney.

VIRGIL S. GORE, JR.
Assistant City Attorney.

* * * * *

page 29-RRRR } EXHIBIT D.

CERTIFICATE.

I hereby certify that the attached documents constitute true copies of Chapter 26 of The Code of the City of Norfolk, Virginia, 1950, which is the recodification in said Code of Ordinance No. 3480 entitled "An Ordinance To Regulate Motor Bus Passenger Transportation In The City of Norfolk" duly adopted by the Council of the City of Norfolk on July 21, 1925, and the recodification of Chapter 21 of The Code of the City of Norfolk, 1944, as amended, and of Ordinances Nos. 14,584, 15,029, 15-064, 16,034, 16,186, 16,494, 17,327, 17,851, 18,237, 19,244, and 19,662, duly adopted by the Council of the City of Norfolk on various dates, which are all the amendments to date to said Chapter 26, and that said Chapter 26 and said amendments thereto are now in full force and effect.

Given under my hand and the seal of the City of Norfolk this 12th day of June, 1959.

Seal

MARY M. RANDOLPH,
Deputy City Clerk of the
City of Norfolk.

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CHARTER AND CODE OF CITY OF NORFOLK.

CHAPTER 26.

MOTOR BUSES[1]

§ 26-1. Buses subject to provisions of chapter.
§ 26-2. Minimum seating capacity.
§ 26-3. Transfers.
§ 26-4. Routes—Designation.
§ 26-5. Same—Change; reasonable return on investment.
§ 26-6. Same—Deviation.
§ 26-7. Same—Temporary modification.
§ 26-8. Same—Operation on unauthorized route.
§ 26-9. Fares.
§ 26-10. Maintenance of efficient service.
§ 26-11. System of accounts and bookkeeping.
§ 26-12. Payment of percentage of gross revenue in lieu of license taxes.
§ 26-13. Passage of additional regulatory ordinances.
§ 26-14. Standard of maintenance and operation.
§ 26-15. Condition of vehicles.
§ 26-16. Maintenance of schedules.
§ 26-17. Regular operation over authorized routes.
§ 26-18. Indemnification of city.
§ 26-19. Operator to have certificate from chief of police.
§ 26-20. Compliance with traffic ordinances; funeral processions.
§ 26-21. Stops.
§ 26-22. Observance of signs and orders of police officers.
§ 26-23. Maximum number of passengers.
§ 26-24. Money or property left in vehicles.
§ 26-25. Charging or receiving other than specified fares; special service.
§ 26-26. Lights in interior.
§ 26-27. Passengers to stand behind white line.
§ 26-28. Smoking.
§ 26-29. Maintenance of vehicles and equipment.
§ 26-30. Signs or advertisements on vehicles.
§ 26-31. Operation in other business.
§ 26-32. Permit; bond.
§ 26-33. Motive power.

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[1]For state law as to motor vehicle carriers generally, see Code of 1950, § 56-273 et seq.

For charter provision as to power of city to regulate services rendered by buses, see char., § 2(11).

§ 26-34. No vested rights in streets; reservation of rights to city; discontinuance of routes.
§ 26-35. Separation of white and colored passengers.
§ 26-36. One bus not to pass another in motion.
§ 26-37. Advisory board.
§ 26-38. Intent of chapter.
§ 26-39. Penalties.

Sec. 26-1. Buses subject to provisions of chapter.

The operation of motor bus passenger transportation for hire, except taxicabs and for-hire vehicles and interurban and city sight-seeing vehicles, in the city shall be subject to the conditions, regulations and restrictions set forth in this chapter. The terms "interurban," as applied to motor buses or motor vehicles in this chapter, shall not be deemed to include a motor bus or motor vehicle which transports passengers from one point to another within the city, or to or from a contiguous city. (1944, § 243.)

Sec. 26-2. Minimum seating capacity.

No motor bus of a seating capacity of less than fifteen passengers shall be operated on the streets of the city under this chapter. (1944, § 244.)

Sec. 26-3. Transfers.

Any person operating under the provisions of this chapter shall furnish to passengers, when requested, transfers at points to be designated by the city manager for transportation over the bus lines operating hereunder. (1944, § 245.)

Sec. 26-4. Routes—Designation.

The operation of motor buses under the provisions of this chapter shall be along such streets of the city as are now or shall be hereafter designated by the council. (1944, § 246.)

Sec. 26-5. Same—Change; reasonable return on investment.

The right to continue to operate on the routes hereinabove provided, or any routes which may be designated, as hereinafter provided, shall be upon the condition that whenever public convenience shall, in the opinion of the council of the city or any person operating hereunder, reasonably require any change

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in the above routes, or any extension thereof, the same shall be made and established with all reasonable dispatch and diligence upon being required or allowed so to do by the council of the city; provided, however, that in the event, in the opinion of the council of the city or of any person operating hereunder, a change in route or schedule then in effect, or extension of route or the establishment of new routes or schedules is not reasonably required, or imposes upon any person operating or to operate the same an unreasonable burden, the issue so arising shall be submitted to the advisory board and be disposed of as herein provided for the settlement of disputes or issues which may arise between the city council and the party operating or to operate under this chapter; but no change or extension of routes which requires additional capital outlay or increased operating expenses by the person operating hereunder shall be required by the council of the city at any time when it appears that from the results of the operation for the preceding six months, the person conducting such operation has not been receiving a reasonable return on the entire investment used in bus service in the city, and in determining this issue it shall be recognized between the parties that a net return of eight per cent on capital invested in bus service shall be provided as a reasonable return after deducting operating expenses, taxes and maintenance and proper reserves for depreciation and renewal of equipment and for injuries and damages. (1944, § 247.)

Sec. 26-6. Same—Deviation.

No deviation from authorized routes shall be practiced or permitted, except that in case any authorized routes shall be obstructed on any block, drivers may, unless the city manager shall otherwise direct, make a detour by the nearest streets around the block on which such obstruction exists, returning to the prescribed route as soon as the obstruction shall have been passed. For any violation of any of these restrictions in any of the particulars named, the driver of the motor bus shall, upon conviction, be liable to the fine imposed by Section 26-39. (1944, § 248.)

Sec. 26-7. Same—Temporary modification.

The city manager is hereby empowered in all cases of fire, accident, parades, obstructions, breaks in or repairs to streets, or any other emergency which requires such action, temporarily to modify the routes herein prescribed and require the use of such other streets as in his opinion the public con-

venience and safety may require, until the emergency calling for such action shall have been terminated. (1944, § 249.)

Sec. 26-8. Same—Operation on unauthorized route.

It shall be unlawful for the driver of any motor bus operated under this chapter to operate such vehicle on any route or streets other than the route or streets which may be authorized in the manner above provided. (1944, § 250.)

Sec. 26-9. Fares.[2]

The fares to be charged on motor buses operated under the provisions of this chapter from December 15, 1949, unless and until changed by the council, which right of change is hereby reserved, and which fares shall be for a single continuous passage, by way of the most direct route between any two points on the motor bus lines of the operating company as now or hereafter operated, even though such trip requires one or more transfers from one motor bus line to another, shall be as follows:

(a) The cash fare shall be twelve cents.

