

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2636

IN THE MATTER OF:

Served December 10, 1984

Application of ALEXANDRIA TRANSIT)
COMPANY for a Certificate of Public)
Convenience and Necessity to)
Perform Charter Operations)

Case No. AP-84-27

By motion filed July 18, 1984, at the conclusion of the public hearing on this matter, Alexandria Transit Company seeks dismissal of the application in Case No. AP-84-27. Essentially, applicant contends that it is a "political subdivision" of the Commonwealth of Virginia and, thus, is exempt from regulation by this Commission. 1/

The relevant facts of this case are as follows. In January 1984, Alexandria Transit Company was formed as a nonprofit stock corporation under the general corporate laws of the Commonwealth of Virginia. 2/ The purpose of the company, according to its articles of incorporation:

is to provide mass transportation services as a public service corporation and to transact any and all lawful business not required to be specifically stated in these articles.

The corporation has issued all seven authorized shares of stock to the City of Alexandria, and the City Council exercises the voting rights attributable to those shares. The City Council thus elects, and has the power to remove, all members of ATC's board of directors. The board of directors selects the corporate officers. 3/ Certain city employees, such as the city manager and the city attorney, serve as officers and/or directors of ATC. ATC's articles of incorporation do not contain any restrictions on the discretion of the corporation's directors.

1/ Title II, Article XII, Section 1(a)(2) of the Compact exempts "transportation by the Federal Government, the signatories hereto [District of Columbia, State of Maryland and Commonwealth of Virginia], or any political subdivision thereof;"

2/ Virginia Stock Corporation Act, §13.1-1 et seq., Chapter 1, Title 13.1 of the Code of Virginia (1950), as amended.

3/ By-Laws of Alexandria Transit Company, Article IV.

The City of Alexandria financed all of ATC's start-up costs. The city purchased, and holds title to, all vehicles operated by ATC. Security for the protection of the public is provided by adding Alexandria Transit System (sic) as a named insured on the city's general automobile liability insurance policy. The city provides an operating subsidy for ATC from its general revenues, and the buses used by ATC display public use (government) tags. ATC pays no sales, fuel, road or other taxes.

ATC has no employees. The corporation has hired a management company (ATE Management and Service Company) to oversee the day-to-day operations of ATC and an employee of ATE serves as general manager of ATC. Other persons providing services for ATC, such as drivers and mechanics, are employed by the Transit Management Company of Alexandria, which is a wholly-owned subsidiary of ATE. These persons are not public employees. Under the contract between ATC and ATE, ATC has an option to purchase the stock of Transit Management Company of Alexandria and ". . . we could then retain it and operate the system directly or we, in turn, could sell it to a new management company." 4/

Routes and fares are determined by ATC's board of directors. 5/ However, fare changes and significant route adjustments do not become effective until 15 days after such changes or adjustments have been communicated to ATC's stockholders. During that period, the City Council may disapprove or modify the decision of the board of directors. Also, the City Council may initiate and refer to the board of directors changes in the route and fare structures. ATC's budget is prepared by the board of directors for presentation to Alexandria's city manager, and the corporation may not borrow funds other than in anticipation of revenues and with the express approval of the stockholders. 6/ Although not required so to do, it appears that the board of directors holds a public hearing when considering significant route and schedule changes. 7/

From various exhibits, memoranda submitted by counsel for ATC, and the testimony of Mr. William Hurd, the chairman of ATC's board of directors, it is clear that ATC's primary mission is to provide scheduled transportation within the city as a complement to, or substitute for, operations of the Washington Metropolitan Area Transit Authority (Metro). Some scheduled service operates between Alexandria

4/ Transcript, p. 129.

5/ By-Laws, Article IX.

6/ By-Laws, Article IX, Section 5.

7/ Transcript, p. 131.

and Arlington pursuant to an agreement between those political subdivisions. Charter service between Alexandria and the District of Columbia, which is the subject of this application, is described by Mr. Hurd as incidental but ". . . a valuable adjunct to local service and . . . to insuring the financial stability . . . of the service in the community." 8/ ATC expects that charter revenues would reduce the operating subsidy provided by the city.

This motion presents an issue of first impression for the Commission. Both the Compact and its legislative history are silent regarding the definition of "political subdivision," and the Commission has never before been called upon comprehensively to define that phrase.

