

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 982

IN THE MATTER OF:

Served October 20, 1969

Order to Show Cause Directed )  
Against Ira F. Gadd, d/b/a )  
Columbia Sightseeing Company. )

Docket No. 193

On September 11, 1969, the Commission issued Order No. 973 revoking, effective October 21, 1969, WMATC Certificate of Public Convenience and Necessity No. 16 issued to Ira F. Gadd, d/b/a Columbia Sightseeing Company. The revocation was ordered after Gadd failed to show cause why his certificate should not be revoked due to his deliberate refusal to operate in accordance with the geographic restriction in his certificate. Timely application for reconsideration of our action in Order No. 973 was made and it is that application we are now addressing.

The crux of Mr. Gadd's certificate compliance difficulties has been his refusal to limit his sightseeing solicitation and pick-up of passengers to Virginia, as is required by Certificate No. 16. Instead, he has regularly solicited and originated patrons in the District of Columbia, usually in front of the White House.

The certification of Mr. Gadd to operate a sightseeing service and the question of his compliance with his certificate have been the subject of Commission action numerous times in the past. In August 1963, he filed an application for a certificate of public convenience and necessity which was denied in October 1964 in Order No. 397. That denial was appealed to the Court of Appeals for the District of Columbia Circuit which held that the Commission's conclusion that Mr. Gadd had no right to "grandfather" certification should stand, but the court further found that the record showed a "need"

for the service performed by Mr. Gadd, thus overruling the Commission's conclusion that the certificate should not be issued on the basis of public convenience and necessity. The matter was remanded to the Commission for action not inconsistent with the court's findings. In February 1966, in Order No. 571, the Commission issued Certificate No. 16 to Gadd, but upon reconsideration the certificate was amended to restrict pick-ups to Virginia only and to limit Gadd's operation to the use of 17-passenger vehicles or less.

Then, in January 1968, the Commission issued an order for Gadd to show cause why the Commission should not revoke and set aside Gadd's WMATC Certificate No. 16 for operating in violation of his certificate by originating passengers in the District of Columbia, for charging a fare not on file with the Commission and for failure to file required statistical data. In February 1968, the Commission accepted Gadd's Offer of Settlement in which he admitted the charges set forth in the show cause order and agreed further breaches would be regarded as wilful. (Order No. 782)

In July 1968, Gadd filed an application to expand his certificate in order to allow irregular route or charter operations anywhere in the Metropolitan District and to remove the vehicle size limitations. In December 1968, having found that Gadd had continued to operate in violation of his certificate and in violation of his Offer of Settlement which the Commission had accepted in disposing of the show cause order, the Commission rejected his application for the expanded certificate, on fitness grounds.

Simultaneously, the Commission issued Order No. 891 requiring Gadd to show cause why, because of the continued wilful violation of the terms of his certificate, his certificate should not be revoked. At the request of Mr. Gadd, the hearing was postponed three times until April 1969. At the hearing, Gadd admitted that he was continuing to operate from the District of Columbia in violation of his certificate and asserted that he was unable to produce sufficient income operating only from Virginia in compliance with his certificate. He submitted passenger, revenue and expense tabulations for the year 1968. In September 1969, the Commission, finding that Gadd had not shown sufficient cause as to why his certificate should not be revoked, issued Order No. 973 revoking it.

Mr. Gadd gives the following reasons to support his request for reconsideration of this latest order:

The limitations in his certificate are violative, he asserts, of the United States Constitution and the Constitution of the Commonwealth of Virginia. The basic theme of his contention is that the limitations in the certificate are such that he is deprived of his right to make a living, a result this Commission cannot lawfully impose.

In addition, he argues that the Commission in issuing Certificate No. 16 in February 1966 in Order No. 571 did not act in conformance with the directive of the Court of Appeals in Gadd v. WMATC, 347 F2d 791 (D.C. Cir. 1965) wherein the Commission denial to Mr. Gadd of a certificate of public convenience and necessity was remanded to the Commission. The court there ordered an "unrestricted" certificate, according to Mr. Gadd, not the one he received containing geographic and vehicle-size restrictions.

We do not concur in Gadd's assertion that limitations placed in the certificate of public convenience and necessity issued to him violate the Constitutions of the United States and the Commonwealth of Virginia. The employment of the certifying device as a means of delineating the activities in accordance with the public convenience and necessity of those providing transportation services to the public has been held compatible with constitutionally guaranteed individual rights. The practice of including restrictions and limitations in those certificates has likewise been upheld in the face of challenge on constitutional grounds.

With respect to the question of the proof submitted by Mr. Gadd with regard to his inability to earn a living, restricted as he is by the terms of his certificate, on review of the record we are still unable to conclude that the showing made constitutes adequate grounds for declaring limitations on his certificate to be inherently unconstitutional. The exhibits attached to Gadd's answer to our order to show cause (Order No. 782) are tabulations showing the number of passengers transported in 1968 from places in Virginia compared to the number of passengers transported from places in the District of Columbia. They further show that

total receipts for 1968 exceeded expenses resulting in a net profit of \$1,113.56. These tabulations do not show what results Mr. Gadd might have had financially if he had diligently concentrated his efforts in originating passengers in Virginia in accordance with his certificate. As such, they cannot be considered as proof that the restricted certificate is uneconomical.

As to the contention that the Commission failed to comply with the Court of Appeals directive in Gadd against WMATC, supra, in issuing WMATC Certificate No. 16, we have reviewed that opinion and do not agree that it required the issuance of an "unrestricted" certificate to Gadd. The opinion, on the contrary, heavily stresses the court's conclusion that the need was apparent for Virginia service with small vehicles such as was being provided by Gadd. We believe that Mr. Gadd has misread the Court of Appeals opinion.

In reviewing this matter, we come back, as we have in the past, to the basic question of Mr. Gadd's wilful violation of the limitations in his certificate. No amount of argument to the effect that Mr. Gadd's operation is economically infeasible will erase the fact that Mr. Gadd has in response to earlier Commission directives agreed to cease and desist from the violations he was charged with, and agreed those violations, if occurring in the future would be regarded as wilful. Instead of attempting to operate in accordance with his certificate and his promises to the Commission until any constitutional or other legal claims he might have wished to assert could be resolved in the judicial process which has been established for the orderly resolution of such claims, he has chosen to continue his pattern of certificate violation leaving us with no alternative to revocation of his certificate.

THEREFORE, IT IS ORDERED that the application of Ira F. Gadd, d/b/a Columbia Sightseeing Company, for reconsideration of Order No. 973 be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:



MELVIN E. LEWIS  
Executive Director