

BEFORE THE FEDERAL TRANSIT ADMINISTRATION

Darek Jones and Tecumseh Trolley & Limousine Service,
Complainants,

v.

Ann Arbor Transportation Authority,
Respondent.

Charter Complaint
49 U.S.C. Section 5323(d)
Docket Nos. 2006-08, 10 & 13

DECISION

Summary

On June 25, 2006, Darek Jones, a private citizen ("Jones") filed a complaint with the Federal Transit Administration ("FTA") alleging that Ann Arbor Transportation Authority ("Respondent" or "AATA")¹ was providing service in violation of FTA's charter regulation, 49 Code of Federal Regulations (C.F.R.) Part 604. The allegations related to AATA providing charter service for an Art Fair, football games, graduation activities for the University of Michigan, and the Saline Celtic Festival. On June 27, 2006, FTA provided AATA thirty (30) days to respond to the complaint, Charter No. 2006-08.

On June 28, 2006, Tecumseh Trolley & Limousine Service ("Tecumseh") also filed a complaint against AATA alleging charter violations. Tecumseh alleged that AATA was competing illegally in the charter market on the Art Fair, the Saline Celtic Festival, and for work with Briarwood Mall. Tecumseh went on to allege that AATA did not file an annual willing and able notice, was not DOT certified, did not have Michigan operating authority, openly advertised for charter work, no published routes, and charged more for charter routes than regular routes. On June 28, 2006, FTA provided AATA with thirty (30) days to respond to Tecumseh's complaint, Charter No. 2006-10.

On July 14, 2006, AATA provided a response to both Mr. Jones and Tecumseh. In its response to Mr. Jones, AATA challenged Mr. Jones standing to file a complaint, that the complaint fails to state facts showing a violation, and requested that the complaint be dismissed. In its response to Tecumseh, AATA states that Tecumseh's complaint should be summarily dismissed because it fails to state what provision of the charter regulation is at issue; it fails to allege facts that establish a violation; and it fails to provide evidence to support any of its allegations.

On July 31, 2006, FTA consolidated the complaints and provided Mr. Jones and Tecumseh (hereinafter "Complainants") with thirty (30) days to provide rebuttals. FTA has received green registered mail certifications back indicating that the Complainants received the requests for rebuttals on August 5, 2006.

¹ AATA is a recipient of Section 5309 funds; therefore, it is required to comply with the charter regulations.

On August 1, 2006, Tecumseh filed another complaint against AATA alleging essentially the same issues as in its prior complaint regarding a charter to The Clinton Bell Party Store. On August 8, 2006, FTA provided AATA thirty (30) days to respond to the additional complaint, Charter No. 2006-13. On August 21, 2006, AATA responded to the complaint stating that the complaint fails to state which part of the charter regulations have been violated; fails to establish facts demonstrating that AATA has violated the charter regulations; and fails to prove that any of the statements made in the complaint are true. AATA requests that the complaint be dismissed.

On August 23, 2006, FTA provided Tecumseh with a copy of AATA's response. Tecumseh was provided with thirty (30) days to provide a rebuttal. Tecumseh received the rebuttal on August 29, 2006, via certified mail.

On August 25, 2006, FTA received a letter from Michigan Department of Transportation (MIDOT) that it had received a charter complaint from Tecumseh alleging similar violations by AATA regarding the Art Fair and the Saline Celtic Festival. On November 3, 2006, MIDOT issued a letter determining that both services operated by AATA did not meet the definition of charter service.

On September 25, 2006, Tecumseh requested a thirty (30) day extension to file a rebuttal in the pending complaints. Tecumseh stated that it had a pending FOIA request with AATA. The extension request was granted.

To date, after numerous attempts² by FTA to obtain rebuttals from the Complainants, no rebuttals to any of the complaints have been received.

Because all three complaints allege essentially the same issues and facts, FTA is consolidating all three complaints in this decision.

Upon reviewing the allegations in the three complaints and the subsequent filings of all the parties (the Complainants and AATA), FTA has concluded that the services in question do not meet the definition of "charter."

