

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
WASHINGTON, D. C.
ORDER NO. 626

IN THE MATTER OF:

Served June 24, 1966

Application of The Gray Line,)
Inc., for Certificate of)
Public Convenience and Neces-)
sity.)

Application No. 365

Docket No. 116

APPEARANCES:

S. HARRISON KAHN, Attorney for The Gray Line, Inc.,
applicant.

MANUEL J. DAVIS and SAMUEL M. LANGERMAN, Attorneys
for D. C. Transit System, Inc., protestant.

LEONARD A. JASKIEWICZ and J. WILLIAM CAIN, Attorneys
for Holiday Tours, Inc., intervenor-protestant.

IRA F. GADD, d/b/a Columbia Sightseeing Company, pro
se, protestant.

The Gray Line, Inc., ("Gray Line") filed an application for a certificate of public convenience and necessity to authorize the operation as a common carrier by motor vehicle in interstate commerce over irregular routes in the transportation of passengers and their baggage in special operations in round-trip and one-way sightseeing and pleasure tours from Alexandria, Virginia to the District of Columbia, points and places in that part of the State of Maryland in the Washington Metropolitan Transit District, and points and places in that part of the Commonwealth of Virginia in the Washington Metropolitan Transit District, via the District of Columbia.

Notice of the application and of hearing thereon was in compliance with Commission instructions.

Ira F. Gadd, d/b/a Columbia Sightseeing Company, filed a protest to the application. D. C. Transit System, Inc., ("Transit") filed a protest to the application. Holiday Tours, Inc., filed a petition to intervene in opposition to the application.

Hearings on the application were conducted on May 11 and 26, 1966. The evidence adduced consists of two hundred fifty-seven (257) pages of transcript of the testimony of eight (8) witnesses, and twenty-six (26) exhibits.

The Gray Line presently is authorized by Certificate of Public Convenience and Necessity No. 12 to, inter alia, transport passengers and their baggage in irregular route, charter and special operations from points in the Metropolitan District except Alexandria, Virginia, to points in the Metropolitan District.

The Gray Line moved to strike the protest of and participation by D. C. Transit in this proceeding. Transit's Certificate of Public Convenience and Necessity No. 5 authorizes charter and special operations from points in Arlington and Fairfax Counties and the Cities of Fairfax and Falls Church, Virginia, to points in Montgomery and Prince Georges Counties, Maryland.

Primarily, the Gray Line argues that Transit has no interest in this proceeding because it has no authority to originate any traffic in the City of Alexandria, and, additionally, that it is not authorized to serve the District of Columbia from any point in Virginia.

Transit counters with its argument that it is presently providing service from Alexandria in limousines, whereby prospective tour passengers are picked up in Alexandria, and carried, free of charge, to Transit's tour terminal in the District of Columbia, where the patrons of D. C. Transit begin their tour. Subsequent to the filing of this application by the Gray Line, Transit filed a corresponding application, and now states that if there is a need for bus service from Alexandria, Virginia, it should be afforded the opportunity to render it rather than the Gray Line.

Transit's interest in this proceeding would appear to stem only from the fact that it has filed a competing application. The examiner permitted Transit to participate in the proceeding subject to the Commission's ruling on Transit's interest. The Commission is of the opinion that an applicant for similar authority should be permitted to participate in a public convenience and necessity application proceeding.

A similar procedural controversy arose upon Gray Line's opposition to the petition to intervene by Holiday Tours, Inc. The examiner permitted Holiday Tours to participate in the proceeding. It is our opinion that good cause having been shown for failure to file a timely protest, the petition to intervene should be granted and Holiday Tours is afforded the status of a party to this proceeding.

At the beginning of the hearing, the applicant moved to amend the application by deleting that portion relating to one-way trips. In the absence of objection, the examiner granted the motion.

