August 19, 1943

To Joseph H. McGillicuddy, Treasurer of State
Re: Tax - Street Railway Operating Bus Service

Chapter 12, Section 35, of the Revised Statutes of Maine provides for the manner in which Street Railroad Corporations and associations are to be taxed:

> "Sec. 35. Street railroad corporations and associations are subject to the seven preceding sections and to section four of chapter thirteen, except that the annual excise tax shall be ascertained as follows: when the gross average receipts per mile do not exceed one thousand dollars the tax shall be equal to one-fourth of one per cent on the gross transportation receipts; and for each thousand dollars additional gross receipts per mile, or fractional part thereof, the rate shall be increased one-fourth of one per cent, provided that the rate shall in no case exceed four per cent."

In reaching a conclusion to the question, one must review the history of legislation on the subject of street railways in the State, together with the decisions of our courts thereon. The original statute in Maine is found in the Public Laws of 1881, Chapter 91, providing for an excise tax on railroads, a tax to be levied against every corporation person or association operating any railroad in this State. At that time there were no electric street railroads in the State.

By Chapter 150 of the Publuc Laws of 1883, horse railroad corporations and associations were made subject to the provisions of the foregoing, except in the manner of ascertaining the tax.

Further amendments were made in1887, 1901 and 1909, and appeared in the Revised Statutes of 1916, Section 32 of Chapter 9, being an adaptation of Chapter 150, Public Laws of 1883, relating to horse railroads and now relating to street railroad corporations or associations. The Revised Statutes of 1930, Chapter 12, Section 35, carry the same method of computation and rates of tax for street railways as appeared in the revision of 1916.

Section 35 of Chapter 12 reads, in part, as follows: "Street railroad corporations and associations are subject to the seven preceding sections," which sections refer to railroads, and our Supreme Court has decided, in the case of State vs. The Boston & Maine Railroad, 123 Maine 48, that a railroad does not include a street railroad. The two are separate and distinct, and a different method of computation of the tax applies to railroads than is applicable to street railroads. In arriving at that conclusion, the Court discusses at considerable length the history of the two types of transportation, together with the intent of the legislature when the two separate sections of our statutes were enacted, dealing with

these methods of transportation. The Court stated that street railroads were not in existence when the original statute providing for taxation of railroads was enacted. Therefore, the legislature could not have considered, nor intended to include an operation which did not then exist. The enactment of the tax on street railroad corporations came into being after the existence of horse-drawn vehicles on tracks. By the same parity of reasoning, one is impressed by the fact that when the legislature enacted the tax on street railroads, it could not have intended to include motor busses and the revenue derived from such, because the facts would show that motor busses were not operated by street railroad companies at the time of that enactment and were not being operated at the time of the incorporation of the York Utilities Company.

The York Utilities Company must have had in mind the limitations under its charter, because it amended the same on August 5, 1924, to provide for the operation of jitney busses or other vehicles over certain routes designated therein, which indicated that the company did not consider the operation of busses a part of its operation of a street railroad or incidental thereto, but a separate and distinct operation.

"Words and Phrases," volume 36, defines a railway or railroad as being a transportation system operated on rails and confined to the course or courses covered thereby.

Further stating, the New York Courts have ruled a vehicle operated on pneumatic tubes by atmospheric pressure is not a railway within the meaning of the statute. Astor v. New York Arcade Railway Company, 113 N. Y. 93.

We next come to the words, as used in our statute for the purpose of taxing railroads, "gross average receipts", which are not to be found exactly defined in volumes of "Words and Phrases", but the words, "gross receipts from traffic" had been defined in Volume 18 of "Words and Phrases", page 771, in the case of City of Harrisburg vs. Harrisburg Railways Company, 179 A. 442, 443 and 319 Pa. 140, in which case an ordinance imposing a three par cent gross receipts tax on street railway or traction companies to be levied on "gross receipts from traffic" was held inapplicable to dividends received by street railway companies from wholly owned subsidiaries operating motor busses.

The conclusion necessarily reached by the reasoning of our courts and the history of the legislation on this subject would be that the income or revenue from the operation of motor busses would not be properly included in computing the taxes on street railways, under our law.

A further question has been posed as to whether or not the mileage covered by the bus operations should be included or added to the trackage of the railway company in computing the tax.

"Words and Phrases," volume 18, page 771, cites the case of Greenfield & T. F. Railway Co. vs. Town of Greenfield, 187 Mass. 352, as a case defining the words "gross receipts for each mile". In that case, the gross receipts of street railway companies shall be based on the annual gross receipts for each mile of track, and the computation is to be made by dividing the annual gross receipts by the entire number of tracks operated. In reaching the decision on the first question in this opinion, one necessarily must exclude anything except a negative answer to the second question. If the legislature did not intend to include bus operations when the statute was enacted, one could not reason that the mileage covered by the bus operation could be used. No attempt here is made to compute the tax on the return of the York Utilities Company, sa that computation should be made by the taxing authority of the State; but it should be noted that in the return of the York Utilities Company to the Public Utilities Commission of the State of Maine, the miles of trackage set forth therein on page 400 in column (d) is 2.44, and under column (e) .50. An examination of the physical properties could determine whether or not the .50 miles should be added to the 2.44 miles of trackage for the purpose of final computation.

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NOTE: Original begins on third page of "In Re The York Utilities Company. HISTORY,"which is neither dated nor signed. Date and signature were obtained from a memo dated May 19, 1944, Joseph H. McGillicuddy to Frank I. Cowan, in York Utilities file under Taxation.