

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
WASHINGTON, D. C.
ORDER NO. 319

Served October 22, 1963

IN THE MATTER OF:

The Application of Zoo Tours,)
Inc., San Francisco, California,)
for a Certificate of Public)
Convenience and Necessity.)

Application No. 252

Docket No. 41

APPEARANCES:

L. C. MAJOR, JR., Attorney at Law, on behalf of
Applicant.

S. HARRISON KAHN, Attorney at Law, on behalf of
Diamond Tours, Inc., and The Gray Line, Inc.,
Protestants.

HAROLD SMITH and C. ROBERT SARVER, Attorneys at
Law, on behalf of D. C. Transit System, Inc.,
Protestant.

MANUEL J. DAVIS, Attorney at Law, on behalf of
Washington, Virginia & Maryland Coach Company,
Protestant.

By application filed June 10, 1963, Zoo Tours, Inc.,
80 Stonestown, San Francisco, California ("applicant"), seeks
a certificate of public convenience and necessity pursuant to
Section 4(a), Article XII, Title II of the Washington Metro-

politan Area Transit Regulation Compact ("Compact"), authorizing applicant to provide a sightseeing service by motor vehicle in Washington, D. C., between the sites of the United States Capitol and the Lincoln Memorial; with intermediate point service at the National Gallery of Art, New National Museum, Smithsonian Institute, Museum of History & Technology, and the Washington Monument, over the following route:

From the West side of Union Square in front of the U. S. Capital Building, over Washington Drive to its intersection with 6th Street; thence North over 6th Street to its intersection with Madison Drive; thence West over Madison Drive to its intersection with 15th Street; thence South over 15th Street to its intersection with Independence Avenue; thence West over Independence Avenue to the Lincoln Memorial; thence Northeast over Henry Bacon Drive to its intersection with Constitution Avenue; thence over Constitution Avenue to its intersection with 15th Street; thence Southward over 15th Street to the intersection with Jefferson Drive; thence Eastward over Jefferson Drive to its intersection with 9th Street; thence North on 9th Street to its intersection with Adams Drive; thence East over Adams Drive to the West side of Union Square, serving the intermediate points of National Gallery of Art, National Museum, Washington Monument, Lincoln Memorial, Smithsonian Insitution and U. S. Capitol, for the pickup and discharge of sightseeing passengers.

The equipment to be used in the proposed service consists of a tractor which draws one or more small trailer cars, resembling a miniature train on rubber wheels. The trailer cars are open-air vehicles and are equipped with a fibre glass top to protect the passengers from the sun and rain. The trailers have a seating

capacity of approximately fifteen persons.

The applicant proposes to charge the following fares in connection with the proposed service:

Round-trip sightseeing fare for persons 13 years of age or over, who commence and terminate their trip at either the Capital, National Gallery of Art, New National Museum, the Washington Monument, Lincoln Memorial, or the Smithsonian Institution, with a maximum of six stop-over privileges en route.....\$1.50 per person

Round-trip sightseeing fare for children 12 years of age and under, who commence and terminate their trip at either the Capitol, National Gallery of Art, New National Museum, the Washington Monument, Lincoln Memorial or the Smithsonian Institution, with a maximum of six stop-over privileges en route.....\$0.50 per person

Fare for persons 13 years of age and over in traveling from one stop to the next succeeding stop only.....\$0.25 per person

Fare for children 12 years of age and under in traveling from one stop to the next succeeding stop only.....\$0.10 per person

The application was protested by D. C. Transit System, Inc., Washington, Virginia & Maryland Coach Company, The Gray Line, Inc., and Diamond Tours, Inc. All of the protestants are authorized to engage in sightseeing transportation service by motor vehicle and are authorized to serve the points proposed to be served by applicant.

