

BEFORE THE  
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 397

IN THE MATTER OF:

Decided September 4, 1964  
Served October 8, 1964  
Application No. 56

Application of Ira F. Gadd, )  
d/b/a Columbia Sightseeing )  
Company, for a Certificate )  
of Public Convenience and )  
Necessity (Grandfather). )

Application of Ira F. Gadd, )  
d/b/a Columbia Sightseeing )  
Company, for a Certificate )  
of Public Convenience and )  
Necessity. )

Application No. 256

Docket No. 49

By the Commission:

SKLAR, Chairman, and HOOKEER, Commissioner; DUKE, Commissioner, concurs in that part of the Order relating to the "grandfather" application (No. 56); dissents as to that part relating to the "public convenience" application (No. 256).

APPEARANCES:

EUGENE T. LIIPFERT, Attorney for applicant.

MANUEL J. DAVIS, Attorney for W. V. & M. Coach Company, protestant.

S. HARRISON KAHN, Attorney for the Gray Line, Inc., Diamond Tours, Inc., and A. B. & W. Transit Company, protestants.

HAROLD SMITH, Attorney for D. C. Transit System, Inc., protestant.

GREEN B. BOHON, d/b/a History Tours, pro se, intervenor.

Pursuant to Section 4(a), Article XII, of the Washington Metropolitan Area Transit Regulation Compact ("Compact"), Ira F. Gadd, d/b/a Columbia Sightseeing Company ("Gadd" or "applicant"), seasonably filed an application for a "grandfather" certificate to authorize the transportation allegedly engaged in on March 22, 1961, the effective date of the Compact. The application seeks authority to transport sightseeing passengers for hire in special and charter operations between points and places within the Metropolitan District. The application was protested. Subsequently, the parties met for informal conferences in an attempt to resolve the issues. Upon failure of the parties to agree, the Commission ordered the matter to formal hearing.

Subsequently, the applicant filed an application for a certificate of public convenience and necessity, which basically duplicates the authority sought in the grandfather application. Protests were also tendered to this application as hereinbefore shown. Gadd also requested a consolidated record, which was granted.

Public notice of the two applications was provided.

The hearing was presided over by an examiner.

Two days of hearings were held and the transcript of the record comprised 472 pages. Seven exhibits were proffered by the applicant and received into evidence. Protestants Gray Line and D. C. Transit System, Inc., ("Transit") submitted one exhibit each. The applicant and four other witnesses testified in behalf of the applications, while nine witnesses testified in opposition thereto.

At the conclusion of the hearing, the applicant orally moved that the presiding officer issue a proposed report and that the Commission waive that portion of its Rule 25-02 which requires such a motion to be in writing. All parties waived any objection to the motion. The final procedural matter arose after the hearing when the Gray Line, Diamond Tours, and A.B. & W. Transit Company filed a petition for separation of these two applications for decisional purposes. The Commission granted the motion for a proposed report and denied the petition for separation, by Order No. 338, issued January 16, 1964.

The examiner's proposed report was served on February 18, 1964. The examiner recommended that:

1. The "grandfather" application be denied.
2. The application for a certificate of public convenience and necessity be denied insofar as it related to charter operations.

3. The applicant be granted a certificate of public convenience and necessity authorizing special operations between points within the District of Columbia, and further between the District of Columbia and certain points in northern Virginia.

The protestants filed exceptions to the proposed report, and the applicant replied.

The Commission ordered oral arguments of counsel for the parties, which arguments were held before the full Commission on May 22, 1964.

Thus, upon the evidence adduced at hearings, the examiner's proposed report, and the exceptions thereto and reply, and the oral argument, the two applications are before the Commission for its decision. For purpose of clarity, we will discuss them seriatim, beginning with the "grandfather" application.

