

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1424

IN THE MATTER OF:

Investigation of FRANK MARTZ COACH)	Served May 2, 1975
COMPANY Acquisition of ATWOOD'S)	
TRANSPORT LINES, INC.)	
)	
Application of FRANK MARTZ COACH)	Application No. 856
COMPANY to Acquire Control of)	
ATWOOD'S TRANSPORT LINES, INC.)	Docket No. 283

APPEARANCES:

ROBERT H. GRISWOLD and WILLIAM A. CHESNUTT, Attorneys for Frank Martz Coach Company, respondent and applicant.

L. C. MAJOR, JR., Attorney for Atwood's Transport Lines, Inc., respondent and seller.

DONALD J. BALSLEY, JR., Counsel for the Washington Metropolitan Area Transit Commission.

By Order No. 1406, served February 12, 1975, the Commission instituted an investigation of Frank Martz Coach Company (Martz) acquisition of the capital stock of Atwood's Transport Lines, Inc. (Atwood). The purpose of the investigation is to determine whether approval of Martz's acquisition of Atwood's capital stock is mandated by the Compact.

By Application No. 856, dated March 3, 1975, Martz seeks authority pursuant to Title II, Article XII, Section 12(a)(2) of the Compact, to acquire stock control of Atwood through the purchase of all of Atwood's outstanding capital stock which is owned by American Transportation Enterprises, Inc. The Commission's Order No. 1409, served March 5, 1975, granted a motion filed by Martz and consolidated the investigation and application for hearing and disposition.

The Commission's Order No. 1415, served March 28, 1975, scheduled the public hearing for April 18, 1975. No protests or notices of interest were filed with respect to the application.

Martz is a Delaware corporation with its principal office located in Wilkes-Barre, Pennsylvania. It is engaged in regular route operations within and among the states of New Jersey, New York and Pennsylvania. Martz also is permitted to perform charter operations from any point on its regular route authority to any point in the United States, and return, as an incidence of its regular route operations. In addition, Martz is authorized, inter alia, to perform special operations in round-trip sightseeing and pleasure tours, from points in Luzerne, Lackawanna, Monroe, Wayne, Susquehanna, Wyoming, and Schuylkill Counties, Pennsylvania, to Mt. Vernon, Virginia, and Washington, D. C., and return, and from Wilkes-Barre and Scranton, Pennsylvania, to points in the United States, except Hawaii and the points referred to hereinbefore, and return. Martz does not have authority to originate passenger transportation within the Metropolitan District.

Martz submitted a schedule of operating revenues for the twelve months ended December 31, 1974. That schedule indicates that Martz generated line revenues of \$2,295,332.39 and special bus revenue of \$1,212,526.09. Martz owns 56 buses. These vehicles are primarily intercity coaches seating 43 to 47 passengers. The age of these vehicles averages three and one-half years.

Atwood is a Maryland corporation with its office located in Tuxedo, Maryland. It performs regular route operations between Washington, D. C., and Point Lookout, Maryland, and between Jarboesville, Maryland, and Piney Point, Maryland. This Commission granted to Atwood Certificate of Public Convenience and Necessity No. 14 pursuant to Order No. 380, served September 11, 1964. Atwood's certificate authorizes regular route operations between Washington, D. C., and the site of the United States Atomic Energy Commission, near Germantown, Maryland, serving no intermediate points, and between Washington, D. C., and the Prince Georges-Charles County Line, serving all intermediate points except points within the District of Columbia. The certificate also authorizes charter operations over irregular routes, round-trip or one-way, from Washington, D. C., to points in the Metropolitan District and from points on its regular routes and a territory within one mile thereof, to points in the Metropolitan District. Atwood's management has indicated, absent a sale of its capital stock, that its intention would be to terminate the operations being performed.

INVESTIGATION

Martz contends that this Commission does not have jurisdiction over the proposed acquisition of Atwood's capital stock. Martz asserts that Title II, Article XII, Section 12 of the Compact does not apply to a carrier whose operations are a part of a transportation service

which has its origins outside the Metropolitan District. This argument is based on a belief that a reasonable interpretation of the Compact would be that Martz is not a carrier in the Metropolitan District.

The Commission believes that Martz is a carrier subject to the provisions of Title II, Article XII, Section 12 of the Compact. That portion of the Compact provides, inter alia, the following:

"It shall be unlawful, without approval of the Commission in accordance with this section--for any carrier which operates in the Metropolitan District or any person controlling, controlled by, or under common control with, such a carrier to acquire control, through ownership of its stock or otherwise, of any carrier which operates in such Metropolitan District."

A carrier is any person who engages in the transportation of passengers for hire by motor vehicle. See Compact, Title II, Article XII, Section 2. Martz certainly is a carrier.

