

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1242

IN THE MATTER OF:

Served December 19, 1972

Disposition of Commission-)
Controlled Funds: D. C.)
Transit System, Inc.)

On October 21, 1972, legislation was approved authorizing the Washington Metropolitan Area Transit Authority (WMATA) to assume control of the four major regular route bus operations in the Washington Metropolitan area. WMATA has indicated that it will accomplish the takeover promptly.

Over the past several years, we have, sometimes at the direction of the U. S. Court of Appeals for the District of Columbia, established special funds in D. C. Transit System, Inc. to be used for special purposes for the benefit of the riding public. As public ownership now appears imminent and some of the special funds we have established remain unexpended, we are, in this order, making disposition of those funds.

In Order No. 773, issued January 26, 1968, we ordered the establishment of a funded "Reserve for Commission-Directed Projects" in the amount of \$141,674.^{2/} This amount represented depreciation on buses which had been allowed in a previous rate case for the year ending June 1, 1967, but that depreciation expense was never incurred as the buses involved were not purchased. Since January 1968, we have allowed expenditures from this reserve in amounts totalling \$81,466.24 for service improvement projects, leaving a cash balance of \$60,207.76.

^{1/} One such fund exists in the Alexandria, Barcroft and Washington Transit Company. See Order No. 1243, issued today, disposing of that fund.

^{2/} Order No. 773, ordering paragraph 3(e) at page 50.

Inasmuch as the "Reserve for Commission-Directed Projects" was money recouped for the ratepayer and set aside to be used directly for the benefit of D. C. Transit's riders, we believe that an appropriate means should be employed to assure that those funds will be used to benefit those riders even after D. C. Transit's operations are assumed by WMATA. To accomplish that, we will direct D. C. Transit to transfer the balance of this fund to WMATA, to be used for the benefit of D. C. Transit's riders when they become WMATA bus riders.

The next fund grew out of a matter remanded to us by the U. S. Court of Appeals,^{3/} upon its review of our Order No. 245, issued April 12, 1963.^{3/} We dealt with the remanded issues in Order No. 981, issued October 17, 1969, wherein, pursuant to guidelines established by the Court, we ordered the establishment of a non-funded "court-ordered reserve" of \$138,304.^{4/} However, a D. C. Transit rate case was then pending, and in Order No. 984 concluding that case, issued October 25, 1969, we said that if the net operating income which we anticipated for the succeeding twelve months did not develop, D. C. Transit could apply for a reduction of the \$138,304 reserve to the extent of a shortfall in anticipated net operating income.^{5/} On February 22, 1971, D. C. Transit submitted a letter stating that its net operating income for the twelve months ended October 31, 1970, had been \$768,634 less than the \$1,700,000 anticipated by Order No. 984; our audit confirmed a net operating income of \$945,125. Thus, the \$138,304 was completely absorbed by shortfall in net operating income for that period. Therefore, we will authorize the \$138,304 item to be transferred to the Retained Earnings account.

In Order No. 1052, issued in June 1970, we established a number of escrow accounts to be used for special purposes. Two of those contain funds subject to our disposition at this time. One, in an amount of \$619,998, was established to provide a 20 percent down payment for 85 new buses,^{6/} and the

^{3/} Williams v. WMATC, 415 F2d 922 (CADC 1968).

^{4/} See Order No. 981, ordering paragraphs 1 and 3 at page 42.

^{5/} Order No. 984, p. 39.

^{6/} Order No. 1052, p. 11, and ordering paragraphs 4 and 5 at p. 31.

other was a \$150,000 fund to be used for approved marketing activities.^{7/}

The buses for which the down payment was escrowed were not purchased. In Order No. 1216, issued May 19, 1972, we authorized the use of this fund with the \$6.4 million D. C. Transit was required to produce from sources other than the farebox as a precondition to any future fare increase.^{8/} However, that particular disposition of the fund did not occur. When public takeover occurs, the requirement for bus purchase will be moot and the bus-purchase fund can be released at that time. The money in this fund was not collected from the ratepayer as an operating expense but was sequestered profit which we anticipated would be earned in the rate year involved. Thus it is appropriate at the time the escrow is released that the money be released to D. C. Transit.

Of the \$150,000 in the marketing fund, \$35,737.40 has been expended with our approval, leaving \$114,262.60. The money in this fund is unlike the bus-purchase money, in that it was not sequestered from profit, but was money chargeable as an operating expense, and as such was to be collected from the ratepayer to be used for particular marketing activities in which we had found D. C. Transit to be deficient. Those activities were never fully undertaken and it is appropriate that the money collected from the ratepayer, and still unexpended, should be passed on to D. C. Transit's successor for marketing or other activities that will benefit the bus riders.

Our rationale in ordering these funds transferred to WMATA is that passing the funds into WMATA's hands will carry out the Commission's intent, and the intent of the Court where it was involved, that the funds should be used for projects which would directly benefit the ratepayer. We cannot direct WMATA to use these funds in any particular

^{7/} Order No. 1052, pp. 24-25, and ordering paragraph 14 at p. 32.

^{8/} Order No. 1216, p. 15.

way and in fact do not feel any necessity to do so. We would only suggest that the funds should be made available for projects which will provide direct benefit to the riders. Perhaps they can be applied as local matching funds for federal grants and thus substantially enhance their purchasing power. In any event, we would not contemplate any arrangement whereby WMATA would offset any part of the purchase price of the bus company's assets in exchange for WMATA's release of these funds to the companies involved. That would constitute a use of the funds for the benefit of the public at large and we believe the benefit should be given the bus riders who paid the money that comprises these funds.

THEREFORE, IT IS ORDERED:

1. That D. C. Transit System, Inc., be, and it is hereby, directed

- (a) to transfer to the Washington Metropolitan Area Transit Authority cash representing the balance of the "Reserve for Commission-Ordered Projects" established in Order No. 773, a cash escrow carried on the books of the company as "Cash-Suburban Trust-Special Account" and "Cash-American Security & Trust Company-Special Account," an amount of \$60,207.76, and
- (b) to transfer to the Washington Metropolitan Area Transit Authority cash representing the balance of the marketing fund established in Order No. 1052, a cash escrow carried on the books of the company as "Cash-Suburban Trust-Marketing Program", an amount of \$114,262.60, such cash transfer to be offset on the books by a contra-charge against "Retained Earnings".

2. That D. C. Transit System, Inc., be, and it is hereby, authorized to close out the court-ordered reserve in the amount of \$138,304 established by Order No. 981 by charging the "Court-Ordered Reserve" and contra-crediting "Retained Earnings".

3. That D. C. Transit System, Inc., be, and it is hereby, authorized to transfer to its general cash accounts the cash held in the escrow account established by Order No. 1052 for purchase of buses, an amount of \$619,998; provided, however, that this authority shall be effective only after the cash transfers to the Washington Metropolitan Area Transit Authority directed in paragraph 1(a) and (b) above have actually been made and the Executive Director of the Commission has confirmed in writing that evidence has been received and accepted as proof that the transfers have taken place.

4. That the dispositions ordered in paragraphs 1(a) and (b) and 2 above shall be made by D. C. Transit System, Inc. at the date its regular route bus operation is taken over by the Washington Metropolitan Area Transit Authority.

BY DIRECTION OF THE COMMISSION:


JEREMIAH C. WATERMAN
Chairman

SULLIVAN, Commissioner, not participating.