

BEFORE THE  
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 334

IN THE MATTER OF:

Served December 13, 1963

Application of Holiday Tours, )  
Inc., for a Certificate of )  
Public Convenience and )  
Necessity ("grandfather"). )

Application No. 18

Docket No. 31

APPEARANCES:

LEONARD J. JASKIEWICZ, Attorney for Holiday Tours, Inc.,  
Applicant.

JOHN R. SIMS, JR. and HAROLD SMITH, Attorneys for D. C.  
Transit System, Inc., and D. C. Transit System  
of Maryland, Inc., Protestants.

MANUEL J. DAVIS, Attorney for the Washington, Virginia  
and Maryland Coach Company, Inc., Protestant.

S. HARRISON KAHN, Attorney for Alexandria, Barcroft and  
Washington Transit Company, The Gray Line, and Diamond  
Tours, Inc., Intervenors.

BEFORE:

RUSSELL W. GUNNINGHAM, Presiding Officer.

Holiday Tours, Inc., seasonably filed a "grandfather"  
application pursuant to Article XII, Section 4(a) of the Washington  
Metropolitan Area Transit Regulation Compact ("Compact"), seeking  
a certificate of public convenience and necessity authorizing such  
transportation as it was bona fide engaged in on March 22, 1961,  
the effective date of the Compact. The application specifically

seeks authority to transport:

Passengers and their baggage in special operations in round trip sightseeing or pleasure tours and in charter operations, between all points in the District of Columbia, the Cities of Alexandria and Falls Church, the Counties of Arlington and Fairfax and political subdivisions of the State of Virginia located within those counties, and the Counties of Prince Georges and Montgomery in the State of Maryland and the political subdivisions of said State located within said counties; passengers and their baggage in special operations in round trip sightseeing or pleasure tours and in charter operations (1) between all points and places within the District of Columbia, and (2) between all points and places within Montgomery and Prince Georges Counties within the State of Maryland and the political subdivisions of the State of Maryland located within said counties.

On August 15, 1962, the Commission issued Order No. 183 denying Holiday Tours a certificate of public convenience and necessity. This action was predicated on the application and attached exhibits and the results of informal conferences with the applicant's president. The applicant filed an application for reconsideration.

On October 15, 1962, the Commission, on its own motion, issued Order No. 210 in which it cancelled and set aside Order No. 183 and

cleansed the file of all papers except the original application and exhibits thereto. In addition, the Commission ordered that notice of the application be given in a local newspaper, and directed persons desiring to contest the grant of any or of all or any portion of the authority sought to notify the Commission and the applicant in writing. This action was taken by the Commission in order that all interested persons, including the applicant, would have an opportunity to present all relevant facts to the Commission and that a record of this proceeding would thereby be preserved.

Protests to the application were filed by D. C. Transit System, Inc., and D. C. Transit System of Maryland, Inc., and the Washington, Virginia and Maryland Coach Company, Inc., (W.V. & M.). Thereafter the Commission set the matter for hearing.

Hearing on the application was held on April 15, 16, 17, and May 9, 1963, before Russell W. Cunningham, examiner. At the hearing the applicant and the above named protestants were present. In addition, counsel for The Gray Line, Inc., the Alexandria, Barcroft and Washington Transit Company, Inc., (A. B. & W.), and Diamond Tours, Inc., appeared and stated that he had previously filed a protest. The applicant objected on the basis that time in which to file a protest had passed. The examiner sustained the objection, but entertained an oral motion to intervene. The oral motion was made, appropriate objection made on behalf of the applicant on the ground that it violated Rule 16 of the Commission's Rules of Practice in that no cause was shown for failure to file a protest and, further, that oral intervention is not permitted

under the Commission's rules. The examiner overruled the objection and granted the oral motion to intervene. The examiner's ruling is affirmed. The intervenors could certainly classify as "interested persons" entitled by Section 16 of the Compact to file for reconsideration of the final decision herein. The applicant was certainly not caught by surprise by a protest, but only to the number of protestants, for as previously discussed, the application had been protested by three other companies. In addition, the examiner offered additional time, if applicant so desired, because of his ruling. Blind adherence to procedural rules is neither in the interest of justice nor the orderly conduct of any proceeding.