The Commission's decisions make clear that a transportation service operated by a city or county located in the Metropolitan District, utilizing government vehicles and employees, is exempt from WMATC regulation by virtue of Title II, Article XII, Section 1(a)(2) of the Compact. An example of such a transportation service would be the Montgomery County, Md., "Ride-On" service.

The Commission has also found that, where a government contracts for transportation service to be operated by a private person, such service is not exempt. Cf. Order Nos. 1895 and 1922, served September 29 and November 21, 1978, and affirmed in Suggs Transportation Service, Inc. v. WMATC (D.C. Cir. No. 79-1074, not printed), decided December 1, 1979.

The facts of this case fall somewhere in between those two precedents.

A "political subdivision" is generally thought of as a public body created by a sovereign to administer laws and/or make regulations or ordinances of a local nature or restricted subject matter. Thus, the City of Alexandria, created by the Virginia legislature is a "political subdivision" as that term is generally used.

Alexandria Transit Company, on the other hand, was not created by a sovereign. It is a stock corporation, brought into being by an individual, albeit pursuant to a resolution of the Alexandria City Council. ATC points out that its creation is specifically authorized by the Virginia legislature in that

[t]he governing body of every . . . city . . . may establish, maintain, operate, extend and enlarge

8/ Transcript, pp. 131-132.

. . . public mass transportation systems . . . within
or without the limits of the . . . city 9/

Nothing in the Virginia Code, however, specifically grants ATC the status of a "political subdivision," a "body politic" or even an "instrumentality" of the Commonwealth of Virginia. In several other cases, the legislature has specifically granted "political subdivision" status to locally created entities such as public recreational facilities authorities, 10/ authorities for development of former federal areas, 11/ and industrial development and revenue bond authorities. 12/ It appears that no such status has been created by the Virginia legislature for ATC.

ATC argues in its motion to dismiss, that it is ". . . but an agent and instrumentality of the City of Alexandria . . ." and, thus falls within the penumbra of the city's designation as a "political subdivision." However, we can find no legal authority for this proposition, and none of the Virginia cases relied on by ATC involve the question here at issue.

In Virginia, political subdivisions are created by the General Assembly as a subordinate political body. They are also granted authority to govern in areas clearly defined by the General Assembly. The most readily available examples of political subdivisions in Virginia are counties and incorporated cities and towns. Also, these "political subdivisions" (counties, cities and towns) do not, without specific enabling legislation, have the authority to organize a separate, legally distinct corporation and confer upon it political subdivision status. It would, therefore, appear that the City of Alexandria cannot confer "political subdivision" status on a legally distinct corporation without the blessing of the General Assembly.

The Code of Virginia is very specific in defining a "political subdivision." Various chapters of Title 15.1 contain definitions which are helpful. For example:

§15.1-1229(d) defines "political subdivision" as "a county or municipality."

§15.1-1240(e) defines it as "a county or municipality and any institution or commission of the Commonwealth of Virginia."

9/ Code of Virginia, §15.1-292.

10/ Ibid., §15.1-1275.

11/ Ibid., §15.1-1322.

12/ Ibid., §15.1-1376.

§15.1-1272(d) defines it as "a county or municipality."

In cases where bodies other than counties, cities or towns are declared to be "political subdivisions," it is only after the General Assembly has expressly bestowed upon such bodies "political subdivision" status. The General Assembly has never bestowed "political subdivision" status upon separate corporations formed at the behest of a city or county. Moreover, the Virginia State Corporation Commission has never recognized such separate city-owned corporations as being exempt from Virginia's motor carrier laws.

The SCC has granted certificates of public convenience and necessity to Greater Richmond Transit Company, Greater Roanoke Transit Company and Lynchburg Transit Company. ATC, according to the testimony of Mr. Hurd, is modeled after those companies. 13/ To the extent that any inference may be drawn from such certifications, 14/ it is that corporations wholly owned by the cities of Richmond, Roanoke and Lynchburg are not considered to be "political subdivisions" by the SCC. 15/

Turning next to the Annotated Code of Maryland, 16/ we find that

"Political subdivision" means any county, municipal corporation, town, village or district. 17/

Just as a state agency is implicitly a part of the State, 18/ so would an agency of a political subdivision be considered part of the corresponding county, municipal corporation, town, village or district. For example, the Prince George's County Department of Transportation, we believe, is a part of County government and, hence, a political subdivision under Maryland law. What we do not find in Maryland law is any indication, statutory or judicial, that a stock corporation created by a political subdivision would actually be a political subdivision of the State of Maryland.

