

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3441

IN THE MATTER OF:

Served December 11, 1989

Application of JEWISH COUNCIL FOR)
THE AGING OF GREATER WASHINGTON,)
INC., for a Certificate to Conduct)
Charter Operations Pursuant to)
Contract with K-2 Limited)
Partnership)

Case No. AP-89-28

By application filed May 12, 1989, the Jewish Council for the Aging of Greater Washington, Inc. (JCA or applicant), a Maryland corporation, seeks a certificate of public convenience and necessity to conduct charter operations pursuant to a contract with K-2 Limited Partnership (K-2). The contract currently requires service over the following routes wholly within Montgomery County, MD:

(1) Between White Oak Tower, Maryland, and Silver Spring, Maryland:

From White Oak Tower, north on Old Columbia Pike to its intersection with Clifftondale Drive, then east on Clifftondale Drive, then west on Clifftondale Drive to its intersection with Old Columbia Pike, then north on Old Columbia Pike to its intersection with Industrial Parkway, then west on Industrial Parkway to its intersection with Columbia Pike, then south on Columbia Pike to its intersection with Georgia Avenue, then east on Georgia Avenue to its intersection with Wayne Avenue, then south on Wayne Avenue to the Silver Spring Metrorail facility, and return over the same route.

(2) Between Glenmont Forest, Maryland, and White Flint, Maryland:

From Glenmont Forest, east on Randolph Road to its intersection with Tivoli Lake Boulevard, then over Tivoli Lake Boulevard to its end, then return via Tivoli Lake Boulevard to its intersection with Randolph Road, then west on Randolph Road to its intersection with Glenallen Avenue, then north on Glenallen Avenue, then south on Glenallen Avenue its intersection with Randolph Road, then west on Randolph Road to its intersection with Parklawn Drive, then south on Parklawn Drive to its intersection with Nebel Street, then north on Nebel Street to its intersection

with Marinelli Road, then west on Marinelli Road to the White Flint Metrorail facility, and return over the same route.

A public hearing was held on Thursday, September 7, 1989, pursuant to Order No. 3371, served July 6, 1989, and incorporated herein by reference. Applicant presented two company witnesses and a representative of K-2. No protests were filed.

SUMMARY OF THE EVIDENCE

JCA's executive director, Ms. Ruth Breslow-Young, testified concerning applicant's day-to-day operations. Ms. Breslow-Young oversees the operations of applicant and works directly with its board of directors. JCA is a nonprofit */ corporation that provides a myriad of services to the elderly including various social services, adult day care, shared living programs, luncheon programs and employment services. Twenty percent of its operations are transportation-related. The witness also testified that JCA performs some charter and special operations for a "suggested fee" between points in the Metropolitan District.

Applicant is currently conducting the proposed operations pursuant to a grant of temporary authority effective through December 22, 1989. Ms. Breslow-Young admitted conducting operations prior to receiving temporary authority under the mistaken belief that WMATC authority was not needed. JCA through Ms. Breslow-Young has become familiar with the Compact and the rules and regulations of the Commission and intends to comply with them. The witness will also become familiar with United States Department of Transportation safety rules and regulations.

Applicant's balance sheet dated June 30, 1989, shows \$634,487 in assets including \$6,843 in cash, with \$162,943 in liabilities, and \$471,544 in "capital." An income statement for the year ending June 30, 1989, shows income of \$2,042,523 and expenses of \$2,041,794. JCA expects to generate \$136,854 in revenues from the proposed operations with \$120,575 in expenses.

Mr. Galil Mordachai, director of transportation for applicant, testified that the proposed operation would require three vehicles, each having a minimum seating capacity of 21 passengers. Service would be conducted in two shifts 6:00-8:00 a.m. and 4:30-7:30 p.m., Monday through Friday. Applicant operates six vehicles with 21- to 29-passenger seating capacity. Each vehicle is equipped with a two-way radio. Vehicles not actually used on shuttle runs are designated for back-up purposes. Minor maintenance is performed by JCA staff, while major preventive maintenance and repairs are handled by

*/ The proposed operations would be conducted for profit. JCA has been informed of the tax consequences of such a change in status.

outside mechanics. Each of JCA's vehicles is inspected and serviced every 3,000 miles. In addition, drivers inspect buses daily and submit weekly vehicle reports describing any mechanical problem. All problems reported are corrected promptly.

JCA hires drivers after a thorough background check, a discussion of safe driving practices, a period of driving paired with an experienced driver, and completion of a Red Cross program that includes CPR training. Because JCA's drivers primarily work with senior citizens in JCA's programs, they are chosen not only for driving skills but also for the personal skills necessary to deal with a demanding clientele.

Mr. Galil testified that he works very closely with representatives of K-2 to make certain the service is performed satisfactorily. This includes telephone conversations almost daily with a representative of K-2; it also includes working closely with K-2 on promotional efforts and any changes that K-2 may make in scheduling.

Mr. Robert Baker testified in support of the application. Mr. Baker is the director of land planning for Richmarr Construction Corporation. Richmarr builds houses, apartment buildings and offices, and develops residential communities. K-2 Limited Partnership is owned by the principals of Richmarr. The proposed transportation is required by the Maryland National Capital Planning Commission which requires developers in Montgomery County to supplement existing mass transportation to reduce the amount of traffic generated by the development of additional residential properties. For 10 years K-2 is responsible for providing free supplemental transportation for the residents of its communities. K-2 meets this obligation by contracting with JCA. Mr. Baker, who was involved in the search for a transportation provider from its inception, was primarily interested in a carrier that would treat its obligations under the agreement as a priority. A deciding factor in selecting applicant was the fact that its vehicles remained essentially idle during the hours when transportation is required under the contract. It was the opinion of the witness that such a situation would not produce competition for resources. Mr. Baker testified that about 75 persons use the service daily. The witness expects this number to increase. K-2 has received positive comments regarding JCA's performance; riders are pleased with the convenience of the service and the courteous disposition of applicant's drivers.

