

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1686

IN THE MATTER OF:		Served May 13, 1977
McMICHAEL SCHOOL BUS SERVICE, INC.)	Formal Complaint No. 77-1
)	
v.)	
)	
OMNIBUS CORPORATION)	Docket No. 367

By Order No. 1668, served April 5, 1977, and incorporated herein by reference, an investigation was instituted pursuant to the complaint of McMichael School Bus Service, Inc., (McMichael), that respondent Omnibus Corporation (Omnibus) is engaged in the following operations contrary to the provisions of Title II, Article XII, Section 4(a) of the Compact:

1. Transportation for hire of persons in school-bus vehicles to and from points in the Metropolitan District;
2. Transportation for hire of persons between points in the Metropolitan District pursuant to a contract with the United States Department of the Treasury, U. S. Customs Service (Customs);
3. Transportation for hire of persons from the Hampshire Motor Inn, 7411 New Hampshire Avenue, Langley Park, Maryland, to U. S. Customs Service Academy, 3520 Prospect Street, N. W., Washington, D. C.;
4. Transportation for hire of persons between points in the District of Columbia pursuant to an agreement with the Smithsonian Institution; and
5. Transportation for hire of persons between points in the Metropolitan District pursuant to an agreement with the National 4-H Center (4-H).

Said order, inter alia, made McMichael and Omnibus parties to this proceeding and scheduled a public hearing to commence Wednesday, May 4, 1977.



On April 29, 1977, Omnibus filed its answer herein. In its answer Omnibus admitted that it does not hold a certificate of public convenience and necessity from the Commission. Omnibus also acknowledged that it holds a contract for transportation within the Metropolitan District with Customs. Omnibus denied that it is in violation of the provisions of the Compact. It offered, as defenses, its belief that the transportation of schoolchildren is exempt from the provisions of the Compact and that it considered its transportation contract with Customs exempt because of the identity of the contracting party.

At the hearing on May 4, 1977, McMichael introduced a contract entered into on August 22, 1975 between Omnibus and Customs. Said contract provided for the transportation of Customs' personnel between the Quality Inn Central, Arlington, Va., and the Customs Academy, Washington, D. C. Pursuant to the contract Omnibus receives consideration at the rate of \$50 per bus per day when its services are utilized. McMichael also introduced the affidavit of customs procurement agent, Hayes Huddleston. Mr. Huddleston's affidavit states that Omnibus has been providing the contractual service and that Customs had extended the contract with Omnibus through September 30, 1977.

McMichael also presented a witness from 4-H, Chevy Chase, Md. This witness testified that 4-H has been paying Omnibus to transport passengers within the Metropolitan District in conjunction with educational programs sponsored by 4-H. The witness also testified that, although some of these passengers were schoolchildren, 4-H is not a school, and the transportation described is not to or from a public or private school.

Respondent Omnibus did not offer any evidence at the hearing.

DISCUSSION AND CONCLUSIONS

Title II, Article XII, Section 13(c) of the Compact provides as follows:

If, after affording to interested persons reasonable opportunity for hearing, the Commission finds in any investigation . . . that any person has failed to comply with any provision of this act or any requirement established pursuant thereto, the Commission shall issue an appropriate order to compel such person to comply therewith.

The Commission has afforded Omnibus a reasonable opportunity for hearing. The Commission finds that Omnibus is providing transportation for hire of persons within the Metropolitan District without the certificate of public convenience and necessity required by Title II, Article XII, Section 1(a)(4) of the Compact.

Omnibus' answer admits the fact that it holds a contract for such transportation service with Customs. The evidence adduced at the hearing, as summarized above, clearly shows that Omnibus has been and is now

transporting for hire persons between points in the Metropolitan District.

Omnibus raises two defenses of its conduct. First, it contends that its contract with Customs is exempt because of the identity of the contracting party. This contention cannot be supported. Title II, Article XII, Section 1(a)(3) of the Compact exempts transportation by the federal government from regulation by this Commission, but there is no provision exempting carriers who contract with the federal government from the requirements of the Compact.

Omnibus' second defense is equally unpersuasive. Omnibus contends that transportation of schoolchildren is exempt under the Compact. Title II, Article XII, Section 1(a)(3) of the Compact exempts only "transportation by motor vehicles employed solely in transporting school children and teachers to or from public or private schools." In the case at hand, the transportation service Omnibus renders to 4-H clearly does not constitute transportation to or from public or private schools. 4-H admittedly is not a public or private school.

Accordingly, Omnibus shall be directed to cease and desist from engaging in transportation subject to the Compact unless and until an appropriate certificate of public convenience and necessity therefor is issued by this Commission.

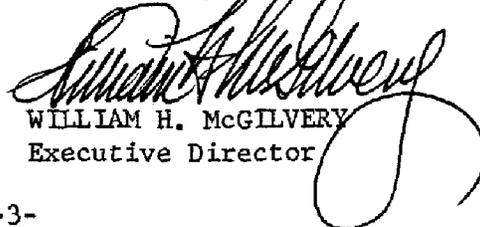
The Compact, Title II, Article XII, Section 19(a) provides, in pertinent part, that "All reasonable expenses of any investigation . . . conducted by the Commission, of or concerning any carriers . . . shall be borne by such carrier." Accordingly, the cost of the transcript for the above-described hearing (\$101.20) and the fee for the subpoenaed witness from 4-H (\$21.60) shall be paid by Omnibus.

THEREFORE, IT IS ORDERED:

1. That respondent Omnibus Corporation be, and it is hereby, directed to cease and desist from the transportation for hire of persons between any points in the Metropolitan District, unless and until an appropriate certificate of public convenience and necessity is in effect therefor.

2. That respondent Omnibus Corporation be, and it is hereby, directed to deliver the sum of \$122.80 to the office of the Commission, Suite 316, 1625 I Street, N. W., Washington, D. C. 20006 no later than twelve noon on Friday, May 20, 1977.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director