(b) Tokens or tickets shall be sold on buses at the rate of three for thirty-five cents, and the same shall entitle the bearer to ride on buses.

(c) There shall be sold at the office of the operating company, or at such other places as may be designated by said company with the approval of the city manager, in the city, during the usual business hours of each day other than Sundays and legal holidays, to the children, pupils of any private, public or parochial school for general education of grade or high school level, within the corporate limits of the city, who are in regular attendance upon such school and who are under eighteen years of age, tickets at the rate of twenty-four tickets for one dollar and twenty cents, which tickets shall be for the use only of the pupil to whom and in whose name they shall be issued, between the hours of 7:30 A. M. and 4:30 P. M. each day, from Monday to Friday, both inclusive, except during the months of July and August, during which period only regularly enrolled summer school students, as above restricted, will be entitled to use school tickets, and, when so presented by the person to whom and in whose name they are issued,

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[2]For charter provision as to power of city to regulate rates charged by buses, see char., § 2(11).

such person is entitled to the same rights as if he had paid the regular fare required of other passengers. The operating company shall not be required to sell such tickets in lots or books of less than twenty-four tickets, and then only to pupils who shall present at the time of purchase of such tickets a certificate from the principal or some regular teacher of the school which the said pupils attend, certifying that the person presenting the same is a regularly enrolled pupil of the school named on said certificate, within the city, is in regular daily attendance thereon, and is under eighteen years of age.

(d) Each passenger paying a fare as provided for herein may carry on said buses operated by said company, free of charge, one child under five years of age, but where two or more children under five years of age accompany one passenger, the fare to be paid for said children shall be at the rate of two children for one fare, and said children shall be entitled to all the privileges of a passenger paying the regular fare.

(e) Transfers shall be issued as provided in section 26-3, but transfers shall be requested at the time the fare is paid.

(f) When routes are extended or new routes established, there shall be such an adjustment of fares as shall be reasonable so as not to impair a reasonable return on the basis provided in this chapter. In the exercise of its reserved power of regulation, the council of the city reserves the right to fix the fares to be charged on the bus system herein provided for, and will at all times prescribe the rates of fare which will permit a reasonable return as defined in this chapter on the investment in the bus service in the city.

(g) In the event a decrease or increase in the fares specified above is found reasonable and proper, and the council of the city and the company or individual operating on said routes cannot agree on the amount of the decrease or increase, or in the event of a disagreement concerning the fare to be charged on a new or extended route, the issue so arising shall be referred to the advisory board as herein provided. (1944, § 251; Ord. 13,218, 8-17-48; Ord. 14,057, 11-15-49; Ord. 14,678, 8-29-50.)

Sec. 26-10. Maintenance of efficient service.

An adequate and efficient public service at the rates herein specified or as the same may hereafter be prescribed by the council of the city, shall at all times be maintained by any person operating under the provisions of this chapter. (1944, § 252.)

Sec. 26-11. System of accounts and bookkeeping.

A standard form of accounts and system of bookkeeping, to be approved by the city auditor, shall be kept and observed by the person operating under the provisions of this chapter insofar as the said system of accounts and bookkeeping applies to such motor bus transportation, and the city auditor, or some accountant duly authorized by the council, shall have the right and privilege at any time to examine the books of the said person in order to verify or, if need be, to correct the same or any returns and reports made by the said person therefrom. (1944, § 253.)

Sec. 26-12. Payment of percentage of gross revenue in lieu of license taxes.

Any company or individual operating under the provisions of this chapter shall pay into the treasury of the city for the use of its streets an amount equal to five per cent of the gross revenue from the bus operations of the said company or individual, in the city, which said payments shall be due and payable monthly on the fifteenth day of each month on the gross revenue for the preceding calendar month, and all of said payments shall be accompanied by a statement of the amount of such gross revenue, sworn to by the treasurer or secretary of the said company or by said individual. All of the payments to be made under this section shall be a lien upon any and all of the vehicles and property of the said company or individual, prior and superior to any other lien or encumbrance thereon. Should any such company or individual fail to make any payment above-mentioned within thirty days after the same shall become due and payable, the said company or individual shall be and become liable to a fine of not less than five dollars nor more than one hundred dollars, each day's failure to be a separate offense. Should any such company or individual continue for thirty days in default as to any such payment, the city council may require and order said company or individual to cease running or operating his vehicles upon the city streets, or any part thereof. Should any such company or individual, after notice of any such requirement by the city and while so continuing in default, run or operate any of his vehicles on the streets of the city, in addition to any other penalties prescribed by law, he shall be liable to a fine of not less than five dollars nor more than one hundred dollars for each and every vehicle so operated,

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and each day's operation of any such vehicle shall be a separate offense.

The payment of said sums for the use of the streets shall be in lieu of any and all city license taxes. But it is expressly stipulated that such payments shall not affect the liability of any such company or individual to general taxation at the rate assessed on the property of other persons within the city, which liability for general taxation is hereby expressly recognized and shall continue.

In the event that, during the continuance of the operation of buses under this chapter, the city should, without the consent of any company or individual operating hereunder, issue license for or authorize the operation of any other motor buses or other motor vehicles in like service, for the transportation of passengers for hire, except as provided for under the terms and conditions of this chapter, then the said company or individual, upon written notice to the city of his objection thereto, shall have the right to cease paying the five per cent gross revenue provided for in this section during such time as such other motor buses or other motor vehicles in like service are licensed or are authorized and are operated thereunder, and the company or individual operating hereunder shall have the right to discontinue the whole operation conducted by him after giving to the city six months' notice of his purpose so to do. (1944, § 254.)

Sec. 26-13. Passage of additional regulatory ordinances.

The city expressly reserves the right to pass at any time, in addition to the provisions of this chapter, any and all ordinances deemed necessary by it in the reasonable exercise of its police power, for the safety, welfare and convenience of the public and for the regulation and control of motor bus transportation within the city, and to prescribe the size, character and type of the motor vehicles to be used under the provisions of this chapter. (1944, § 255.)

Sec. 26-14. Standard of maintenance and operation.

Any person operating under the provisions of this chapter shall at all times maintain and operate his transportation system in accordance with the most approved methods and by use of the most approved means of surface transportation, without and otherwise than by the construction or use of railway tracks or the erection of poles and wires, and shall maintain all of the physical property used and operated by him at the highest practical standard of efficiency. (1944, § 256.)

Sec. 26-15. Condition of vehicles.

Every person shall at all times keep all buses or vehicles operated by him clean, sufficiently ventilated, efficiently lighted at night and adequately heated with safe and convenient appliances whenever the weather is such that heating is essential to the comfort of passengers. (1944, § 257.)

Sec. 26-16. Maintenance of schedules.