Pursuant to public notice duly given, hearings on the application were held on June 26, 1963, and July 23 and 24, 1963. Applicant adduced oral evidence from its President and sole stock-

holder and six additional public witnesses. The public witnesses included the Associate Director of the United Givers Fund of the National Capital area; the Assistant Manager of the United Givers Fund, Government Division; a public relations counsellor; a travel consultant; a housewife; and the Special Assistant to the Commissioner of Public Buildings, General Services Administration. The applicant also submitted documentary evidence through the introduction of some seventeen exhibits. Protestant, Diamond Tours, Inc., submitted evidence through its Owner and Manager. Protestant, Washington, Virginia and Maryland Coach Company, submitted testimony through its Vice President and General Manager. Protestant, D. C. Transit System, Inc., submitted testimony through its Assistant Vice President in Charge of Sales and Special Operations. Protestant, The Gray Line, Inc., submitted testimony through its President. The protestants also submitted two exhibits in support of their position. Briefs were also filed by counsel representing certain of the parties.

The President of applicant testified that he or his firm is presently conducting service, similar to that proposed in the within application, in the San Francisco Zoo, Los Angeles Zoo, Kansas City Zoo and Slope Park, the Denver Park and Zoo, and operated a similar service in the Seattle World's Fair. The President also testified that trackless trains are used as a means of transportation in the New York Bronx Zoo, Detroit Zoo, Houston Zoo, San Antonio Zoo,

the Canadian National Exhibition, the Vancouver Fair, Sacramento State Fair, Los Angeles County Fair, Disneyland, in St. Augustine, Florida, and Santa Monica Beach, California. It would appear that applicant is thoroughly familiar with, and has had substantial experience in, the operation of rubber tired miniature trains, at least in parks and zoos in other cities.

According to the testimony, applicant proposes to operate four or five trains, each train to be composed of one tractor and three trailers, at headways of between ten and fifteen minutes, between 9:30 A.M. and 4:30 P.M. daily, during the normal Washington sightseeing season. The President of applicant estimates that the normal sightseeing season in Washington begins in late March or early April and ends in late October or early November. While applicant contemplates that each train would consist of one tractor and three trailers, applicant's President admitted that it is not permissible under current traffic regulations to operate vehicles in combination in excess of two; namely, one tractor and one trailer, in the District of Columbia. The primary basis for applicant's contention that a need exists for the proposed service is the special design of the vehicle and the manner in which the operations will be conducted. The President of applicant testified that he had recently spent a great deal of time in the mall area of the District of Columbia familiarizing himself with the proposed operations. The applicant testified that one

complete miniature train was shipped to Washington and that several demonstration runs were actually conducted over the proposed route, primarily to determine if the route was feasible. The President testified that based on visible reaction from sightseers as the miniature train passed it was his opinion that the proposed service would be used if provided.

The alleged attractive and convenient features of applicant's proposed operations may be described by directly quoting from the transcript applicant's President:

"As an example, let us take the Capitol Building. They would purchase a ticket right there, and ride on to the National Art Gallery, and have their ticket punched. They would get off and spend as much time as they would like in the Art Gallery, come out and re-board the train within ten or fifteen minutes, and then go on to the next stop, the National Museum, and possibly they may not want to get out there, or another person might want to. However, they could get off there and re-board a different vehicle and go on to the Lincoln Memorial and then back to the Smithsonian, and on their way back home. They would be in control of their own time, in other words, and could spend as much time as they wanted to, at each one of these six stops, provided they had not completely had their ticket punched out."

Applicant has classified its proposed service as being a service whereby the passenger regulates himself as to his time. In contrast, the applicant contends that the existing sightseeing service is a service whereby the service regulates the time of the

passenger. The applicant contends that the existing sightseeing service to the mall area, the area proposed to be served by applicant, consists of scheduled tours and that the individual sightseers have no control over the time period which they are permitted, or required, to spend at a particular building or site. Being required to travel on a fixed schedule, applicant contends that many people, because of their interests, are not allowed enough time to fully enjoy some points of interest, while at other sites the same people are required to spend too much time for lack of interest. Thus, applicant contends that its proposed service will overcome this alleged service deficiency in that any person using applicant's proposed service may spend as little or as much time desired at any one building or site and then move on to the next point of interest without having to wait more than ten or fifteen minutes for transportation.

