MEMORANDUM OF LAW

DATE: July 6, 1987

TO: Kurt Gronwald via Barbara Lupro, Paratransit Administrator

FROM: City Attorney

SUBJECT: Assembly Bill 4382 - Impact on City Programs (Dial-a-Ride and Transit Pass Subsidy)

Your memorandum of May 5, 1987 requested our comments on the applicability of Assembly Bill 4382 to the City "Dial-a-Ride" program and to the City subsidies for transit passes for the elderly, each of which requires residence in the City as a condition of eligibility. Assembly Bill 4382 was adopted by Stats. 1986, c. 706, section 3, and added section 99155 and amended section 99275.5 of the Public Utilities Code. (All references hereafter are to the Public Utilities Code.) Your concern is prompted by section 99155(e) which provides:

> Any transit operator, as defined in subdivision (b), who receives funds pursuant to the Mills-Alquist-Deddeh Act . . . shall not require that a person requesting transportation be a resident of that transit operator's service area. ┌Emphasis added.σ

You have asked whether the term "transit operator" as used in section 99155 will include the City. Unfortunately, subdivision (b) of section 99155 does not define the term "transit operator." It merely provides, in pertinent part, that "each transit operator, whether publicly or privately funded in whole or in part, nonprofit or profit, which offers reduced fares . . ." to senior citizens shall also offer such fares to the disabled.

This failure to specifically define "transit operator" lead us to look at other sections of the Mills-Alquist-Deddeh Act, section 99200 et seq. (hereafter referred to as the "Act" or as TDA) which might bear on your concern consistent with the statutory scheme for transportation development. The Act was adopted in 1971 (Stats. 1971, c. 1400, p. 2757, section 3) and amended periodically thereafter. Definitions in the Act include "operator" (section 99210), "municipal operator" (sections 99209 and 99209.1) and "included municipal operator" (section 99207). None otherwise defines "transit operator," except as noted above.

We believe, however, that the real thrust of your question is not so much a consideration of the definition of a "transit

operator," as it is a matter of the City qualifying for and claiming TDA payments under the Act. The Act created a fund to encourage public transportation systems (sections 99220 and 99230) and authorized "all operators and City or County governments with responsibility for providing municipal services" to file claims against the fund for proportional expenses of administration of the system. ┌Emphasis added.σ (Section 99231). Section 99275.5, as added by Stats. 1986, c. 706, section 3, will, on and after July 1, 1987 require for the purposes of approving such claims that the "claimant" be in compliance with section 99155. The term "claimant" includes "cities." (Section 99203.) Section 99275, added by Stats. 1976, c. 1348, p. 6149, section 21 had previously authorized such claims to be filed with the transportation planning agency by community transit services that included transportation services for the disabled. In proceeding further, section 99288 provides that a City, County or transit district may contract with a qualifying operator to provide transportation service and the operator providing the service may then include the claim of the City, County or transit district with its claim.

From a consideration of the Act and the term "operator" in juxtaposition to the term "claimant," it is not material whether the City is an operator, if the City becomes a "claimant" under section 99288. Then by virtue of section 99275.5 the City must be in compliance with section 99155, if it is to receive funds pursuant to the Act to defray transportation services for certain classes of City residents.

Your memorandum advised us that the transit pass subsidy for the elderly and disabled residents is funded from the Public Transportation Reserve Fund, which is funded from sales and use tax and the interest on investments. No TDA funding or claims are involved. Therefore, we do not see any reason to alter your procedures for the elderly and disabled transit subsidy.

"Dial-a-Ride," on the other hand, does involve a TDA subsidy, according to your memorandum. It is thus clear that the City becomes a "claimant" and is subject to the strictures of the Act when it submits a claim. Further, by section 99231, City governments are authorized to file claims for monies under TDA representing the apportionment applicable to that area of service, and thus are "claimants" (section 99203) to which section 99155 applies by virtue of section 99275.5.

We may summarize then that the "Dial-a-Ride" subsidy will be subject to the rule prohibiting discrimination against a nonresident, while the transit pass subsidy will not be.

Should you have questions about the application or the definition of the word "resident," we shall be pleased to respond further. We note that your memorandum did not discuss any length of time for residency purposes. In the final analysis, any person with a City address would be regarded a resident, even if on a temporary basis. Conversely, nonresidents or persons without City addresses are not likely to be using "Dial-a-Ride" services on any regular basis.

JOHN W. WITT, City Attorney
By
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Deputy City Attorney

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