

MEMORANDUM IN RE

THE COMPLAINT OF A&D DAVENPORT TRANSPORTATION, TRANSPORTATION BY LAMAR, BRADFORD SCHOOL BUS TRANSIT, INC., AND N.H.L. TRANSPORTATION AGAINST THE CHICAGO TRANSIT AUTHORITY.

FINDINGS OF FACT, AND CONCLUSIONS OF LAW

A. Introduction

On December 1, 1976, a Complaint was received on behalf of A&D Davenport Transportation, Transportation by Lamar, Bradford School Bus Transit, Inc., and N.H.L. Transportation (hereinafter, "the Petitioners") against the Chicago Transit Authority (hereinafter, sometimes "CTA" or "the Respondent") and the Board of Education of the City of Chicago. 1/ The Complaint alleged that the Respondent has applied for and received large sums of money pursuant to applications by it; that Respondent had entered into a grant contract with the Urban Mass Transportation Administration (hereinafter "UMTA"); that said grant contract incorporated an agreement that the Respondent would comply with the terms of section 164(b) of the Federal-Aid Highway Act of 1973

1/ The Urban Mass Transportation lacks jurisdiction to decide any claim made against the non-transit entity. Hence no consideration will be given to any claim against the Board of Education of the City of Chicago.

(P.L. 93-87, August 13, 1973, 88 Stat. 250, §164(b)); 2/ that subsequent to its entering into the grant contract, Respondent bid on certain contracts with the Board of Education of the City of Chicago, specifically Bid Numbers D.P. 77-6116 (transporting school children between Raster and Dyett Schools) and 77-6117 (transporting school children between Brennan and Poe Schools, and to and from certain points in the City of Chicago and Ward School); that Petitioner's also bid on those solicitations, and that Respondent CTA was awarded, and accepted, contracts to provide said service in violation of its agreement to comply with section 164(b) of the 1973 Federal-Aid Highway Act.

2/ Section 164(b) [49 U.S.C. §1602a] reads, in pertinent part, as follows:

"(b) No Federal financial assistance shall be provided...for the purchase of buses to any applicant for such assistance unless such applicant and the Secretary of Transportation shall have first entered into an agreement that such applicant will not engage in school bus operations, exclusively for the transportation of students and school personnel, in competition with private school bus operators... . This subsection shall not apply unless private school bus operators are available to provide adequate transportation, at reasonable rates, and in conformance with applicable safety standards, and this subsection shall not apply with respect to any State or local public body or agency thereof if it, (or a direct predecessor in interest from which it acquired the function of so transporting school children and personnel along with facilities to be used therefor) was so engaged in school bus operations any time during the twelve-month period immediately prior to the date of the enactment of this subsection... ."
The effective date of section 164(b) was August 13, 1973.

An identical provision is incorporated in section 3(g) of the Urban Mass Transportation Act of 1964, as amended, (49 U.S.C. §1601, 1602(g)), whose effective date was November 26, 1974.

In support of its complaint, Petitioner's attorney, Thomas N. Todd, Esq., furnished UMTA with an affidavit from Jerry Hargrove, Sr., one of the owners of petitioner N.H.L. Transportation, attesting to certain CTA buses being used to transport school children from the Raster School to points elsewhere in the City of Chicago. Mr. Hargrove further stated that he had personally observed CTA transit buses used to transport school children on other occasions.

On December 2 and 6, 1976, a preliminary investigation was conducted via telephone with CTA. Subsequently, on December 16, 1976, a letter was sent to CTA reciting certain statements made during those telephone conversations, to the effect that service provided pursuant to Solicitation No. 77-6116, between the Raster and Dyett Schools and service provided under Solicitation No. 77-6117, between the Brennan and Poe Schools, was claimed as an incidental charter operation undertaken pursuant to the UMTA Charter Regulations (49 CFR Part 604; 41 Fed. Reg. 14122 [April 1, 1976]). CTA was requested to submit documentation substantiating its charter claims. The service to Ward School undertaken pursuant to Solicitation No. 77-6117 was noted as a probable violation of the UMTA school bus regulations (49 CFR Part 605; 41 Fed. Reg. 14127 [April 1, 1976]). A response was requested within 20 days thereafter.

Subsequently, CTA submitted copies of route maps and schedules in support of its contentions that it is lawfully engaged in incidental charter service and to rebut the finding by the Chief Counsel that CTA had engaged in a probable violation of the UMTA school bus regulations.

B. Findings and Conclusions

The Urban Mass Transportation Administration has considered the statements made by the Petitioners and the Respondent, and we have concluded that the petitioners have failed to show violation of the UMTA school bus regulations with regard to service to Raster and Dyett Schools and Brennan and Poe Schools, but that a violation has been shown regarding service to Ward School.

Specifically, the evidence submitted by Respondent CTA shows that the services to the Raster-Dyett Schools (Contract No. 77-6116) consists of morning and afternoon movements; that the morning segment utilizes 10 buses for group transportation of students from Raster School to Dyett School; that each of the 10 buses reports to Raster at 8:30 a.m. and is scheduled to complete its movement by 8:45 a.m.; that after discharging a group, each bus returns to its respective garage; that each of the buses utilized for the movement had completed its morning schedule, and but for the group movement would have returned to its respective garage; that the

afternoon segment reverses the morning group movement; that students are picked up at Dyett School at 3:20 p.m. and are returned to Raster School not later than 3:45 p.m., at which point each bus then commences its normal scheduled route service. The evidence further shows that the morning movement utilizes buses from CTA's 77th, 69th and Archer Garages, that the afternoon movement utilizes buses from the 52nd and Archer Garages; and that each of said garages services routes which are in close proximity to Raster and Dyett Schools.

