CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 780765

HARBOR CRUISES, INC.
Appellant

v.

STATE CORPORATION COMMISSION
and HARBOR TOURS, INC.
Appellees

JOINT APPENDIX

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VIRGINIA: IN THE STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA AT RICHMOND

At the relation of the

State Corporation Commission

Apellee

v. Case No. SSW-19

Harbor Cruises, Inc.

Appellant.

NOTICE OF APPEAL

TO THE HONORABLE CLERK OF THE STATE CORPORATION COMMISSION:

PLEASE TAKE NOTICE that Harbor Cruises, Inc. does appeal from the Opinion and Final Order of the State Corporation Commission announced March 15, 1978, wherein the Commission issued a Limited Certificate of Convenience and Necessity for the carrying of charter parties by boat contrary to the letter and spirit of Title 56, Chapter 14.1 Code of Virginia, from which judgment Harbor Cruises, Inc. does note an Appeal, and further does hereby announce its intentions to apply to the Supreme Court of Virginia for a Writ of Error and Supersedeas.

HARBOR CRUISES, INC.

By Samuel Bradberry
Of Counsel

CERTIFICATE

I certify that a true copy of the foregoing Notice of Appeal was sent by U.S. Mail, postage paid, to Raymond H. Strople,

Esquire, Suite 201, Central Building, County and Court Street, Portsmouth, Virginia 23705, Counsel for Harbor Tours, Inc., this 12th day of April, 1978.

VIRGINIA: IN THE SUPREME COURT

STATE CORPORATION COMMISSION,

Appellee

v.

HARBOR CRUISES, INC.

Appellant

ASSIGNMENTS OF ERROR

TO THE HONORABLE JUDGES OF THE SUPREME COURT OF VIRGINIA:

Pursuant to the Clerk's certificate dated and in accordance with Rule 5:18 (i) Rules of the Supreme Court, your appellant who is aggrieved by the decision of the State Corporation Commission announced March 15, 1978, does respectfully assign as errors the following:

1. The Commission erred as a matter of law in issuing a Certificate of Public Convenience and Necessity to Harbor Tours, Inc. for the purpose of carrying charters over a restricted and specific route, such a certificate being inconsistent with the nature of a boat charter.

2. The Commission erred as a matter of law in ruling that

the point of origin for a charter party by boat is the location where the passengers paying for the charter are embarked and disembarked.

3. The Commission erred as a matter of law by unrealistically narrowing the meaning of "Charter" as applied to boat tours, the ruling of the Commission being contrary to generally accepted legal principals governing maritime charters.

For all of the foregoing reasons, the appellant does respectfully pray that the decision of the State Corporation Commission announced March 15, 1978, in the above styled case, be set aside or in lieu thereof that this matter be remanded to the State Corporation Commission for further hearing with regard to charter operations by tour boat operators.

HARBOR CRUISES, INC.

By James E. Bradberry
Of Counsel

James E. Bradberry
Counsel for Appellant
Moore, Weaver, Moore & Bradberry
13185 Warwick Boulevard
Newport News, Virginia 23602

C E R T I F I C A T E

I certify that a true copy of the foregoing Assignments of Error was sent by U.S. Mail, postage paid, to Denton Roberts, Esquire, Counsel for the appellee, State Corporation Commission, P. O. Box 1197, Richmond, Virginia, 23209, and Honorable J. Marshall

Coleman, Attorney General, Richmond, Virginia, 23219, and Raymond H. Strople, Esquire, Suite 201, Central Building, County and Court Street, Portsmouth, Virginia, 23705, and Paul M. Lipkin, Esquire, 304 Plaza One Building, Norfolk, Virginia, 23514

James E. Bradberry

James E. Bradberry

-7-9-78—15M (Thick).

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 15, 1978

APPLICATION OF

HARBOR TOURS, INC.

For Certificates of Public Convenience and Necessity pursuant to Chapter 14.1, Title 56 of the Code of Virginia

CASE NO. SSW-19
OPINION AND FINAL ORDER

On July 22, 1977, a public hearing was held before the State Corporation Commission in Richmond, Virginia, on the application of Harbor Tours, Inc. ("Harbor Tours" or "Applicant"). As set out in its application and supporting exhibits, Applicant seeks issuance of a certificate of public convenience and necessity pursuant to Chapter 14.1, Title 56 of the Code of Virginia. Raymond H. Strople appeared as counsel to the Applicant; James E. Bradberry appeared as counsel to Protestant Harbor Cruises, Inc.; and Wayne N. Smith appeared as counsel to the Commission.