The foregoing contentions of applicant were corroborated by six public witnesses and it may be said that these contentions are the crux of applicant's case.

Three of the public witnesses testified that in their opinion there is a need for two distinct types of sightseeing service in the Washington area, namely; (1) the scheduled tour service presently being performed by the existing authorized carriers and (2) the service proposed by applicant whereby the

individual is not required to conform to a scheduled tour. Two of the public witnesses testifying for applicant relied upon their experience in the Seattle World's Fair, which service, in their words, is somewhat similar to that proposed by applicant. The sixth witness who has spent many years in governmental service in Washington, testified that in his opinion, based on inquiries received from the traveling public, there is a distinct need for the proposed service. All of the public witnesses expressed the opinion that children and relatives visiting families in Washington would utilize applicant's service. They testified that, in their opinion, such persons could take either an automobile or taxicab or even walk to the mall area and board the miniature train for the purpose of seeing the sites located in or adjacent to the mall area. Many people, according to the testimony, now must walk from building to building, or are required to travel on a fixed schedule such as is operated by the presently authorized carriers.

Applicant contends that its proposed service will have no substantial competitive effect on the service of the existing authorized carriers. Applicant contends that people who are now driving to the mall area, and from building to building, and who have difficulty finding parking places, are the people who will use its service. Applicant further contends that many people who now go to the mall area by automobile or taxicab and walk from building to building, particularly children and the elderly people,

will use its service. The applicant also contends that many children, who would otherwise not make sightseeing trips, would be attracted to the miniature train because of the novelty of the vehicle and would go just for the ride. In essence, applicant contends that the great majority of its passengers are not now using, and will not in the future use, the guided scheduled tour service of the existing carriers.

Applicant offered in the form of exhibits evidence as to the number of monthly and annual visits by members of the public to the various buildings and sites located on, and adjacent to, the mall area. Applicant's President testified that, based on his experience in operating similar miniature trains in zoos and parks in other cities, applicant could be expected to attract a substantial number of these people to its service.

In reply to questions concerning the safety of its proposed operations, applicant's President contended that the operations will be completely safe and all vehicles will be operated in full compliance with all safety rules and regulations of any and all governmental agencies involved.

The four protestants vigorously protested the application and contended that they are capable of providing whatever sightseeing service is needed; have been providing it over the years, and are ready, willing and able to provide it in the future. All protestants have authority to serve the area proposed to be

served by applicant.

Protestant, Diamond Tours, Inc., has been in business since 1926 and presently operates scheduled tours with three buses and seven limousines. The points proposed to be served by applicant are on the scheduled tours of Diamond Tours. In addition, Diamond Tours also will provide, upon request, and apart from its regular tour service, service for any individual or group to the mall area or elsewhere.

Protestant, Washington, Virginia & Maryland Coach Company, has authority to handle charter trips (group riding) only in the mall area, but is concerned about losing business if the application is approved.

Protestant, D. C. Transit System, Inc., is the largest mass transit operator in the Washington area. It is also engaged in providing various forms of sightseeing service in the Washington area, including guided tours. The Company operates 1,029 buses, of which approximately 300 are operated in the off-peak hours and over 1,000 during the rush hours. According to its testimony, D. C. Transit has a special interest in sightseeing operations. It contends that its substantial sightseeing operations assure maximum use of equipment and manpower and thus make its overall operations more profitable. The Company points out that normally sightseeing service is confined to the non-rush hours, a time when

equipment and manpower would otherwise be idle. In addition to its regular sightseeing service, D. C. Transit contends that the area proposed to be served by applicant is presently being served by its regular route vehicles in its mass transit operations.

According to the testimony, D. C. Transit undertook, in 1951, to operate a regular route, scheduled sightseeing service around the mall area approximating the route proposed to be operated by applicant. The vehicle used consisted of a regular transit bus with the top cut off at the seat rail, thus making an open-air vehicle. This bus was operated daily from April to June, 1951, and on Saturday and Sunday only from June to the end of October, 1951. The schedule called for only two round-trips daily.