#### GRANDFATHER APPLICATION

The applicant has been in the sightseeing industry in the Metropolitan District for nearly twenty years, initially in an individual capacity, operating limousines. In 1951, he filed an application for bus authority with the Interstate Commerce Commission, which was denied. Then, in 1953, he sold his operation to the Gray Line and joined that organization as an employee. In 1957, Gadd left that employment and returned to an individual operation. The record shows that he operated two seven-passenger limousines on and before March 22, 1961, doing business as Columbia Tours. He operated his sightseeing business from an office in his home in Arlington, Virginia. This transportation in the pre-Compact days was exempt from the Interstate Commerce Act (Section 203(b)(2)) certificate requirements.

In July and October of 1960, Gadd received several certificates of public convenience and necessity from the State Corporation Commission of the Commonwealth of Virginia authorizing him to furnish sightseeing service in northern Virginia. These certificates, while unrestricted insofar as the size of the vehicle used to furnish the transportation, authorized sightseeing operations from named locations to specified points, over designated routes, and return.

On March 8, 1961, Gadd purchased a Chevrolet Greenbrier. After acquiring this vehicle, Gadd took it to a body works company to have the vehicle converted into a sightseeing vehicle, designed to accommodate eleven (11) passengers and the driver. On March 22, 1961, the Compact became effective. At that point in time, it is uncontrovertible that Gadd operated only two vehicles designed to carry

seven (7) passengers or less. The "reconstructed" vehicle had not been placed into operation.

A sole issue must be decided in a "grandfather" proceeding: What transportation subject to the Act was the applicant bona fide engaged in on the effective date of the Act (March 22, 1961)?

Gadd's operation parallels exactly the operations of more than 100 other individuals here in the Metropolitan District and which have previously been classified as being bona fide taxicab operations by both the Interstate Commerce Commission<sup>1</sup> and this Commission<sup>2</sup>.

One of the primary purposes in creating this Commission was to transfer the regulation of the transportation of persons for hire in motor vehicles in the Washington Metropolitan Area from several agencies into one agency. It was the obvious intent of the legislatures to establish an orderly procedure whereby those lawfully so engaged could continue their work -- and thus the use of the "grandfather" clause of Section 4(a). The United States Court of Appeals for the District of Columbia Circuit, when requiring this Commission to issue a certificate to one entitled to "grandfather" rights, said the authority should embrace that transportation "legally and in good faith" engaged in<sup>3</sup>. Therefore, we find that a "bona fide" operation must have been a lawful one, at least insofar as prior laws required operating authority in the form of certificates and permits, or insofar as the operations were lawfully exempt from such requirements.

In Gadd's case, his interstate operations were lawful only as a taxicab operation under the exemption provision of Section 203(b)(2) of the Interstate Commerce Act, Part II. Practically all of Gadd's operations were interstate in nature.

His intrastate operations in Virginia, when not pursuant to the restricted certificates, were lawful only when rendering taxicab service. The District of Columbia did not require any operating authority. Gadd's operations in Maryland were rare and sporadic.

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1. Motor Carrier Operations between Washington, D. C. and Mount Vernon, Virginia, 51 MCC 197.

2. Orders Nos. 165 and 174.

3. Montgomery Charter Service, Inc., v. Washington Metropolitan Area Transit Commission, 325 F. 2d 230 (1963).

We are of the opinion that, as of March 22, 1961, the applicant was bona fide engaged solely in a taxicab operation as defined in Section 2(d)<sup>4</sup> of the Compact and that such operations are not entitled to a certificate of public convenience and necessity under Section 4(a) "grandfather" provisions of the Compact. The Commission's jurisdiction over Gadd's operations as of March 22, 1961, extended only to rates and insurance of taxicab operations between the signatories. Thus, Gadd is, as he was, restricted to taxicab operations in vehicles having a designed seating capacity of eight passengers or less, excluding the driver.

#### "PUBLIC CONVENIENCE" APPLICATION

As hereinbefore noted, Gadd filed an application for a certificate of public convenience and necessity subsequent to the filing of his "grandfather" application, seeking authority identical to that sought in the "grandfather" application.

