

BEFORE THE  
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION  
WASHINGTON, D. C.  
ORDER NO. 206

Served October 11, 1962

IN THE MATTER OF:

Application of Holiday Tours, Inc. )	Application No. 151
for a Certificate of Public )	
Convenience and Necessity )	Docket No. 11

APPEARANCES: As shown in prior order.

On July 16, 1962, by Order No. 169, the Commission denied the application of Holiday Tours, Inc., for a certificate of public convenience and necessity to authorize the applicant to transport passengers for hire in charter and sightseeing operations in the Metropolitan District.

Holiday Tours, Inc. filed an application for reconsideration. By order entered September 7, 1962, the Commission reopened this proceeding for reconsideration on the same record.

Subsequently, on September 25, 1962, the Commission received a letter from counsel for the applicant requesting that this application be amended and narrowed by striking its request for charter authority, thereby having the effect of seeking sightseeing or pleasure tour authority only. The only procedural basis for such a request, once the hearing is over and the record closed, that is to be found in the Commission's Rules of Practice and Procedure is Rule 27 and sub-rules thereto. But this rule is explicit in stating the reason for its existence, and that is for the purpose of taking additional evidence that was either undiscovered or not in existence at the time of hearing. The instant request is hereby denied for the reasons that it was not submitted in petition or motion form and thus does not meet the requirements set forth in Rule 4, that the request is argumentative and several matters therein more properly belong in briefs, that the granting of such a request would be manifestly unfair to the other parties to this proceeding, and rather than aiding the Commission in reaching a fair and equitable decision would result in the Commission having to interpret all testimony in a new light. It is obvious to the Commission that all testimony taken in the proceeding was freely given by the witnesses with

the thought to testifying to a certain application. To materially change the application, which the granting of this request would do, would undoubtedly cause many witnesses to alter in many respects their testimony. Thus, we proceed to reconsider this proceeding as we initially stated in the order of September 17, i.e., upon the entire record in this proceeding.

The details of the application are set forth in Order No. 169. As there stated, notice of the application was given as required and seven protests were recognized, the protest of W M A Transit Company, however, being excluded for the reasons stated therein. Now, as then, the Commission will disregard any evidence put in the record on behalf of W M A Transit Company.

#### FACTS OF THE CASE

The applicant seeks authority to engage in special and charter operations throughout the Metropolitan District. The application is opposed by seven carriers, all of whom have been issued extensive operating authority including special and charter rights by the Interstate Commerce Commission, and all of whom have pending "grandfather" applications on file with the Commission and are currently operating on that basis. It is clear to the Commission that all have authority to engage in all or portions of the area sought to be served by the applicant.

The applicant's president, vice-president, accountant and 15 other witnesses testified in support of the application. Of the 15, 14 witnesses were owners or employees of various motels and tourists' homes located in the Metropolitan District. The remaining witness was affiliated with a local Chamber of Commerce organization.

The applicant is primarily managed and operated by its president, Walter L. Davis. Davis was in the sightseeing business, both as an individual and in a proprietary arrangement, prior to the incorporation of Holiday Tours, Inc., in 1959. The Company owns and operates several limousines and claims to have also operated leased buses. Davis testified at length as to how the operations would be conducted if the authority is granted. It appears that sightseeing and pleasure tours would be advertised and operated chiefly from motels in Virginia and Maryland to scenic and historical points of interest in and around the Nation's Capital, including various government buildings, the Arlington National Cemetery, the Marine Memorial in Arlington, Virginia, and Mount Vernon, Virginia. He claimed this service would differ from that of the protestants because of the "personalized" service attached to the actual transportation. It appears this "personalized" service consists of steering customers to motels at which the Company would provide service, of free information and a ready smile. Agents to sell tour tickets

would be available in many of these motels for which service the agent will receive a commission or salary plus commission. When the agent is off duty, motel personnel would arrange the transportation.

In return for this personalized service rendered to its patrons, the motel would benefit by the applicant recommending the motels to those people it transports. In addition to this arrangement, applicant also operates newsstands in some of the motels and also rents television receivers to some of them.

