Developing Ridesharing Law: A First Step to Privatizing Transportation

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During the last five years, interest in ridesharing, especially vanpooling, has been rapidly growing. Before an organization decides to become involved in a ridesharing program, they usually ask their legal staff for an opinion on the liability, tax, insurance, wage and hour standards, and other consequences. It is then that they realize that ridesharing is a legal nonentity, so the law that applies to the pool is the law that developed for other purposes. The crucial legal test is whose name is on the vehicle title. This article examines a hypothetical vanpool with 12 passengers that is ready to start operation. The vehicle has been selected, the routes and fares have been determined, passengers and driver identified, and vanpool rules established. The only thing necessary is to decide whose name should be placed on the title of the new van. The vanpool group approaches the employer, the local transit authority, and two lease firms, considers incorporation, and asks the driver to accept title to the vehicle. In each case a totally different body of law applies, which ranges from lease law to common carrier law to labor law. Five legislative areas are suggested that need to be addressed before a body of ridesharing law is established. The development of ridesharing law would not only benefit ridesharing but would also be the beginning of privatizing public transportation for human service agencies.

The energy shortage and reduced public funding have focused public attention on one of the easiest and most effective conservation methods available--ridesharing. Unfortunately, our nation's legal system does not have a body of law to allow such cooperative endeavors; thus, ridesharing efforts encounter many institutional obstacles that will eventually have to be addressed if ridesharing is to reach its full potential.

This paper was prepared to assist the reader in conceptualizing these institutional barriers so that ridesharing programs can be structured to avoid them and to help policymakers understand the necessary changes.

Ridesharing commonly appears in three forms: carpooling, vanpooling, and buspooling. Vanpooling is simply carpooling by using a 12- or 15-passenger van instead of a 6-passenger car. A buspool is identical except that a bus is used. Carpools (and vanpools) can be either shared driving (each passenger takes a turn driving) or shared expense (one vehicle is used each day and all riders share the cost of operating the vehicle).

Ridesharing not only reduces energy use but also reduces public deficits in several ways:

1. Usually, the ridesharing vehicle is garaged at the employment site once the employees arrive at work and is usually garaged at the driver's residence after the employees return home;
2. Usually, a small vehicle, such as a station wagon or van, reduces the time necessary to gather a full load; therefore, the travel time approximates that of single-occupant automobiles; also, smaller vehicles usually use less fuel; and
3. Usually, the vehicles used are relatively inexpensive and are therefore easier for individuals, government, and employers to purchase; the vehicles will usually be driven from 10 000 to 20 000 miles/year; therefore, a vehicle with a design life of 1 million miles or more (as in the case of a transit bus) is not required; standard production-line vehicles can be used and large public investments are not needed.

Since carpooling and vanpooling are basically informal arrangements among neighbors, friends, and fellow employees, the service can readily adapt to the changing needs of the commuters. Because of this, it is generally much better to allow the driver to take the responsibility for routing and scheduling.

Since the drivers of the ridesharing vehicles are usually fellow employees who would be spending this time driving to and from work anyway, there is virtually no labor cost. Reduced commuting cost and potentially supplemented income usually motivate the drivers of ridesharing vehicles.

OPTIONS FOR PROVIDING RIDESHARING VEHICLES

As ridesharing arrangements become more formalized, there is often an opportunity to use vans in which 12-15 people can ride. Although many individuals have automobiles, less than 1 percent of the population have vans, especially those seating 12-15 passengers. Therefore, if a group of 10-15 people find that they live in the same neighborhood, work for the same or neighboring employers, have the same work schedule, and desire to ride together, a very important question becomes, "How do we obtain a vehicle so we can start vanpooling?"

There are generally five ways of obtaining vanpool vehicles:

1. The employer can provide the vehicle;
2. The government, usually through an agency such as a regional transportation authority, can provide the vehicle;
3. An independent company can provide the vehicle;
4. An individual employee can provide the vehicle; or
5. The individual can form a corporation to own the vehicle.

Consider, for example, the hypothetical case of 12 commuters living in a suburb 20 miles from their worksite; being concerned about fuel costs, energy efficiency, congestion, parking, pollution, etc.; and, after listening to numerous public service announcements, having decided to do something personally to help solve these problems. They decide to start a vanpool and to share in the cost of operating the van. They are now ready to find a vehicle. The 12 commuters approach their employer, the local transit authority, a lease firm, and a third-party provider. They consider incorporating, and they consider having one member of the pool buy the vehicle.

This paper is designed to illustrate the barriers to each option. A legal system that fails to recognize ridesharing as a legitimate human endeavor creates these barriers. The body of law that applies to vanpooling is dictated by vehicle title. By changing the name on the vehicle title, the members of the vanpool can alter the body of law that will apply from employer-employee law to common carrier transportation law to leasing law to corporate law to business law or to some other legal theory. After the implications of each option have been examined and the institutional concerns have been identified, the five legal philosophies are described that must be addressed to develop a body of ridesharing law so that ridesharing is not forced into inappropriate legal categories due solely to the name on the legal title.

Employer-Provided Vehicle

When the commuter group approached the employer, they were told that vanpooling was a good idea, but that the company's legal department was concerned about several issues, discussed below.