POSITIONS OF PARTIES

Applicant is a Virginia corporation seeking the issuance of a certificate of public convenience and necessity pursuant to Chapter 14.1, Title 56 of the Code of Virginia. Predicated upon its application and the evidence in support thereof, Harbor Tours proposes to serve only special or charter parties by boat from the Elizabeth River Esplanade to points of interest in Hampton Roads and return to the point of origin.

The sole opposition to this application was voiced by Protestant Harbor Cruises, Inc., a certificated sightseeing carrier by boat serving Hampton and Norfolk. Harbor Cruises offered no evidence showing that the Applicant was incapable or unfit, or that the public did not need the proposed service. The Protestant contended instead that applicant could provide the proposed service under its certificates of public convenience and necessity granted by the Commission's orders of August 1, 1977, in cases SSW-17 and SSW-18.

The thrust of the Harbor Cruises' argument adopts the proposition that a special or charter party by boat, under the present Code, must travel "over regular routes to the point or points of interest named in the certificate and back to the point of origin." Thus conceding "one point of origin," Applicant nevertheless argues that one point of origin refers only to the point from which the "voyage" of the vessel - the subject of the charter contract - originates. In other words, the boat is leased for a "voyage" from its "origin point" as described in its certificate without regard to where the "lading" (passengers) are picked up.

The Commission does not appear ever to have adopted any such interpretation of "point of origin," nor does it appear that any carrier certificated or grandfathered under the Act has ever argued for Applicant's present contention.

While admitting the "Act" is not without ambiguities, even contradictions, §56-457.2 appears quite lucid in

describing the "certificate" issued by the Commission as authorizing the ". . . holder . . . to transport . . . special or charter parties from the point of origin . . . ." Reading the above in conjunction with the definition of special or charter party contained in §56-457.1(d), to wit: ". . . a group movement of persons transported under a single contract . . . for an agreed charge for such movement . . . ." it seems rather apparent that the law contemplates "transporting" only from one point - the "point of origin" as named in the certificate. This does not appear even to suggest that "transport" can commence anywhere but at the point of origin. The above Code section pointedly limits the authority of any certificate holder "to transport . . . from the point of origin . . . ." A certificate holder cannot be "transporting" from a point - any point - without people to transport. A vessel, even though under charter, is transporting nothing while empty. Had the General Assembly intended to permit more than one origin point from which passengers could be "transported," it would have been quite simple to have so provided. We therefore reject Protestant Harbor Cruises' argument.

LEGAL BASIS OF APPLICATION

A special or charter party by boat is defined in §56-457.1(d) of the Code as ". . . a group movement of persons transported under a single contract made with one person for an agreed charge for such movement regardless of the number of persons transported and in connection with which the fare or tariff is set for (*SIC*) determined with regard to the

number of such persons to be transported and not on an individual basis." Applicant does not propose to provide service from the Elizabeth River Esplanade as a sightseeing carrier by boat as defined in §56-457.1(c) of the Code.

This application raises the question of whether a person may provide special or charter party service by boat from a point of origin without also offering sightseeing carrier by boat service. The Code provisions do not provide a clear answer to this question. Some provisions of Chapter 14.1, Title 56 of the Code arguably suggest an intent that sightseeing carrier by boat service and special or charter party by boat service are to be offered jointly (see §56-457.2). The remaining sections, however, suggest that one or the other service, but not necessarily both, may be offered. We find that accepted transportation regulation principals do not require the offering of both sightseeing and special or charter party by boat services as part of an operation from one point of origin and that the Code supports this finding.

EVIDENCE IN SUPPORT OF APPLICATION

One cannot be authorized to offer a transportation service for which he has not applied and for which he has shown no public need. The evidence in this case supports a finding only that the public convenience and necessity requires special or charter party service from the Elizabeth River Esplanade. This evidence included testimony by a state and a local official supporting the need for special or charter party service by boat from the proposed point of

origin. According to the evidence, many convention and other groups using the Omni International Hotel adjacent to the Esplanade could be expected to utilize the proposed service.