The applicant presented the testimony of five witnesses. V.K. Stephens, Vice President and General Manager of Gray Line, testified that his Company presently originates sightseeing persons at points south, west and north of Alexandria, such points being in Arlington and Fairfax Counties, Virginia. He related that the purpose of the application was to permit the Gray Line to serve the sightseeing public in the City limits of Alexandria. Mr. Stephens stated that the proposed service would be offered daily on a scheduled year-round service, in the same manner as its other service is currently being rendered. This service consists of picking up the applicant's patrons at their hotels and motels and taking them to the tour headquarters in Washington, D. C. Here they are given a briefing and a short history of the Capitol. The passengers then embark on their tours in modern, air-conditioned equipment, having pullman-type seats, glass panels in the ceiling, and high fidelity public address system. Applicant operates a fleet of 22 vehicles, including 19 buses, one 11-passenger stretchout limousine and one 8-passenger limousine.

The applicant belongs to an international association of carriers similar to it. This association prepares, and distributes all over the world, a schedule of tours available in each area served by the member carriers. The tours are described and fares stated.

The tours are usually part of a package arrangement, whereby the patron arranges in advance for the tour, his housing and meals. These prepaid advance orders permit advance scheduling by the local carrier. At present, if the patron stays in Alexandria, separate supplemental arrangement by taxicab must be made, which, the witness stated, puts the patron to considerable inconvenience.

The witness also stated that a large number of visitors are from non-English speaking countries. The Gray Line has developed "individual" tape recordings of a tour lecture in five languages. Thus, a visitor from France can be assimilated into a regular tour by merely carrying a lightweight portable tape recorder. Large groups of visitors can be similarly accommodated by using the public address system on the bus.

Mr. Stephens submitted a balance sheet and an income statement for the year 1965. It appears that the applicant is in sound financial condition.

Witness Stephens stated that the price of a tour is the same wherever the patron stays or purchases his ticket. However, transportation from his hotel or motel to the tour terminal is provided without any additional charge.

Mr. M. B. Allen, Executive Vice-President of the Gray Line Sightseeing Companies, Inc., the association, testified about the various activities of his association to promote and stimulate the tourist trade and its efforts to promote and better the service of the applicant. He further stated that the number of tourists yearly has been increasing, and a growing part of these are seeking to have the details of their travel placed in package form.

Mr. Leo Brais, operator of a 25-unit motel in Alexandria, testified in favor of the application. He stated that the type of the proposed service would be convenient to his guests and that they would use it. The witness testified that there were several "smaller" lines operating limousine tour services.

Mr. Don Stevenson, operator of a 102-unit motel in Alexandria, testified. He stated that his motel had adequate service from D. C. Transit, which transported the patrons to its Washington terminal, but that if any of his patrons desired service by the Gray Line, he would refer them to it.

Mr. Harry Madden, operator of a 250-unit hotel in Alexandria, testified for the applicant. He stated that the proposed service would be convenient to his guests, and that it was needed because "at the present time we don't have much to offer the public." He was not familiar with the operation of protestant Gadd.

Mr. Frank Myers, manager of a 107-unit hotel in Alexandria, testified in favor of the application. He stated that there was some existing service, but felt the Gray Line would give greater coverage and better service.

Mr. George Keyser testified for protestant D. C. Transit. He stated that Transit has been and is selling tours in Alexandria, and the patron is transported in a limousine to its tour headquarters in Washington, D. C. No separate charge is made for this transportation, the witness claiming that "it is part of the service." Mr. Keyser testified, over objection, that prior to 1961, Transit was rendering bus sightseeing operations from Alexandria but was required by the Interstate Commerce Commission to cease because it lacked the appropriate authority. Subsequently, he stated, Transit entered into an arrangement with an Alexandria-based carrier to bring its patrons into Washington, D. C. This arrangement was terminated in 1964, and since that time Transit has moved the passengers in limousines. This transportation, the witness stated, was exempt from the certificate requirement [Section 4(a)] of the Compact. He then revealed that Transit had filed an application for authority to transport sightseeing passengers from Alexandria in buses. This application is basically the same as the one under consideration herein. It was Mr. Keyser's position that these historical matters give Transit a prior claim of right over the applicant. The witness stated that he knew of no bus service available for sightseeing purposes in Alexandria.