Workers' Compensation

If purchase of the van were considered an extension of the workplace, the passengers would be covered under workers' compensation. The workers'-compensation laws hold the employer strictly liable for all injuries occurring to employees within the scope of employment. Since workers'-compensation insurance premiums are based on payroll size, the workers'-compensation rates should not be increased. However, if a major accident occurred, it would raise the rates on workers' compensation for the firm's entire workforce, since workers'-compensation rates are based on the prior year's losses. Also, since workers'-compensation benefits are very low in some states, the passengers may not be adequately compensated in case of a major accident. Furthermore, even if the employees are protected by workers' compensation, the van rider may still be able to sue the driver of the vehicle if the state does not recognize the fellow-servant doctrine and/or prohibit such a suit under workers'-compensation statutes. Thus, the driver may still want to have individual liability coverage, since the driver's personal automobile coverage may not apply to regularly driven vehicles owned by the employer.

Employer Liability

If the van were not considered to be an extension of the workplace, the employer, like the driver, would be liable for damages that injure the commuters. Even if workers' compensation did apply, the company would have to buy insurance coverage to protect the company in case of accidental harm to those outside the vehicle who would not be covered by workers' compensation. In essence, existing laws assume that it is the employee's responsibility to get to work and that the employer will not become involved unless it is a necessary part of the business, as in the case of the transportation of migratory farm workers, who may not otherwise have transportation. Therefore, the employer may be required to assume full liability for all accidents to the passengers, the driver, and other parties if the employer is named on the vehicle title.

Taxation

Since the law assumes that the employer will not become involved in employee transportation unless it is essential for the operation of the business, monies spent on employee transportation are considered an ordinary business expense, similar to parking costs. Therefore, expenses related to the providing of transportation and the expenses related to the actual possession of the vehicle would be deductible expenses under the Internal Revenue Code. The employer, of course, would have to maintain detailed accounting records to verify the amount of expenses, depreciation, and tax credits claimed. The employer would also be eligible for a tax credit under Article 26, U.S. Code 46(6)(B), if the van fits within the definition of a commuter highway vehicle.

Discrimination

Since employer-provided transportation is considered by law as a benefit to employees, the employer has to be concerned about discrimination. First, tax laws specifically discourage discrimination on benefits because they can be used as tax-avoidance techniques for company owners and officers. For example, a company cannot give medical benefits to the owners and/or officers but deny coverage to other employees. Second, if an employer provides benefits for one group of employees and not for other employees, employee morale may suffer. Current laws and regulations treat ridesharing activities as employee benefits, not as a public service effort to accomplish public objectives.

Collective Bargaining

Since ridesharing support activities are not considered to be a public service, ridesharing may become a collective-bargaining issue. Until both labor and management jointly decide that vanpooling is a mutual social benefit and define the rules in advance, the employer is rightfully concerned that the group (either the company or the employees) that initiates vanpooling programs will end up absorbing the full cost. Therefore, each group wants to wait for the other group to initiate the program and thereby incur the cost.

Financial Risk

By purchasing the vehicle, the employer assumes all the financial risk. If the ridesharing group could not maintain payments or if the vehicle were stolen or damaged, the employer would incur the loss. Fortunately, few vanpools fail.

State Fair-Labor Laws

At the federal level, vanpools have been declared exempt from the federal standard wage and hour laws. Most states have adopted the same standards as those used by the federal government. Therefore, this ruling, in effect, changed the state laws. In the states that do not use the federal standard, the commuters may have to be paid overtime for the time spent traveling to work.

Limited to Large Employment Centers

If the employer purchases the van, individuals who work for a different employer nearby may have difficulty participating, since the first employer's workers'-compensation coverage would not cover them. Also, if some of the riders are not employees of the firm owning the vehicle, the vehicle no longer satisfies the definition of commuter highway vehicle that allows the accelerated investment tax credit. Then the employer must deny neighbors and spouses the opportunity to ride or incur total liability for their safety and jeopardize the investment tax credit.

Regulation

Until recently, the employer had to provide the vehicle without charge or become a regulated for-hire carrier. Recently, many state laws have been changed. In 1978, all vanpool trips that crossed state lines were exempted from Interstate Commerce Commission (ICC) regulation. In 1979, the National Committee on Uniform Traffic Laws and Ordinances drafted a model state ridesharing law that is now being considered by many states. In general, the regulating barriers in most states have been removed.

Government-Provided Vehicle

After hearing the employer's concerns regarding the implications of using the company's name on the title (or lease), the group of commuters decided to approach the local transportation authority, which they felt was responsible for solving commuter transportation problems. The executive director of the transportation authority explained that transit was operated under an entirely different body of laws. It was explained that the subway, the commuter trains, and transit bus lines were originally operated by private "for-profit" commercial companies as public utilities and that these franchised carriers were expected to serve all people without discrimination, to serve both profitable and unprofitable groups, to hold extensive public hearings regarding service and fare changes, and to abide by special protective labor and liability laws. When the private commercial for-hire companies were no longer financially able to provide service, they were purchased with public funds. The public system, in addition to assuming all existing regulations and obligations of the private companies, has also been subjected to requirements under public ownership, such as those discussed below.

Common Carrier Liability Standard

The law requires the transit authority to exercise extreme care to protect the passengers as opposed to the ordinary care required of the driver of a privately owned vehicle. This raises a question. If the transit authority is named owner on the title, does this subject the vanpools to the same legal standard of care as the remainder of the bus operation? If so, the authority would want to have very tight control over how the vehicle was used and how the driver was selected, and many other issues would have to be addressed. Also, because of the greater suit consciousness toward public transportation vehicles, the insurance cost would probably be much higher than that under any other ownership option.

