

Raised Bill No. 5314

Before the Committee on Transportation

March 5, 2018

Remarks of Jeffrey J. Mirman

Mr. Chairman and Members of the Committee:

Thank you for giving me the opportunity to speak to you today. My name is Jeffrey Mirman. I am a lawyer with the Hartford law firm of Hinckley, Allen & Snyder LLP. I appear today on behalf of my clients – four privately held bus companies: DATTCO, Inc., The New Britain Transportation Company, Collins Bus Service, and Nason partners, LLP d/b/a Kelly Transit Company. I have been representing these companies in litigation with the Commissioner continuously since 2010.

You may recall that I appeared in 2015 and spoke in opposition to Raised Bill No. 6821, and again in 2016 in opposition to Raised Bill No. 5411, in opposition to sections of proposed legislation which sought to give to the Commissioner of Transportation the right to condemn the private personal intangible property rights of these four companies – their Certificates of Public Convenience and Necessity which they must have in order to provide bus service in Connecticut. Their Certificates specifically authorize them to provide exclusive bus service over the routes covered by their Certificates. I am here today to speak in opposition to Raised Bill No. 5314 which, again, seeks unjustly and unnecessarily to take the bus companies' property.

In my previous testimony I pointed out that at no time has the Commissioner suggested that these bus companies are not providing a public service or not meeting the public need for the service. That remains true today. These companies are already satisfying the public need for the service. As the need was being satisfied, there was no justifiable reason for the Commissioner to condemn the Certificates, and no reason to condemn the Certificates other than to give the right to provide the service to another company.

The Commissioner's latest attempt to deprive these companies of their constitutionally protected property rights in their Certificates of Public Convenience and Necessity is this proposed legislation would allow the Commissioner to revoke any certificate in the funding for the operation of the route is provided by contract.

Let us be perfectly clear. DOT contracts with these private companies to run bus services pursuant to their Certificates of Public Convenience and Necessity, a service provided by these companies literally for generations. DOT requires these companies to enter into contracts for bus services along these routes so the DOT can, among other things, set the fares. The companies have said for years they are more than willing and able to provide the necessary service over the routes and at a substantial savings over

what it will cost the State to provide the same service. Indeed, they are already more cost effective than other companies providing similar service. For reasons which have not been made clear to the companies, the DOT continues to try and take these Certificates from the companies, Certificates which have provided the opportunity to provide the service they have exclusively and more than satisfactorily provided for many decades. Throughout this whole process, the DOT has never argued there was sufficient cause, such as a failure to provide adequate services, to revoke these Certificates. DOT simply does not want the companies to have these legal rights. DOT now seeks with this proposed legislation to define sufficient cause to take the Certificates so that the taking will be a *fait accompli* once the legislation is passed.

The proposed legislation is bad economics, bad policy, and bad law. It is bad policy because the proposed legislation would accomplish nothing other than the revocation of the companies' constitutionally protected rights. There appears to be no reason for the legislation other than to merely to take the right to provide the service from one entity to give it to another entity.

It is bad law because the legislation would allow the Commissioner to take the routes from the companies without just compensation.

I appear before you today to point out the legal flaw in Section 5 of the Raised Bill, which proposes to repeal Section 13b-80 and add new language to the statute. The proposed legislation adds the following language to the existing statutory language:

Sufficient cause [to suspend or revoke a certificate of public convenience and necessity] shall include, but be not limited to, the circumstance where a route set forth in a certificate of public convenience and necessity overlaps, in whole or in part, with a route set forth in a contract issued to the holder of such certificate pursuant to Section 13b-34, as amended by this act.

You should all know that while the Certificate vests the bus companies with the exclusive right to operate over the routes covered by the Certificate, each company has a contract with the DOT pursuant to Section 13b-34. The companies can operate service over the routes Covered by their Certificates without a contract. The DOT and the companies have recognized this requirement for perhaps 100 years.

The plain language of the proposed legislation would authorize the Commissioner to revoke a Certificate where a route covered by the certificate is the subject of a contract. Well, all routes today are subject to a contract because the Commissioner has exercised his authority to set fares at artificially low levels, thus making the contracts necessary to subsidize the service. As at least one Superior Court judge has ruled on this point, "the contract between the parties governs terms of service and has no bearing on the exclusive rights that" the companies have to operate the service. *Nason Partners, LLC v. Northwestern Conn. Transit Dist.*, 2013 Conn. Super. LEXIS 1425 (Conn. Super. Ct. June 28, 2013, Danaher, J).

This legislation, then, would authorize the Commissioner to summarily revoke all of the existing certificates and terminate the right of the bus companies to provide service, because without the certificate neither they, nor anyone else, can provide the service. What sense does this legislation make? Frankly, none, because upon revocation of the certificates no service could be provided until a new entity were granted a certificate, and then a contract setting forth the terms of the service.

What this legislation proposes, then, is to permit the Commissioner to in effect condemn the companies' Certificates, which are vested property rights, long recognized by both the legislature and the Connecticut Supreme Court, without due process, and without any justifiable legal authority to do so, and without even the requirement of paying just compensation for the value of the certificate condemned. This legislation is, to put it bluntly, less likely to pass legal muster in the courts than was the legislation proposed and rejected over last several years.

As I am sure you know by now, in December, 2016, the Connecticut Supreme Court held the Commissioner lacks the authority to condemn the bus companies' Certificates. *DATTCO, Inc. v. Commissioner of Transportation*, 324 Conn. 39 (2016). The Commissioner now seeks to avoid the consequences of that decision with this legislation, legislation that would undeniably lead to the unjust and unnecessary revocation of the certificates without just compensation.

Thank you again for giving me the opportunity to speak to you today.

Jeffrey Mirman