Every person shall operate and maintain regular schedules so as to render reasonable service on each route served by him; provided, that the council of the city may, from time to time, require service of said person on such schedules as public needs may demand; and provided further, that no service shall be required which shall adversely affect or impair the present or future ability of the person operating under this chapter to earn the required reasonable return on the investment as defined in section 26-5. (1944, § 258.)

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Sec. 26-17. Regular operation over authorized routes.

Such person shall operate his said vehicles regularly over the authorized routes, unless prevented from so doing by an act of God or other causes not reasonably preventable. But should it be necessary in the prosecution of any public work to stop temporarily the operation of such vehicles, it may be done on the order of the city manager, and in such case the city shall not be liable and such person shall be held free from all claims of the city for damages or penalties by reason of the delay or suspension of its business or traffic. (1944, § 259.)

Sec. 26-18. Indemnification of city.

Any person operating under the provisions of this chapter shall by acceptance in writing of the terms and conditions of this chapter agree and bind himself to keep and hold the city free and harmless from liability for any and all damages that may accrue to himself or to any other person on account of injury or damage to person or property directly or indirectly growing out of the construction of his work or out of the operation of his vehicles under this chapter, wherever the city is liable therefor; and in case suit shall be brought against the city, either independently or jointly with the said person, on account thereof, the said person, upon notice to him by the

city, will defend the city in such suit, and in the event of a judgment being obtained against the city, either independently or jointly with the said person, on account of the acts or omissions of the said person, such person shall pay the said judgment, with all costs, and hold the city harmless therefrom. (1944, § 260.)

Sec. 26-19. Operator to have certificate from chief of police.

No person shall operate any vehicle under the provisions of this chapter until he shall have appeared before the chief of police of the city and passed an examination as to his ability to operate such vehicle and as to his knowledge of the traffic laws of the state and of the city and shall have obtained a certificate in writing from the chief of police to that effect; provided, however, that the chief of police shall not approve any application for such certificate from any person who is under the age of eighteen years, nor unless he be fully satisfied upon the giving of evidence for and against the applicant if necessary, or if desired by the applicant, that the latter is a person of good moral character and of good reputation in the community. (1944, § 261.)

Sec. 26-20. Compliance with traffic ordinances[3] funeral processions.

Any person in the operation of his vehicles under this chapter shall be at all times subject to and controlled by the ordinances of the city regulating travel and traffic upon the streets, sidewalks and alleys, as the same have been or may hereafter be from time to time amended, unless the same are in direct conflict herewith, and no vehicle operated under this chapter shall run through or obstruct any funeral procession while the same is in motion. (1944, § 262.)

Sec. 26-21. Stops.[4]

All vehicles operated under this chapter shall stop for the purpose of taking on or letting off passengers at such points or places as may be designated by the city manager, or his duly authorized representatives. All such stops shall be clearly marked by suitable signs to be placed and maintained at the

[3]As to compliance with Motor Vehicle Code, see § 27-5 of this Code. As to parking motor passenger buses, see § 27-94

[4]As to entering or leaving buses, see § 27-27 of this Code. As to bus stops in parking meter zones, see § 27-118.

cost and expense of the person operating hereunder. (1944, § 263.)

Sec. 26-22. Observance of signs and orders of police officers.

All vehicles operated under this chapter
page 29-XXXX } shall be made to observe and comply with
all orders given by word or sign by the
police officers of the city and with all signs and directions placed in the said streets by the city manager, and for any failure so to do, both the operator of the vehicle and the person employing him shall be liable to a fine of not less than five dollars nor more than one hundred dollars. (1944, § 264.)

Sec. 26-23. Maximum number of passengers.

The number of passengers received for transportation shall be limited to the seating capacity of the vehicle, plus such additional number as may be authorized by the city manager. (1944, § 265.)

Sec. 26-24. Money or property left in vehicles.

The person in charge of any vehicle operated under this chapter shall carefully preserve any money or other property left in such vehicle by any passenger, and the same shall be promptly deposited with the person employing him, to be by him kept at some convenient point within the city, where the same may be called for by the owner. When such money or property shall have been identified and ownership established, the same shall be promptly delivered to such owner. Any property, whether money or other thing, which shall not be called for within three months, shall be disposed of according to law. (1944, § 266.)

Sec. 26-25. Charging or receiving other than specified fares; special service.

No person operating under the provisions of this chapter shall permit to be charged, nor shall the operator of any vehicle owned by such person charge, demand, collect or receive a greater or different compensation for the transportation of passengers or for any service in connection therewith than the rates and charges specified in this chapter. Nothing herein shall prevent such person from operating vehicles for excursion parties or on special service under charter or other contracts at such charges as may be agreed upon; pro-

vided, that there shall be no interference with the operation of established schedules. (1944, § 267.)

Sec. 26-26. Lights in interior.

No motor vehicle operating under this chapter shall be operated between one-half hour after sunset and one-half hour before sunrise, unless sufficient light be provided adequately to light the whole of the interior of said vehicle. (1944, § 268.)

Sec. 26-27. Passengers to stand behind white line.

Each vehicle operating under this chapter shall have a white line not less than two inches in width on the floor thereof, plainly visible at all times, extending from the fare box stanchion to the top rear corner of the front step and there shall be posted in each vehicle in a conspicuous place in type easily legible a sign reading "Passengers must stand behind white line."

It shall be unlawful for any passenger to stand between said white line and the front of said vehicle while said vehicle is in motion.

Any person violating any provisions of this section shall, upon conviction, be fined not to exceed fifty dollars for each offense. (Ord. 12,999, 5-11-48.)

Sec. 26-28. Smoking.

It shall be unlawful for any person operating any vehicle under this chapter or for any passenger to smoke or have in his possession a lighted cigar, cigarette or pipe while such vehicle is being operated hereunder, and it shall be unlawful for such operator to permit any passenger so to do. Notice to this effect shall be posted and kept posted in some conspicuous place in each motor bus. Any person violating the provisions hereof shall, upon conviction, be fined not to exceed fifty dollars for each offense. (1944, § 269.)

Sec. 26-29. Maintenance of vehicles and equipment.

All vehicles and the equipment used in connection therewith, operated under this chapter, shall at all times be kept in proper physical condition to the satisfaction of the city manager, or his duly authorized representa-
page 29-YYYY } tive, so as to render safe, adequate and proper public service and so as not to be a

menace to the safety of the occupants or of the general public. (1944, § 270.)

Editor's note.—This section was cited in the case of *Moore* v. *Virginia Transit Co., et al.*, 188 Va. 493, 50 S. E. (2), 268.

Sec. 26-30. Signs or advertisements on vehicles.

No vehicle operated under this chapter shall have on the exterior thereof any signs or advertisements of any description, except such as designate the name of the company or individual operating it, or route signs and the number of the vehicle and such license plates as may be required by the laws of the state and ordinances of the city. (1944, § 271.)

Sec. 26-31. Operation in other business.

It shall be unlawful for any person operating under the provisions of this chapter to allow any vehicle authorized by this chapter to be operated or for the operator thereof to operate such vehicle in any other business than that for which it is authorized by this chapter. (1944, § 272.)

