

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2483

IN THE MATTERS OF:

Served October 7, 1983

Application of V.I.P. TOURS for a) Certificate of Public Convenience) and Necessity to Conduct Special) Operations -- Sightseeing Tours) and School Children)	Case No. AP-83-10
Application of NATION'S CAPITAL) SIGHTSEEING TOURS for a Certificate) of Public Convenience and Necessity) to Conduct Special Operations --) Sightseeing Tours)	Case No. AP-83-12
Application of HENRY LICHTENSTEIN) for a Certificate of Public) Convenience and Necessity to) Conduct Special Operations --) Sightseeing Tours)	Case No. AP-83-13
Application of ARTHUR J. THOMAS) T/A GOLDEN EAGLE SIGHTSEEING) TOURS for a Certificate of Public) Convenience and Necessity to) Conduct Special Operations --) Sightseeing Tours)	Case No. AP-83-17
Application of SAMUEL HOWELL T/A) HOWELL SIGHTSEEING TOURS for a) Certificate of Public Convenience) and Necessity to Conduct Special) Operations -- Sightseeing Tours)	Case No. AP-83-22
Application of LUCILLE R. MOORE) T/A MOORE'S SIGHTSEEING SERVICE) for a Certificate of Public) Convenience and Necessity to) Conduct Special Operations --) Sightseeing)	Case No. AP-83-26
Application of SCENIC SIGHTSEEING) TOURS, a Partnership, for a) Certificate of Public Convenience) and Necessity to Conduct Special) Operations -- Sightseeing)	Case No. AP-83-28

By application filed September 8, 1983, each of the above-named applicants seeks reconsideration of Order No. 2447, served August 9, 1983, which granted, in part, each application but generally restricted the territories in which special operations may be performed.

It is noted that each applicant has operated a sightseeing service for a number of years. Generally, the testimony indicated that each operator generates the bulk of his business in the Mall area of Washington, D. C. Some public witnesses demonstrated a need for service at points outside of the Mall area, and, where such testimony existed, appropriate authority was granted.

The applicants also generally testified about "referral business" where friends or prior customers refer clients to an individual applicant. In those cases, requests for door-to-door service are sometimes received. This self-serving testimony, although in some cases supplemented by letters, 1/ was much too vague to support a grant of authority.

Contrary to applicant's assertions on reconsideration, we affirm our finding that the evidence was insufficient to support territorial grants broader than those actually made in Order No. 2447. Moreover, the testimony on "referral business" related to past illegal operations. It is well-settled that unlawful operations, even if performed under color of right, cannot, standing alone, support a grant of authority. 2/ Absent corroboration by the riding public of applicants' self-serving statements, we had no basis for finding that applicants had met their initial burden of proof on the question of Metropolitan-District-wide authority.

With respect to the contention that the Peterson House, Ford's Theatre and the FBI Building are inaccessible due to the southbound-only nature of 9th and 10th Streets, N. W., it suffices to state that Order No. 2447 prescribes the territories in which

1/ The letters, of course, were not admitted into evidence but were received and included in the correspondence section of each docket.

2/ Cf. W. T. Mayfield Sons Trucking Co. v. U. S., 211 F.Supp. 619 (D.C. Ga. 1962), Hudson Transit Line v. U. S., 82 F.Supp.153 (D.C.N.Y. 1948), affirmed 338 U.S. 802, 70 S.Ct. 59, 94 L.Ed. 485, and Service Transfer, Inc. Contract Carrier Application, 117 M.C.C. 506, 513 and cases cited therein.

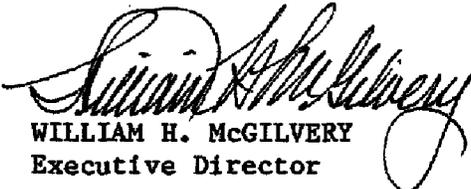
passengers may be picked up or discharged or where sightseeing service may be rendered. It does not prohibit the traversing of other roadways when reasonable and necessary to access an area wherein service is to be provided.

Finally, applicants contend that the solicitation restrictions promulgated by D. C. Police Regulations (January 1983), Article II, Section 8(e)(7) are not properly includable in a Commission order or certificate. We disagree. This no-soliciting regulation has been in effect for many years and applies to all sightseeing operators. Sound public policy would not be well served by authorizing (and thus requiring) 3/ service in an area where the carrier may be subject to arrest for engaging in a certificated enterprise.

However, we note that several additional restrictions bear on the issue of solicitation by sightseeing guides, 4/ and these regulations may be amended from time to time. Thus, the grants of authority in Order No. 2447 (and Order No. 2467 dealing with four similar cases) could, in the future, become inconsistent with other Federal, State or District requirements. For that reason we shall delete specific territorial restrictions against soliciting and provide in each certificate that nothing contained therein shall be construed to authorize or require the solicitation of passengers where such solicitation is otherwise prohibited. A person violating any term, condition or limitation of his certificate is, of course, subject to the administrative sanctions which may be levied by this Commission including, but not limited to, suspension or revocation of a violator's operating rights. 5/

THEREFORE, IT IS ORDERED that the application for reconsideration, to the extent not granted herein, is hereby denied and Order No. 2447, except as modified herein, remains in full force and effect, and appropriate revised certificates shall be issued.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS WORTHY, SCHIFTER AND SHANNON:


WILLIAM H. MCGILVERY
Executive Director

3/ Compact, Title II, Article III.

4/ See also 36 CFR §50.24 and the above-cited Article of the D.C. Police Regulations, §§8(d) and 8(e)(4).

5/ By Order No. 2484, issued this date, we shall similarly modify the grants of authority in Order Nos. 2447 and 2467 in those cases where reconsideration was not sought on this point.