

11-24-1944

ORDINANCE NO. 177

AN ORDINANCE ENTITLED:

AN ORDINANCE GRANTING TO CITY TRANSPORTATION COMPANY, A CO-PARTNERSHIP COMPOSED OF GEO. W. PAGE, O. L. PAGE, W. L. MURPHY, FRANK GERLACH AND C. S. GUIN, A FRANCHISE OVER THE STREETS AND ALLEYS OF THE CITY OF ABILENE, TEXAS, FOR OPERATING BUSES, PROVIDING FOR COMPENSATION AND FIXING THE CHARGE FOR SAME: PROVIDING FOR FORFEITURE OF SAID FRANCHISE AND REPEALING ALL ORDINANCES, OR PARTS OF ORDINANCES, IN CONFLICT WITH THIS ORDINANCE.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF ABILENE, TEXAS:

SECTION 1: The right and privilege of operating a bus line under the name of City Transportation Company, a copartnership composed of Geo. W. Page, O. L. Page, W.L. Murphy, Frank Gerlach and C.S. Guin, within the City of Abilene, through endupon its streets, alleys and public thoroughfares, is hereby granted to the City Transportation Company, a copartnership, and hereinafter called "Grantees", for a period of ~~twenty-five~~ <sup>(25)</sup> years from the date of this ordinance takes effect, under and subject to the terms, stipulations and restrictions hereinunder set out, and expressly conditioned that the grantees hereunder will fully comply with the provisions hereof.

SECTION 2: The grantees shall pay to the City Tax Collector of the City of Abilene, Texas, an annual tax of \$500.00 per year for the first five years of the effective period of this franchise, for the next ~~five~~ years thereof grantees shall pay the City Tax Collector of the City of Abilene, Texas, for the use and benefit of the City of Abilene, in lieu of said annual franchise tax, a sum equal to one percent (1%) of the gross receipts of said grantees from the operation of said bus line; the \$500.00 annual franchise tax for the first five years of said franchise, shall be payable in advance, the first payment to be made effective the date of this franchise and annually thereafter; the 1% gross receipts tax payable for the ~~next~~ years of this franchise shall be payable quarterly each year, and said grantees shall pay ~~two percent (2%) gross receipts tax for the remaining fifteen (15) years of this franchise, and said tax shall be payable quarterly~~ payments ~~as follows:~~

(a) In order to determine the gross receipts of the grantees from traffic on its bus line, the grantees, shall quarterly accompany the remittance of the payment of the consideration to the City with a full and complete statement of the quarterly gross receipts in the current year for which said tax is payable, which statement shall be sworn to by the ~~President~~ of said copartnership and attested by the Secretary of same, and said statement shall be a full, true and correct statement of grantee's gross receipts for the quarter in which same is payable.

(b) If on examination of any quarterly statement of the gross receipts made by the grantees, as herein provided, the City is not satisfied of the correctness of said statement, it shall so notify said grantees in writing within thirty days after said statement is filed with the City; otherwise, such statement shall be deemed correct. If the City notifies said grantees of its dissatisfaction with such ~~annual~~ statement, it shall specify as near as may be the grounds of its dissatisfaction, and the grantees shall

correct said report to the satisfaction of the City within thirty days after its receipt of said dissatisfaction and in the event said grantees fail to satisfy said City within said thirty days of the correctness of said quarterly statement, then the books and accounts of said grantees shall be audited by a competent auditor, to determine the amount of such gross receipts, such auditor to be selected by agreement of the City and Grantees, or if they fail to agree then the City may select such auditor. The opinion of such auditor shall be final and conclusive, as to said gross receipts. If on such audit such quarterly statement shall be found to be incorrect in any material particular, the grantees shall pay for such audit, and if it be found correct, the City shall pay for same.

(c) Should the grantees fail to render any quarterly statement of the gross receipts and pay the compensation provided for herein within thirty days after such payment is due; or in case of disagreement between the City and grantees as to the amount of such payment, should they fail to pay the same within thirty days after amount is finally determined, the franchise of said grantees and all rights and privileges granted to said grantees for the use of the streets of said City may be forfeited by said City. And in addition to said forfeiture, the City shall have the right to collect any and all payments due and owing the City by all legal and equitable remedies given by law for the collection of debts.

SECTION 3: A bus or motor bus, under the terms of this franchise, is hereby defined to be a motor driven vehicle, used for passenger service between fixed termini in the City of Abilene, Texas, and having a seating capacity of not less than sixteen persons, with an aisle of approach to the seats, and with a distance from the floor to the ceiling of the bus of approximately seventy-six inches, except that in peak periods and in cases of emergency busses of a lesser passenger capacity and with lower head room may be operated.

SECTION 4: (a) All busses operated under the terms of this franchise shall be of modern design and construction, and known as street bus type equipment, and shall meet all safety requirements as prescribed by the ordinance of the City of Abilene and the laws of the State of Texas, and shall have their entrance on the front of the right side thereof. *to that on 5 and operation busses to be approved by Board of Commissioners shall fall in operation*  
(b) Grantees shall operate busses on a fixed schedule and at such hours and at such intervals of time as may be required by public convenience and necessity to provide adequate bus service to the citizens of Abilene. Grantees shall reduce schedules to writing and file a copy of the same with the City Secretary, and same shall be subject to the following provisions, to-wit:

(1) Said schedules and routes may be changed from time to time by the grantees when conditions warrant, but adequate service must be maintained by grantees. Supplemental schedules shall be filed as provided in subsection (b) hereof.

*a sufficient number of them known to exist or come on available*  
*City Commission and*

(ii) Said schedules shall contain the number of hours each regularly scheduled bus is to be operated; the route it shall follow, stops as designed by grantees and the time required to make a complete round trip.