Sec. 26-32. Permit; bond.

Before any person shall operate any motor bus or buses on the routes herein provided, said person shall file with the city manager an application for a permit so to do together with a written agreement, in form approved by the city attorney, that he will conform to, and comply with, all the provisions of this chapter; and no permits shall be granted to an applicant to operate hereunder unless said applicant shall undertake to operate on all of said routes.

Upon receipt of said application and agreement, the city manager shall issue a certificate, in form approved by the city attorney, authorizing the applicant to operate buses as herein provided for, upon the filing of a bond, with surety approved by the city attorney, in the sum of twenty thousand dollars, conditioned that the applicant will conform to and comply with each and every condition and provision of this chapter, and will indemnify and save harmless the city, or any person from any and all claims, demands or judgments on account of injuries or damages occasioned by the negligence of such applicant. Upon the filing and approval of said bond, the applicant shall be authorized to operate buses as herein provided for. (1944, § 273.)

Sec. 26-33. Motive power.

The power by which the system of passenger transportation hereby authorized shall be operated shall be gasoline motor, or such other motor power, or combination of power, as may be authorized or required from time to time by the council of the city. (1944, § 275.)

Sec. 26-34. No vested rights in streets; reservation of rights to city; discontinuance of routes.

No company or individual operating under this chapter shall acquire any vested right thereunder in the streets of the city or any vested right to use the same. The city reserves the right to alter, amend or repeal this chapter at any time, and may at any time by resolution of its council, without amending or repealing this chapter, and with or without cause, revoke any permit or right to operate that may be given hereunder. Notwithstanding this chapter shall have been amended or repealed, or any such permit revoked, any person operating hereunder shall have the right to, and at the option of the city shall, continue to operate over authorized routes for a period of six months from the date of service of notice by the city to discontinue such operation. Any person operating under this chapter shall likewise have the right to discontinue all of the routes covered by its permit after six months' notice to the city of its intention so to do; provided, that the discontinuance by such person, without the consent of the city council, of the operation of any one or more routes less than all covered by its permit shall, at the option of the city to be exercised at any time it elects ipso facto, terminate at once the right of such person to operate on all other routes covered by said permit, or in such event the city may itself operate or may authorize others to operate motor buses on such abandoned routes. The said rights so reserved to the city by this section shall be absolute and shall not be the subject of arbitration under any provision of this chapter or otherwise. (1944, § 276.)

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Sec. 26-35. Separation of white and colored passengers[5]

(1) Every person shall separate the white and colored passengers in his motor buses and vehicles operated hereunder, and set apart and designate in each bus or other vehicle a por-

[5]For similar state law, see Code of 1950, §§ 56-326 to 56-329.

tion thereof or certain seats therein to be occupied by white passengers and a portion thereof or certain seats therein to be occupied by colored passengers, and any person who shall fail, refuse or neglect to comply with the provisions of this paragraph shall be guilty of a misdemeanor and, upon conviction, shall be fined not exceeding two hundred and fifty dollars for each offense.

(2) Said person shall make no difference or discrimination in the quality or convenience of the accommodations provided for the two races under the provisions of this section.

(3) The driver, operator or other person in charge of any such motor bus or vehicle shall have the right, and he is hereby directed and required, at any time when it may be necessary or proper for the comfort and convenience of passengers so to do, to change the designation so as to increase or decrease the amount of space or seats set apart for either race, but no contiguous seats on the same bench shall be occupied by white and colored passengers at the same time (unless or until all of the other seats in said bus or vehicle shall be occupied), and said driver, operator or other person in charge of the bus or vehicle may require any passenger to change his seat, as it may be necessary or proper. The driver, operator or other person in charge of any bus or vehicle who shall fail or refuse to carry out the provisions of this paragraph shall, upon conviction, be fined not more than twenty-five dollars for each offense.

(4) All persons who shall fail, while on any motor bus or vehicle, to take and occupy the seats or other space assigned to them by the driver, operator or other person in charge thereof, or who shall fail to obey the instructions of any driver, operator or other person in charge as aforesaid to change their seats from time to time as occasions require, pursuant to any lawful rule, regulation or custom in force as to assigning separate seats or other space to white and colored persons, respectively, having been first advised of such regulation and requested to conform thereto shall, upon conviction thereof, be fined not more than twenty-five dollars for each offense. (1944, § 277.)

Sec. 26-36. One bus not to pass another in motion.

It shall be unlawful for the driver of any motor bus operated upon any public street of the city to pass another motor bus traveling in the same direction while such other motor bus is in motion.

Any person violating the provisions of this section shall,

upon conviction thereof, be fined not less than ten dollars nor more than fifty dollars. (1944, § 278.)

Sec. 26-37. Advisory board.[6]

Subject to the proviso at the end of this section, any difference or issue which may arise between the city and any person operating under this chapter shall, upon request of either party, be referred to an advisory board, which shall consist of the presidents of the following organizations in the city: Chamber of Commerce, Retail Merchants' Association, Norfolk Real Estate Board Inc., and the chairman of the Industrial Commission, and in the event that the decision of a majority of said board so constituted shall not be acceptable to either the city or the person operating under this chapter, then either party shall have the right to present the issue or difference so arising between them for decision by the judge of the circuit court of the city, which decision shall be entered as a judgment of said court, from which an appeal may be taken by either party; provided, that nothing in this section shall be construed to prevent the city
page 29-AAAA(1) } from exercising at any time the rights reserved to it under section 26-34, or the right to revoke any permit or right to operate that may be given hereunder. (1944, § 279.)

Sec. 26-38. Intent of chapter.

It is not intended by this chapter to grant or offer any franchise, but it is intended to regulate motor bus passenger transportation in the city. (1944, § 280.)

Sec. 26-39. Penalties.

All of the provisions of this chapter imposing obligations or requirements on any person operating hereunder shall be deemed to be mandatory and for any violation of any obligation or requirement of this chapter for which no special penalty is prescribed, any person operating hereunder, upon conviction thereof, and for each day's continuance of such violation, shall pay a fine of not less than five dollars nor more than one hundred dollars, recoverable before the police justice of the city, and all debts, penalties or forfeitures inuring

[6]For charter provision as to appointment of advisory boards, see char., § 141. For charter provision as to removal of members of boards, see char., § 142.

to the city under this chapter shall constitute a lien upon the property of said person, prior to all other debts, liens or obligations thereof, whether created before or after the creation of any lien in favor of any person. (1944, § 274.)

CHAPTER 27.

MOTOR VEHICLE CODE.

Article I. General Provisions.