Government Regulation

Under the public utility philosophy, there is social obligation for the transportation authority to provide services to all areas, including areas of limited demand, regardless of operating losses. This raises the question of government subsidization. If commuting areas started vanpools but did not have sufficient ridership to cover the cost of operating them, would it be as difficult for the authority to drop an unprofitable van as it is to drop an unprofitable bus run? Other questions, such as control over the use of publicly owned vehicles, are raised. Can the authority allow publicly owned vehicles, especially those on subsidized routes, to be used by drivers on evenings and weekends? If so, how is this use to be controlled? To what degree would authority vehicles be required to prove that they are not in competition with private providers, charter operations, or existing transit operations? What reporting requirements would be imposed? Would public meeting and notification requirements have to be met each time a van was added (or dropped) or a route changed due to changes in ridership? What if the destination (home or work) were outside the local transit district? Would the vans be able to operate there? Would the local community be willing to use local tax dollars to provide service to nonresidents? If the surrounding communities were asked to contribute toward the administration of the vans, would these communities see this as a means of getting other communities to subsidize the city's transit deficits? If the transportation authority is the titled owner, many questions must be addressed and many are very unclear at this time.

Section 13(c) Agreements

If the transit authority obtained public funds for vanpools, would this require negotiations with local transit unions pursuant to the Urban Mass Transportation Act (P.L. 88-365) in order to "protect employees from any adverse effect" resulting from vanpool operations? Would the vanpool drivers themselves become "protected employees" and become part of the labor protection agreements when transit service changes are made? For-hire commercial carriers have an extensive history of labor protection agreements that have been substantially strengthened with the public takeover of these companies. These issues raise many questions.

Public Use and Noncompetition

What if a vanpool driver decided to use the transit authority van to take a group of Boy Scouts to a campout at the state park, a group of parents to a high school football game, or senior citizens to a church supper? Would this be considered illegal charter service and in competition with local charter bus operators? Would the authority authorize this type of service? If so, how should fares be set? If the activity is authorized, would the driver be allowed to donate driving time or would the driver be required to be an employee to provide this service? If the driver is an employee, can the driver be assigned without having to go through his or her turn as an extraboard and take assignments in turn with other drivers?

Financial Loss

If the authority owned the vehicle, the authority would bear the financial risk of loss if the vanpool failed. The authority might be able, however, to give the vehicle to another group of commuters if it is politically acceptable to remove service on which individuals have become dependent.

Tax Considerations

Vanpooling under the authority should be completely exempt because most authorities are nonprofit organizations. Revenue would not be taxable. Vehicles would be exempt from sales tax, license fees, property tax, and possibly fuel tax and may even be eligible for federal and state subsidies as transit vehicles are. When vehicles are shifted from one commuter group to another, there would be no registration fees, sales tax, or other costs of transferring the vehicle between commuting groups.

Discrimination

The fundamental principle of the regulation of for-hire commercial transportation is the avoidance of discrimination. The word "discrimination" in transportation law differs from that in the civil rights context. Discrimination means the providing of a different level of service or the charging of a different fare to any person, geographic region, or for any type of trip.

The importance of discrimination in transportation can be seen by reviewing certain sections of the ICC Act. For example, 49 U.S. Code Supplement, Section 10101, states that the "Transportation Policy" includes the encouragement of establishing and maintaining "reasonable rates for transportation without unreasonable discrimination or unfair or distinctive competitive practices." Section 49, U.S. Code Supplement, Section 10741, provides as follows:

> (a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title (49 USCS § 10501 et seq.) may not charge or receive from a person a different compensation (by using a special rate, rebate, drawback, or another means) for a service rendered, or to be rendered, in transportation the carrier may perform under this subtitle than it charges or receives from another person for performing a like kind of traffic under substantially similar circumstances. A common carrier that charges or receives such a different compensation for that service unreasonably discriminates.
> (b) A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 106 of this title (49 USCS § 10501 et seq.) may not subject a person, place, port, or type of traffic to unreasonable discrimination. However, subject to subsection (c) of this section, this subsection does not apply to discrimination against the traffic of another carrier providing transportation by any mode.
> (c) A common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II, or III of that chapter (49 USCS § 10501 et seq., 10521 et seq., or 10541 et seq.) may not subject a freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of that chapter (49 USCS § 10561 et seq.) to unreasonable discrimination whether or not the freight forwarder is controlled by that carrier.

Therefore, the authority would have to be careful not to discriminate between groups. If vans were made available for long-distance commuters, they might have to be made available for short- and intermediate-distance commuters. Should vans be withheld from areas served by transit or private operators for competitive reasons or should they be offered in order to avoid charges of discrimination? This question also must be addressed.

Liability

With the decline in governmental immunity, authority ownership of the van could make the authority fully liable to the passengers for all accidents as well as to the driver and other persons involved in a van accident. The authority would probably be required to have workers'-compensation coverage for the driver in addition to liability insurance. The authority would also find that suit consciousness and the resulting insurance cost would probably be much higher because of the common carrier liability standards associated with the transit authority (i.e., individuals are probably much more willing to sue when the van is owned by the authority than when it is owned by a neighbor or their employer).