Witness Davis also testified to the corporate structure of applicant and testified that 10 shares of stock have been issued, of which amount he held eight shares, a secretary held one share and the vice-president (Wackerman) one share. He claimed that the latter two shares were issued to these people for money he borrowed from them, that they were in effect "pledged" and would revert to him upon payment of the loans. However, Wackerman testified that his share was a gift, that the loan was being repaid and that Davis did not hold an option or other device to retrieve the stock from him.

Davis also testified as to the financial ability of Holiday Tours, Inc. Two financial exhibits were filed with the application. At the hearings, Davis attempted to explain various items therein but deferred many questions to his accountant, claiming that the accountant had the requested information or knowledge, and that he, Davis, did not know the answer to them. Later, the applicant introduced several other exhibits through the accountant-witness. These exhibits, it was stated, were intended to supplement and update the original financial exhibits. However, the accountant testified that he did not prepare the original financial exhibits, that the subsequent exhibits were prepared by him and Mr. Davis collectively, that the Company had few accounting ledgers and vouchers, and consequently much of the information contained in the exhibits was based on representation and information supplied to him by Davis. It is interesting to note that this witness, in testifying that he had not verified much of the information and data that he put in the exhibits, stated that such verification was not possible because Mr. Davis "has most of these facts in his mind."

Wackerman, the vice-president, testified that he worked for a finance company, that either the company or he individually would loan Holiday Tours, Inc. money necessary to purchase equipment.

Fourteen witnesses presented by applicant to testify in support of the application were, at the time of the hearing, either presently employed in motels and tourists' homes or had been so employed in the immediate past. In general, they related that Holiday Tours had provided transportation for patrons of their motels, that such transportation was usually arranged by their own employees who sold tickets to

the individuals and received a commission on these sales from Holiday Tours, that Holiday Tours in turn, through its "personalized" service, had referred people to their motels for lodging and meals, for which they in turn usually paid Holiday Tours a commission. That they knew the transportation was performed in limousines or buses, that the limousines were those of Holiday Tours, but they either had no knowledge of the buses or identified them as belonging to one of the protestants. Some stated that they dealt exclusively with Holiday Tours to provide the sightseeing transportation, while others were open to any carrier desiring to provide such service. In a few of the motels, Holiday Tours actually had an employee to sell tickets, although motel personnel would take over this duty when the Holiday Tours employee was not present. One or two of these witnesses voiced complaints against the service provided by protestants.

One witness, not directly connected with Holiday Tours or the motels, was the head of a local Chamber of Commerce unit. He stated that he was impressed with the personalized service of Holiday Tours, and Mr. Davis whom, however, he had only met several times. However, as to the transportation picture, he had nothing to offer, knowing nothing of the requirements of the traveling public nor of existing service.

Five witnesses testified on behalf of the protestants. Generally, they stated that the carrier they represented was authorized to perform such transportation in all or portions of the area in which the applicant seeks authority to serve. Three of these stated that they performed regular route, common carrier service, that they engage in charter and sightseeing operations as extensively as the need exists, and that the revenue received from these special operations was an important part of their total revenue, and that the proposed service, if granted, would result in a loss of revenue and ultimately make it necessary to raise their regular route fares. That the nature of their business requires them to invest large sums of money in equipment, equipment that is utilized in performing the special operations as well as the regular route operations. That they are willing and able to provide such transportation whenever the need exists. The record also indicated a substantial number of limousine operators rendering sightseeing transportation within the Metropolitan District.

By stipulation, the record includes verified orders of the Supreme Court of the State of Mississippi referring to the conviction and sentencing of Walter L. Davis, in 1955, of embezzlement and a sentence to serve a term of five years in the state penitentiary. The stipulation also included a civil action by the United States Government against Walter L. Davis and two others for failure to repay a loan, for which judgment was entered for the United States, in 1941. Parties further stipulated that the United States Government brought a civil

action against the Tennessee Mechanical Institute, Inc., Walter L. Davis, and others to recover fraudulent overcharges to the United States in connection with a trade school for veterans; that Walter Lee Davis was president of the Tennessee Mechanical Institute, Inc.; that Davis filed an answer denying all of the allegations; and that the United States was awarded a judgment of \$27,500 in November 1953, and that the case was dismissed in December 1955 upon motion of plaintiff.