§ 27-1. Designation and application of chapter.
§ 27-2. Definitions.
§ 27-3. Business district defined.
§ 27-4. Residence district defined.
§ 27-5. Unlawful not to comply with chapter.
§ 27-6. Persons riding bicycle or riding or driving animals subject to traffic regulations.
§ 27-7. Obedience to orders of police.
§ 27-8. Other than official signs prohibited.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:—That it shall be unlawful for any person to drive, operate, or park any motor vehicle, animal drawn vehicle or vehicle moved by human power on any of the streets of the City within the area bounded on the north by the northern line of Brambleton Avenue, on the east by the eastern line of Church Street, on the south by the southern line of Main Street, and on the west by the western line of Boush Street, for advertising purposes, provided, however, that nothing herein contained shall prevent the placing of business advertisements and notices upon such vehicle so long as it is engaged in the usual business or regular work of the owner and is not used merely or mainly for advertising purposes.

Section 2:—That nothing herein contained shall prevent the use of such vehicles for advertising purposes in any parade for which a permit is issued pursuant to Section 864 of The Code of the City of Norfolk, 1944.

Section 3:—That any person violating any of the provisions of this ordinance shall, upon conviction thereof, be fined not less than $5.00 nor more than $500.00.

Section 4:—That this ordinance shall be in effect from and after thirty days from the date of its adoption.

Adopted by the Council August 1, 1950
Effective August 31, 1950.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:—That Subsection 23 of Section 246 of The Code of the City of Norfolk, 1944, be and the same hereby is amended and reordained so as to read, as follows:

(23) ROUTE NO. 23 WILLARD PARK. Beginning at City Hall Avenue and Granby Street; thence along Granby Street to 26th Street to Lafayette Boulevard; thence along Lafayette Boulevard to Norway Place; thence along Norway Place to Alsace Avenue; thence along Alsace Avenue to Dunkirk Avenue; thence along Dunkirk Avenue to Cromwell Road; thence along Cromwell Road to Cottage Toll Road, and thence along Cottage Toll Road to Sunshine Homes. Returning along the same route to Granby Street; thence to 9th Street to Monticello Avenue, to City Hall Avenue to Granby Street, the point of beginning.

Section 2:—That this ordinance shall be in effect from and after thirty days from the date of its adoption.

Adopted by the Council March 13, 1951.
Effective April 12, 1951.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:—That the Code of the City of Norfolk, Virginia, 1950, be and the same hereby is amended by adding a new section thereto to be numbered 26-30.1 and to read as follows, as

recommended by the Acting City Manager under date of July 17, 1952;

Sec. 26-30.1

In addition to the advertising signs heretofore permitted on vehicles operated under this chapter, as set forth in ordinance number 15,029, such vehicles may have one additional sign on the rear of such vehicles, the size of which signs shall not exceed 6-inches by 56-inches, and which said signs shall be used exclusively to advertise the services of the company operating said vehicle; subject, however, to the right of Council to require the removal of such signs at any time on not less than 90 days' written notice to the company operating said vehicle.

Section 2:—That this ordinance shall be in effect from and after thirty days from the date of its adoption.

Adopted by the Council July 29th, 1952.
Effective—August 28th, 1952.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section I:—That Sections 26-5 and 26-11 of Chapter 26 of the Norfolk City Code of 1950 be amended and reordained, and that said Code be amended by adding thereto Section 26-5.1, said amended sections and said new section to read as follows:

Sec. 26-5. Routes—Change; Reasonable Return on Investment.

The right to continue to operate on the routes hereinabove provided, or any routes which may be designated, as hereinafter provided, shall be upon the condition that whenever public convenience shall, in the opinion of the council of the city or any person operating hereunder, reasonably require any change in the above routes, or any extension thereof, the same shall be made and established with all reasonable dispatch and diligence upon being required or allowed so to do by the council of the City; provided, however, that in the

event, in the opinion of the council of the city or of any person operating hereunder, a change in route or schedule then in effect, or extension of route or the establishment of new routes or schedules is not reasonably required, or imposes upon any person operating or to operate the same an unreasonable burden, the issue so arising shall be submitted to the advisory board and be disposed of as herein provided for the settlement of disputes or issues which may arise between the city council and the person operating or to operate under this chapter; but no change or extension of routes which requires additional capital outlay or increased operating expenses by the person operating hereunder shall be required by the council of the city at any time when it appears that from the results of the operation for the preceding six months, the person conducting such operation has not been receiving the allowable return hereinafter provided for in this chapter.

Sec. 26-11. System of Accounts and Bookkeeping.

A standard form of accounts and system of bookkeeping, to be approved by the city auditor, shall be kept and observed by the person operating under the provisions of this chapter in so far as the said system of accounts and bookkeeping applies to such motor bus transportation, and the city auditor, or some accountant duly authorized by the council, shall have the right and privilege at any time to examine the books of the said person in order to certify or, if need be, to correct the same or any returns and reports made by the said person therefrom.

page 29-IIII(1) } No basic changes in the form of accounts and system of bookkeeping now in use and applicable to the motor bus transportation operated under the provisions of this chapter shall be made without the prior approval of the council.

Sec. 26-5.1. Capital Investment; Rate of Return; Depreciation.

The council of the city shall determine the items and values contained in the capital investment account of the motor bus service operated under this chapter, the addition and retirement of bus equipment, or any major change in capital assets, both as to incidence and value, and the rates for depreciation of capital assets contained in the rate base investment.

The rate base investment shall be determined at the end of each calendar year, by the council, (a) on the average of the remainder value of the capital assets therein at the beginning

of each month, starting at January 1 and ending at December 1 of each year, and seven per centum (7%) shall be the allowable return thereon, and (b) another calculation shall be made at three and one-half per centum (3½%) of the gross annual revenue from said motor bus service. The greater allowable return, under either method, as and when earned, shall be the allowable return to the person operating under the provisions of this chapter, subject, however, to the following provision:

Any profits before deduction for interest and/or dividends, in excess of such final allowable return, as and when earned, shall be distributed on the following basis:

On the first $10,000.00, or any part thereof, 100% to the person operating under the provisions of this chapter.

On the next $15,000.00, or any part thereof, 75% to said person and 25% to the city.

On the next $20,000.00, or any part thereof, 50% to said person and 50% to the city.

On the next $25,000.00, or any part thereof, 25% to said person and 75% to the city.

On all over $70,000.00, 100% to the city.

Section II:—That this ordinance shall be in effect from and after thirty days from the date of its adoption.

Adopted by the Council on April 21st, 1953.
Effective—May 21st, 1953.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:—That Chapter 26 of The Code of the City of Norfolk, Virginia, 1950, as amended, is hereby amended by adding thereto a new section to be numbered and to read as follows:

Sec. 26-40. Size of passenger motor buses.

Passenger motor buses operated under the provisions of this Chapter may have a total outside width up to but not

exceeding one hundred and two inches and a total length up to but not exceeding forty feet; provided, however, that whenever passenger motor buses exceeding a total outside width of ninety-six inches or a total length of thirty-five feet are to be operated, permits therefor must be obtained from the City Manager, who in such permits shall designate the route or routes on which passenger motor buses of such dimensions may be operated, and provided further, that whenever passenger motor buses exceeding a total length of thirty-five feet are to be operated, a general or special order therefor shall be obtained from the State Highway Commission, pursuant to the provisions of Section 46-328 of the Code of Virginia, 1950, as amended, and the City Manager is hereby authorized to request the State Highway Commission to issue such general or special order increasing the length of such passenger motor buses and designating the highways, or parts thereof, over which passenger motor buses of such increased length may be operated.