The legal philosophy under which transit authorities developed generally assumed that the authorities were designed to take over, operate, and replace the traditional commercial for-hire carriers that operated the buses or subways, like the private transportation utility. These laws and regulations leave many questions that need to be resolved before regional authorities should consider commuter-van ownership. (It is easy to understand why some transit authorities have been reluctant to purchase vans and start vanpool programs.)

Independent Provider of Vehicle

After discovering all the legal implications of having vehicles owned by the regional transportation authority, the group decided to approach a private business to obtain a van. Here they discovered that there were two distinct ways in which a private firm can supply a vehicle. If the business supplies a vehicle without a driver, the firm is legally considered to be a lease firm, but if the business selects the driver as well as the vehicles, the firm is legally a taxi, limousine, or public livery operator.

Lease Firm

There are many types of leases--day leases, long-term leases, open-end or closed-end leases, with- or without-maintenance leases, with- or without-insurance leases, etc. The details of the lease make very little difference as long as the driver is not supplied at the same time as the vehicle. Except for tax purposes, there is essentially no difference in a long-term, open-end lease and a vehicle purchased with a loan from a financial institution. The following legal issues face leased vans:

1. Liability: The liability for the operations of the leased vehicle would normally be on the lessee and on the driver of the vehicle, not on the lessor. The lessor, like an automobile dealer, would be liable, however, if a defective vehicle were furnished. Thus, the group was asked to identify the individual who would assume full responsibility, not only for the passengers, but for all the damage to the vehicle itself.
2. Financial risk: Under a lease, the lessee is normally responsible for all financial risks by virtue of the contract (lease). The lessor, of course, would bear the financial risks if the lessee was unable to pay the lease charges, but the lessor would have a claim against the lessee for violation of lease. Thus, not only did the group have to put up the first and last month's lease payment, but also one or all members of the commuter group had to accept responsibility for all contractual lease payments.

   The popularity of vanpooling is creating a new form of leasing for vanpools, however. The Hertz Corporation offers a vanpool lease with a maximum lease commitment of three months with automatic monthly extensions. The Chrysler Corporation offers monthly leases. In essence, the lease firm accepts the risk of vanpool failure but feels that the probability of loss is very low because of the success rate for vanpools and the availability of new groups to take over the van even if a pool fails.
3. Restrictions on use of vehicles: Usually, limitations are placed on the amount of annual mileage that may be driven and any activity that would damage the vehicle or reduce the value of the vehicle at the end of the lease. These restrictions normally are to protect the lessor from financial loss where the salvage value at the end of the lease is fixed.
4. Taxes: Lessees are expected to pay full sales taxes, registration taxes, and fuel and other taxes. If the vehicle is leased by a business, the vehicle lease may be tax deductible if it is used to transport employees in a business operation. Unless the lease can be considered a business expense, it is not tax deductible by a private owner-driver like an interest payment in the financing of a van. Thus, a major distinction between a lease and the financing of the van through a bank is the ability of the taxpayer to deduct the interest to reduce taxable income.

Public Livery Firm

If the group or the firm desires the lessor to supply the driver, then the firm is no longer considered a lease firm but a public livery organization. Under this arrangement, the vehicle would be operated much as the transit authority or a taxi.

In this case the transportation would probably be considered to be for-hire transportation and the higher legal standard of care would apply, just as if the van were owned by the transportation authority. Full liability would belong to the firm.

The state regulatory bodies would, in all probability, retain control over the route, fares, entrance into the business, and the discontinuance of unprofitable routes. Thus, if a route needed to be changed due to one rider's moving and another's joining the pool, regulatory approval might be required, with proper notice and public hearings.

Under this arrangement, the firm would probably require a long-term contract in which the commuter group would pay the cost of the operation. If the group defaulted, the firm would bear the ultimate financial responsibility, unless the contract was enforced by a court. The firm would, however, be able to transport other groups like a taxi or airport limousine service if the regulatory body granted approval.

Usually, these vehicles are highly taxed, including not only sales taxes, registration fees, and all the other fees paid by private vehicles, but also special seat taxes, license fees, and fuel taxes charged to for-hire commercial carriers.

The state regulatory exemption for vanpooling in this instance would probably not be pertinent because this model would not fit within the framework of most existing ridesharing legislation. The vanpooling exemption generally assumes that the driver can only be selected by the employer; otherwise, the van is a private, driver-owned vanpool.

Employee-Provided Vehicle (Driver-Owned Vanpool)

After realizing that a lease program required the group or one of its members to take full financial responsibility anyway (the short-term Chrysler leases are an exception), the group decided to see whether one of their members should purchase a van or whether the group should consider incorporation.

Two important questions must be raised for privately owned vehicles: (a) Are shared-expense vanpools subject to regulation in that state? (b) Should the driver consider the vanpool operation to be a business? The first question was extremely important as late as 1978, but in many states either some version of vanpool deregulation has been passed or the state public service commission has decided not to enforce strict regulatory controls. Some states still regulate vanpools to varying degrees. If the vanpool is regulated, the vehicle will probably come under the law that applies to the for-hire commercial companies, since only for-hire commercial carriers are regulated by the public service commissions.

The second question is much more difficult: Is ridesharing considered to be a business? Legally, an activity is considered to be a business if

1. The primary reason for being involved in the activity is to earn income and
2. The activity is of continual duration (for example, if an individual sells one car per year, that is generally considered to be a casual venture, but if the individual sells 100 cars per year, that is generally considered to be the person's business or occupation; i.e., if it is occasional or casual, then it is not a business).