The applicant also objected, as a preliminary matter at the hearing, that he had no notice that the presiding officer had been designated by the Commission to preside at the hearing. One of the first acts of the Commission was to designate the presiding officer as an examiner because of the fact that the Commissioners are neither full-time nor located permanently at the office of the Commission, and for the further reason that it has only two employees designated to act as examiners. It cannot determine at any appreciable time prior to any given hearing who the presiding officer will be. No party is prejudiced by lack of advance knowledge as to the identity of the presiding officer. Any personal objection to a presiding officer may be raised before him as a preliminary matter. Counsel for applicant was afforded this opportunity by the presiding officer, but counsel declared that he had no personal objection to him. The

applicant's objection is overruled. A third procedural objection was raised when the applicant questioned the basis for the Commission's order of notice published in a newspaper of general circulation. A publication of such notice was ordered by the Commission in order to provide notice to any interested person of the application and in order that it can be fully informed of all pertinent facts. This must be in order to protect the public interest. The objection is overruled.

The record includes 600 pages of transcript and a total of 36 exhibits were marked for identification; however, upon objection 22 were rejected by the presiding officer and refused admission into evidence. Exhibits 1, 2, 3, 4, 7, 23, 24, 25, 26, 27, 28, 30, 31 and 32 were admitted in evidence in this proceeding. The Commission has reviewed the rejected exhibits, the objections thereto, and hereby affirms the rulings of the presiding officer as being correct in every instance.

Mode of Operation. Chronologically, the history of this application began in 1957 when Walter L. Davis originated a sight-seeing operation. From then until November, 1959, the operation was conducted either as a sole proprietorship or as a partnership. In November, 1959, Holiday Tours was incorporated, with Davis as president. The primary interest of Holiday Tours is related to the sightseeing industry. Its principal place of business was and is located in Bethesda, Maryland, just outside the District of Columbia. It also had an outlet at the Fairfax Hotel in Washington

which was a combination gift shop and outlet for sale of sightseeing tours. In addition, a saleslady was employed at the Holiday Inn, Arlington, Virginia. The applicant transported its passengers in limousines having a designed seating capacity of eight passengers or less, excluding the driver. On the effective date of the Compact, March 22, 1961, applicant had three Cadillac limousines licensed in the District of Columbia. Holiday advertised its business in the yellow pages of the Telephone Director for several years prior to the effective date of the Compact; however, none of these advertisements specifically offered transportation in buses, and in most instances stated that the tours would be conducted in limousines. It also advertised by use of brochures which contained the various tours offered by the applicant. In addition to the tour offerings, the applicant would, if requested by a prospective passenger, offer its services on an hourly basis. The applicant alleged that where the number of people to be transported exceeded their limousine seating capacity it would secure a bus from one of the local bus companies. A witness for the applicant, Thomas Parran, Jr., testified that he was the owner of the Suburban Transit Company and that in 1958 he had "rented" a bus to Mr. Davis and in 1959 he has rented either to Mr. Davis or to the applicant, buses on at least ten to twelve occasions. Further, Mr. Davis testified that he had secured the use of buses from Atwood's Transport Lines in 1960 and the first three months of 1961. One of applicant's exhibits was a letter from the president of Atwood's to Mr. Delmer Ison, the Executive Director

of the Commission, to the effect that it had "chartered" buses in 1960 to the applicant. To support the above evidence that it had utilized the bus equipment, Witness Davis testified from manifests prepared by him or other employees. These manifests purported to show the number of passengers handled each day and their point of origin. Based on these manifests, Mr. Davis attempted to show on what days the people were transported and how they were transported, i.e., bus or limousine. This was accomplished by grouping the number of people transported from various locations and, where they appeared, the names of various drivers utilized by applicant.

The protestants cross examined extensively and argued that this was not proper evidence to prove the utilization of buses and that where in many instances the applicant had claimed a group or groups had been moved by bus, the same transportation could have been performed by the use of several limousines. This argument was borne out by the testimony of Mr. Davis that on some occasions more than thirty passengers had been transported by the use of three limousines running in relays; however, protestants offered not a scintilla of proof to bolster their own argument. The protestants also took the position that the transportation provided by buses, especially where Atwood buses were utilized, was actually rendered by the carriers themselves and this had placed Holiday Tours merely in the position of a broker and salesman.