13/ Transcript, pp. 125-127.

14/ It is noted that ATC now has its own application pending before the SCC.

15/ See Virginia Code §§56-274(4) and 56-275.

16/ The District of Columbia has no political subdivision and that term, therefore, is not defined in the D.C. Code.

17/ Art. 16A, §3(c). See also Art. 23A, §9.

18/ Byrne v. Mass Transit Administration, 473 A.2d 956 (1984).

Assuming, arguendo, ATC is so closely connected with Alexandria as to be its "alter ego," that still does not make the corporation a "political subdivision" as that term is usually defined. ATC's own motion admits as much by stating "ATC is neither a municipality nor a political subdivision of Virginia" Although it is not unusual to grant "political subdivision status to locally created entities," the Virginia legislature did not do so for ATC.

To find that ATC is a political subdivision under the theory that ATC is an "alter ego" of the City of Alexandria, therefore, would require piercing ATC's corporate veil. There appears to be little question that the city consciously chose to establish a stock corporation in lieu of a city department or authority. 19/ The city derives several benefits from such a choice. For example, drivers and mechanics are not city employees, and the city thus incurs no civil service or pension obligations to those persons. Moreover, it would appear that Virginia's general corporate law would permit ATC to engage in several functions which might not be lawful or appropriate for the City of Alexandria to undertake directly. 20/

ATC is not actually operated by the city, although the city ultimately has control over ATC through its stock voting rights. Day-to-day operations are conducted by ATE Management, pursuant to a management contract with the city. ATC's general manager is an employee of ATE Management. All drivers and mechanics are employed by Transit Management Company of Alexandria, Inc., which is a wholly-owned subsidiary of ATE Management. No city employees are utilized by ATC to conduct its operation. Essentially, ATC is a private company which enjoys all the benefits of a city-owned operation.

It is a general principal of corporate law that persons who choose to do business through use of a corporate entity must accept the liabilities, as well as the benefits, of that decision. Noble v. C.I.R., 368 F.2d 439 (10th Cir. 1966). A corporation is generally viewed as a separate legal entity, even when it is wholly owned by a single individual. Quinn v. Butz, 166 U.S.App.D.C. 363, 510 F.2d 743 (D.C.Cir. 1975) and Terry v. Yancey, 344 F.2d 789 (4th Cir. 1965). In Virginia, it appears that the courts follow these general rules and uphold a corporate entity as being separate and apart from its stockholders and officers unless specific and unusual circumstances call for looking beyond the corporate structure. Cf. Puamier v. Barge BT 1973, 395 F.Supp. 1019 (D.C.Va. 1974), Brown v. Margrande Sierra Naviera, S.A., 281 F.Supp. 1004 (D.C.Va. 1968), and Mullins v. First Nat'l. Exchange Bank of Va., 275 F.Supp. 712 (D.C.Va. 1967).

19/ Transcript, pp. 126-127.

20/ See fn. 2, supra, and Industrial Development Authority v. Suthers, 208 Va. 52, 155 S.E.2d 236 (1967).

Penetration of the corporate veil is a step to be taken cautiously, for example, in the interest of justice where a corporate form would be used to defeat an overriding public policy. Bangor Punta Operations, Inc. v. Bangor & A. R. Co., 417 U.S. 703, 94 S.Ct. 2578, 41 L.Ed.2d 418 (1974). Examples of appropriate penetration are when failure so to do would permit circumvention of a statute, 21/ where an individual's money has been shifted in and out of a corporation without any formality, 22/ where the corporate identity is used to defeat public convenience, justify wrong, protect fraud or defend crime, 23/ or to "perpetrate fraud or promote injustice." 24/ Thus, it appears that it is insufficient justification for piercing the corporate veil merely to say that ATC is an alter ego for the City of Alexandria; it must also be found that the city intended to use ATC to justify some wrong or to defeat the public convenience. There exists no evidence of record to justify such a finding.