#### ISSUES

1. Is the proposed transportation required by public convenience and necessity?

2. Is the applicant fit, willing and able to perform such transportation properly and to conform to the provisions of the Compact and the rules, regulations and requirements of the Commission thereunder?

#### OPINION

In a proceeding for a certificate of public convenience and necessity, the burden of proof is on the applicant to show a need for the proposed operation, and, if there is existing service, the lack or inadequacy of existing facilities to meet this need. Of course, the applicant must also affirmatively meet the burden of proving that the applicant is fit, willing and able to perform the proposed service properly.

On reconsideration, the Commission is of the opinion and finds that the applicant has failed to meet its burden. In authorizing the Commission to issue certificates of public convenience and necessity, the Compact did not specify the quantum and kind of proof required. This was left to the discretion of the Commission. The Commission feels that the best evidence of a need for a particular service can best be shown by those members of the traveling public who would actually utilize the service. Of the eighteen witnesses presented by the applicant, none fall in this category. The Commission recognizes the difficulty of securing such witnesses, but does not feel that this presents an insurmountable burden on an applicant. In the absence of that type of testimony, the Commission would then look to one who would secure the service for the traveling public. However, the Commission would expect any of the witnesses so testifying to be in a disinterested position. The bulk of witnesses presented by the applicant in this proceeding indeed comes from that group that is interested in securing service for the traveling public. However, these witnesses can hardly be said to be disinterested in the outcome of this proceeding, for they stand to benefit financially due to the arrangement they would have with

Holiday Tours. In the absence of any existing service, the Commission might well conclude that the applicant could meet its burden of proof with this degree of evidence, although it would surely be less persuasive than testimony from disinterested persons. Except for one or two isolated examples, however, the record clearly reveals, and the Commission so finds, that the existing service as provided by the protestants is clearly adequate to meet the needs of the traveling public. We further find that the applicant has clearly failed to meet the burden of showing that the present service is inadequate. We further find that such transportation is not, and will not be, required by the public convenience and necessity.

While the applicant has demonstrated its willingness to perform the service, the Commission is of the opinion and finds that the applicant has failed to establish that it is fit and able to perform the service. It is an unavoidable conclusion that Holiday Tours and Walter L. Davis are unalterably intertwined, and that Holiday Tours is, in fact, Walter Davis. The record is replete with inconsistent statements by, and evasiveness on the part of, Davis, and these have left a profound unfavorable impression on us. Further, his past record is such that we do not feel that he should play a part in an industry so vested with the public interest. Nor can we give favorable judgment as to his financial fitness and ability. The applicant's financial exhibits, filed with the application, were discredited during the hearing by the applicant himself, and we can place no reliance on later exhibits because of Davis' repeated avowals of no knowledge that are in contradiction with the accountant's testimony that so much of the exhibits he testified to were based on information from Davis, and which he could not, or did not, verify.

In issuing Order No. 169, the Commission did not make a finding on the question of fitness. This was done because the application was denied on other grounds, and it was unnecessary to make a finding on the issue of fitness. However, the question of fitness was raised by the applicant in the application for reconsideration by requesting the Commission to make a favorable finding. Therefore, we felt compelled to make a finding on the subject of fitness.

Concluding, we have reconsidered the record in this proceeding and are of the opinion that Order No. 169 should be modified to express the rulings, facts, opinions, findings and conclusions set forth herein, and reaffirm our decision to deny this application. To meet the applicant's claims of error, we have dealt exhaustively with this proceeding and if there be any inconsistencies or contradictions between the modifications and the original order, we mean for the modifications to express our views.

**THEREFORE, IT IS ORDERED:**

1. That Order No. 169 be, and it is hereby, modified to express the rulings, facts, opinions, findings and conclusions stated herein.
2. That the application of Holiday Tours, Inc., for a certificate of public convenience and necessity be, and the same is hereby, denied.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in cursive script, appearing to read "Delmer Ison". The signature is written in black ink and is positioned above the printed name and title.

DELMER ISON  
Executive Director