The importance of whether or not the van is considered to be a business is demonstrated by examining issues affecting employee-owned vanpools.

Financial Risk

The employee-owner would bear all financial risk. That is, the employee would have the responsibility of purchasing the vehicle, making payments on the vehicle, and obtaining enough passengers who pay their fair share of the cost of purchasing and operating the van.

In general, most private vanpool owners can obtain vehicle financing. Some financial institutions, such as Riggs National Bank, Bank of Virginia, and some credit unions, were providing 100 percent financing (prior to the financial crunch) based on the fact that the vans are not a personal expense, such as a car or a boat, but an income-generating investment, especially if there is some group that can help the driver find passengers to keep the vehicle filled.

Regulation

Under the evolving state ridesharing legislation there has normally been one or more legal tests of whether or not the pools are exempt from state public service commission regulation. These evolving legal tests are as follows:

1. The operation must be "not for profit." Although this is an easy concept, the question is what "profit" means. Can the nonprofit fare include, for example, gasoline, parking, insurance, license fees, depreciation, finance payments, maintenance cost, tires, depreciation on the office and garage at driver's residence, office expense, telephone, typewriter, business privilege tax, etc.? If the van is also for personal use, how should cost be divided between personal and commuter use? Should average, marginal, or total cost be used? If the operation is considered to be a business, then all costs should be allowed. If it is not a business, then the driver may be required to reduce costs by the driver's prorated share of expenses. For example, if nine persons, including the driver, were riding in the van, then the total cost would have to be reduced by one-ninth (the driver's share) in determining whether the operation were profitable.
2. The pool must not exceed a certain number of persons. In general, individual state provisions have ranged between 8 and 15 passengers. In many states, the exemption is based not on the number of passengers, but on the number of seats in the vehicle.
3. The trip is incidental to the trip purpose of the driver. Under this concept, the driver is going between the same origin and destination as the passengers. This exemption may include vehicles of any size; for example, in Missouri, any vehicle driven to work by a commuter going to work at the same location is exempt. The concept is that the driver is not making the trip primarily for income purposes and therefore the pool is not a business.

Liability

The liability for operating the vehicle is fully on the shoulders of the driver (who also owns the vehicle). In the event of an accident in which the driver is negligent, the fellow passengers look only to the owner-driver for recovery in case of injury.

Taxation

The revenue collected by the driver may or may not be taxable income, depending on varying interpretations of Revenue Ruling 55-555. This depends on whether the operation is considered to be a business. The Internal Revenue Service (IRS) holds that if it is not a business, but merely a sharing of expenses, then Ruling 55-555 would place all revenue and costs outside tax considerations. If, however, it is held to be a business, then detailed records must be kept and it appears that the vanpool driver would be eligible for all investment tax credits, depreciation, and other business deductions, such as those for an office in the home. If the driver-owner assumes that the Revenue Ruling 55-555 does not apply and later is informed by the IRS that it does apply, the driver may find that he or she has not kept adequate records to justify all costs. Therefore, the driver may find that he or she owes substantial taxes and penalties. On the other hand, if careful records are kept, the taxpayer could be eligible for a substantial refund due to the investment tax credit, depreciation, and the cost of the office in the home, for which the business may be eligible to deduct. The key limitation contained in Revenue Ruling 55-555 is as follows:

> However, this revenue ruling is not intended to apply to the situation where a particular car owner has developed his carpool arrangements to the extent that he can be said to have established a trade or business of transporting workers for hire from which a profit is derived.

At this time, the applicability of this revenue ruling and the position that the IRS will ultimately take are unclear. Until this ruling has been clarified, the driver/owner does not know whether the tax benefits of being a business will outweigh the additional cost of insurance that occurs if the van is classified as a business.

In addition, if the vanpool is considered to be a business, the van owner may be subject to all the standard taxes such as sales tax, registration fees, and fuel taxes plus business taxes, such as business privilege taxes. (A shared-expense vehicle has no income or sales tax, and other business taxes do not apply.) In addition, it may be illegal to operate a business or to park commercial vehicles in some residential areas because of zoning.

Restrictions on Use

Noncommuter use of the vehicle is restricted only if the noncommuter use is regulated. For example, if the owner attempts to take groups of Boy Scouts, senior citizens, or others and they share expenses for trips, in states where vanpool exemptions were limited to work trips or where more people ride than was authorized in the state vanpooling exemptions, these uses would be restricted. (If the state exempted vans of 10 passengers or less and 11 people are carried to the Boy Scout outing, then this shared-expense use would not be exempted.) Otherwise, the van owner may use the van anywhere he or she would operate a privately owned car.

Insurance

The driver would have to purchase a sufficient amount of insurance to protect against liability and also to afford passengers compensation if they are injured either by the driver or by a third party. Normally, this insurance is to be obtained through the owner/operator's private automotive insurance policy. If the pool is not considered to be a business, then the van would be insured under the driver/owner's private automobile policy just like a privately owned car. If the pool is considered to be a business, then it would be insured under the commercial automobile manual and frequently with a different insurance company.

In summary, if the employee provides his or her own vehicle, it must be decided whether the pool should be considered a business or nonbusiness activity. (The legal name of the latter is not clear because it is not a joint venture, it is not a partnership, it is not a business, it is not a family relationship, and it is not a charity, but at the same time it is not strictly a private affair.)