Section 2:—That this ordinance shall be in effect from and after thirty days from the date of its adoption.

Adopted by the Council August 9th, 1955.
Effective September 8th, 1955.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:—That Section 26-30, as amended, of The Code of the City of Norfolk, Virginia, 1950, is hereby amended and reordained so as to read as follows:

Sec. 26-30. Signs or advertisements on the front and sides of vehicles.

No vehicle operated under this chapter shall have on the exterior thereof any signs or advertisements of any description, except such as designate the name of the company or individual operating it, or route signs and the number of the vehicle and such license plates as may be required by the laws of the state and ordinances of the city; provided, however, that such vehicles may have one advertising sign on the front

and one advertising sign on each side thereof, except 30 buses may have two advertising signs on each side thereof, each sign not to exceed nine hundred sixty-eight square inches in size, subject, however, to the right of the Council to require the removal of said signs at any time on not less than ninety days' written notice to the company operating under this chapter.

Section 2:—That this ordinance shall be in effect from and after thirty days from the date of its adoption.

Adopted by the Council January 21st, 1958.
Effective—February 20th, 1958.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:—That Section 26-9, as amended, of The Code of the City of Norfolk, Virginia, 1950 is hereby amended and reordained so as to read as follows:

Sec. 26-9. Fares.

The fares to be charged on motor buses operated under the provisions of this chapter from December 13, 1958, unless and until changed by the Council, which right of change is hereby reserved, and which fares shall be for a single continuous passage, by way of the most direct route between any two points on the motor bus lines of the operating company as now or hereafter operated, even though such trip requires one or more transfers from one motor bus line to another, shall be as follows:

(a) The cash fare shall be 15¢ for any single zone ride or portion thereof. Any person continuing his ride beyond any zone point shall pay an additional fare of 5¢.

The zone points herein referred to shall be designated as follows:

Granby Street Route: Granby Street and Brackenridge

Avenue for inbound rides, and Granby Street and Fife Street for outbound rides.

Naval Base Route: Hampton Boulevard and the southern end of the Hampton Boulevard Bridge for inbound rides, and Hampton Boulevard and the northern end of the Hampton Boulevard Bridge for outbound rides.

Chesapeake Route: Sewells Point Road and Chesapeake Boulevard (Norview).

Broad Creek Route: Sewells Point Road and Chesapeake Boulevard.

Money Point Route: Bainbridge Boulevard and Rosemont Avenue.

(b) There shall be sold at the office of the operating company, or at such other places as may be designated by said company with the approval of the City Manager, in the City, during the usual business hours of each day other than Sundays and legal holidays, to the children, pupils of any private, public or parochial school for general education of grade or high school level, within the corporate limits of the City, who are in regular attendance upon such school and who are under eighteen years of age, tickets at the rate of twenty tickets for two dollars, which tickets shall be for the use only of the pupil to whom and in whose name they shall be issued, between the hours of 7:30 A. M. and 4:30 P. M., each day, from Monday to Friday, both inclusive, except during the months of July and August, during which period only regularly enrolled summer school students, as above restricted, will be entitled to use school tickets, and, when so presented by the person to whom and in whose name they are issued, such person is entitled to the same rights as if he had paid the regular fare required of other passengers, except that such person shall be entitled to ride in the second zone in any continuous ride without payment of any additional fare. The operating company shall not be required to sell such tickets in lots or books of less than twenty tickets, and then only to pupils who shall present at the time of purchase of such tickets a certificate from the principal or some regular teacher of the school which the said pupils attend, certifying that the person presenting the same is a regularly enrolled pupil of the school named on said certificate, within the City, is in regular daily attendance thereon, and is under eighteen years of age.

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(c) Each passenger paying a fare as provided for herein may carry on said buses operated by said company, free of charge, one child under five years of age, but if one passenger

carries two or more children under five years of age the fare to be paid for the second and all additional children shall be 10¢ each and not subject to any zone fare; and said children shall be entitled to all the privileges of a passenger paying the regular fare.

(d) Transfers shall be issued as provided for in Section 26-3 but transfers shall be requested at the time of payment of the original fare. Transfer passengers continuing their ride beyond any zone point shall pay the additional zone fare.

(e) When routes are extended or new routes established, there shall be such an adjustment of fares as shall be reasonable so as not to impair a reasonable return on the basis provided in this chapter. In the exercise of its reserved power of regulation, the Council of the city reserves the right to fix the fares to be charged on the bus system herein provided for, and will at all times prescribe the rates of fare which will permit a reasonable return as defined in this chapter on the investment in the bus service in the city.

(f) In the event a decrease or increase in the fares specified above is found reasonable and proper, and the council of the city and the company or individual operating on said routes cannot agree on the amount of the increase or decrease, or in the event of a disagreement concerning the fare to be charged on a new or extended route, the issue so arising shall be referred to the advisory board as herein provided.

Section 2:—That this ordinance shall be in effect from and after thirty days from the date of its adoption.

Adopted by the Council November 12, 1958.
Effective December 12, 1958.

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page 29-PPPP(1) }

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EXHIBIT E.

Norfolk, Virginia
December 29, 1944

Mr. Charles B. Borland,
City Manager of the City of Norfolk,
Norfolk, Virginia.

Dear Sir:

The undersigned, Virginia Transit Company, hereby makes application for permit to operate buses upon the routes enumerated in the ordinance entitled "An Ordinance to Regulate Motor Bus Passenger Transportation in the City of Norfolk," adopted by the Council, July 21, 1925, as amended, subject to the terms and conditions of said ordinance, as amended.

This Company hereby covenants that it will conform to and comply with all of the provisions of said ordinance, as amended, and undertakes to operate on all of the routes specified therein as required by Section 28 of Article IV of said ordinance.

This Company hereby accepts the terms and conditions of said ordinance, as amended, and agrees and binds itself to keep and hold the City free and harmless from liability for any and all damages that may accrue to itself or to any person or persons on account of injury or damage to person or property directly or indirectly growing out of the construction of its work or out of the operation of its vehicles under said ordinance, as amended, wherever the City is liable therefor; and in case suit shall be brought against the City, either independently or jointly with this Company, on account thereof, the said Company, upon notice to it by the City, will defend the City in such suit, and in the event of a judgment being obtained against the City, either independently or jointly with this Company, on account of the acts or omissions of said Company, this Company will pay the said judgment with all costs and hold the City harmless therefrom, as required by Section 15 of Article IV of said ordinance.

Upon the issuance of permit to this Company it will execute and file the bond required by Section 28 of Article IV of said ordinance.

VIRGINIA TRANSIT COMPANY
By MURRAY M. McGUIRE
President.

Attest:

JAMES A. GLASCOCK, JR.
Secretary.