With respect to service to the Brennan and Poe Schools (Contract No. 77-6117) the evidence shows that this service also involves morning and afternoon movements, utilizing 9 buses; that the morning movement transports students in pre-formed groups from Brennan to Poe School commencing at 8:20 a.m. and is scheduled for completion not later than 8:45 a.m.; that said movement occurs after the completion of the buses scheduled service and at a time when said buses would ordinarily be returned to their respective garages; that the afternoon segment commences at 2:00 p.m. and are scheduled for completion not later than 2:25 p.m., at which point each bus commences its normal scheduled route service. The evidence further shows that buses for the Brennan-Poe service come from the CTA Beverly Garage which provides buses for routes that are in close proximity to Brennan and Poe Schools.

The evidence supports Respondent CTA's contention that the Raster-Dyett and Brennan-Poe services are properly characterized as incidental charter operations engaged in pursuant to its authority. Each service involves a common contract of carriage; a common pick-up and delivery point for all school students and personnel so transported; that school students and personnel are transported in pre-formed groups for a common purpose and remain so constituted for the entire length of the trip, and are thereafter returned to their points of origin in the same manner (compare, 49 CFR Part 1054 [definition of charter party used by the Interstate Commerce Commission]). No such commonly accepted definition exists to describe school bus operations, and in many respects, school bus and charter operations are similar. The salient characteristic of school bus operations appears to be that school bus operations involve multiple pick up points serving a common school destination, and a reverse of that pattern on return trips. The evidence further supports Respondent CTA's contention that its assignment of federally-assisted buses in the above-described manner in no way detracts from the use of said buses in regular mass transportation service during the hours of peak usage, in accordance with the routes and schedules heretofore established for those vehicles. Consequently we conclude

that CTA's provision of service between Raster and Dyett Schools and between Brennan and Poe Schools constitutes incidental charter service within the meaning of Part 604 of the UMTA regulations.

We cannot agree, however, that the service to Ward School constitutes charter, rather than school bus, service, even though some of the requisite characteristics of ordinary charter operations are present. The evidence shows that the service to Ward School utilizes one bus for the morning and afternoon segments; that the morning segment commences at 8:30 a.m. and is scheduled for completion at 8:50 a.m.; that the afternoon segment commences at 2:30 p.m. and is scheduled for completion at 2:50 p.m. The difference between the Ward School service and the other two services described above is that school students are picked up at regular route bus stops on the trip to Ward School, and are discharged at those stops on the return trip, which is indistinguishable from school bus service. 3/

3/ This type of service must be distinguished from so-called "tripper service" which the regulations define as "regularly scheduled mass transportation service which is open to the public, and which is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems." The regulation further requires that buses used in tripper service must be clearly marked as open to the public and may not carry designations such as "school bus" or "school special". These buses may stop only at a grantee or operators regular service stop, and all routes traveled by tripper buses must be within a grantee's or operator's regular route service as indicated in their published route schedules 49 CFR §605.3(b). In the instant case, the CTA vehicles engaged in the carriage of the school students were operating during times either before or after their regularly scheduled route service, and away from their regular routes.

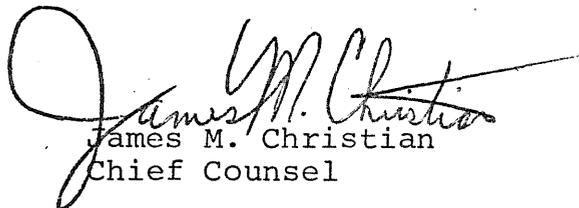
Consequently, we conclude that the Ward School service constitutes a school bus operation within the meaning of the applicable statute and regulations thereunder.

Respondent has also raised an affirmative defense that it is exempt from the prohibitions contained in section 3(g) of the Urban Mass Transportation Act of 1964 (49 U.S.C. §1602(g)) in that the subject contract was effective within the 12 months preceding November 26, 1974, the date of enactment of section 3(g). However, this defense does not address the requirements of section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. §1602a) which prohibits UMTA grantees from engaging in school bus operations unless, inter alia, they, or a direct predecessor in interest was engaged in school bus operations "at any time during the 12-month period immediately prior to the date of enactment of this section." The effective date of section 164(b) was August 13, 1973. Although this statute was never codified, neither was it amended or repealed upon the subsequent enactment of section 3(g), and therefore, the one year period specified in that statute is still effective to bar Respondent's competition the petitioners with respect to the Ward School service. 4/

4/ The exemptions to the regulations apply only to "a state or local public body or agency thereof (or a direct predecessor in interest which has acquired the function of so transporting school children and personnel along with facilities to be used therefor) who was so engaged in school bus operations

C. Decision

It is therefore our decision that Respondent CTA should cease and desist from further competition with private school bus operators in the manner so described herein.


James M. Christian
Chief Counsel

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(footnote continued)

4/ "(1) In the case of a grant involving the purchase of buses any time during the 12 month period immediately prior to August 13, 1973."

"(2) In the case of a grant for construction or operating of facilities and equipment made pursuant to the Urban Mass Transportation Act of 1964, as amended, anytime during the 12 month period immediately prior to November 26, 1974."

49 CFR §605.11(c)