If the pooling arrangement is a "nonbusiness," then

1. No tax benefits or tax-break incentives would be available to the driver,
2. The taxability of the revenue as previously stated pursuant to the Revenue Ruling 55-555 is not clear,
3. The private automobile insurance policy would probably provide the required coverage if this activity is considered to be noncommercial, and
4. It is uncertain which records are necessary to prove that the activity is or is not a business for purposes of income taxation.

On the other hand, if this activity is a business, then the following characteristics apply:

1. The individual will receive tax benefits (the individual will be allowed to depreciate the vehicle, deduct expenses, including lease payments, and receive an investment tax credit). Other income tax questions are raised. For example, how does one calculate the tax? Does one allow full depreciation but not accelerated depreciation? Does one allow the accelerated investment tax credits? Is the individual allowed to have a deduction for an office in the home, for a telephone, for a typewriter, and for other bills? Must there be a profit to continue operating as a business? In other words, could a vanpool become a tax shelter? To what extent can the individual claim tax credits?
2. There will be a record-keeping requirement because the individual will be claiming this activity as a business and will need to support and verify all deductions.
3. It would be uncertain if this would be considered a for-hire activity, and it may ultimately be up to a court to determine whether or not this would constitute regulated transportation. In states that have exempted this kind of transportation from regulation, there would be no question, but in other states where either they have not passed any exempting legislation or the exemption passed was too narrow, this activity quite possibly would be regulated.
4. Since this is a business, the individual would be subject to any sales taxes, business privilege taxes, etc., that are required for businesses, together with penalties.
5. From the point of view of the insurance industry, when is this activity a business and when is it a nonbusiness? When is the private automobile policy to be used and when is the commercial automobile policy to be used? The commercial automobile insurance is usually more expensive.
6. How is "nonprofit" defined? Does the business remain nonprofit if income is earned, since nonprofit businesses may earn an income and for-profit businesses may have a loss?
7. If this is a business, what other regulations

such as zoning restrictions and business taxes would apply?

Incorporation

After considering the concentration of liability on the owner/operator, one of the pool members suggested that the group consider incorporation. If the 10 or 15 member commuters decided to incorporate, the law has still another treatment of the operation. Normally, corporations are created to conduct businesses and usually there is a profit motive; however, there are also such things as nonprofit corporations. The same questions raised above would be applicable. Besides those discussed above, additional legal considerations arise:

1. Liability for conducting the business or nonbusiness, whatever the case may be, would be placed on the corporation. Many people assume that by incorporating, individuals can escape all liability. This is not true. If the driver of the vehicle by his or her negligence injures someone, he or she may be named in the suit in addition to the corporation, especially if the corporation has insufficient assets to compensate those that are injured.
2. Since this is a corporation, the corporation would have to have commercial insurance and would not be eligible for the broader family automobile policy coverage.
3. Who assumes the financial risk in a corporation? Normally, banks will not lend to new corporations until they have built up sufficient assets. Banks normally require that there be individual cosigners on any loan made to a small corporation. If the owners of this business (or nonbusiness) cosign a note with the corporation, even though the corporation will be primarily liable in the event of a default, the individuals who cosigned will be secondarily liable, so they all must incur the financial risk.
4. Most states have special corporate taxes, such as state income, franchise, excise, and privilege taxes, that would be applicable.
5. The formalities of corporate ownership and control would have to be observed; i.e., minutes would have to be kept and by-laws and the charter would have to be kept in proper order.

WHAT ARE THE MAJOR PROBLEMS?

This review of various approaches to vanpooling and other ridesharing efforts illustrates the frustration to which ridesharing promoters have been subjected in involving employers, unions, transportation authorities, and individuals in ridesharing. The growth of ridesharing in spite of all these concerns bears testimony to the practicality and popularity of this approach to transportation. It also illustrates another important principle: Our legal system does not have a place for individuals who mutually cooperate to solve basic individual and societal transportation problems.

Law in general addresses several categories of activities:

1. Family or domestic or private activities between parent and child, husband and wife, etc., for which the law is established to protect;
2. Criminal activities, for which the law is established to prohibit certain types that would injure other persons; and
3. Administrative and revenue activities, for which government raises money and carries on the process of government.

Ridesharing does not fit into any of these categories, and when it is forced into commercial or business law, the legal barriers arise.

Traditional government activity, especially in the transportation field, has focused on three basic legal approaches, none of which applies to ridesharing:

1. In the regulation of transportation firms, the government first declared that the operation of commercial, for-hire transportation was a privilege, and thus the transportation firm could only supply for-hire transportation if given this privilege by the appropriate political body. A regulatory body (ICC, Civil Aeronautics Board, or local taxi board) was established to prescribe how the service should be provided. If the service was not provided in accordance with the decisions of the regulatory body, the regulatory body was given the authority to deny the firm the privilege of operating and thus of being in business.
2. The government would levy taxes on transportation vehicles, their fuel, and their owners to generate funds to purchase transportation improvements such as highways and street lighting.
3. The right of individuals to transport themselves when there is no commercial interest has generally only been limited by safety considerations.