The critical issue is whether Martz is a carrier in the Metropolitan District subject to this Commission's jurisdiction. The legislative history surrounding the enactment of Title II, Article XII, Section 1(a)(4) provides guidance. That section of the Compact excepts from the provisions of the Compact the following:

". . . transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce, if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any carrier whose only transportation within the Metropolitan District is within this exemption shall not be deemed to be a carrier subject to the Compact; provided, however, if the primary function of a carrier's entire operations is the furnishing of mass transportation service within the Washington Metropolitan Area Transit District, then such operations in the Metropolitan District shall be subject to the jurisdiction of the Commission;" (Emphasis added.)

This provision was the subject of an amendment to the original draft of the Compact. With respect to the amendment, the United States Senate Report 1/ states:

"Under this amendment, jurisdiction over transportation within the metropolitan district, performed in the course of an operation over a regular route between a point in the metropolitan district and a point outside the metropolitan district, shall remain under the jurisdiction of the Interstate Commerce Commission. Any carrier whose only transportation within the metropolitan district falls within the described category shall not be deemed to be a carrier subject to the compact. The effect of this amendment from the standpoint of division of jurisdiction is to treat the metropolitan district as a State with the consequence that the Washington Metropolitan Area Transit Commission would have jurisdiction over purely intrametropolitan district transportation and the Interstate Commerce Commission would have jurisdiction over transportation crossing the metropolitan district boundaries." (Emphasis added.)

Title II, Article XII, Section 1(a)(4) and the legislative history refer to the possible dual jurisdiction of this Commission and the Interstate Commerce Commission over the same carrier. The clear import of the Senate Report is that a carrier is not subject to the Compact if it performs regular route operations which extend to points beyond the Metropolitan District. Martz does not perform regular route operations within the Metropolitan District. Rather, it performs special operations over irregular routes from points outside the Metropolitan District. The transportation service occurs, in part, within the Metropolitan District. Therefore, Martz is a carrier subject to this Commission's jurisdiction and the proposed acquisition of Atwood's capital stock would be unlawful without Commission approval. 2/

1/ See S.Rep.No. 1906, 86th Cong., 2d Sess. at 24 and 25 (1960) and H.Rep. No. 1621, 86th Cong., 2d Sess. at 22 (1960).

2/ The finding that Martz is a carrier subject to the Commission's jurisdiction does not mean that the current operations performed by Martz in the Metropolitan District constitute transportation for hire subject to the Compact and require certification under Title II, Article XII, Section 4. Obviously, the operations are not transportation for hire between two points within the Metropolitan District.

APPLICATION

The finding to be made by the Commission with respect to applications for the acquisition of control of a carrier through ownership of its capital stock is set forth in Title II, Article XII, Section 12(b) of the Compact. The Commission must find that the proposed transaction is consistent with the public interest. The Commission may condition approval of the proposed acquisition with such terms, conditions, and modifications as it finds to be necessary.

Several facets of the proposed transaction favor the public interest. The management of Martz contains people who are qualified and experienced in the conduct of transit operations. Martz's acquisition of Atwood's capital stock should result in the management of Martz consulting and assisting in the operation of Atwood. Martz intends to retain all present employees who desire to remain with Atwood. Martz proposes to improve the quality of Atwood's service by decreasing the age of Atwood's fleet of equipment. Martz owns vehicles which average only three and one-half years in age. These vehicles would be made available for Atwood's operations. The current operations performed by Atwood would be improved but there would be no change in the service rendered.

As the prior discussion indicates, Martz performs sightseeing operations which embrace portions of the Metropolitan District. At times Martz has used the equipment of other carriers in the Metropolitan District. This practice has resulted from either an inability to use its own equipment or drivers due to mechanical breakdowns or limitations on the driver's hours or a pre-arranged joint operation between Martz and some other carrier. The source of equipment used by Martz will not be restricted. However, Martz has consistently stated that it would operate Atwood as a separate entity. The approval of the application shall be conditioned to provide that the operating authorities of Martz and Atwood are not to be combined or jointly operated and that Martz and Atwood are not permitted to enter an agreement or arrangement whereunder one of these carriers performs service as part of the service offered by the other carrier.

With respect to the purchase price of \$435,837 to be paid in cash for Atwood's capital stock, Martz's working capital position is apparently sufficient. The capital stock purchase is merely a portion of an acquisition agreement whereby Martz is required to make cash payments totaling approximately \$702,762. The difference of \$266,925 will be devoted to the retirement of equipment obligations. Martz has invested a large portion of the necessary cash in certificates of deposit which would be surrendered and the proceeds used to satisfy the buyer's obligations under the acquisition agreement. No loan is contemplated and no promissory note or other securities would be issued. The proposed transaction should not adversely affect the public interest.

The Commission finds that Martz's acquisition of Atwood's capital stock is in the public interest. The benefits to be derived by the public should result from Atwood's access to a management with substantial background and experience in transportation and from service improvements. The Commission further finds that the approval and authorization should be subject to the conditions hereinbefore described.

