

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 788

IN THE MATTER OF:

Served March 8, 1968

Application of Horse Buses)
Incorporated for Certificate)
of Public Convenience and)
Necessity to Operate Horse-)
Drawn Vehicles in Georgetown.)

Application No. 439

Docket No. 151

By application filed June 27, 1967, Horse Buses, Inc., of Washington, D. C. seeks a certificate of public convenience and necessity authorizing operation as a common carrier of passengers by horse-drawn vehicles over irregular routes in a non-scheduled service within Georgetown. The application requests authority to conduct the following operations:

(a) Horse Hurdic Movements, (b) Horse Bus Sightseeing Movements, and (c) Charter Horse Bus Movements. Notice of the filing of the application and hearing thereon was given as required pursuant to Commission directives. D. C. Transit System, Inc., opposes the application. Gray Line, Inc., was allowed leave to intervene in opposition. The Georgetown Citizens Association was also granted leave to intervene, and two other witnesses testified as informal parties.

Transit and Gray Line have filed a joint motion objecting to the admission of certain documents as evidence. They are copies of statutes and regulations of the State and City of New York pertaining to horse-drawn vehicles. Movants assert that these documents are irrelevant and immaterial. The grounds relied on are directed to the weight to be afforded the evidence rather than its admissibility. We will receive the documents in evidence.

Applicant proposes to transport passengers in horse-drawn vehicles within the area of the District of Columbia known as Georgetown. Service would be irregular route and would not operate on a fixed schedule. Mainly, it would consist of

transporting passengers from store to store, or between parking lot and store. Applicant proposes to institute an arrangement whereby ticket books would be sold to area merchants or proprietors of local parking lots. The merchants would in turn give a customer a ticket; the ticket would entitle the customer to a free ride in applicant's vehicles. This service would not be operated over the main streets of Georgetown during the hours commonly designated as rush hours.

This is the second such application, the first having been denied in Order No. 712 due to applicant's failure to comply with certain conditions upon which a grant of authority would have issued.

If the proposed operation proves successful, applicant plans, in the future, to conduct sightseeing tours within Georgetown. It is conjectured that these tours would run about four times a day and would last approximately one and one-half hours. Applicant proposes to open an office in Georgetown. This office would serve as a "semi-terminal." Prospective tourists would also be picked up from various restaurants such as the Georgetown Inn, the Heritage House, and the Carriage House.

During the Christmas seasons in the early 1960's, applicant's president offered a similar service: transporting passengers in horse-drawn vehicles around the commercial area of Georgetown. This operation was supported by the merchants, and the passengers were not charged. Applicant asserts that the service was received well by the riding public. However, this service was discontinued because the vehicle wore out and the operator was unable to replace it due to financial problems.

At this time, the applicant does not own any vehicles. In addition, there is no evidence of record to indicate that the applicant even owns any horses, nor retains any employees. According to applicant, its first vehicle will be designed in conjunction with the Smithsonian Institution and will be a replica of a hurdic, that is, a horse-drawn vehicle, commonly used in Georgetown in the 19th century. Applicant will commence operation with just this one vehicle and will dedicate it primarily

as indicated above, i.e., the initial store to store, parking lot to store type operation. The estimated cost of production of this first vehicle ranges between \$6,000 and \$7,000.

At this time applicant is a bona fide corporation of the District of Columbia and holds a license to engage in business within the District. Applicant's undated balance sheet indicates the following:

Assets

Cash in Bank and On Hand	\$15,000
	<u> </u>
Total Assets	\$15,000
	<u> </u>

Liabilities and Equity

Other Long-Term Debt	\$10,000
Capital Stock	<u>5,000</u>
Total Liabilities and Equity	\$15,000
	<u> </u>

The proposed fare for applicant's operation would be 50¢ per passenger for the normal operation and \$3.00 per passenger on the sightseeing tour.

Mr. George Worthington, president of the applicant, described in his testimony the operations proposed by the application. He submitted copies of certain laws and regulations of the State of New York and the City of New York governing operations in that city of services similar to those proposed herein.

He discussed the financial condition and structure of the applicant, and described its corporate organization.

The witness stated that the initial undertaking of the applicant would be the carrying of shoppers between parking lots and stores. The only evidence of a need for the proposed service was the unsubstantiated statement of Mr. Worthington that it was needed by the merchants of Georgetown. Apparently, the witness envisions that the vehicle will wander around Georgetown, unrestricted as to route or time schedule, picking up

people as might be waiting at parking lots, delivering them at their destinations in the order decided upon by the driver. In short, there would be no regularity of service, either at the parking lots or the stores.

The witness gave no estimate as to what number of people would be carried, even in rough figures. It is apparent from the record that there has been no public demand expressed for the service. The need for such a service does not appear from this witness' testimony.

Gary Cannon, Chairman of the Georgetown Merchants and Farmers Corporation, supports the application. This corporation is temporarily engaged in a marketing operation on Grace Street in Georgetown and is seeking congressional legislation to restore the old Georgetown market building at Potomac and N Street, N. W. to which it would relocate. Apparently, the market would be enhanced by the availability and attractiveness of the horse-drawn transportation.

The Department of Highways and Traffic of the District of Columbia Government appeared as an informal party, and by stipulation of the parties, a letter by Daniel J. Hanson, Deputy Director, Traffic and Engineering and Operation, was accepted into the record. The position of the Department is that the application should be denied because the proposed operations are incompatible with the current congested traffic conditions in the Georgetown area. On the other hand, a Mr. Jutson Chrisney, a director for the National Planning Association, and a resident of Georgetown, testified as another informal party. He supported the instant applicant and favored the institution of the proposed service or a similar service by perhaps D. C. Transit similar to the minibus service operated on F Street, N. W.