Ridesharing is somewhat foreign to standard government operating methods. Ridesharing is a cooperative endeavor among individuals attempting to solve their own problems outside of normal government procedures. It does not conform to standard government procurement or contracting procedures. Government can only facilitate, encourage, or promote this largely cooperative activity, but it cannot effectively pay people to ride together. Public transportation advocates thus find themselves in a dilemma where the most popular form of commuter transportation does not have a legal identity. In the classic case, Southern California Commuter Bus Service, Inc. versus Zappitelli (Case 9797), before the Public Utilities Commission of the State of California, Mrs. Zappitelli decided to carpool by using her van so her neighbors could get to work without fighting the 1973-1974 gasoline lines. The California Public Service Commission promptly charged her for providing commercial transportation without going through the costly and time-consuming steps necessary to legally obtain that privilege (or operating authority). The publicity resulted in a change in the regulatory law.

RECOMMENDED LEGISLATIVE PHILOSOPHY

Since 1974, many states as well as the federal government have exempted certain types of vanpools from economic regulation by the various regulatory boards. These legislative efforts have primarily been directed toward removing regulatory or tax barriers and have emphasized that ridesharing is not traditional for-hire commercial carriage. It is now time to state legally that ridesharing is a specific goal of public policy with its own body of law. This new body of law should address the following subjects.

Solution to Public Need

Commuter ridesharing is a solution to an urgent public need. The full cooperation of employers, employees, and government is needed to meet the national objectives of energy conservation, traffic control, reduced highway congestion and maintenance, improved air-quality standards, reduced commuting cost, and other transportation-related objectives. It is not equitable nor in the public interest to place the full cost or the full liability for the commute trip on any one group, especially where the cooperation of that group is so crucial to the accomplishment of national objectives. Therefore, legislation needs to firmly establish that cooperative efforts between government, employers, and employees to facilitate ridesharing should not be construed to be a fringe benefit nor to expand the employer's or government's liability for accidents incurred during the commute trip. This legislative approach should apply even if the government or the employer makes low-interest loans available to commuter groups to purchase vehicles, leases vehicles to groups of commuters, or assists commuters in finding other ridesharers.

The key legal test should be the degree of control that the employer or government exerts over the operation of the ridesharing vehicle. If the employer controls the operation of the vehicle and pays the majority of the cost of the commute trip, as in the case of transporting migratory farm workers, then the employer should be fully liable for its operation as under existing laws. Likewise, if a government body such as a military base or transit authority controls the operation of the vehicle, then government should be liable as under existing law. On the other hand, if a group of commuters desire to start a vanpool and the employer offers to guarantee the loan obtained from the local credit union, or if the employer (or a governmental body such as a transit authority) leases a vehicle to a group of commuters who select their own driver, set their own schedules, and share their own expenses, including the cost of the loan or lease, then this facilitating type of ridesharing promotion and support should not make either government or the employer liable for accidents to the commuters.

An analogy would be the sale of U.S. savings bonds, which was held to be a public service. Thus the employer was not held liable if Series E interest rates were lower than certificates of deposit or treasury bills. Also, since the sale of savings bonds was considered to be a public service, it did not become a fringe-benefit issue where the employer was pressured to pay an ever larger share of the cost of the bond. Without these two conditions, it is doubtful that employers would have supported the sale of U.S. savings bonds through payroll deduction.

Liability

Commuter ridesharing is a cooperative solution to a mutual problem and the total financial responsibility for all accidents should not be concentrated on those who take the initiative to implement the cooperative activity on a nonprofit basis. Therefore, ridesharing should be legally defined as a cooperative activity in which each ridesharer retains the same legal protections from injury as he or she would have if not ridesharing but traveling in a privately owned or family-owned automobile. If another vehicle were at fault, the ridesharers would seek to recover damages from the vehicle that caused the accident. If the ridesharing vehicle were at fault, the ridesharers would recover for their individual injuries just as if they were driving the ridesharing vehicle. If they were driving the vehicle themselves, they would not be able to sue themselves, but they would look to alternative sources of reparations. Injury to individuals who are not ridesharing would be handled just as it is now. This approach would assure that no one would be disadvantaged financially by ridesharing. This approach avoids the concentration of risk where financial responsibility for all passenger injuries is now concentrated--on the driver or owner of the vehicle. The current concentration of liability not only discourages ridesharing but also requires that each vehicle involved in ridesharing increase its insurance limits to cover the maximum number of people who might ride. If five individuals who always drove alone decided to alternate driving, then each vehicle would have to increase insurance coverage to include the possibility that all five might be injured while ridesharing. Under the proposed legal philosophy, these five commuters would look to the same insurance (or other payment methods) as if they were driving alone and the same accident and injuries had occurred. Thus, there would be no increased risks or cost to anyone, including any insurance carrier, because of the ridesharing arrangement. In the unlikely case where the ridesharer had no insurance coverage of any kind, this exception could be covered by the insurance on vehicles in which they were riding through, perhaps, first-party medical pay insurance. The State of Michigan is approaching this when they place ridesharing vehicles under the "follow-the-family" type of no-fault insurance.

There are other legal precedents for such an approach to liability. When a person participates in casual or community athletic programs, the legal doctrine of assumption of risk is well established. Each player accepts the risk of injury to himself or herself and will not sue the other team members in case of an accident. If it were not for this principle, it would be very difficult to get people to play touch football or go on Boy Scout hikes or have the many volunteer recreational programs now available.

The sharing of risk for accidents would eliminate the major barrier to ridesharing in individually owned vehicles.