Pre-Compact Regulation. The transportation of passengers for hire in sightseeing prior to the effective date of the Compact

was subject to four regulatory laws; namely, the Federal Motor Carrier Act (Interstate Commerce Act), the laws of the District of Columbia, the State of Maryland, and the Commonwealth of Virginia. In the District of Columbia one could engage in irregular route sightseeing operations solely by purchasing the proper license plate. This was true also in the State of Maryland. In the Commonwealth of Virginia authorization from the Virginia State Corporation Commission was a prerequisite to operations. Under the Federal Motor Carrier Act such transportation required a certificate of public convenience and necessity from the Interstate Commerce Commission unless such transportation was exempt from the certificate requirements. Exemption was possible under two different sections of that Act; namely, Section 203(b)(8) (the Commercial Zone exemption whereby a carrier lawfully engaged in the intrastate transportation of passengers over the entire length of the interstate route involved, in accordance with the laws of each state having jurisdiction, did not need a certificate); secondly, under Section 203(b)(2) (exempting operations conducted in taxicabs or other motor vehicles performing a bona fide taxicab service).

It is the contention of the protestants that applicant lacked the appropriate Virginia intrastate authority and thereby could not legally qualify under the first stated exemption. They argued further that applicant had not received a certificate of public convenience and necessity from the Interstate Commerce Commission. The protestants concluded that the transportation in

limousines came within the second stated exemption, i.e., the taxicab clause. It has been heretofore pointed out that the protestants' position re use of buses is that the transportation performed by the buses was actually done under the authority and operation of the carriers themselves.

The first question the Commission must resolve is what transportation was bona fide engaged in by the applicant on the effective date of the Act, March 22, 1961.

#### FINDINGS OF FACT

The Commission is of the opinion and finds that the transportation performed in buses was that of the carriers or owners of the vehicles and not that of the applicant, and that applicant's role was solely that of a broker and/or salesman. The applicant's claim for a certificate is also predicated on the allegation that more than eight passengers were transported in a single limousine. All this denotes to us is a crass violation of the Interstate Commerce Act. The pattern of operation of hundreds of one- and two-limousine sightseeing operators in the Metropolitan District has developed before us from numerous cases. All of these people, including Davis and Holiday Tours, were clearly performing transportation under the taxicab exemption clause of the Interstate Commerce Act. This was recognized by the Interstate Commerce Commission in Motor Carrier Operations, 51 M.C.C. 197, 7 Fed. Car. Cases Par. 31,725. That there were undiscovered violations is not

surprising considering the number of small operators in this area and considering the magnitude of the Interstate Commerce Commission's responsibility. The vehicles of Holiday Tours were designed to seat no more than eight passengers. That these violations should be honored and blessed with an unlimited certificate of public convenience and necessity would require stretching the term "bona fide" beyond a reasonable meaning. We do not believe that that term means complete compliance with every law, but it certainly does not embrace a deliberate violation of the Interstate Commerce Act certificate requirements. We further find that the applicant offered no evidence that he had engaged in intra-Maryland commerce. We further find that applicant had no authority to operate intrastate Virginia from the Virginia State Corporation Commission, nor was there evidence that he had engaged in intra-Virginia commerce. Since our finding as to bus operations being those of the carriers eliminates any basis for the issuing of a certificate for that transportation, we must decide whether the limousine operations of the applicant within the District of Columbia qualifies for a certificate. Section 2(d)<sup>1</sup> of the Compact places a limit on the number of passengers which a vehicle is designed to carry -- eight -- and still be considered a taxicab. We conclude that the applicant was within the definition of 2(d) in that it

<sup>1</sup> "2(d) The term "taxicab" means any motor vehicle for hire (other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules) designed to carry eight persons or less, not including the driver, used for the purpose of accepting or soliciting passengers for hire in transportation subject to this Act, along the public streets and highways, as the passengers may direct."

"bona fide" engaged in performing taxicab operations within the District of Columbia. The applicant's operation by limousine was over irregular routes and more or less at the passenger's discretion in that the service offered by applicant through the use of brochures and other methods was simply an offer to prospective passengers of its sightseeing service and that the so-called tours were merely a means of getting various people to accept transportation to the same place at the same time with other passengers. They definitely were not scheduled and were subject to change. There is nothing contained in the evidence of this proceeding to distinguish the operations of this applicant from the operations of nearly 100 limousine "grandfather" applicants who were found in Orders Nos. 165 and 174 to have been engaged in taxicab operations as defined both by the Interstate Commerce Act and by Section 2(d) of the Washington Metropolitan Area Transit Regulation Compact.

Inasmuch as the Commission has found that the applicant, Holiday Tours, Inc., was bona fide engaged only in performing a taxicab operation on March 22, 1961, the application for a certificate of public convenience and necessity should be denied.

THEREFORE, IT IS ORDERED that the application of Holiday Tours, Inc., for a "grandfather" certificate of public convenience and necessity be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

  
DELMER ISON  
Executive Director