Finally, the Commission is urged to adopt a broader definition of "political subdivision" than has been considered to this point. The city proposes that WMATC adopt the interpretation of that phrase used by the National Labor Relations Board, to wit:

Entities that are either (1) created directly by the state, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate. 25/

Hawkins, however, is distinguishable on several points. First, the Tennessee statute permitting creation of utility districts specifically made each such district a "body politic." As demonstrated above, Virginia chose not to make the same designation for utilities

21/ Joseph A. Kaplan & Sons, Inc. v. F.T.C., 121 U.S.App.D.C. 1, 347 F.2d 785 (D.C.Cir. 1965).

22/ Pardo v. Wilson Line of Washington, Inc., 134 U.S.App.D.C. 249, 414 F.2d 1145 (D.C.Cir. 1969).

23/ Sell v. U.S., 336 F.2d 467 (10th Cir. 1964).

24/ Cf., Bankers Life & Cas. Co. v. Kirtley, 338 F.2d 1006 (8th Cir. 1964), U.S. v. Martin, 337 F.2d 171 (8th Cir. 1964) and In re Gibraltar Amusements, Ltd., 291 F.2d 22 (2d Cir. 1961).

25/ N.L.R.B. v. Natural Gas Util. Dist. of Hawkins Co., Tenn., 402 U.S. 600, 604-05, 91 S.Ct. 1746, 1749 (1971). The N.L.R.B. thus interpreted 29 U.S.C. §152(2) which provides, as pertinent, that the term "employer" shall not include ". . . any State or political subdivision thereof"

such as ATC. See fn. 9-12, supra. Moreover, it is extremely important to note that the characteristics the Court considered in holding the utility district was a "political subdivision" are not shared by ATC. These include:

- a) a specific statute which authorized the creation of such a utility district and declared such a district to be a municipality or public corporation;
- b) the district's records were deemed "public records" open for inspection;
- c) the district was administered by appointed Commissioners who were required to hear any protest to rates, hold hearings and make specific written findings;
- d) decisions of the district were appealable to a county court;
- e) the Commissioners were "public officials" subject to removal from office for malfeasance;
- f) the district had the power to subpoena witnesses and administer oaths in investigating district affairs; and
- g) the district had the power of eminent domain.

In short, the utility district in Hawkins had many attributes not enjoyed by ATC.

Moreover, we do not think it is appropriate, as a policy matter, to base a WMATC decision on a federal determination of what a "political subdivision" is for NLRB purposes because the Compact and National Labor Relations Act purposes for exempting "political subdivisions" are not the same. In Hawkins, the Supreme Court states that

. . . Congress enacted the §2(2) exemption to except from Board cognizance the labor relations of federal, state and municipal governments, since governmental employees did not usually enjoy the right to strike. 26/

Absent any express intention on the part of the Commonwealth of Virginia to establish ATC as a political subdivision, some purpose by the framers of the Compact must be found that warrants a construction of Title II, Article XII, Section 1(a)(2) of the Compact which is broader than the first Hawkins test. As noted above, the legislative history of the Compact, as reported by the House and Senate in 1960, is silent on what purpose the framers intended. Moreover, ATC advances no transportation reason for a broadened definition of the term "political subdivision." Hence, we must find that the term, as used by the framers of the Compact, was intended to have its usual meaning.


26/ 402 U.S. 600, 604, 91 S.Ct. 1746, 1749.

Accordingly, we conclude that the term "political subdivision" as used in Title II, Article XII, Section 1(a)(2) of the Compact, means any county, municipality, or other body politic and corporate specifically designated by the legislature of the signatory creating such body as a political subdivision. Within the term municipality would be cities, towns, villages and other local governmental units of similar purpose. Agencies, departments, commissions and other functional units of the government of the political subdivision, the officials of whom are governmentally appointed and which are staffed by government employees, are part of the political subdivision. Examples of such units would be the Alexandria Housing Department, the Prince George's County Landlord-Tenant Commission and the Arlington County Department of Public Works. Nothing in this record or the law of any signatory to the Compact warrants a broader definition.

THEREFORE, IT IS ORDERED:

1. That the above-referenced motion of Alexandria Transit Company is hereby denied.
2. That briefs on the merits, in the form of proposed orders, be filed by any party wishing so to do no later than January 11, 1985.

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


GREGORY PAUL BARTH
Acting Executive Director