CERTIFICATE

The acquisition agreement among the parties indicates that Atwood has suspended and is not rendering any service between Washington, D. C., and the site of the United States Atomic Energy Commission near Germantown, Maryland. Martz understood that the cessation of operations by Atwood with respect to this portion of its authority was the result of Atwood's failure to bid for the service. However, Martz did not know the nature of the operations previously performed by Atwood with respect to this portion of its authority.

The Compact, Title II, Article XII, Section 3, imposes upon every carrier the duty of furnishing transportation as authorized by its certificate. Furthermore, Certificate of Public Convenience and Necessity No. 14 issued to Atwood conditions such authority by requiring the holder to render reasonable, continuous and adequate service to the public in pursuance of the authority granted therein. Failure to so perform constitutes sufficient grounds for suspension, change or revocation of the certificate.

The Commission finds that the holder of Certificate of Public Convenience and Necessity No. 14 has failed to render reasonable, continuous and adequate service to the public pursuant to the authority therein requiring Atwood to perform regular route service between Washington, D. C., and the site of the United States Atomic Energy Commission near Germantown, Maryland. The Commission further finds that the prospective holder of said certificate does not intend to render reasonable, continuous and adequate service to the public pursuant to this portion of said certificate. Accordingly, the Commission shall revoke that portion of Atwood's certificate which authorizes regular route operations between Washington, D. C., and the site of the United States Atomic Energy Commission near Germantown, Maryland.

THEREFORE, IT IS ORDERED:

1. That the investigation instituted by the Commission in Order No. 1406, served February 12, 1975, be, and it is hereby, terminated.
2. That Application No. 856 of Frank Martz Coach Company to acquire control of Atwood's Transport Lines, Inc., be, and it is hereby, approved subject to the conditions set forth hereinbefore.

3. That Certificate of Public Convenience and Necessity No. 14 be, and it is hereby, reissued as attached hereto and made a part hereof.

4. That Frank Martz Coach Company be, and it is hereby, required to give the Commission written notice of the consummation of the transaction hereinbefore approved within ten days of the date of consummation.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERY
Acting Executive Director

Attachment

Order No. 1424

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NO. 14

ATWOOD'S TRANSPORT LINES, INC.*
WASHINGTON, D. C.

AFTER DUE INVESTIGATION, it appearing that the above named carrier has complied with all applicable provisions of the Washington Metropolitan Area Transit Regulation Compact, and the requirements, rules and regulations prescribed thereunder and therefore is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District, as a carrier; and the Commission so finding;

THEREFORE, IT IS ORDERED, that the said carrier be, and it is hereby, granted this certificate of public convenience and necessity as evidence of the authority of the holder to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions and limitations as are now, or may hereafter, be attached to the exercise of the privilege herein granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

REGULAR ROUTES:

Passengers and their baggage, and express, mail and newspapers in the same vehicle:

Between Washington, D. C., and the Prince Georges-Charles County line, and all intermediate points, except intra-District points:

From Washington, over city streets to the District of Columbia-Maryland State line, thence over Maryland Highway 5 to Prince Georges-Charles County line, and return over the same route.

* Atwood's Transport Lines, Inc., is a wholly owned subsidiary of Frank Martz Coach Company.

IRREGULAR ROUTES:

Passengers and their baggage, and express, mail and newspapers in the same vehicle:

Round-trip or one-way:

CHARTER OPERATIONS:

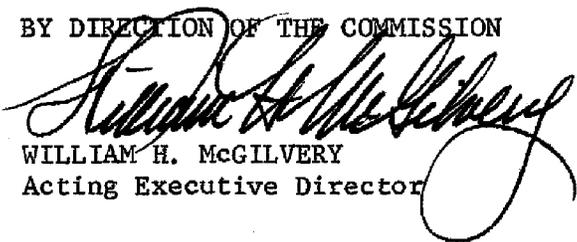
- (1) From Washington, D. C., to points in the Metropolitan District.
- (2) From points on its regular routes, authorized herein, and a territory within one mile thereof, to points in the Metropolitan District.

THIS CERTIFICATE IS RESTRICTED to provide that the operating authorities of Atwood's Transport Lines, Inc., and Frank Martz Coach Company shall not be combined or jointly operated, and to further provide that Atwood's Transport Lines, Inc., and Frank Martz Coach Company shall not enter an agreement or arrangement whereunder one of these carriers performs service as part of the service offered by the other carrier.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous and adequate service to the public in pursuance of the authority granted herein, and that failure so to do shall constitute sufficient grounds for suspension, change or revocation of this certificate.

The operating authority granted by this Certificate is granted pursuant to Order No. 1424, served May 2, 1975.

BY DIRECTION OF THE COMMISSION


WILLIAM H. MCGILVERY
Acting Executive Director