

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 384

IN THE MATTER OF:

Served September 11, 1964

Application of Raymond Warrenner,)
t/a Blue Line Sightseeing Company,))
for a Certificate of Public)
Convenience and Necessity.)

Application No. 58

Docket No. 39

APPEARANCES:

WARREN WOODS and DAVID C. VENABLE, attorneys for applicant;

MANUEL J. DAVIS, attorney for W.V. & M. Coach Company, Inc., protestant;

S. HARRISON KAHN, attorney for A.B. & W. Transit Company, protestant;

JOHN R. SIMS, JR. and C. ROBERT SARVER, attorneys for D. C. Transit System, Inc., protestant.

Raymond Warrenner, t/a Blue Line Sightseeing Company (applicant), seasonably filed an application for a "grandfather" certificate, pursuant to Section 4(a), Article XII, of the Washington Metropolitan Area Transit Regulation Compact (Compact), authorizing the continuation of transportation of passengers allegedly engaged in on March 22, 1961, the effective date of the Compact. Specifically, the applicant seeks authority to transport sightseeing passengers for hire (1) in special operations between points and places in the Washington Metropolitan Area Transit District and (2) in charter operations within the District of Columbia. The terms "special operations" and "charter operations" are defined by the Commission's Rules and Regulations as follows:

"51-13. Charter Operation: The term 'charter operation' means the transportation of a group of passengers who, pursuant to a common purpose and under a single contract, has acquired the exclusive use of a vehicle or vehicles to travel together.

"51-14. Special Operation: The term 'special operation' means the transportation of passengers for a special trip, for which the carrier contracts with each individual separately."

The application was protested by the A.B. & W. Transit Company, W.V. & M. Coach Company and D.C. Transit System, Inc. Subsequently, several informal conferences were held in an attempt to resolve the issues raised by the application and protests thereto. Upon failure of the parties to agree, the Commission ordered the matter to formal hearing, which hearing was presided over by an examiner. The parties did not request a proposed report of the examiner.

By Order No. 342, the Commission approved a portion of the application and granted a certificate of public convenience and necessity authorizing the following transportation:

IRREGULAR ROUTES:

- (a) Charter Operations:
Between points and places within the District of Columbia.

- (b) Special Operations:
Sightseeing or pleasure tours:
From points and places in the District of Columbia, the City of Alexandria, and Arlington County, Virginia, to points and places in the District of Columbia, the City of Alexandria, Arlington County and Mount Vernon, Fairfax County, Virginia, and return.

The protestants did not contest applicant's right to a certificate of public convenience authorizing special and charter operations in the transportation of sightseeing passengers between points in the District of Columbia. Such transportation was exempt from certificate requirements prior to the effective date of the Compact and it was established that the applicant was engaged in such transportation prior to the effective date of the Compact. Furthermore, protestants did not contest that applicant was in fact operating motor buses in special operations between points in the District of Columbia and certain points in Northern Virginia on the effective date of the Compact. The protestants argued, however, that applicant was not bona fide engaged in motor bus operations in interstate commerce between points in the District of Columbia and

points in Northern Virginia on the effective date of the Compact. It was on this latter issue that the protestants filed petitions for reconsideration of Commission Order No. 342. The applicant did not seek reconsideration.

By Order No. 351, the Commission granted reconsideration and ordered oral arguments before the full Commission, which arguments were held May 22, 1964. Thus, this matter is now before the Commission upon reconsideration of its Order No. 342.

The applicant maintains that it was legally engaged in sightseeing operations in interstate commerce between points in the District of Columbia and points in Northern Virginia by virtue of Section 203(b)(8) of the Interstate Commerce Act. This particular provision of the Interstate Commerce Act, popularly referred to as the Commercial Zone Exemption, provides that the operation is exempt from the certificate requirements of the Act if "the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction".

