



U.S. Department
of Transportation
Federal Transit
Administration

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New Jersey,
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Before the Federal Transit Administration

Service Tours, Inc.
Complainant

v.

Westchester Department of transportation
Respondent

Docket No.:2006-11

Decision

Introduction

On June 13, 2006, Service Tours, Inc. ("ST") filed a complaint with the Federal Transit Administration ("FTA") alleging that the Westchester Department of Transportation ("WCDOT") had violated certain conditions placed on recipients of Federal assistance by the Federal transit laws (49 U.S.C. Chapter 53) by providing service to the professional golf tournament in Harrison, New York. After reviewing the submissions of the parties, FTA has concluded that WDOT's service to the golf tournament was impermissible charter service.

Service Tours, Inc. Complaint

ST's complaint consists of letters dated June 8, 2006 and June 13, 2006. ST states that they had been contracted to provide service to the tournament and several days of the previously contracted service were subsequently cancelled when the WCDOT agreed to provide service with Federally-funded buses. ST alleges this activity was a violation of FTA's charter regulations.

Westchester Department of Transportation's Response

By letter dated July 5, 2006, WDOT responded to ST's Complaint. WDOT maintains the services in question were public transit services, not charter. WDOT states that WDOT placed a public

notice in a newspaper, fixed the routes and stops in advance, provided service to the public, established regular fare media and received a subsidy from the tournament operator.

Service Tours, Inc. Rebuttal

ST rebutted by letter dated August 3, 2006, arguing that Federal dollars should not be used to compete unfairly with private charter operators. ST also states that WDOT did not determine if there were any willing and able charter operators available to perform the service.

WDOT and ST Follow-up Responses to FTA Questions

Upon review of the submissions, FTA wrote the parties by letter dated September 12, 2006, and requested further information about how the service had been established and operated.

WDOT responded by letter dated October 13, 2006. WDOT explained that the service is basically demand responsive. Buses are dispatched according to demand. All of the stops are regular bus stops, except for the tournament stop. Notice of the service was put on the web although there are no copies of it. The sponsor of the tournament tells WDOT the days of operation for the service. The buses display Route 12A signage. The decision to have WDPT provide the service for the 9th of June was made on June 8th.

ST responded by correspondence received by FTA on December 21, 2006. By that correspondence, ST submitted copies of what appear to be invoices for ST's provision of tournament service. These invoices are annotated with comments that golf tournament service previously booked was now cancelled.

Discussion

In order to resolve this matter, a determination needs to be made as to whether Respondent's service is impermissible charter service or public transportation. Respondent does not allege that they operated pursuant to an exception or that there were no willing and able operators. Respondent maintains that the service is legitimate mass or public transportation. The definition of charter service in FTA regulations at 49 C.F.R.604.5(c) is as follows:

Transportation using buses or vans, or facilities funded under the Acts of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the vehicle or service, have acquired the exclusive use of the vehicle or service to travel together under an itinerary either specified in advance or modified after having left the place of origin.

Mass or public transportation, in contrast, is defined as service provided to the public that is regular and continuing general or special transportation. 49 U.S.C. 5302(a)(7). FTA cites various factors for determining the nature of the service and uses a balancing test to ascertain the type of service. The characteristics cited by FTA are illustrative, not exhaustive. 52 Fed. Reg. 1199-11920.

Therefore, determining questions posed by FTA are: is the service open to the public and not closed door; is the service under the control of the recipient and is it designed to benefit the public at large?

Is the service open to the public and not closed door ?

In determining whether service is “open door”, FTA may consider the ridership and the intent of WDOT in offering the service. To determine this, FTA looks at what attempts were made to make the service known and available to the general public. Seymour v. Knoxville Transit Authority, TN-09/88-01 and California Bus Ass’n v. Sacramento Regional Transit District, 08-03.

In the instant case, the service was advertised on May 31, 2006, just more than one week before its commencement. It was advertised in only one newspaper and it only advertised the service for June 11th and June 12th. WDOT added last minute service on June 10th, but this was not decided upon until June 9th and there was no cognizable emergency basis for this June 9th service. Such limited advertisement and last minute service additions do not demonstrate a broad outreach and attempt to make the service known to the general public.

In addition, WDOT states that a notice appeared on their website; however, in the absence of copies of the website publication, we cannot consider this in our analysis. Similarly, we have no copies of any pre-printed timetables. The newspaper notice did not mention a schedule, other than to say, service would be “frequent”; there was no notice for half-fare or the disabled. Therefore, we find that the service did not have the characteristics of “open door” service.

Is the service under the control of the recipient?

In the same vein, we must analyze whether the service was under the control of the recipient, WCDOT. A critical element in making the determination is whether WCDOT controlled the fare and schedules. Seymour. WDOT has a subsidy arrangement with the tournament operator and the tournament operator lets WDOT know which days to operate. WDOT acknowledges this request in their letter of May 26, 2006 to Mr. Mele, Executive Director of the Buick Classic, in which WDOT states, “At your request, we will extend service on the Bee-Line Bus System route 12....” It further states that the extension will be subject to the addition of 13 buses. The subsidy is described as the greater of \$1.75 for each passenger with a Buick Open ticket or the fully allocated cost of operation (\$145.00 for each hour) minus the fares collected. These factors indicate that payment is linked to hours of service and that the tournament operator is really dictating the service and has control of the service. The golf tournament bus stop, as WDOT acknowledges, is not part of their regular route service but is made into a stop for tournament days. Therefore, the service is not under the control of the recipient because fares, number of buses and schedule were negotiated between the tournament director and WDOT.

Is the service designed to benefit the public at large?

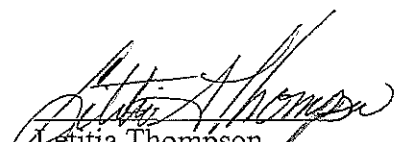
Lastly, we ask, is the service designed to benefit the public at large? The service in question is operated, as WDOT states, on a generally “demand responsive” basis. This apparently means that WDOT assigns a dispatcher to the golf bus stop and, as more people congregate waiting to leave,

another bus is requested. The service to this stop was not well advertised and planned in advance and, hence, is not set up to benefit the general public at large except as the general public might coincidentally learn of the service. The tournament operator designed the service to meet the needs of its golf patrons and it was not treated in the same fashion as other public transit service provided by WDOT. And, thus, the service was not designed to benefit the public at large.

Conclusion and Order

FTA finds that WDOT has been providing impermissible charter service and orders it to cease and desist from any such further service. Refusal to cease and desist in the provision of such service could lead to additional penalties on the part of the FTA.

In accordance with 49 C.F.R. 604.19, the losing party may appeal this decision within ten days of receipt of the decision. The appeal should be sent to James Simpson, Administrator, FTA, 400 Seventh Street, S.W., Room 9328, Washington, D.C. 20590.


Letitia Thompson
Regional Administrator

01/18/07
Date