

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1246

IN THE MATTER OF:

Served February 16, 1973

Disposition of Commission-)
Controlled Funds: Alexandria,)
Barcroft and Washington Transit)
Company.)

In Order No. 1243, issued December 19, 1972, we directed the Alexandria, Barcroft and Washington Transit Company (A. B. & W.) to transfer \$40,710.36 to the Washington Metropolitan Area Transit Authority (WMATA). That amount represents the unexpended balance of an escrowed fund established by us in Order No. 1101 in November 1970, to be used for marketing and promotional programs. On January 18, 1973, A. B. & W. filed a petition for reconsideration of Order No. 1243 asking that we set aside the disposition of the fund made in that order.

A. B. & W.'s argument, as we understand it, is that the Commission has no authority, either by statute or by virtue of any ownership of the money, to order it transferred to WMATA. Our disposition is particularly inappropriate, says A. B. & W., because there can be no guarantee that the bus riders will receive the benefit of the money if WMATA is given control of it. A. B. & W. further argues that, because there was no formal proceeding, or informal consultation, before we ordered the disposition in Order No. 1243, our disposition constitutes confiscation of A. B. & W.'s property without due process of law.

Of course we make no claim of ownership of the money involved, but we do strongly assert our right to control, on behalf of the riding public, the disposition of funds we authorized to be collected from that public for special use. This power arises from Sections 3, 6 and 15 of the Compact. The circumstances surrounding the accumulation of this particular fund were that, in response to a request from A. B. & W., we required

the ratepayer to pay higher fares, and because we felt A. B. & W. had consistently failed to carry out an adequate program of marketing and promoting its services,^{1/} we required the company to place some of the increased revenue in escrow to be used only for marketing and promotional programs. Thus the company was not vested with the power to control the disposition of those funds. They had to be expended for defined purposes. Indeed, the petition for reconsideration specifically recognizes the validity of the Commission's control over these funds. (Petition, p. 6) The money in the fund in question was not allowed to enter the normal cash flow channels, to be commingled with the company's general funds. That was done for a very specific reason: we allowed it to be collected from the bus rider only to be used for the benefit of the bus rider.^{2/} And since all the funds thus collected were not expended, we are obliged to see that they are placed where they will be used for the purposes for which we authorized them to be collected. That is what we did in Order No. 1243. To do otherwise would be to provide the bus riders with neither the program nor the money they paid for it, and to provide the company with a windfall emanating from its own failure adequately to conduct the program.

We do not share A. B. & W.'s concern that WMATA will not put the funds to uses benefiting the rider. On the contrary, better marketing of mass transit is one of the programs WMATA has promised to undertake, and this money in WMATA's hands can finally be put to the use for which it was intended.

Moreover, we consider that the issue of whether we could control the escrow fund and its disposition, if it were to be contested, should have been contested at the time we asserted control over the money, i.e., at the time we issued Order No. 1101 in which we established the escrow account and declared how the money was to be used. No reconsideration of our action was requested then. Section 16 of the Compact requires reconsideration of our actions to be requested within 30 days of the date an action is taken. The nature of the questions now raised by A. B. & W. concerning the power of the Commission to control this fund were appropriate, under that section, in the 30 days following Order No. 1101, issued in November 1970, but not now.

^{1/} See Order No. 1101, p. 12. See also Order No. 946 and Order No. 703.

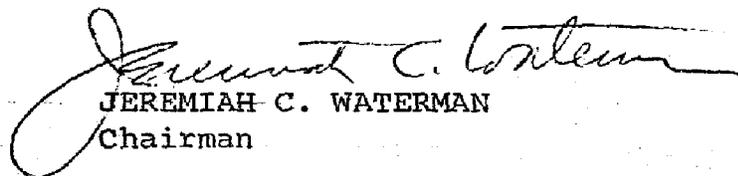
^{2/} See Order No. 1101, p. 12.

The due process argument made by A. B. & W. is not persuasive to us. The procedures established by the Compact, both for reconsideration of our original order establishing the escrow, and for reconsideration of Order No. 1243 disposing of the balance of the fund, provide ample due process.

Unless some purpose will be served by holding an additional hearing, due process does not require it. Here, no new evidence was necessary before we took our action in Order No. 1243. Hence a new hearing was not necessary. Furthermore, we do not read A. B. & W.'s petition for reconsideration as a request for a hearing. If it is, it supplies no reason why a hearing would be helpful to further clarify the issues or to receive new evidence.

THEREFORE, IT IS ORDERED that the petition for reconsideration of Order No. 1243 filed by Alexandria, Barcroft and Washington Transit Company on January 18, 1973, be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:


JEREMIAH C. WATERMAN
Chairman