The Interstate Commerce Commission has held that the exemption "applies only if such carriers are lawfully engaged in corresponding intrastate passenger operations" A.B.& W. Transit Company v. D.C. Transit System, Inc., 83 M.C.C. 547, 14 Fed. Car. Cases, par. 35,000. In that case the Interstate Commerce Commission held that a carrier holding only intrastate charter rights in Virginia could not claim exemption of interstate special operations between Virginia and the District of Columbia. Thus, to qualify for an exemption the applicant must have been lawfully engaged in corresponding intrastate operations in both the District of Columbia and Virginia.

It is not disputed that applicant was lawfully engaged in the territory of the District of Columbia in irregular route charter and sightseeing operations, without restriction. Thus, applicant's operations within the District of Columbia appear to satisfy half the requirements of Section 203(b)(8) of the Interstate Commerce Act. It becomes necessary then to determine whether its intrastate operations in Virginia are such as to make the two operations "corresponding" within the meaning of Section 203(b)(8) of the Interstate Commerce Act. A little background of applicant's operations will be helpful to a clear understanding of this issue.

Prior to 1958, applicant had transported passengers in sightseeing operations in limousines in the District of Columbia and suburban areas. In 1958, the applicant filed an application for a certificate of public convenience and necessity to authorize sightseeing operations in the Washington Metropolitan Area before the Interstate Commerce Commission. On July 17, 1958, the Interstate Commerce Commission denied the application and, in addition, held that applicant could not engage in sightseeing operations in interstate commerce in the Washington commercial zone under Section 203(b)(8) because it did not have the requisite intrastate authority from the Commonwealth of Virginia. Subsequently, applicant purchased an 11-passenger bus, and in 1959, a 44-passenger bus. These buses were licensed in the District of Columbia and entitled applicant to engage in irregular route sightseeing and charter operations within the District of Columbia. In February, 1959, the State Corporation Commission of Virginia issued to applicant two certificates of public convenience and necessity, authorizing restricted, regular route, round-trip only, sightseeing operations from two motels in Virginia. The Virginia law authorizing these certificates (Section 56-338.41) states:

"A certificate issued under this Chapter shall authorize the holder named in the certificate to transport sightseers from the point of origin named in the certificate over regular routes to the points of interest named in the certificate and back to the point of origin Passengers shall be transported only on round-trips without stopover privileges"

Specifically, Certificates S-5 and S-6 were issued by the Virginia Commission to read as follows:

S-5:

"From Charterhouse Motel at junction Va. No. 648 and Va. No. 350; northward over Va. No. 350 to U. S. No. 1; north on U. S. No. 1 to south end of 14th Street Bridge; south on U. S. No. 1 to unnamed road along river front of Pentagon northwestward to Arlington Ridge Road; then south on Arlington Ridge Road, stopping at Marine Corps War Memorial; then touring Arlington National Cemetery; leaving the cemetery continue south on Arlington Ridge Road to Va. No. 350; north on Va. No. 350 to U. S. No. 1; north on U. S. No. 1 to Mount Vernon Memorial Highway; south on this highway to Alexandria, Va.; continue south on Mount Vernon Memorial Highway to Mount Vernon Estate; returning north over Mount Vernon Memorial Highway to Alexandria, Va.; south on Va. No. 350 to Charterhouse Motel."

S-6:

"From Rambler Motel, 1964 Richmond Highway, U. S. No. 1, Fairfax County, Va., north on U. S. No. 1 to Alexandria, north from Alexandria on Mount Vernon Memorial Highway to U. S. No. 1 at south end of 14th Street Bridge, south on U. S. Highway No. 1 to unnamed road along river front of Pentagon northwestward to Arlington Ridge Road; then south on Arlington Ridge Road stopping at Marine Corps War Memorial; then touring Arlington National Cemetery; leaving cemetery to continue south on Arlington Ridge Road to Va. No. 350; north on Va. No. 350 to U. S. No. 1; north on U. S. No. 1 to Mount Vernon Memorial Highway; south on this highway to Alexandria, Va.; then continue south on Mount Vernon Memorial Highway to Mount Vernon Estate; returning north over Mount Vernon Memorial Highway to Alexandria, Va.; then south on U. S. No. 1 to Rambler Motel."