DISCUSSION AND CONCLUSIONS

This matter is governed by Title II, Article XII, Section 4(b) of the Compact which requires that an applicant for a certificate of public convenience and necessity prove that it is fit, willing, and able to perform the proposed transportation properly and to conform to the provisions of the Compact and the Commission's rules, regulations, and requirements thereunder. Section 4(b) further requires that the applicant prove the proposed service is required by the public

convenience and necessity. After reviewing the entire record in this case, the Commission finds that JCA has met its statutory burden. Accordingly, the application shall be granted.

JCA operates a sufficient number of 21- to 29-passenger vehicles to perform the proposed operations. The vehicles are regularly maintained and inspected daily before being placed into service. Applicant's drivers are required to have good safety records and undergo a driver training program. JCA has shown itself capable of meeting K-2's service requirements. Applicant is a nonprofit entity. Nonetheless, JCA is sufficiently robust financially to sustain the proposed operations and anticipates its service for K-2 will be profitable. The issue of compliance fitness has been addressed by Commission order. See Case No. AP-89-27, Application of Jewish Council for the Aging of Greater Washington, Inc., for Temporary Authority to Conduct Charter Operations Pursuant to Contract with K-2 Limited Partnership, Order No. 3362, served June 26, 1989. For these reasons we find applicant fit financially, operationally, and as to compliance.

We turn now to the matter of whether applicant has satisfied its burden of proving that the public convenience and necessity require the proposed service. The Commission has relied on the test enunciated in Pan-American Bus Lines Operations (1 M.C.C. 190, 203 [1936]) when interpreting this provision of the Compact. The Pan-American test consists of three parts as follows:

. . . whether the new operations or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

This application is supported by the contracting party, K-2, whose representative has testified at length about the reasons for his organization's entering into a contract with JCA and his organization's satisfaction with the service that has been provided thus far. His description of the service, JCA's capabilities, and the reasons for choosing it from among other sources, are persuasive.

This Commission is also aware of the need to coordinate transportation activities within the Metropolitan District to alleviate traffic congestion. It is noteworthy that this application stems from a requirement of Montgomery County, MD, regarding efforts to limit traffic congestion arising from new residential development.

It is clear from the record that a need exists for this service and that it will service a useful public purpose, responsive to a public need.

In terms of the remaining two tests as expressed in Pan-American, it is noted that no existing carriers oppose this application. The testimony by Mr. Baker supporting the application

is that existing carriers cannot meet K-2's transportation requirements as well as JCA can. The lack of any evidence to the contrary from existing carriers makes it possible for us to conclude this is so. Further, the absence of opposition warrants the conclusion that no demonstrable harm will befall any existing carrier from authorization of this proposed new service.

THEREFORE, IT IS ORDERED:


1. That Jewish Council for the Aging of Greater Washington, Inc., is hereby conditionally granted authority, contingent upon compliance with the requirements of this order, to transport passengers in charter operations between points in Montgomery County, MD, pursuant to contract dated March 15, 1989, with K-2 Limited Partnership, together with any continuous extensions, amendments, or modifications thereto.

2. That Jewish Council for the Aging of Greater Washington, Inc., is hereby directed to file with the Commission within 30 days of the service date of this order the following: (a) three copies of its WMATC Tariff No. 1; (b) an equipment list specifying make, model, year, serial number, vehicle number, seating capacity, and license plate number (with jurisdiction) for each vehicle to be used in revenue operations; (c) evidence of ownership or lease, as appropriate, in conformance with Commission Regulation No. 69, for each vehicle to be used in revenue operations; (d) a certificate of insurance in accordance with Commission Regulation No. 62, covering all vehicles to be used in revenue operations; and (e) an affidavit of identification of vehicles pursuant to Commission Regulation No. 67, for which purpose WMATC No. 159 is hereby assigned.

3. That unless Jewish Council for the Aging of Greater Washington, Inc., complies with the requirements of the preceding paragraph within 30 days of the service date of this order, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

4. That upon compliance with the conditions set forth in the preceding paragraphs, a certificate of public convenience and necessity will be issued to Jewish Council for the Aging of Greater Washington, Inc., in the form and as worded in the Appendix to this order.

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


William H. McGilvery
Executive Director

NO. 159

JEWISH COUNCIL FOR THE AGING OF GREATER WASHINGTON, INC.

By Order No. 3441 of the Washington Metropolitan Area Transit Commission issued December 11, 1989;

AFTER DUE INVESTIGATION, it appearing that the the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order No. 3441;

THEREFORE, IT IS ORDERED that the said carrier is hereby granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privilege herein granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

CHARTER OPERATIONS transporting passengers between points in Montgomery County, MD, pursuant to contract dated March 15, 1989, with K-2 Limited Partnership, together with any continuous extensions, amendments, or modifications thereto.

AND IT IS FURTHER ORDERED and made a condition that the holder thereof shall render reasonable, continuous, and adequate service to the public in pursuance of the authority granted herein, and that failure to do so shall constitute sufficient grounds for suspension, change, or revocation of the certificate.