D. C. Transit admitted having considered rendering a service similar to that proposed by applicant, stated that the matter was under active study at the present time, and that arrangements had been made to procure an appropriate vehicle similar to the vehicle proposed to be operated by applicant. D. C. Transit admitted that there might be a need for the proposed service and that such an operation might be economically feasible.

Protestant, The Gray Line, Inc., is engaged primarily in conducting sightseeing tours of Washington, D. C., and the

surrounding area. It has twenty-six buses, eight additional buses on order, and six limousines. The Gray Line, Inc., is a member of The Gray Line Sightseeing Companies, Associated, which has members in one hundred and five cities, parks or other attractions in Canada, the United States, Mexico, the Caribbean and Australia. The Company's President for the past eighteen years, Mr. Henry F. Burroughs, is a member of the Board of Directors of the Association. The Association has semi-annual board meetings and annual membership meetings where sightseeing techniques, procedures and policies are discussed. Mr. Burroughs is also a member of the American Society of Travel Agents.

All of the buildings and sites proposed to be served by applicant are served by The Gray Line, Inc., on one or more of its guided tours which are operated, according to the testimony, "rain or shine". The Gray Line, Inc., conducts guided tours on an individual basis, group basis, or special reservation basis. The Company has, in addition to a large downtown terminal, sixty agents in the District of Columbia--in hotel lobbies or other gathering points for visitors--to help members of the public arrange appropriate sightseeing tours.

The President of The Gray Line, Inc., testified that in his opinion the vehicle proposed to be operated by applicant "is an excellent vehicle for zoos or amusement parks", but an

inappropriate vehicle for use on heavily traveled streets.

The President of Gray Line testified that in 1955, after about two years of planning and testing, his Company operated an almost identical sightseeing service as that proposed by applicant except that ordinary buses were used. In fact, the White House was included as an attraction on the route and a shuttle bus was operated between the Lincoln Memorial and the Arlington Cemetery. Forty-four-passenger transit-type equipment, with a rear exit door, was used. The driver of the bus lectured the route traveled with a public address system. The fare was 25¢, which was collected in a turnstile. The service was commenced about the 25th of March, 1955. Bus stop signs were posted with notices that the bus left there every fifteen minutes for various buildings and memorials. While patronage varied, the witness estimated that 100 was the greatest number of passengers carried in any one day. The service required the use of six vehicles in order to maintain the 15 minute headway. The buses were painted red, white and blue, making them very conspicuous so that they could be easily observed as they traveled around. The buses were operated from 8:00 in the morning until 5:00 in the evening, on a 15 minute headway every day of the week, including Sunday. After operating for approximately four and one-half months, the service was discontinued on August 15, 1955, for lack of patronage.

The President of The Gray Line testified that his Company is continuously reviewing its sightseeing operations. Each year the Company reviews its past year's operations, which enables the Company to modify its future operations to better serve the public.

With reference to the need for additional sightseeing transportation on the mall area, Mr. Burroughs stated on the record:

"...the people who are on the Mall area get there by private automobile, they get there by riding the regularly scheduled bus service in the City, they get there by the bus of the tour operators who are conducting the tours and bringing the people to these buildings, or they get there by an out-of-town bus, or are otherwise in some manner conducted to this Mall area. They don't live adjacent to it.

"In many cases they come from miles away, but the way they get there is the way they also move to the next building unless they walk, and we saw ample evidence of people being perfectly willing to walk from the Washington Monument to the Smithsonian Institution, from the Smithsonian Institution to the National Gallery of Art, rather than pay 25 cents for a comfortable lectured bus to take them to the next stop.

"It would be my conclusion, and I would say this would save this applicant some money if he would find out that the people who crowd around his vehicle aren't riders. This was the experience that we had. Every day you have standing in front of the Smithsonian Institution at this time of the year 100 or 1500 people, and every one of these persons has got a ticket in his pocket for some transportation that he has previously purchased and that has gotten him to the Smithsonian, or he has a car parked three or four blocks away."

