

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 321

Served October 22, 1963

IN THE MATTER OF:

Complaint of the W M A Transit)	Formal Complaint No. 8
Company vs. Randolph P. Owens,)	
Jr., t/a O & K Bus Service.)	Docket No. 38

The W M A Transit Company (W M A) filed a formal complaint against Randolph P. Owens, Jr., t/a O & K Bus Service (Owens), alleging that Owens had engaged in certain transportation of passengers for hire by motor vehicle without a certificate of public convenience and necessity issued by this Commission authorizing such transportation. The complaint was duly served upon Owens as required by law. Owens filed an answer which either denied illegal operations or claimed that the complaint failed to set forth definite facts and information. When the parties failed to settle the dispute, the Commission ordered the matter to formal hearing. Subsequently, but prior to the commencement of the hearing, the parties requested a pre-hearing conference. Two conferences were actually held before Examiner Russell W. Cunningham. D. C. Transit petitioned to intervene, which the examiner granted at the first conference. Thereafter, the parties stipulated to a statement of facts. Specifically, the following transportation has been

engaged in by the respondent and is complained of by W M A:

1. Charter operations between a point in either Montgomery County or Prince Georges County, Maryland, and Ocean City, Maryland. The respondent claims that the Compact does not apply to such transportation.

2. The transportation of children within the Metropolitan District from homes to churches for the purpose of receiving religious instruction, outside of regular school hours. Respondent contends that such transportation falls within the purview of Section 1(a)(3) of Article XII.

3. Transportation of parochial school athletic teams to other schools in connection with sporting events, which transportation originated within the Metropolitan District and terminated in (a) other points within the Metropolitan District and (b) points outside the Metropolitan District. The respondent alleges that the transportation in (a) falls within the school exemption of Section 1(a)(3) and that the transportation described in (b) is outside the scope of jurisdiction of this Commission.

4. Charter trips for the Prince Georges County Recreation Department, (a) solely within the Metropolitan District and (b) from Prince Georges County to a point in Maryland outside the Metropolitan District. The respondent claims that the transportation described in (a) and (b) is not subject to the jurisdiction of this Commission.

5. Charter operations carrying school children on trips originating in the Metropolitan District to Hershey, Pennsylvania, and return. Respondent states that the Compact does not apply to this transportation.

6. Transportation of a teen club from points in the Metropolitan District to the Wilson Line Dock in the District of Columbia. The teen club is under the supervision of the Prince Georges County Recreation Department. The Department employs a school teacher as a "paid leader" of this group. The group meets in a County school, but is not recognized by the school as an official school activity. The transportation is arranged by the supervisor who collects the fares from the individual children. The respondent alleges that such transportation falls within the school exemption language of Section 1(a)(3).

Section 4(a), Article XII of the Compact provides, in part, that "No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation...." Section 1(a) of the Act sets forth the transportation embraced by the Compact and exemptions thereto, as follows:

1. (a) This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service,

except --

- (1) transportation by water;
- (2) transportation by the Federal Government, the signatories hereto, or any political subdivision thereof;
- (3) transportation by motor vehicles employed solely in transporting school children and teachers to or from public or private schools;

....

The Compact has provided that the jurisdiction of this Commission extends only to transportation performed solely within the Metropolitan District.¹ Thus the transportation described in sub-paragraph 1, being charter operations between a point in the Metropolitan District and a point outside the Metropolitan District, does not fall within the purview of the Compact and over which the Commission has no jurisdiction. The transportation being performed is between a point in Maryland within the Metropolitan District and a point in Maryland outside the Metropolitan District, and as such is subject to the laws of the Maryland Public Service Commission.

Does the transportation described in sub-paragraph 2 come within the exemption of Section 1(a)(3)? In construing this section, we have to determine whether the legislatures intended that language to embrace only transportation to or from classes at the school building. We think not. There is no significant legislative history.

¹ There is one exception to this general rule, applying to regular route operations, but it is not a point at issue here.

We take judicial notice that modern education is no longer restricted to the little red school house. The phrase "to and from schools" has been interpreted by one of our predecessors, the Interstate Commerce Commission, as "embracing transportation to or from any place where such transportation is directly connected with and contributes to the educational development of school children." We adopt this language as our own in the establishment of a broad and general guide line. The Commission is of the opinion that the transportation described in sub-paragraph 2 comes within the meaning of Section 1(a)(3), provided, however, only if the vehicle used in performing the transportation is employed solely to transport school children and teachers. We find no distinction between attending a private school to learn arithmetic and attending a private school for religious instruction. Both are solely "educational" in nature and in fact. The facts in this case do not reveal whether or not the respondent utilizes the vehicle in performing the transportation described herein for other types of transportation. If the latter, then he has removed it from the exempt status.

Additionally, it should be pointed out that if he performs transportation subject to this Act a certificate of public convenience and necessity must be in effect.

The transportation stated in sub-paragraph 3(a) relating to the transportation of school athletic teams within the Metro-

politan District also is exempt from the certificate requirements of the Compact by virtue of Section 1(a)(3). School sponsored sporting events, such as football and baseball, are a part of our educational system today, and as such should be treated in the same way as the transportation of school children to or from school and to and from other school events. This ruling does not include, of course, the outright charter to the general public which includes any adult not a teacher of the school itself. The transportation described in 3(b) is subject to our ruling in sub-paragraph 1, supra, as the transportation is not within the Metropolitan District.

The transportation described in sub-paragraph 4(a) does not in any way relate to the transportation of school children and teachers to and from public or private schools, nor does it fall within any of the other statutory exemptions. Inasmuch as the transportation is between points in the Metropolitan District and not exempt, such transportation may not be performed unless a certificate has been issued authorizing such transportation. The transportation described in 4(b), being between a point within the Metropolitan District and a point outside the Metropolitan District, is not subject to our jurisdiction.

The transportation described in sub-paragraph 5 obviously is outside the scope of our jurisdiction. That transportation is subject to regulation, if at all, by the Interstate Commerce Commission.

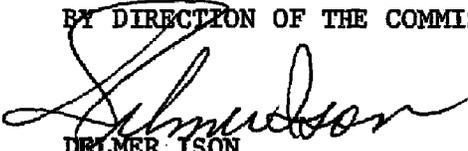
The transportation described in sub-paragraph 6 is the same as that described in sub-paragraph 4(a). Any such transportation may not be performed prior to the issuance of a certificate of convenience and necessity authorizing such transportation.

From the evidence adduced in this proceeding, and from other Commission proceedings, both formal and informal, it appears that the Respondent was performing some transportation subject to the Compact prior to March 22, 1961. Why he did not file a "grandfather" application is, of course, known only by Owens himself. However, this is a matter only for speculation for the "grandfather" filing date is passed. The respondent's only course of action, if he hopes to continue to engage in transportation subject to the Compact, is to file an application for a certificate of public convenience and necessity. However, until such authority is granted, the Commission is of the opinion that a cease and desist order must issue embracing that transportation which we have found herein that the respondent has heretofore engaged in and which we have found herein to be subject to the certificate requirements of the Compact.

THEREFORE, IT IS ORDERED that Randolph P. Owens, Jr., t/a O & K Bus Service, be, and he is hereby, ordered and required to cease and desist forthwith, and thereafter to refrain and abstain, from all operations of the character found hereinabove to be subject

to the certificate requirement of Section 4(a), Article XII, Compact,
unless and until appropriate authority therefor is obtained.

BY DIRECTION OF THE COMMISSION:



DELMER ISON
Executive Director