Generally, the testimony of applicant in support of its application for a certificate of public convenience and necessity related almost entirely to his prior operations (i.e., prior to the date of the hearing in this matter). The protestants contended that the bus operations instituted by Gadd subsequent to March 22, 1961, were unlawful and, therefore, such testimony should not have been admitted and considered.

The significant factor is not the admissibility of the evidence, but the weight given to it. The Commission is of the opinion that any evidence not tainted with fraud or privilege that has a bearing on the ultimate question of public convenience and necessity should be admissible for our consideration. We cannot determine its materiality until we receive and weigh it.

A brief summary of the prior operations is in order. The record shows that in the middle of May, 1961, conversion on the Greenbrier vehicle, previously discussed herein, was completed, and the vehicle was put into operation. The record further shows that the vehicle was licensed in Virginia during the month of May, 1961, and in the District of Columbia on June 2, 1961. Thereafter, Gadd purchased another Greenbrier, and, at the time of the hearing, owned two seventeen-passenger Mercedes buses which were purchased in March, 1963.

The evidence relating to prior operations reveals that applicant did very little bus business until 1963. In an eight-

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4. The subsequent amendment of Section 1(c) thus has no effect on these findings.

month period, from January to August, 1963, applicant transported a total of 1,473 passengers, although it is not clear how many of these passengers were transported by bus and how many were transported by taxicab.

In addition to this testimony, four witnesses testified in support of the application. They were all operators or managers of motels in Arlington County or the City of Alexandria, Virginia. Generally, they contended that there was a need for the service sought in the application and that the existing service was inadequate. Much of their testimony was based upon opinions formed from talks with their motel patrons.

Nine witnesses testified in opposition to this application, four of whom were taxicab operators who engage extensively in sightseeing operations, and five representatives of the protesting carriers. The carriers were either devoted exclusively to sightseeing operations or regular-route carriers incidentally engaged in charter and sightseeing operations. The latter's testimony discussed the extent of their authority, the number of vehicles available for and devoted to the sightseeing business, the large financial investment in those vehicles, the extensive efforts they make to serve those seeking charter and sightseeing transportation, and, in the case of the regular route carriers, the importance of the revenues from these incidental services to their overall financial requirements and the effect any diversion would have upon their regular transit operations; they also testified that they have never declined a request for service and have received no complaints regarding the service they have rendered.

While it is undisputed that Gadd did, in fact, transport by bus a number of sightseeing passengers prior to the date of the hearing in this matter, there is little, if any, evidence to show that this service could not have been adequately provided by other authorized carriers. The mere existence of Gadd's bus operation would undoubtedly have resulted in patronage even though an overabundance of service was otherwise available. Therefore, we attach little weight to the fact that he actually transported some passengers. The number of passengers carried is too insignificant to warrant the conclusion that the service of protestants is inadequate. On the other hand, the evidence is more than substantial that adequate service is available and rendered. We are of the opinion and find that the service of the protesting carriers is and will be adequate to meet the present and future public convenience and necessity. We further find that the present and future public convenience and necessity does not require the proposed service of the applicant.

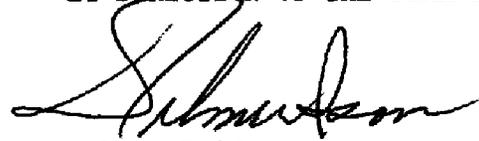
As we have found that the public convenience and necessity does not require the proposed service, it is not necessary that we consider applicant's fitness and financial ability.

THEREFORE, IT IS ORDERED THAT:

1. The "grandfather" application (No. 56) of Ira F. Gadd, d/b/a Columbia Sightseeing Company, be, and it is hereby, denied;

2. The application (No. 256) of Ira F. Gadd, d/b/a Columbia Sightseeing Company, for a certificate of public convenience and necessity be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:



DELMER ISON  
Executive Director

DUKE, Commissioner, concurs with the decision to deny the "grandfather" application, dissents as to the decision to deny the "public convenience and necessity" application:

In my opinion, the evidence in this proceeding warrants a finding that the public convenience and necessity requires the proposed service. I would grant the authority sought in Application No. 256.