Approved as to Form.

..... WARD

page 29-QQQQ(1) } EXHIBIT F.

December 29, 1944.

To Virginia Transit Company,
Norfolk, Virginia.

Receipt is hereby acknowledged of your application for the permit to operate buses provided for by the ordinance entitled "An Ordinance to Regulate Motor Bus Passenger Transportation in the City of Norfolk," which was adopted by the Council on July 21, 1925, as amended, which application embodies the acceptance of the terms and conditions of said ordinances and the agreements and undertakings required by Sections 15 and 28 of Article IV of said ordinance.

You are hereby granted the permit to operate buses pursuant to the provisions of the above entitled ordinance, as amended, and to immediately conform your operations to the provisions thereof. This permit to become effective upon the filing of the bond provided for in said ordinance.

Attention is called to the fact that the Council of the City of Norfolk, by ordinance adopted December 19, 1944, authorized the transfer by Virginia Electric and Power Company to you of its electric street railway and motor bus passenger transportation system in this City, and it is understood that this permit is issued solely for the purpose of complying with the special provisions of the aforesaid ordinance of July 21, 1925, as amended.

CITY OF NORFOLK
By (Signed) CHAS B. BORLAND
City Manager.

* * * * *

page 29-WWWW(1) }

EXHIBIT H.

To The City of Norfolk,
John D. Corbell, City Clerk,
Norfolk, Virginia.

In accordance with Section 5 of the hereinafter mentioned ordinance, the undersigned, Virginia Transit Company, hereby accepts the transfer and assignment of the rights and privileges of Virginia Electric and Power Company to main-

tain and operate its electric street railway and motor bus systems upon certain of the streets, avenues and highways of the City of Norfolk, to which the Council of the City of Norfolk has granted its consent as evidenced by an ordinance adopted by said Council on December 19, 1944, entitled "An Ordinance to grant consent of the City of Norfolk to the transfer by Virginia Electric and Power Company to Virginia Transit Company of the rights and privileges of said Virginia Electric and Power Company to maintain and operate its electric street railway and motor bus systems upon certain of the streets, avenues and highways of the City of Norfolk," and the undersigned, Virginia Transit Company, hereby agrees to operate, on and after December 29, 1944, said electric street railway and motor bus transportation systems as located and operated on the date of the adoption of said ordinance and covenants and agrees to be bound by all of the obligations heretofore resting on said Virginia Electric and Power Company by virtue of any agreement with the City of Norfolk or any franchise or ordinance granted or adopted by the Council of the City of Norfolk or that may otherwise exist according to law, by reason of such operations on and after December 29, 1944.

WITNESS the following signatures and seal this 29th day of December, 1944.

VIRGINIA TRANSIT COMPANY
By MURRY M. McGUIRE
President.

Attest:

JAMES A. GLASCOCK, JR.
Secretary.

Approved as to form.

J. WARD, City Attorney.

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Filed June 18, 1959.

T. A. W. GRAY, D. C.

ANSWER OF CAROLINA COACH COMPANY TO THE PETITIONS OF CITY OF NORFOLK AND VIRGINIA TRANSIT COMPANY.

To the Honorable Clyde H. Jacob, Judge of the Circuit Court of the City of Norfolk:

Your defendant, Carolina Coach Company, a Virginia corporation, without, in any manner, waiving the Motion to Dismiss previously filed in this proceeding, comes now and says in response to the Petitions filed herein by the City of Norfolk and the Virginia Transit Company, as follows:

1. The jurisdiction of this Court in this proceeding is alleged as invoked under Title 8, Chapter 25, Code of Virginia, 1950, as amended, Sections 8-578 to 8-585 inclusive. The same issues raised by the Petitions had been, at the time said Petitions were filed, presented to the State Corporation Commission of Virginia by your defendant, Carolina Coach Company, all as set forth in the Motion to Dismiss. Subsequent to the filing of said Motion to Dismiss, the Virginia Transit Company intervened and made an appearance before the State Corporation Commission in the proceeding instituted by Carolina Coach Company. The Virginia Transit Company, and the City of Norfolk, named defendant, in the proceeding before the State Corporation Commission, filed Motions to Dismiss, which the Commission took under advisement. Following this action, the City of Norfolk and the Virginia Transit Company participated fully in said proceeding. Wherefore, your defendant says that your Petitioners have not, and cannot, show unto this Court any basis for the exercise by this Court of its discretion to entertain a Declaratory Judgment proceeding inasmuch as the same legal issues presented herein are pending before the State Corporation Commission in a proceeding in which all of the present parties are parties and full and adequate relief is available in that forum.

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2. This defendant denies that Section 124 of the Constitution of Virginia, 1902, as amended, precludes or prevents the continued operation by this defendant of its buses in the manner and between the points and places complained of in the said Petitions. This defendant likewise denies that Section 15-774 of the Code of Virginia, or Section 15-736 of said Code, or the Charter of the City of Norfolk or the Code of the City of Norfolk or any other provisions of law in any way bar the continued operation by this defendant of its busses in the manner and between the points and places com-

plained of in said Petitions; this in response to Paragraphs 2, 3, 4 and 5 of the Petition of the City of Norfolk and Paragraphs 3, 4, 5 and 6 of the Virginia Transit Company.

3. Your defendant admits that it is a Virginia corporation, and says further that it is, and has for many years, operated as a public service company in the transportation of passengers in the State of Virginia upon the high-
page 32 } ways of this State under certain Certificates of Public Convenience and Necessity issued by the State Corporation Commission. Your defendant says further that the Certificates of Public Convenience and Necessity involved in this proceeding were issued prior to the institution of the annexation proceedings referred to, in public hearings in which the City of Norfolk had a right to appear and be heard but did not do so. Your defendant says further that it was openly and actively operating under said Certificates at and before the institution of said annexation proceedings to the knowledge of the City of Norfolk and the Virginia Transit Company, and that the City of Norfolk, in its annexation petition, did not attempt to make Carolina Coach Company a defendant, and made no reference to said operations. The annexation decree in no way referred to the operations of the Carolina Coach Company or its Certificates of Public Convenience and Necessity.

4. Your defendant admits that it has continued to transport passengers between points wholly within the corporate limits of the City of Norfolk as extended by the annexation of January 1, 1959, as alleged in Paragraphs 7, 8 and 9 of the City of Norfolk's Petition and Paragraphs 7, 8 and 9 of the Virginia Transit Company's Petition, but your defendant denies the validity of any legal conclusions or statements referred to in said Paragraphs or contained in any of the Exhibits mentioned in said Paragraphs, and your defendant denies that such operations are in any way unlawful.

5. Your defendant is not advised as to the allegations of Paragraph 10 of the said Petitions.

6. Your defendant admits that it is unable to give city-wide bus service under its Certificates as alleged in Paragraph 11 of the Petitions, just as the Virginia Transit Com-
page 33 } pany is unable, under its authority from the City, to give service between the City of Norfolk and areas just beyond the corporate limits which might subsequently be annexed.

