

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1996

IN THE MATTER OF:

Served May 11, 1979

Application of ERNEST H. BANNISTER, )  
SR., for Authority to Perform )  
Charter Operations Pursuant to )  
Contract with Friendship Heights )  
Village Council )

Case No. AP-79-06

On May 7, 1979, Ernest H. Bannister, Sr., (Bannister) filed an application seeking authority to perform charter operations pursuant to a contract with Friendship Heights Village Council (FHVC). The proposed service is a one-vehicle shuttle within the community of Friendship Heights, Md., consisting of a circuit of about one mile. The vehicle would seat about 20 passengers, and the shuttle would operate on a 20-minute headway with a two-minute layover at each of six stops, Monday through Saturday from 7 a.m. to 7 p.m. There would be no direct charge to the passengers.

The application was filed on our form prescribed for applicants seeking a certificate of public convenience and necessity pursuant to the Compact, Title II, Article XII, Section 4(b). However, the entire context of the application indicates with specificity that applicant seeks temporary authority for a period of two months. In fact, the contract underlying the application specifies that the "length of service shall be a two-month period effective May 1, 1979, or as soon as possible thereafter." For this reason, and for the purposes of this order, we shall construe this as an application for temporary authority pursuant to the Compact, Title II, Article XII, Section 4(d)(3). We will give applicant a deadline by which he must formally advise us if he also wants this filing construed as an application for a certificate.

Requests for temporary authority are evaluated in light of the aforementioned section of the Compact which permits the Commission "in its discretion and without hearings or other proceedings" to grant temporary authority to "enable the provision of service for which there is an immediate and urgent need" where there is "no carrier service capable of meeting such need". Applicant has failed to address directly the issues of need and other carrier service. Normally, this would result in denial of the request.

In this particular case, however, we have an initial indication of need evidenced by a signed contract for the service and the following expression in a letter dated April 25, 1979, from the Chairman of FHVC to Bannister, filed with the application.

We are very desirous of expediting all approvals by governmental units so that service may begin by May 1, 1979, or as soon as possible thereafter.

As you are aware, the shuttle bus service is to be provided for the residents of Friendship Heights, which includes many elderly persons who do not have a satisfactory means of transportation both within the Village and to immediately adjacent shopping areas. This service is to be provided to residents without charge. This service is immediately needed since no one else is presently providing it, and the residents have been promised that the service would soon begin.

Clearly the public interest here warrants more than dismissal of the application for technical deficiencies, and we shall exercise our discretion to schedule the matter for an expedited public hearing. At that hearing Bannister will be expected and required to address a number of issues of concern to us and which are described below.

The Commission staff contacted FHVC on May 10, 1979, and was advised that two other bids were received on the proposed service. One was from an entity not holding authority from this Commission and, for that reason, is not of concern with respect to Section 4(d)(3). The other was Beltway Limousine Service, Inc. (Beltway) holder of Certificate of Public Convenience and Necessity No. 25 issued by this Commission. That certificate, although it includes territorial charter authority broad enough to include Friendship Heights, Md., contains the following restriction:

RESTRICTED to the performance of such operations in vehicles having a manufacturer's designed seating capacity of fifteen persons or less (including the driver).

This restriction apparently renders Beltway incapable of providing the proposed service which the contract requires be provided in a vehicle with capacity for "approximately twenty (20) passengers". Still, with respect to any other certificated carriers who may be capable of meeting the asserted need, we are left with the issue of the sufficiency of notice provided by FHVC in publishing its request for bids. We intend to assure notice by serving a copy of this order on all carriers holding certificates which would cover the proposed service.

