

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 80-415
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of	:	<u>July 29, 1980</u>
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SUBJECT: TEN PERCENT: “FAREBOX RECOVERY” REQUIREMENT—The 10 percent “farebox recovery” requirement, to qualify a local transportation system serving an urbanized area for local transportation funds with respect to the use of “Handy Ride” vehicles designed and equipped for handicapped passengers, applies only during the times those vehicles are used exclusively for elderly and handicapped passengers and does not apply during such times as they are also used for the general public even though priority is given to the elderly and handicapped.

The Honorable Floyd R. B. Viau, County Counsel, County of Fresno, has requested an opinion on a question which we have phrased as follows:

Under what circumstances does the 10 percent “farebox recovery” requirement apply to qualify a local transportation system serving an urbanized area for local transportation funds with respect to the use of “Handy Ride” vehicles designed and equipped for handicapped passengers when they are used to transport the general public as well as elderly and handicapped passengers?

CONCLUSION

The 10 percent “farebox recovery” requirement, to qualify a local transportation system serving an urbanized area for local transportation funds with respect to the use of “Handy Ride” vehicles designed and equipped for handicapped passengers, applies only during the times those vehicles are used exclusively for elderly and handicapped passengers and does not apply during such times as they are also used for the general public even though priority is given to the elderly and handicapped.

ANALYSIS

A county may establish a local transportation fund derived from taxes on motor fuels. (Gov. Code, § 29530.) The purpose of the fund is to help finance local public transportation systems. (Pub. Util. Code, § 99220.)¹ Qualified operators of transportation systems may apply for these funds. (§ 99230 *et seq.*) To qualify for such funds, an operator must maintain a certain ratio of fare revenues to operating costs known as the “farebox recovery requirement.” The two sections which establish the farebox requirements relevant to the questions presented are sections 99268.3 and 99268.5. Section 99268.3 reads as follows:

“(a) In the case of an operator which is serving an urbanized area, and which was eligible for funds under this article during the 1978–79 fiscal year even though not required to be in compliance with Section 99268 or which commenced operation after that fiscal year, the operator shall be eligible for such funds in any fiscal year, commencing with claims for the 1980–81 fiscal year, if it maintains, for the fiscal year, a ratio of fare revenues to operating cost, as defined by subdivision (a) of Section 99247, at least equal to one-fifth or to the ratio it had during the 1978–79 fiscal year, whichever is greater.

“(b) In addition, such an operator having a ratio of the sum of fare revenues and local support to operating cost greater than one-fifth during the 1978–79 fiscal year shall, at least, maintain that ratio in order to be eligible for funds under this article.”²

Section 99265.5 provides:

“Commencing with claims for the 1980–81 fiscal year, no funds shall be allocated under this article in any fiscal year to an operator providing services using vehicles *for the exclusive use of elderly and handicapped*

¹ All unidentified statutory references are to the Public Utilities Code.

² See also title 21, California Administrative Code section 6633.2.

*persons, unless the operator maintains, for the fiscal year, a ratio of fare revenues to operating cost, as defined by subdivision (a) of Section 99247, for such services at least equal to one-tenth or to the ratio it had for such services during the 1978–79 fiscal year, whichever is greater.” (Emphasis added.)*³

Thus, operators must recover 20 percent of their operating expenses through fares to ‘he eligible for funds but in the transportation of the elderly and handicapped, they need only recover 10 percent through the farebox.⁴

In situations where handicapped equipped vehicles are put into the general bus service, giving priority to the elderly and handicapped, the 20 percent farebox recovery requirement applies. Under section 99268.5 the 10 percent ratio can *only* be used when the vehicles are used for the “exclusive use” of the elderly and handicapped. Since the vehicles are in the general bus service available to *all* persons and, therefore, not held for the “exclusive use” of elderly and handicapped persons, the 20 percent ratio cannot be employed and the 20 percent general service farebox recovery rate applies. This ratio would also apply where the revenues from the “Handy Ride” service alone do not meet either of the farebox recovery requirements. The combined revenues, then, would be subject to the 20 percent requirement.

Where the “Handy Ride” vehicles are used at certain times exclusively for the use of the elderly and handicapped but available for use by the general public at other times, we are faced with a mix of exclusive and nonexclusive use. It is our conclusion that different ratios should be used for each type of service. The exclusive portion of the services, serving only elderly and handicapped persons, would, then, be subject to the 10 percent requirement while the nonexclusive portion would be subject to the 20 percent requirement.

³ See also title 21, California Administrative Code section 6633.5.

⁴ We are only asked whether the 10 percent or 20 percent ratio should be used, Of course, if the 1978–79 ratio is greater than the applicable rate, it would apply.