7. Your defendant denies the allegations and legal conclusions in Paragraphs 12, 13, and 14 of the Petitions.

8. Your defendant has seen a copy of the Resolution referred to in Paragraph 15 of the Petition, but denies that said

Resolution is material to this case or opposes any lawful operation by your defendant.

9. In answer to Paragraph 16 of the Petition of the City of Norfolk, your defendant admits that a controversy exists between the City and it, but alleges that said controversy should be determined by the State Corporation Commission to which the controversy was submitted by Carolina Coach Company approximately two months prior to the institution of this case.

10. In answer to Paragraph 16 of the Petition of the Virginia Transit Company, your defendant alleges that on or about March 31, 1959, it tendered to the City of Norfolk five per cent of the gross receipts received by it since January 1, 1959 in the conduct of the operations complained of; that the City of Norfolk refused the tender of said sum, and that your defendant continues to withhold said five per cent and is ready, willing and able to pay said sum to the City of Norfolk and, by this Answer, again, expresses its willingness and desire to pay said five per cent to the City of Norfolk.

11. Your defendant further alleges that the City of Norfolk is merely a political subdivision of the Commonwealth of Virginia and has only the powers given to it by the Constitution of Virginia and the Acts of the General Assembly, and that, as such, it is an instrumentality for carrying out the provisions adopted by the General Assembly page 34 } of Virginia for the general public welfare of all the citizens of Virginia, consistent with the provisions of the Constitution. Your defendant alleges that the general public welfare of the citizens of Virginia, particularly those residing in the area annexed to the City of Norfolk on January 1, 1959, and those persons residing in the suburban area surrounding the City of Norfolk, is best served by the continued operations of Carolina Coach Company in the manner complained of in the Petitions, and that such service is not unlawful or forbidden by any provision of the Constitution or laws of Virginia, but is sanctioned and authorized by said Constitution and laws.

12. Your defendant alleges that the Certificates issued to it and the routes involved in this proceeding are entirely over streets, roads and highways which are a part of the State Highway System.

13. Your defendant denies that the Virginia Transit Company is lawfully operating passenger bus service in the City of Norfolk as alleged; in that the Transit Company is operating under permits issued pursuant to separate ordinances which have been adopted by the City from time to

time since 1924; that such ordinances did not provide for advertisements and receipt of public bids as required by law, even though they do purport to grant to the Transit Company the privilege to use the streets and highways of the City of Norfolk in a manner not open to the general public; and that many such permits have extended beyond the period of time permitted by law.

WHEREFORE, your defendants prays that the said Petitions be dismissed and that your defendant be given such further relief as may be appropriate.

CAROLINA COACH COMPANY,
A VIRGINIA CORPORATION
By TOY D. SAVAGE, JR.
Of Counsel.

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Of Counsel.

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FINAL DECREE.

This cause came on this day to be heard upon the papers formerly filed herein, including the petition of the City of Norfolk and Virginia Transit Company, as intervenor, for declaratory judgment and injunctive relief, the motion of the defendant Carolina Coach Company to dismiss said petition, the motions of the City of Norfolk and Virginia Transit Company to strike the defendant's motion to dismiss, the defendant's answer, and all exhibits attached to the aforesaid pleadings and the transcript of the proceedings pending between the portion before the State Corporation Commission which were considered by the Court by consent of the parties; and was argued by counsel.

Upon consideration whereof, the Court being of the opinion that it has jurisdiction, the defendant Carolina Coach Company's motion to dismiss said petition is hereby denied.

And the Court being of the further opinion that there is no issue upon any material fact, that the defendant's answer is insufficient and that said petition should be granted, it is

ADJUDGED, ORDERED and DECREED that Carolina Coach Company be and it is hereby enjoined and restrained from conducting any public service transportation business whereby passengers are transported for compensation from one point within the present corporate limits of the City of Norfolk and discharged at another point within the present corporate limits of the City of Norfolk; to which ruling of the Court the defendant excepted.

On motion of the defendant the Court orders that the execution of this decree be suspended for the purpose of perfecting an appeal to the Supreme Court of Appeals and until said appeal is finally acted upon by that Court or, no appeal having been taken, until the time within which said appeal may be perfected has expired, if the defendant gives a suspending bond with surety in the penalty of $20,000.00 conditioned according to law, on or before August 7,
page 37 } 1959.

And the Court doth further Order that the complainants, City of Norfolk and Virginia Transit Company, recover from the defendant, Carolina Coach Company, their costs about this proceeding in their behalf expended.

Dated July 28, 1959.

Enter: July 28th '59.

C. H. J., Judge.

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Filed 9-1-59.

W. R. HANCKEL, Clerk.

ASSIGNMENTS OF ERROR.

Carolina Coach Company makes the following assignments of error to the action of the lower court and the Final Decree entered in the above matter on July 28, 1959:

1. The Court erred in holding that the State Corporation Commission did not have jurisdiction.
page 39 } 2. The Court erred in holding that the Circuit Court of the City of Norfolk did have jurisdiction.
3. The Court erred in exercising any jurisdiction.

4. The Court erred in denying the Motion to Dismiss filed by Carolina Coach Company.

5. The Court erred in holding that the annexation of December 31, 1958 by the City of Norfolk of certain territory formerly in Princess Anne County destroyed the rights previously exercised by Carolina Coach Company between that territory and the City of Norfolk as it existed prior to annexation under Certificates of Public Convenience and Necessity previously issued by the State Corporation Commission.

6. The Court erred in holding that there was no issue upon any material fact.

7. The Court erred in holding that the answer of Carolina Coach Company was insufficient.

8. The Court erred in enjoining and restraining Carolina Coach Company from conducting any public service transportation business whereby passengers are transported for compensation from one point within the present corporate limits of the City of Norfolk and discharged at another point within the present corporate limits of the City of Norfolk.

CAROLINA COACH COMPANY
By E. BALLARD BAKER
Of Counsel.

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page 2 } The Court: The Court of Appeals, if this Court erred, would quickly advise their opinion as to what this Court had done.

Gentlemen, I don't want to cut you off. I think you are tending to go outside of the commitment. The Court does not hold here that there is concurrent jurisdiction. On the contrary, it holds that there is no concurrent jurisdiction in this matter at all between this Court and the Corporation Commission. The Corporation Commission, if it had power—and no doubt it did—had it until the order of annexation was entered, and such power as the Corporation Commission had prior to that date would preclude this Court from having any right to consider the case at all. But it lost its power when the City of Norfolk took in that section in Princess Anne County which is described in the order of annexation. The Carolina Coach Company lost whatever it had under the certificate, had no power to operate it in the city. It is strictly in the city. You admitted that when the Court asked you. It could not issue a certificate for a bus company in Roanoke, Richmond or any other city, within the city limits.

Mr. Baker: Not in the original matter.

The Court: That is the Court's view of it. The page 3 } Court will overrule the motion to dismiss this proceeding and enter an injunction as asked for in the petition.

Mr. Baker: Note our exception to it.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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