With reference to competition, Mr. Burroughs stated on the record:

"...Washington is rather unique in that I believe there are approximately a dozen regulated companies holding themselves out to run or to serve the public in sightseeing tours, and in addition to those 12 regulated companies, there are probably in excess of a hundred individuals or partnerships or small operators who have one or two cars, limousines or small capacity vehicles, who operate generally the same type of service operated by the regulated carriers, these being an unregulated group.

"In addition to that, of course, there is an exemption to the licensing laws and regulations in the District of Columbia for carriers outside of the District of Columbia bringing in student groups, Girl and Boy Scout groups, and groups of that kind which make up a great number of visitors, and those common carriers can enter the District of Columbia without regulation and without the necessity for licenses or other taxes, they park on the public streets free of charge, special places are provided, and these carriers can make 15 visits a year from any place in the United States.

"I think that this service if placed in operation will confuse the visitor to Washington, that the publicity on this thing will confuse the public with the idea that they can come to Washington and tour the City in this open-air vehicle for a very small amount of money and receive a comprehensive personally conducted tour program. I think we will set about to combat this as a reason why Washington will be visited. I really object to the esthetic side of this in that I think it will make a zoo out of the Mall, which I think belongs to everyone, and I think that to create a carnival atmosphere on the Mall of the Capital of the United States would be a tragedy.

"I don't think there is any need for this transportation at all. I think the public has available to it at each one of these buildings transportation opportunities or guided tour opportunities far exceeding anything offered here, either by taxicab or other type public vehicle or by the sightseeing carriers or public transportation system.

"It is our estimate that 2500 individual taxicabs in the District of Columbia hold themselves out to conduct sightseeing tours, there being some 8500 cabs in this City."

The primary issue to be decided in this case is whether or not public convenience and necessity require the operation of the proposed service by applicant. If this issue is determined in the negative, then it becomes unnecessary to pass upon the other issues.

In essence, the applicant proposes to operate a sightseeing service by motor vehicle in an area authorized to be served, and presently being served, by numerous motor carriers. If the existing service is adequate, it is of little significance that applicant proposes to introduce a new vehicle concept, which it classifies as a "highly specially designed" vehicle. In prosecuting its application, applicant elected to classify its proposed service as regular-route, non-scheduled, although it proposes to operate on headways of between ten and fifteen minutes. If it was the intent of applicant to propose a service which would fall somewhere in between the service of carriers authorized to perform regular-route, scheduled service and the service of carriers authorized to conduct scheduled and non-scheduled guided sightseeing tours, it would be inappropriate on this record to determine this issue. Both D. C. Transit System, Inc., and The Gray Line, under existing authority, have in the past conducted a similar service, except a different type vehicle was used. No one contends that a vehicle proposed to be operated by applicant

does not come within the scope of the authority of the existing carriers. Thus, on this record, it must be assumed that more than one of the existing carriers have authority to perform the service proposed by applicant.

Having carefully considered all the evidence, the Commission is of the opinion that applicant has failed to meet the burden of proof that a need exists for its proposed service. The Commission takes judicial notice of the fact that following the hearing in this matter, D. C. Transit System, Inc., instituted a service similar to the service proposed by applicant, including a similar type vehicle. While the Commission questions the economic feasibility of such service, the Commission views this operation as coming within managerial discretion and within D. C. Transit's existing authority. The Commission will closely observe this new operation to the end that the public interest is fully protected.

FINDINGS OF FACT

The Commission finds that the area proposed to be served by applicant is being served adequately by the existing authorized carriers and unregulated motor vehicles, and that no additional sightseeing service is needed. All statements of fact in this Order are adopted by the Commission as additional findings of fact.

CONCLUSIONS OF LAW

The Commission concludes as a matter of law that the transportation proposed by applicant is not required, and will not be required in the immediate future, by public convenience and necessity.

ORDER

THEREFORE, IT IS ORDERED that the application of Zoo Tours, Inc., for a certificate of public convenience and necessity to provide a sightseeing service, more fully described in this Order, be, and the same is, hereby denied.

BY DIRECTION OF THE COMMISSION:



DELMER ISON
Executive Director