The Georgetown Citizens Association appearing as a formal party, neither supported nor opposed the instant application; rather, it took the position that the proposed service would esthetically enhance the area of Georgetown, thus constituting a constructive step in the direction of the edification of the type of community desired by the residents. On the other hand, the proposed service would aggravate traffic and parking problems which at this moment must be classified as inadequate, at best.

D. C. Transit is a duly certified motor common carrier of passengers operating within the Washington Metropolitan Area pursuant to Certificate No. 5 issued by this Commission, and, according to Transit, pursuant to its Franchise. Transit contends its franchise gives it the necessary authority to conduct operations in horse-drawn vehicles in the area sought herein, and further, that the institution of the proposed service would be directly competitive with its operations, especially with respect to its sightseeing and charter operations. This protestant's operations within Georgetown are extensive and protestant asserts most all residents of Georgetown are within one block of a D. C. Transit bus stop. This seems to be substantially accurate. D. C. Transit has regularly scheduled sightseeing operations which include, among other things, various points within the area of Georgetown: Dumbarton Bridge, Oakhill Cemetery, Dumbarton House, Mr. Roger's Academy, Old Stonehouse, Cockeron Home, and Scott Key Mansion. D. C. Transit also provides a booklet instructing a tourist on how he may find the main attractions in Washington area by riding its regular service. Transit contends that if the authority requested is granted, it will suffer a substantial diversion of traffic.

Washington Gray Line, Inc., a member of the Gray Line Sightseeing Companies Associates, is a duly certified carrier holding authority from this Commission. It operates numerous 41-49 passenger, late model, air-conditioned, GM coaches (it does not operate any horse-drawn vehicles) and maintains a terminal at 1010 Eye Street, N. W. This terminal is ornately decorated with a historical motif. Prospective passengers can assemble there. In addition, Gray Line makes regular pickups at major hotels, including the Georgetown Inn. One of the varied tours offered by protestant includes a 25-30 minute itinerary of important Georgetown spots. This specific tour is operated twice daily except in winter months when it is operated daily. It offers no tour, however, exclusively confined to Georgetown, although it asserts that it would develop one if public demand was sufficient. Gray Lines' opposition extends only to that part of the application seeking authority for sightseeing tours.

DISCUSSION AND CONCLUSION

As indicated above, applicant actually seeks authority for (a) Horse Hurdic Movements, (b) Horse Bus Sightseeing Movements, and (c) Charter Horse Bus Movements. The evidence of record indicates that applicant is not ready at this time to commence such sightseeing operations. Rather, applicant's plans in this respect are contingent on a number of factors, one being the success of its general operations. Applicant merely hopes to do sightseeing in the future, and plans at this stage are largely conjectural. It is clear that our decision as to the proposed sightseeing and charter service must be based upon whether there will be a reasonable need in the foreseeable future; our decision on horse hurdic service must be based on a determination whether there is a present need.

In proceedings of this nature, where present need must be shown, the burden is upon the applicant to establish affirmatively that the proposed operation will serve a useful purpose responsive to a substantial public need or demand, and that such need cannot or will not be met by existing authorized carriers in a reasonably adequate fashion.

Quite simply, the applicant here has established neither a need for the service nor his ability to provide the service. On the question of need, there was very little evidence presented. Essentially, all we have before us is the conjecture of one of the principals of the applicant that, in his opinion, the service would be used. This opinion is based upon a free service that was offered (apparently unsuccessful) on a limited basis some years ago. We are frank to say that we find this showing woefully weak.

The only other witness called by applicant testified to the effect that a farmers' market in Georgetown with which he was connected would be enhanced by the availability and attractiveness of horse-drawn transportation. However, the support of this witness appears to emanate more from an esthetic and nostalgic desire to recapture the spirit of an age that was Georgetown's than from sound economic considerations.

Turning now from the question of need for the service to that of the ability to perform, the record is far from satisfactory on this point either. The basic element of the plan

is to sell ticket books to merchants who will in turn distribute them to customers. There is no showing that merchants would be willing to support the service in this manner; and it is certainly not self-evident that such support would be forthcoming for a non-scheduled, irregular route service. In the absence of firm evidence on this point, we must hold that applicant has not met his burden of proof on ability to perform.

Moreover, the entire organization and financial structure of the applicant seems nebulous. For instance, the applicant's witness was very vague on the financial arrangements underlying the company, on its officers and directors, and on the status of its stock ownership.

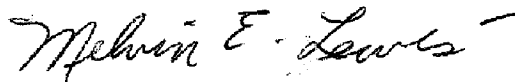
We simply cannot conclude, on the basis of the record before us, that the proposed service would serve the public convenience and necessity, nor that the applicant is fit, willing, and able to perform.

We should add that since we cannot find that the proposed irregular route service should be authorized, it follows that this authority for sightseeing and charter operations should also be withheld. Applicant itself states that charter and sightseeing service would not be provided unless the irregular route service were a success.

We realize that the applicant is proposing a new service and that his plans are necessarily somewhat imprecise. All other things being equal, we would be disposed to let the applicant take his chances and let the forces of the marketplace determine the success or failure of his venture. All other things are not equal, however. The D. C. Department of Highways and Traffic has informed us in unequivocal terms that the proposed service would aggravate an already congested traffic situation. We do not feel that it is in the public interest to authorize this service when little demand or preparation therefor has been shown and when it might actually be detrimental to traffic conditions in the Georgetown area. Accordingly, we will deny the application.

THEREFORE, IT IS ORDERED that the application of Horse Buses Incorporated for a certificate of public convenience and necessity be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in cursive script that reads "Melvin E. Lewis".

MELVIN E. LEWIS
Executive Director