Complaint History

Complainant Jones contacted the FTA on June 25, 2006, via email to complain that AATA was providing illegal charter service through an Art Fair Shuttle, a Football Shuttle, a Graduation Shuttle, and the Saline Celtic Festival. Complainant Jones alleges that each of these shuttles operates very infrequently for the events in question. The shuttles stop at either hotels or park and ride lots and then at the event in question. The complaint acknowledges that the Art Fair Shuttle is "open door." Fares for the shuttles are higher than the regular fixed route fare.³

Complainant Jones acknowledges that AATA publishes a "RIDE GUIDE" which advertises the shuttles. He alleges that the Football Shuttles and the Graduation Shuttle could be operated by

² FTA has tried to reach the Complainants via email and telephone, but neither Complainant has responded.

³ AATA's fixed route fare is \$1 and the Art Fair Shuttle fare is \$1.50. Complainant Jones states that a "premium" fare is charged for the Football Shuttle.

the University of Michigan which has a fleet of buses and that therefore, they violate the charter regulations. He states that the Art Fair and the Celtic Festival only benefit the patrons of those events and therefore, are violations of the charter regulations. The Complainant states that there are a number of private operators in the area who would be interested in providing these services.

Complainant Tecumseh alleges that his company has bid on the Art Fair business in the past and lost the contract to AATA. He states that "Art Fair Shuttle" is on the bus marquee. Complainant Tecumseh acknowledges that the shuttle is advertised on the AATA website. Tecumseh requests a disgorgement of fees. Attached to the complaint are pages from AATA's website listing the various programs and services it offers.⁴ Emails between the two Complainants are also attached to the complaint.⁵ Complainant also makes a number of allegations with regard to the FTA and enforcement which are not appropriate for addressing in the context of a charter complaint.

In AATA's response dated July 14, 2006, to Jones' complaint, AATA states that Jones lacks standing as an "interested party" since he fails to demonstrate how he has a concrete interest in the alleged illegal activities. Additionally, AATA states that Jones has failed to state facts showing that there has been a violation of the charter regulations. AATA points out that Jones' sole grounds for alleging that there is a violation of the charter regulations is his "belief" that the University of Michigan has its own vehicles and should provide service for school events. AATA states that there is no allegation by Jones of any of the criteria used to meet the definition of charter and that his complaint is without merit and should be dismissed.⁶

In AATA's response dated July 14, 2006, to Tecumseh's complaint, AATA states the complaint is "lacking in merit" since it fails to state what provision of the charter regulations AATA violated; it fails to provide evidence of a violation; and it fails to prove any of the allegations in its complaint. AATA contends that the two services that are referred to in the complaint, the Art Fair and the Saline Celtic Festival are both regular public transportation for infrequent but regularly scheduled events. Attached to the response are a number of route schedules and fare information.

Although Complainants were provided opportunities to provide rebuttals, neither party chose to do so. Complainant Tecumseh requested and was granted an extension to provide a rebuttal pending an alleged FOIA request directed at AATA, but FTA never received a rebuttal. FTA attempted to contact both Complainants on a number of occasions, but never received a response.

On August 1, 2006, Complainant Tecumseh filed a second complaint against AATA alleging that on July 17, 2006, he had seen a transit bus and a group of business passengers at the Clinton Bell Party Store. Tecumseh alleged that the group indicated they were from Ann Arbor and had stopped for some refreshments. Tecumseh again made a number of allegations that the service violated the charter regulations and requested a disgorgement.

⁴ The Football Shuttle fare is \$4 roundtrip. The service runs approximately every 20 min. beginning two hours before the game and runs approximately 60 minutes after the game. The Graduation Shuttle fare is also \$4 roundtrip. It runs every 20 min. from 8 am until approximately 60 min. after the ceremony.

⁵ Complainant Tecumseh alleges that he has attached photos to his complaint, but no photos were included with the fax he sent to FTA.

⁶ Attached to the response is a copy of the questions and explanation on charter from FTA's Triennial Review Handbook.

AATA filed its response on August 21, 2006, stating the complaint should be dismissed. AATA states the complaint is "lacking in merit" since it fails to state what provision of the charter regulations AATA violated; it fails to provide evidence of a violation; and it fails to prove any of the allegations in its complaint. AATA provides dispatch records to demonstrate that on the date in question, AATA did not send any of its buses beyond its service area. AATA points out that Tecumseh fails to provide any specifics regarding the alleged incident and that the complaint should be dismissed.