The Gray Line took the position that the pre-1961 illegal operations cannot be used as the basis of any "prior right", that the limousine operations of Transit are illegal, and therefore Transit has no basis for a claim of preference over it.

Protestant Ira Gadd, doing business as Columbia Sightseeing Company, testified in opposition to the application, and sponsored an exhibit revealing the extent of his operating authority. He is authorized to engage in sightseeing operations from the City of Alexandria and Arlington County, Virginia, to the District of Columbia, and return, restricted to vehicles having a seating capacity of seventeen (17) passengers or less.

Mr. Gadd testified that he has one motel account in Alexandria, that he operates two 17-passenger vehicles and one limousine. It was his opinion that additional service was not required.

Protestant Holiday Tours, Inc., participated only briefly in the proceeding, and neither cross-examined applicant's witnesses nor presented any evidence of its own. The extent of its service, if any, is unknown.

After the hearings were concluded, Transit filed a motion to dismiss the application on the ground that since the Gray Line did not intend to make a separate charge for the movement of the tour purchaser from Alexandria to its District of Columbia tour headquarters and advertised such service as being "free", that transportation is not "for hire" and therefore not subject to our jurisdiction.

It should be obvious that the "free pick-up" is not really free transportation at all. This movement of the passenger to the tour headquarters is not a single, separate movement. The price paid for the tour includes compensation for such movement. If it did not, we would never countenance what would then be an obvious attempt to circumvent the law. Nor will we permit a carrier subject to our jurisdiction to engage in such circumvention and pass the costs of so-called "free" transportation off on its other patrons, who are admittedly transferred for a cost. A proposed fare for a passenger originating in Alexandria has been declared. Since it is the same as for a passenger originating in the District of Columbia, the Commission will be required to inquire as to whether it is a reasonable and compensatory one. However, that factor is not an issue here as it has no bearing on the question of whether or not the authority should be issued.

Transit's contention that it is entitled to preference over the Gray Line is without merit. We give no weight to its evidence of the unauthorized service which was halted by the Interstate Commerce Commission. Without passing on the merits of the legality of its limousine operations, we give little weight to the effect of the grant or denial upon that service. If it is legal, it is then exempt from our certificate requirements. Availability of taxicab service -- which is how it would then be classified -- has little to do with the need for bus operations; they are distinct services. Since the exemption removes the duty to serve, it also removes the cover of protection offered by a certificate. The operation of one has little bearing on the issue before us.

Upon consideration of the evidence adduced herein, the Commission is of the opinion and finds that there is no carrier service available to adequately perform the transportation sought to be authorized by the instant application. The only certificated carrier that is a party to this proceeding evidencing an active interest is Mr. Gadd. We find that neither his authority nor evidence of service indicates an existence of adequate service. Accordingly, we find that the transportation sought to be performed is and will be required by the public convenience and necessity. We further find that the applicant is fit, willing and able to perform. The application, as amended, should be granted.

THEREFORE, IT IS ORDERED:

1. That the application of The Gray Line, Inc., as amended, be, and it is hereby, granted.
2. That Certificate of Public Convenience and Necessity No. 12 be amended to authorize the following transportation:

IRREGULAR ROUTES:

Passengers and their baggage, in the same vehicles with passengers, in special operations, in round-trip sightseeing and pleasure tours,

From Alexandria, Virginia to the District of Columbia, points and places in that part of the State of Maryland in the Washington Metropolitan Transit District, and points and places in that part of the Commonwealth of Virginia in the Washington Metropolitan Transit District, via the District of Columbia, and return.

BY DIRECTION OF THE COMMISSION:



DELMER ISON
Executive Director