It is apparent that the two intrastate operations are not "corresponding", with an irregular route, territorial right on the one hand, and a restricted, regular route, round-trip only right on the other hand. They are even less similar than the examples cited in A.B. & W. Transit Company v. D.C. Transit System, Inc., *supra*, and we are confident that the Interstate Commerce Commission would so rule. Thus, it must be concluded that the interstate operations alleged were not lawful prior to March 22, 1961.

In the case of Montgomery Charter Service, Inc., v. Washington Metropolitan Area Transit Commission, 325 F 2d 230 (1964), the District of Columbia circuit court of appeals interpreted Section 4(a), Article XII, of the Compact (grandfather provision) by stating that a carrier was entitled to be "grandfathered" if it was "legally and in good faith engaged in" the transportation on the critical date. The Commission is, of course, bound by this interpretation, but, in addition, it concurs in this interpretation.

One of the primary purposes in creating this Commission cannot be overlooked. The Commission was created to place in a single agency the regulation of mass transit operations in the Washington area in lieu of separate regulation by several governmental agencies. The intent of the grandfather clause of the Compact was to establish an orderly, no-hearing procedure for preserving the existing operating rights of the carriers. However, the Commission was not created to give birth to new operations through legal technicalities stemming from the transition of regulatory authority

to this Commission. The situation is unlike the situation confronting the Interstate Commerce Commission when it was created. There was no regulation of interstate carriers prior to the creation of the Interstate Commerce Commission. Consequently, interstate carriers applying for grandfather rights before that Commission could not produce certificates of public convenience and necessity as evidence of operating authority.

While the grandfather provisions of the Compact and the Interstate Commerce Act are very similar, the difference in circumstances justifies different interpretations.

Since we have found that the applicant held no authority from the Interstate Commerce Commission, and its interstate operations did not come within the "commercial zone" exemption, it follows that his interstate bus operations were unauthorized on the effective date of the Compact. The mere fact that applicant was in fact engaged in bus operations in interstate commerce on the effective date of the Compact does not justify the Commission's granting a grandfather certificate. The important fact is that the operations must have been bona fide. The creation of a new regulatory agency to preserve the existing regulatory situation insofar as operating rights were concerned, should not be permitted to serve as a vehicle to authorize an operation otherwise unlawful. The applicant was no stranger to governmental motor carrier regulation, as noted elsewhere in this Order. The language of the Interstate Commerce Commission in denying his application, plus the language of the A.B. & W. Transit Company v. D.C. Transit System, Inc., decision, supra, should have served to put applicant on notice of the legal requirements of Section 203(b)(8). It cannot be said that applicant commenced interstate operations between the District of Columbia and points in Virginia in good faith; or that applicant was operating in good faith on the effective date of the Compact.

Upon reconsideration, the Commission finds that applicant, Raymond Warrenner, t/a Blue Line Sightseeing Company, was not bona fide engaged in motor bus operations in interstate commerce on the effective date of the Compact, but was bona fide engaged in sightseeing operations by motor bus in charter and special operations between points in the District of Columbia on the effective date of the Compact.

THEREFORE, IT IS ORDERED:

1. That Order No. 343 be, and it is hereby, set aside and held for naught.

2. That Raymond Warrenner, t/a Blue Line Sightseeing Company, be granted a certificate of public convenience and necessity authorizing the following operations:

IRREGULAR ROUTES:

(a) Charter Operations:

Between points within the District of Columbia.

(b) Special Operations: Sightseeing or Pleasure Tours

Between points within the District of Columbia.

3. That in all other respects the application be, and it is hereby, denied.

4. That this Order shall become effective thirty (30) days after the date of issuance hereof.

BY DIRECTION OF THE COMMISSION:



DELMER ISON
Executive Director