Although Complainant Tecumseh was provided a number of opportunities to provide a rebuttal, he failed to do so. Complainant requested and was granted an extension to provide a rebuttal pending an alleged FOIA request directed at AATA, but FTA never received a rebuttal. FTA attempted to contact both Complainants on a number of occasions, but never received a response.

Finally, on November 3, 2006, MIDOT issued its decision regarding Complainant Tecumseh's charter complaint before the agency. In its decision, MIDOT indicated that neither the Ann Arbor Street Fair nor the Saline Celtic Festival Shuttle constituted impermissible charter service but rather public transportation to infrequent events.

Discussion

A. Interested Party

With regard to Complainant Jones's complaint, AATA has raised the question of whether the complainant qualifies as an "interested party" under the regulations. Under the regulations, 49 CFR Section 604.15(a), any "interested party" can file a complaint. The definition of "interested party" is any "individual, partnership, corporation, association, or public or private organization that has a financial interest which is adversely affected by the act or acts of a recipient regarding charter service." 49 CFR Section 604.5(j) Unfortunately, Complainant Jones did not provide any evidence regarding how he would be adversely affected financially from Respondent's alleged provision of illegal charter service. Therefore, since there is no evidence that Complainant Jones meets the definition of an "interested party," his complaint is dismissed because he lacks standing to file a complaint.

B. Shuttles

The charter regulations state that recipients of Federal financial assistance cannot provide charter service using federally funded equipment or facilities, unless one of the limited exceptions applies. In the absence of one of the limited exceptions, the recipients are prohibited from providing the service. 49 C.F.R. Section 604.9(a) Respondent is asserting that it is not providing charter service under the definition of charter under 49 C.F.R. Section 604.5, but rather is providing service which meets the definition of "public transportation."⁷

⁷ As part of Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the definition of "mass transportation" was changed to "public transportation." Section 3004(d)(7)

The regulations define charter service as the following:

transportation using buses or vans, funded under the Acts of a group of persons who pursuant to a common purpose, under a single contract, for a fixed charge for the vehicle or service, who have acquired the exclusive use of the vehicle or service in order to travel together under an itinerary either specified in advance or modified after leaving the place of origin. Includes incidental use of FTA funded equipment for the exclusive transportation of school students, personnel, and equipment. 49 C.F.R. § 605.5(e)

Thus, a determination needs to be made as to whether Respondent's service meets the definition of charter by examining the elements required for charter service. In order to qualify as charter service, the following questions need to be answered:

- a) Is this transportation service using buses or facilities funded with FTA money?
- b) Is the service for a common purpose?
- c) Is it under a single contract?
- d) Is it for a fixed charge for the vehicle or service?
- e) Is the exclusive use of the vehicles to travel together under an itinerary either specified in advance or modified after leaving the place of origin?

Complainant Tecumseh alleges that Respondent provided illegal charter service to the Art Fair and the Saline Celtic Festival (the "Festival"). Complainant Jones alleges that Respondent provided illegal charter service to University of Michigan (U of M) football games and graduation. While Respondent states that Complainant Tecumseh's complaint should be dismissed because it "lacks merit," FTA believes there is enough information to analyze the service and determine whether or not it constitutes charter service. The U of M service is very similar to the Art Fair and Festival service and although Jones lacked standing, FTA believes there is enough information in Respondent's response to make a determination regarding that service as well.

The transportation service provided for these events does use buses or facilities funded with FTA money. One could argue that the service for these events is for a common purpose, to attend the event in question. However, there is no allegation that the shuttles are under a single contract or for a fixed charge for the vehicle or service. Riders pay their own fares for the shuttle service, although the fare for the Festival is free. The shuttles are not for the exclusive use of the vehicles to travel together under an itinerary either specified in advance or modified after leaving the place of origin.

All four types of events, the Art Fair, the Festival, the U of M football games, and the U of M graduation are relatively infrequent events. Additionally, the shuttle service that Respondent provides for all four events is a similar type of service. The shuttles are advertised on AATA's website and in the Respondent's "Ride Guides." The service is "open door" and there is no allegation that anyone other than the Respondent controls the service. The shuttles do not meet the definition of charter under 49 CFR Section 604.5(e).

