

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 3, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-1292

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

TOWN OF LIBERTY GROVE,

PLAINTIFF-RESPONDENT,

V.

**CHARLES VOIGHT AND VOIGHT MARINE SERVICE
LIMITED,**

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Door County:
JOHN D. KOEHN, Judge. *Reversed and cause remanded with directions.*

MYSE, J. Charles Voight and Voight Marine Service, Limited, (Voight Marine) appeal a judgment in favor of the Town of Liberty Grove for its 1995 and 1996 personal property tax assessment on Voight Marine's ferry, the Yankee Clipper. Voight Marine contends the trial court erred by concluding that the Yankee Clipper is not exempt from the tax under § 70.111(3), STATS., because the boat is not employed in interstate traffic. Because we conclude that the

Yankee Clipper is regularly employed in interstate traffic and is therefore exempt from taxation under § 70.111(3), this court reverses the trial court's judgment and remands with directions to enter judgment dismissing the Town's claims and declaring that the Yankee Clipper is a boat employed in interstate commerce and therefore exempt from personal property tax pursuant to § 70.111(3).

Charles Voight is the president of Voight Marine, which operates a passenger ferry service between Gill's Rock in Ellison Bay, Door County, Wisconsin, and various destinations. Voight Marine owns two vessels, one of which is the Yankee Clipper. The Yankee Clipper is a passenger ferry that operates as a permanent substitute for Voight Marine's other vessel, the Island Clipper, when the Island Clipper is either out of service or is making voyages to Fayette State Park in Michigan's Upper Peninsula. The Yankee Clipper travels only between Gill's Rock and Washington Island, an island township in Door County, located approximately six miles north of Gill's Rock. In 1995 and 1996, Liberty Grove issued tax bills to Voight Marine on personal property which included the Yankee Clipper. Voight Marine notified Liberty Grove officials that the boat was exempt from taxation under § 70.111(3), STATS., as a boat regularly engaged in interstate traffic and refused to pay the assessments for 1995 and 1996. Because Voight Marine failed to pay the taxes in full, the Town filed suit in small claims court to recover the delinquencies.

On summary judgment, the trial court, on stipulated facts, concluded as a matter of law that the Yankee Clipper was not exempt from personal property tax because it was not engaged in interstate traffic under § 70.111(3), STATS. The court determined that because passengers traveling on the Yankee Clipper were "day trippers" touring Washington Island on partial day tours while on vacation in Door County, the transportation service provided on the Yankee Clipper could not

be considered an indispensable link in interstate travel or commerce. Accordingly, the court entered judgment for the Town and Voight Marine appeals the court's conclusion.

Voight Marine maintains that the Yankee Clipper is regularly employed in interstate traffic and is therefore exempt from personal property taxes under § 70.111(3), STATS.¹ Whether a watercraft is regularly engaged in interstate traffic is a question of law which we review de novo. *Town of LaPointe v. Madeline Island Ferry Line*, 179 Wis.2d 726, 736, 508 N.W.2d 440, 444 (Ct. App. 1993). In addition, this court has previously determined that, unlike most tax exemption statutes, § 70.111(3) is entitled to liberal construction in favor of the person required to pay taxes. *Id.* at 730, 508 N.W.2d at 442. Our analysis requires us to make two determinations: (1) whether the Yankee Clipper was engaged in interstate traffic; and, if so, (2) whether the Yankee Clipper was “regularly” so engaged.

We begin with the first consideration. “Interstate traffic” as used in § 70.111(3), STATS., means interstate commerce as that term is used for interpreting constitutional interstate commerce issues. *Id.* at 736, 508 N.W.2d at 444. Therefore, we consider whether the Yankee Clipper's activity constitutes interstate commerce.

¹ Section 70.111(3), STATS., provides:

Personal property exempted from taxation. The property described in this section is exempted from general property taxes:

(3) BOATS. Watercraft employed regularly in interstate traffic. Watercraft laid up for repairs. All pleasure watercraft used for recreational purposes. Commercial fishing boats. Charter sailboats.