Applicant also based its case, in part, upon the experience of its predecessor, Walter M. McDowell who traded as Norfolk-Portsmouth Harbor Tours. During 1976 and 1977, Norfolk-Portsmouth Harbor Tours provided service as a special or charter party by boat from the proposed point of origin on a number of occasions. Norfolk-Portsmouth Harbor Tours claims to have been so operating pursuant to Code §56-457.9 which purports to "grandfather" operations commenced on or before January 1, 1976. However, the evidence before us shows the foregoing operation to have commenced subsequent to that statutory date. This would make the operation unlawful.

We do not believe that an applicant should be permitted to base its case for a certificate of public convenience and necessity upon unlawful operations. However, Applicant has presented the evidence of local officials showing that the need for service does exist. On the basis of this evidence, we find that the public convenience and necessity requires the proposed service by a special or charter party by boat.

On the basis of the evidence presented by Harbor Tours, we find that it can provide economical, comfortable, and convenient transportation. Applicant is fit and willing to provide the service to the public, and it has suitable

equipment. Therefore, IT IS ORDERED that the application of Harbor Tours, Inc. for a certificate of public convenience and necessity pursuant to Chapter 14.1 of Title 56 of the Code of Virginia over the following described route be, and the same is hereby granted:

> From the Elizabeth River Esplanade, Norfolk, thence south on the Elizabeth River to the Belt Line Railroad bridge crossing at Norfolk Naval Shipyard; thence north on the Elizabeth River past the mouth of the Lafayette River into Hampton Roads, passing the Norfolk and Western Railway Company Coal Piers at Lamberts Point, Craney Island U.S. Navy Fuel Depot, Norfolk International Terminals, U.S. Navy Destroyer and Submarine Piers, and the U.S. Naval Operating Base, Norfolk, as far as Naval Operating Base Pier 12 and return to the point of origin.
>
> RESTRICTION: This Certificate shall authorize the holder to transport from this point of origin only a special or charter party by boat as defined in §56-457.1(d) of the Code of Virginia.

IT IS FURTHER ORDERED that an appropriate certificate be issued to Harbor Tours, Inc. upon satisfaction of all requirements for operation fixed by law.

AN ATTESTED COPY hereof shall be mailed to Raymond H. Strople, Esquire, Suite 201 Central Building, County at Court Street, Portsmouth, Virginia 23705; James E. Bradberry, Esquire, Moore, Weaver, Moore & Bradberry, P.O. Box 2100, Newport News, Virginia 23602.

A True Copy
Teste: William C. Young
Clerk of State Corporation Commission

Q All right, thank you.

MR. SMITH: Thank you. I have no further questions.

CHAIRMAN SHANNON: Mr. Bradberry?

CROSS EXAMINATION

BY MR. BRADBERRY

Q You too are becoming a veteran of these hearings. You are familiar with the operation of Harbor Cruises out of Willoughby Bay?

A Yes, sir.

Q You are familiar, basically, with our scope and nature of operation?

A Yes, sir.

Q At the present time, the dock at Salt Pier, which is owned by the City of Norfolk, is used on a daily basis for the regular 10, 12, 2, 4, and 6 tours conducted by Mr. McDowell, is it not?

A Right.

Q Who pays for the maintenance on that dock?

A The City.

Q Who pays rent on that dock?

A No one.

Q So Mr. McDowell, basically uses a publicly owned facility at no cost to him during the season to run his regular business operations?

A Right.

Q Now, the Omni Dock is likewise owned by the City and maintained totally by the City?

A Right.

Q Has the City of Norfolk not gone to a certificate or permit basis for the use of the dock at Omni, if you are going to come in and pick up a charter party?

A Not yet; no we haven't.

Q There has been some discussion of going to a permanent basis for the dock, has it not?

A Yes.

Q So what would happen would be if I had a charter for Harbor Cruise before the day of the Charter, I would contact the City of Norfolk and say we have a charter that is going to run from eight o'clock to eleven o'clock on Thursday night, and I would then come to the City, pay a fee, get a permit, and literally

get the right to use the dock that particular evening for the purpose of picking up the charter?

A At this point, Mr. Bradberry, you would not pay a fee, but you would get permission to use the dock, yes, sir.

Q All right. And I assume that that is the purpose of the City maintaining some control over the usage of that facility.

A That is right.