The application indicates that applicant "is a sole-proprietorship operated by Ernest H. Bannister, Sr., T/A Bannister Transportation, Ltd.", and includes a Certificate of Registration issued pursuant to District of Columbia Sales and Use Tax Acts naming:

Ernest H. Bannister, Sr.  
Bannister Transportation, Ltd.  
635 F Street, N. W.  
Washington, D. C. 20004

The contract with FHVC names "Bannister's Transportation, Ltd. (also known as Bannister Transportation Service and Bannister)". We initially express our concern that the inclusion of "Ltd." in Bannister's trade name strongly implies a corporate status which applicant, in fact, does not enjoy. And we suggest that Bannister consider a trade name less susceptible to misconstruction by the public.

In addition, the application states that no other authority has been issued by this Commission to the applicant. While, strictly speaking, this is true, the Commission's records indicate that Ernest H. Bannister, Sr., is the president of Bannister Enterprises, Inc., a company which holds Certificate of Public Convenience and Necessity No. 32 issued by this Commission. This situation raises the question of common control prohibited under Title II, Article XII, Section 12(a)(2) of the Compact, an issue which Bannister shall be required to address.

Bannister has indicated the type of equipment to be used to provide the service, but there is no indication of whether the vehicle is already owned or whether it will be purchased or leased. More detailed information about the vehicle and proposed method of acquisition will be required. In addition, Bannister will be required to provide a certificate of insurance evidencing adequate security for the protection of the public pursuant to Title II, Article XII, Section 9(a) of the Compact and Commission Regulation No. 62 (as amended) thereunder before any temporary authority that may be granted will become effective.

Pursuant to the provisions of the Compact, Title II, Article XII, Section 19, Bannister shall be assessed an amount preliminarily estimated to be sufficient to cover the expenses of the proceeding. Bannister also shall be required to submit a projected statement of revenue deductions for the proposed two-month period of operation.

**THEREFORE, IT IS ORDERED:**

1. That Case No. AP-79-06 of Ernest H. Bannister, Sr., is hereby scheduled for public hearing to begin Friday, May 18, 1979, at 10 a.m. in the Hearing Room of the Commission, Room 314, 1625 I Street, N. W., Washington, D. C. 20006.

2. That any person desiring to protest the application or any person desiring to be heard on this matter shall appear at the public hearing.

3. That Ernest H. Bannister, Sr., is hereby assessed \$250 pursuant to the provisions of the Compact, Title II, Article XII, Section 19, and directed to deliver said amount in the form of a certified check or postal money order to the offices of the Commission, Room 316, 1625 I Street, N. W., Washington, D. C. 20006, prior to commencement of the public hearing.

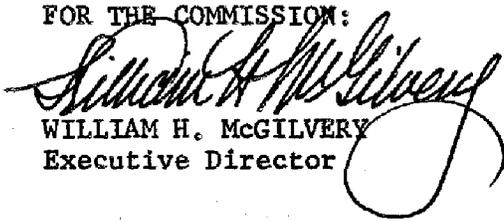
4. That Ernest H. Bannister, Sr., is hereby directed to deliver to the Commission prior to the public hearing six copies of each of the following statements, in writing:

- A. A proposed new trade name;
- B. A list of the officers, stockholders and directors of Bannister Enterprises, Inc., along with a complete and detailed description of the role of Ernest H. Bannister, Sr., in the management, finances and any other aspect of Bannister Enterprises, Inc.;
- C. A statement of applicant's position with respect to the common control issue;
- D. A statement concerning the proposed method of acquisition of a vehicle to provide the service, and, if already owned or leased, the make, model, year, seating capacity, serial number, vehicle number, and registered owner;
- E. A projected statement of revenue deductions for the proposed two-month period of operation.

5. That, if after the public hearing the requested temporary authority should be granted, applicant is hereby required to provide notice to the Commission in writing within 45 days of the commencement of service whether it also wants this application construed as an application for a certificate of public convenience and necessity.

6. That applicant shall be fully prepared at the public hearing to establish that the criteria of the Compact, Title II, Article XII, Section 4(d)(3) are met in this case, and to establish applicant's financial, operational and compliance fitness.

FOR THE COMMISSION:

  
WILLIAM H. MCGILVERY  
Executive Director