(4)

It is undisputed that the Yankee Clipper's passenger ferry service provides transportation solely within the State of Wisconsin. This court has previously determined that transportation of persons solely within one state, however, may be considered interstate commerce when the intrastate activity is a constituent part of the interstate movement and the activity is more than just casual or incidental to the interstate movement. *Id.* at 737-38, 508 N.W.2d 444-45. In *LaPointe*, we concluded that a ferry line, which operated vessels exclusively in Wisconsin and which carried significant numbers of passengers, parcels, and other freight that were in the process of moving in interstate commerce, was regularly employed in interstate commerce within the meaning of § 70.111(3), STATS. We relied upon the United States Supreme Court's analysis in *United States v. Yellow Cab Co.*, 332 U.S. 218, 228-29, 231 (1947) (overruled on other grounds, *Copperweld Corp v. Independence Tube Corp.*, 467 U.S. 752 (1984)), which considered when a local journey might be considered a constituent part of an interstate trip:

When persons or goods move from a point of origin in one state to a point of destination in another, the fact that a part of that journey consists of transportation by an independent agency solely within the boundaries of one state does not make that portion of the trip any less interstate in character. That portion must be viewed in its relation to the entire journey rather than in isolation. So viewed, it is an integral step in the interstate movement. (Citation omitted.)

The Court continued its analysis by noting that practical considerations mark the beginning and end of particular kinds of interstate commerce and suggesting that special arrangements could make what is a local journey a "constituent part of the interstate movement." *Id.* at 232. Such special arrangements, according to the Court, include a contractual relationship or fares paid and collected as part of the travel. *Id.* at 231.

Applying these principles, we conclude that the Yankee Clipper was employed in interstate commerce because the majority of passengers utilizing the ferry are out-of-state travelers and because the ferry service operates as a constituent part of these passengers' interstate travels.

First, pursuant to the stipulated facts, it is clear that interstate travelers used the Yankee Clipper to reach Washington Island for the years in question. The parties stipulated that a majority of the tourists using Voight Marine are from out-of-state. While no state-of-origin passenger tracking was conducted specifically for the Yankee Clipper in 1995, the stipulation states that "the chart attached hereto as Exhibit H [a license plate survey for August and September] reflects the passenger count by state of residence for passengers utilizing the Voight Marine Service, Ltd., water carrier transportation service in 1995." According to the chart, almost sixty percent of the license plates were out-of-state. The stipulation also indicates that the Island Clipper did provide services to Michigan each year, in which instance the Yankee Clipper would have been used as the replacement vessel for the excursions to Washington Island. For 1996, a passenger count survey conducted specifically on the Yankee Clipper indicated that the percentage of out-of-state passengers averaged 53.46%. Passengers using Voight Marine in 1996 included tourist groups arriving by scheduled tour buses from Illinois, Iowa, Indiana, Minnesota and Michigan. They also included organized bicycling tour groups from states like Vermont and Missouri seeking to bicycle on Washington Island.

Second, we conclude that the Yankee Clipper operates as a constituent part of the interstate travel for many of these passengers and is an indispensable link to their interstate journey because ferry service is the only means of public transportation to Washington Island. Washington Island is a

residential township located in Green Bay approximately six miles north of Gill's Rock. As a community of permanent and summer residents, it maintains churches, schools, businesses, stores and all of the features required to support a permanent population. As a picturesque tourist and historical site, the island offers its visitors parks, beaches, bicycle paths, gift shops, restaurants, historical and cultural landmarks, and bus and train tours.

According to the stipulation, Washington Island is a destination of out-of-state bicyclists and out-of-state organized bicycle tours seeking to bicycle on the island. In addition, some group tour transportation arrangements are made with Voight Marine in advance telephonically or by mail by out-of-state tour operators and promoters. Such circumstances make the ferry's passenger service to Washington Island a constituent and integral part of these passengers' interstate travels. Voight Marine's prearrangements with tour operators places its operations squarely within the stream of interstate commerce even though those operations take place solely within the State of Wisconsin.² Furthermore, because transportation of interstate passengers to a destination which is a necessary link in their interstate journey is the Yankee Clipper's principal function, this court concludes that its service is not so unrelated to interstate commerce so as to render it casual and incidental. Finally, this court concludes that interstate commerce can include "daytrippers" when their trip to the island is an integral component of their interstate travels. Daytrippers are not disqualified from the realm of interstate commerce by virtue of their visit to the island for a number of hours or for a day