The shuttle services provided are for fairly infrequent events. FTA in the 1987 Charter Questions and Answers stated the following with regard to whether this type of service qualified as charter:

27. c. Service to regularly scheduled but relatively infrequent events (sporting events, annual festivals) that is open door, with the routes and schedules set by the grantee and with fares collected from individuals, whether or not the individual fares are subsidized by a donor?

Answer: No. Such service does not meet the charter criteria of being under a single contract, for a fixed charge, exclusive use, or with an itinerary controlled by a party other than the grantee. However, such services would appear to be excellent candidates for privatization since they may very well be self-supporting without the need for public subsidies. In accordance with UMTA's private enterprise policy, grantees should examine the interest and capability of the private sector in providing the service.

The events in question may be good candidates for private providers to either provide the service themselves or participate in providing the transportation along with AATA.

With regard to the other allegations in Complainant Tecumseh's complaint, such as service to the Briarwood Mall, the allegations are dismissed for lack of information or evidence.

C. Clinton Bell Party Store

Complainant Tecumseh makes a number of allegations in its second complaint regarding alleged illegal charter service by Respondent to the Clinton Bell Party Store. Respondent states that the complaint should be dismissed because it is "not without obvious merit." Under 49 CFR Section 604.15(b), the FTA can refer a matter for conciliation if the complaint is "not without obvious merit" and "it states grounds on which relief may be granted." *Id.* Although FTA has been liberal in the past with allowing complaints to proceed when there is not a tremendous amount of evidence, FTA agrees with Respondent in this case that the complaint lacks specificity or evidence and is full of allegations that are not appropriate for a charter complaint. The complaint in fact does lack "obvious merit." Nonetheless, Respondent has provided evidence demonstrating that none of its buses were in Clinton, MI on the date in question.⁸ Therefore, FTA dismisses Complainant Tecumseh's second charter complaint since it fails to include evidence demonstrating AATA was in violation of the charter regulations.

Finally, as a reminder to Complainant Tecumseh, the charter complaint process is an opportunity for each side to present evidence related to alleged illegal charter service and for the FTA to make a determination based on the evidence in the administrative record. Without evidence or clear allegations, complaints will be dismissed. Allegations regarding FTA's handling of complaints are not appropriate for inclusion in a charter complaint.

Conclusion

Based on all the information provided, FTA finds that the service Respondent is providing does not meet the definition of "charter." FTA strongly encourages AATA to work cooperatively with private providers to jointly provide service for events such as these in the future.

⁸ Attached to Respondent's response dated August 21, 2006, are dispatch logs showing where the buses were on July 17, 2006.

Finally, the charter regulation is currently the subject of a negotiated rulemaking. It is possible that a new charter regulation will modify the definition of charter such that some of the shuttle service AATA is currently providing might qualify as charter service in the future.

Remedy

Complainants have requested that Respondent immediately cease the charter operations at issue. FTA denies Complainants' request for the cease and desist order because Respondent is not providing illegal charter service pursuant to 49 C.F.R. Part 604. Complainant Tecumseh has requested that FTA order AATA to disgorge its proceeds acquired from the shuttle service. FTA denies this request based on the fact the service provided was public transportation.

Order

FTA finds that Respondent has not been providing impermissible charter service.

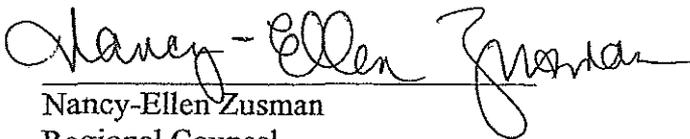
In accordance with 49 C.F.R. § 604.19, the losing party may appeal this decision within ten days of receipt of the decision. The appeal should be sent to James Simpson, Administrator, FTA, 400 Seventh Street, S.W., Room 9328, Washington, D.C. 20590.



Marisol Simon
Regional Administrator

4-12-07

Date



Nancy-Ellen Zusman
Regional Counsel

4/12/07

Date