(iii) During peak periods and on special occasions such as football games, athletic contests, fairs, circuses, etc., grantees herein are given the right to operate extra busses in such number as may be required to meet the transportation needs of the general public.

(iv) The City of Abilene shall have the power at all times to compel the grantees to change existing schedules of operation in such way as will better meet the public necessity and convenience; provided that no change shall ever be made or demanded by the City Commission except that after thirty days written notice to the grantees and after the adoption by such City Commission of a resolution ordering such adoption by such City Commission of a resolution ordering such change, which resolution shall be adopted only after due and reasonable consideration of the public convenience and necessity, and the taking into consideration of the net earnings of grantees from such operations; providing further that no change, or demand for change, shall be made by the City Commission until after the expiration of three months from any prior change made or demanded by the City Commission.

(v) The City of Abilene shall ~~maintain the streets, completely, for the routes to be traversed by the busses of grantees in reasonably safe condition, and~~ shall provide such safety zones in the congested traffic areas of City as said City may require, and said grantees will mark said zones at their own expense under the direction of said City.

(vi) Grantees shall have the right and the City shall have the right to require grantees to extend their routes to new areas or additions (including suburban additions) and where such extensions are made, same shall be on a thirty-day trial basis subject to discontinuance in the event extension cannot be profitably maintained.

SECTION 5: The grantees, their agents, servants and employees, shall at all times comply with the traffic regulations and ordinances now in effect in the City of Abilene, or which may be hereafter passed.

SECTION 6: The fare or charge for each continuous passage from terminus to terminus shall not exceed seven cents, except by resolution of the City Commission, upon due and reasonable consideration of the benefit to the public, the net earnings of the grantee from operations hereunder, the said fare or charge may be, with the consent of the City Commission, increased to an amount not in excess of ten cents for each continuous passage from terminus to terminus. No additional charge is to be made for transfers from one route to another necessitated to complete a continuous one way passage within the City limits of adjacent suburban areas. Grantees agree, however, to transport students, including public school and college students, from terminus to terminus for a five cent fare.

SECTION 7: The initial routes to be traversed by busses of the grantees under this franchise shall be fully set forth in the schedule, and the termini of each route shall be set forth therein, and same shall be approved by the City Commission .

SECTION 8: This franchise is granted and shall remain in effect only on condition that the grantees herein shall make rendition of all real and personal property of the grantees used in connection with the bus line, taxable by the City of Abilene, and shall pay all taxes owing the City of Abilene thereon when due.

SECTION 9: The grantees are required and shall at all times keep each and every bus operated by it under the terms of this franchise fully insured in a stock company, and said policy of insurance to be filed with the City Secretary and approved as to solvency by the City Commission, with a minimum of property damage liability in the sum of \$5,000.00, and a minimum of public liability to one person as the result of one accident in the sum of \$5,000.00, and a maximum of \$25,000.00 to a group of persons injured as the result of one accident, in some reliable and thoroughly solvent insurance company authorized to do business in the State of Texas. Failure to provide the insurance aforesaid shall automatically terminate and cancel this franchise and all rights and equities herein granted.

(a) Grantees shall indemnify and save the City of Abilene whole and harmless from any and all judgments rendered against said City for personal injuries, death or damage to property occasioned by the negligence or wrongful action of the grantees in the operation of its busses on the streets in the City of Abilene.

SECTION 10: Non-use of the franchise granted herein by the grantee or willful failure by the grantees herein to comply with the conditions hereof, or to perform the duties herein provided, for a period of ninety days shall as a result operate as a cancellation of said franchise, whereupon same shall become null and void of no force and effect.

SECTION 11: All of the rights and privileges herein granted shall be subject to the provisions of the City Charter of the City of Abilene as it now exists, or may hereafter at any time be amended. The rights, privileges and franchise herein granted shall never be sold, transferred or assigned to any person, firm, association or corporation by the grantees herein, as a whole or as respects the interest of each individual grantee (except to each other), without first giving the City Commission of Abilene sixty days notice of such intention to so sell, together with the name of such proposed purchaser. The City of Abilene shall have thirty days from and after receipt of such notice within which to investigate such proposed purchaser, person, firm, association, or corporation, as to his, their, or its financial ability and moral fitness, and if, in the opinion of the majority of the City Commission, such proposed purchaser is not financially able or morally fit to operate busses within the City of Abilene, then and in that event such sale and transfer shall not be made; and should said sale be made, none the less, all rights hereunder shall terminate and be of no further force and

effect; provided that upon the approval of such proposed purchaser by a majority of the City Commission, as to financial ability and moral fitness, such purchaser shall, upon consummation thereof, succeed to all of the rights and privileges of grantees hereunder; provided further that successions to the grantees herein, arising or occasioned by dissolution of grantees by operation of law, shall not be regarded as a sale of this franchise, and same, in such contingency, or contingencies, shall continue to be vested in such successor ~~xxx~~ or successors, as though dissolution by operation of law had not occurred.

SECTION 12: The grantees shall give no passes to any person except to those actually engaged in the maintenance and operation of its busses; provided that members of the City Police Force and Firemen while in uniform shall be entitled to free transportation on said busses.

SECTION 13: If any part of this ordinance shall be held invalid for any reason, no valid part or parts thereof shall be affected thereby.

SECTION 14: This ordinance shall become effective immediately upon the acceptance thereof by the grantees herein in writing, which acceptance shall be filed with the City Secretary not later than ten days from and after the second and final reading thereof.

The foregoing ordinance was read the first time and passed to the second reading on the 27th day of November, 1944.

A.D. 1944.

Passed second and final reading 24 day of November

Lila Fern Martin  
City Secretary

W. J. H. H.  
Mayor

Approved as to form before passage: Indecision  
Corporation Counsel