

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 890

IN THE MATTER OF:

Served December 9, 1968

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

Application No. 511

Docket No. 181

APPEARANCES:

IRA F. GADD, applicant.

LINWOOD C. MAJOR, JR., Attorney for Washington Sightseeing Tours, Inc., Atwood Transport Lines, Inc., and Airport Transport, Inc., protestants.

MANUEL J. DAVIS, Attorney for D. C. Transit System, Inc., and W. V. & M. Coach Company, protestants.

S. HARRISON KAHN, Attorney for A. B. & W. Transit Company, the Gray Line, and White House Sightseeing Corporation, protestants.

DAVID S. GREENE, Attorney for WMA Transit Company, protestant.

By Application No. 511, filed July 26, 1968, Ira F. Gadd, d/b/a Columbia Sightseeing Company, seeks amendment of his Certificate of Public Convenience and Necessity No. 16 for authority

- (a) To engage in irregular route, round-trip or ~~one-way~~ sightseeing tours between all points in the Washington Metropolitan Area;
- (b) To engage in irregular route charter operations between all points in the Washington Metropolitan Area;

- (c) To remove from his certificate a restriction limiting the authorized operations to vehicles having a seating capacity of not more than seventeen (17) people.

On November 18, 1968, the Commission held a hearing on this matter. At the termination of the applicant's case, the protestants moved to suspend further hearing in this matter and to submit to the Commission the issue of applicant's fitness for an immediate determination. Pursuant to Rule 15-04 of the Commission Rules of Practice and Procedure, the examiner recessed the hearing and certified this question to the Commission for consideration.

Applicant presently holds authority to conduct special operations round-trip or one-way sightseeing tours from points in the City of Alexandria and Arlington County, Virginia, to points in the District of Columbia, and points in the City of Alexandria, Arlington and Fairfax Counties, Virginia, via the District of Columbia. This transportation is restricted to vehicles having a seating capacity of not more than seventeen (17) passengers.

Applicant operates two 1963 seventeen (17) passenger buses. Mr. Gadd presented evidence indicating that he regularly conducts sightseeing operations in Virginia and the District of Columbia. Generally, applicant starts his trips in Virginia and then proceeds into the District of Columbia, continually picking up passengers all the time, regardless of the geographical location. For a period of from June through October of 1968, he had originated trips with 434 passengers in Virginia and 564 passengers in the District of Columbia. Of the Virginia trips, the evidence of record indicated that some of them were likewise originated beyond the scope of applicant's certificate. Applicant openly admitted that he did not have the authority to operate trips which originated in the District of Columbia, that he was aware of this at the time he made the trips, and that he would continue to conduct such operations regardless of the outcome reached herein. In addition, the applicant admitted that there were instances in which he had conducted trips with more than seventeen (17) passengers in his vehicle.

The applicant presented one supporting witness. This witness testified that he regularly sells sightseeing tickets for the applicant for trips originating in the District of Columbia.

At this point, the Commission will take official notice of Docket No. 164, in which we issued a show cause order against the applicant for certain unauthorized operations -- similar, if not identical, to those complained of herein.

Subsequently, the applicant tendered an Offer of Settlement and Proposals of Adjustment. Therein the applicant agreed to cease and desist all operations beyond that authorized in his certificate. By Order No. 782, served February 28, 1968, we dismissed the show cause order, accepted applicant's settlement, and stated that any such subsequent operations would be in wilful violation of the Compact.

On the basis of the record before us, we have no choice but to find the applicant unfit. As indicated, applicant's operations have been under careful Commission scrutiny for some time. In Order No. 782, we declined to further pursue any remedial action against the applicant on receipt of a pledge from him to discontinue all illegal operations. And in that order we stated that any subsequent similar violation would constitute a wilful violation. By applicant's own admission and evidence, it is apparent that he disregarded the stated pledge and originated unauthorized trips in the District of Columbia (as well as a few in parts of Virginia) from June to October, 1968. Applicant stated that he did this with full knowledge of the illegality and that he would continue to do so. Under the circumstances, the unauthorized trips can in no sense be said to have been performed under a color of right; they are blatant violations of the law.

Under Section 4(b) of the Compact, the Commission must reach an affirmative finding of fitness as a prerequisite to a grant of authority. As indicated, this we cannot do. The evidence of record is clear, applicant's violations are patent, and we find him to be unfit.

In the normal case, no further hearings would be necessary, and the application would simply be denied. However, we cannot overlook the deliberate and wilful breach of Mr. Gadd's written pledge not to engage in transportation unauthorized by his certificate, and by his wilful and knowing violations of the cease and desist provisions of Order No. 782. The Commission is of the opinion that a revocation proceeding should be initiated immediately. We will, therefore, hereinafter deny the pending application, and, by separate order entered concurrent herewith, establish the revocation proceeding.

THEREFORE, IT IS ORDERED that the application of Ira F. Gadd, d/b/a Columbia Sightseeing Company for amendment of Certificate of Public Convenience and Necessity No. 16 be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

*Melvin E. Lewis*

MELVIN E. LEWIS  
Executive Director