² Using this same analysis, other courts have found completely local transportation services a constituent part of interstate travel particularly when the service was *prearranged* by interstate communication. *See, e.g., Executive Town & Country Servs. v. Atlanta*, 789 F.2d 1523 (11th Cir. 1986); *Charter Limousine v. Dade Cty. Bd. of Cty. Comm'rs.*, 678 F.2d 586 (5th Cir. 1982).

because their trips to the island can still be a constituent part of their interstate travels.

Liberty Grove contends that the Yankee Clipper is not engaged in interstate commerce because the service it provides is more like an “excursion service.” Liberty Grove relies on *LaCrosse Queen v. DOR*, 208 Wis.2d 439, 561 N.W.2d 686 (1997), in which the Wisconsin Supreme Court concluded that a riverboat which picked up passengers and dropped them off at the same point in the state was not involved in interstate commerce for purposes of exemption from sales tax, even though the boat crossed state lines during sightseeing and dinner cruises because the boat made no stops and did not involve interstate business. The court held that “[i]n order for an activity to qualify as interstate commerce, there must not only be interstate movement but also interstate business.” *Id.* at 451, 561 N.W.2d at 690.

While this court has already determined that the ferry activity in this case constitutes interstate movement for the reasons stated above, it further concludes that the operation of the Yankee Clipper involves interstate business. Here, unlike the La Crosse Queen, passengers aboard the Yankee Clipper are taken to Washington Island where they disembark to participate in a wide variety of activities involving “interstate business.” As described in Exhibit F of the stipulation, passengers may purchase train tickets to tour the island, rent mopeds or bicycles, have lunch at the Holiday Inn, or shop at gift stores. Consequently, the interstate travelers on the Yankee Clipper provide island businesses with interstate business.

Because this court concludes that the Yankee Clipper was engaged in interstate traffic, it next addresses whether the Yankee Clipper was “regularly”

engaged in interstate traffic. Section 70.111(3), STATS., fails to define the word “regularly.” If a term is left undefined, we must construe the word according to its common and approved usage, which “may be established by resort to dictionary definitions.” *Swatek v. County of Dane*, 192 Wis.2d 47, 61, 531 N.W.2d 45, 50 (1995). The term “regular” is defined as “steady or uniform in course, practice, or occurrence,” and “returning, recurring, or received at stated, fixed, or uniform intervals.” WEBSTER’S THIRD NEW INT’L DICTIONARY 1913 (Unabr. 1993). The stipulation reflects that in 1995 and 1996, the Island Clipper provided services to Fayette State Park in Michigan every Thursday between July 11 and August 27. The stipulation further indicates that the Yankee Clipper was utilized as the replacement vessel in place of the Island Clipper during those periods when the Island Clipper voyaged to Michigan. Consequently, we conclude that the Yankee Clipper was a regularly employed substitute boat because its usage was clearly arranged according to an established, recurrent schedule.

Because for the years 1995 and 1996 the Yankee Clipper, as a regularly employed substitute boat, carried significant numbers of out-of-state passengers to and from Washington Island as a constituent part of their interstate journeys, we conclude that it was regularly employed in interstate traffic within the meaning of § 70.111(3), STATS., and is therefore exempt from payment of personal property tax. In its summary judgment motion, Voight Marine requested a declaratory judgment declaring that the Yankee Clipper is regularly employed in interstate traffic and consequently is exempt from personal property tax pursuant to § 70.111(3). The trial court did not address this issue because it concluded the boat was not exempt from the tax. Because this court concludes the transportation of out-of-state visitors to Washington Island is an integral component of their interstate travels is interstate commerce, this court directs the trial court to enter

judgment dismissing Liberty Grove's claims and declaring that the Yankee Clipper is a boat employed in interstate commerce and therefore is exempt from personal property tax pursuant to § 70.111(3). Accordingly, the trial court judgment is reversed and cause is remanded with directions consistent with this opinion.

By the Court.—Judgment reversed and cause remanded with directions.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.