Suggested legislative language related to defining government and employer liability for ridesharing accidents appears below:

> WHEREAS, it is recognized that employees and the nation as a whole benefit greatly when employees and government cooperate with employees to promote commuter ridesharing programs;
>
> WHEREAS, it is in the best interest of the nation as a whole and individual employees in particular to encourage employer ridesharing programs;
>
> WHEREAS, it is in the best interest of the nation and employees to clarify any barriers that would inhibit this cooperation.
>
> NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:
>
> Employer's and Government's Role in Providing Vehicles for Ridesharing.
>
> 1. Employers and the government shall not be liable for injuries to passengers and other persons resulting from the operation or use of a motor vehicle not owned, leased, or contracted for by the employer or government in a ridesharing arrangement.
>
> 2. Employers and government shall not be liable for injuries to passengers and other persons because they provide ridesharing support activities, such as information, incentives, vehicle loans, or security for loans or leases, or otherwise encourage employees and commuters to participate in ridesharing arrangements.

Role of Transit Authority

The role of public bodies such as regional transit authorities (RTAs) needs to be redefined from that of owning, operating, and funding traditional public transportation service to the facilitation of all public transportation options. The role of the RTA should be shifted from an entrepreneurial one of preserving the bus company to a mission-oriented one of serving various public transportation needs. Until the RTA boards and executives recognize the difference between the entrepreneurial role of preserving specific transportation service and the public mission to solve a specific problem, it will be difficult to implement alternative solutions. To implement a mission-oriented approach, there is need to separate the rules, liability, funding, and guidelines that apply to the entrepreneurial operation of the traditional services and the promotion and procurement of alternative services. For example, if a transit authority finds it more cost effective to promote carpooling than to add additional buses into low-density suburbs, the carpool efforts should not extend the common-carrier liability standard, Section 13(c) labor protections, public hearings over route and fare changes, and noncompetitive requirements to cover all carpools that develop.

Tax Issues

The IRS should resolve the tax issues and decide whether ridesharing is a business. The goal of ridesharing is to accomplish public goals through the cooperative effort of individuals (employers, employees, public officials, administrators, neighbors, friends, schoolmates, and other groups) who voluntarily decide to ride together. By making some vans tax-deductible and others highly taxed and by being unable to define when a vanpool is a business and thus which laws are applicable, the tax mechanism is a strong force to artificially structure the form vanpools take.

Currently, discussions are under way to subsidize employers to assume a large legal responsibility for their employees' transportation to work or to support transit authorities to do something they are ill-equipped to do, whereas individuals who can easily do it are discouraged by the uncertainty of liability and tax issues.

Federal tax law should recognize the following points:

1. Ridesharing is a cooperative area of activity and not subject to the traditional business or personal accounting and tax principles.
2. Employer efforts to promote ridesharing are a public service activity and should not necessarily be limited to employees only. For example, the investment tax credit should apply regardless of whether the pools include nonemployees, because this restriction encourages the destruction of pools involving neighbors or spouses who may work for nearby employers.
3. Individual pools are cooperative efforts and should have well-defined accounting and tax procedures without reference to whether or not the driver considers it to be a business.

Federal and state legislatures should explicitly recognize that it is in the national interest for government to permit individual citizens to cooperatively resolve their own transportation problems at their own expense and that these solutions should not be restricted to promote government-subsidized solutions, such as mass transit, the National Railroad Passenger Corporation (Amtrak), rail commuter services, subsidized intercity bus runs, or employment programs for drivers under the Comprehensive Employment and Training Act.

SUMMARY

Government seldom faces such a logical, inexpensive, and acceptable solution to a major national problem. Unfortunately, both state and federal government must make major legal and policy changes if the full potential of the ridesharing solution is to be realized. This paper has attempted to illustrate how government has unintentionally inhibited ridesharing by first making it illegal and then, after it was legalized, by applying archaic, inappropriate legal structures that did not recognize its cooperative, public service orientation. Seldom has government been faced with such a productive, low-cost situation requiring such a redirection in regulatory, tax, liability, insurance, and funding philosophy.

Demand Analysis for Ridesharing: State-of-the-Art Review

LIDIA P. KOSTYNIUK

The methods that are currently used to estimate demand for ridesharing for the work trip are reviewed. These techniques are categorized by the basic approach used, and models within each category are described, reviewed, and summarized. The first category consists of those techniques developed from the perspective of the formation of ridesharing units and includes the assessment of areawide ridesharing potential by estimation of possible matches and the identification of characteristics of the population that shares rides. The second category includes the techniques that view ridesharing as an individual or household decision. These include utility maximization models and household travel decision simulations. The third category includes those models concerned with estimating changes in ridership by various modes, including ridesharing, that result from the implementation of high-vehicle-occupancy treatments. These models consider demand and supply effects to obtain equilibrium traffic flows.

Ridesharing, the transportation of persons in a motor vehicle where such transportation is incidental to the purpose of the driver, did not generate much interest on the part of transportation analysts prior to 1973-1974. Until then, traditional transportation demand methodology developed in the 1950s and 1960s did not directly concern itself with ridesharing, and the sharing of rides entered into the planning process only through the automobile occupancy model. The objective of the automobile occupancy model was to convert person trips into vehicle trips for the purpose of planning highway facilities. Although the possibility of affecting vehicle occupancy by deliberate public policy did occur to planners in the 1960s, it ap-