Q Now, if Captain McDowell were to call and say he would like to use the dock for charter purpose, the same courtesy would be granted to Captain McDowell, as would be granted us, would it not?

A Yes, sir.

Q And there would never, at any time, that you could reasonably foresee, be a reason why Captain McDowell or myself, or my Company, or another charter carrier could not use that dock, would there?

A We would encourage it.

Q In fact, it would be the position of the City, would it not, to encourage as many different carriers as the public seeks to use or as are serving the public?

A Absolutely.

Q Do you consider the use of vessels for charters to be an aspect of tourism which promotes the tourist industry?

A One which we haven't even tapped.

Q And I would assume that based on your pleasure and satisfaction with the service that Captain McDowell has provided, that you would like to see him maintain his operation at Portsmouth, and --

A Yes, sir; without any question.

Q And I assume you would like to see him do charter work for the Omni Motel?

A Yes, sir.

Q I also assume you have no objection to us doing the charter work from the Omni Motel, since it all helps the area that you come from?

A Very much so.

MR. BRADBERRY: Thank you. I don't have anything further.

CHAIRMAN SHANNON: Any redirect?

MR. STROPLE: No, sir.

CHARLES H. NELSON, JR., a witness called by and on behalf of Harbor Tours, Inc., having first been duly sworn by the Bailiff, testified as follows:

DIRECT EXAMINATION

BY MR. STROPLE:

Q State your name, sir.

A Charles H. Nelson, Jr.

Q Who do you work for, Mr. Nelson?

A Assistant Director of Public Relations for the Virginia Port Authority.

Q All right, sir. Have you in your capacity had occasion to deal with Captain McDowell's tour service?

A Many times.

Q Could you explain in what capacity and how the Port Authority uses his service?

A Most frequently we have used Captain McDowell's service for the Azalea Festival, 1976 and 1977. Both times we embarked two cruises, one the dignataries and the other the Queen and her court, took them on a harbor tour. In the 1976 Virginia Conference on World Trade, we

embarked approximately one hundred five people from all over the State and several from out of state.

On other occasions we have taken groups of shippers from throughout the United States, members of the Transportation industry who are staying at the Omni. We have had special tours on the Carrie B and all of these tours embarked at the Omni for convenience.

Q What would be one of the purposes you would take the shippers out on a tour boat for?

A Well, the State of Virginia owns five general cargo marine terminals in Hampton Roads and we have two choices of showing shippers these marvelous facilities. One is to charter a bus and take them by bus, which takes all day because there is a wide spread around the perimeter of the harbor there. The other choice is to charter the Carrie B and take them by water.

And during that tour we can assist the Captain in narrating the entire tour, point out the various facilities, their location, their frequency of use by international shipping. We can actually show them the terminals at work, and we can do it in about one-fifth of the time it would take us by land.

Q And how have you found Captain McDowell's

service when you have used his facilities?

A We find the boat immaculate. We find the crew from the Captain right on down to be exceptionally well doctrinated in the harbor. They are neat. They are clean. The narration is excellent.

We find it an outstanding service as far as we are concerned.

CHAIRMAN SHANNON: What points of origin did you generally operate from, Mr. Nelson?

WITNESS NELSON: At times, sir, we have taken people aboard the Carrie B at the regular pier, at the foot of West Main Street.

CHAIRMAN SHANNON: The foot of West Main Street, Norfolk?

WITNESS NELSON: Yes, sir. But almost exclusively when we have large groups they will stay at the Omni and we will go aboard the boat right at the Omni Pier.

CHAIRMAN SHANNON: But you would desire to have him authorized to move from the foot of West Main Street as well as the Omni?

WITNESS NELSON: Yes, sir.

CHAIRMAN SHANNON: Now when I say Captain McDowell, I will refer to him, you would still use the service of the corporation which is owned by Captain McDowell; would you not?

WITNESS NELSON: Yes, sir. We would use the service regardless of where we had to go to get it.

But for convenience purporses, the Omni, on special occasions, is excellent. And during the Azalea Festival, because of security for the Queen and so forth, and because the group does stay at the Omni, it is particularly important then.

COMMISSIONER BRADSHAW: All those trips from the Omni are charter parties, right?

WITNESS NELSON: Yes, sir. They are special groups.

CHAIRMAN SHANNON: Go ahead, Mr. Strople.

MR. STROPLE: I don't have any further

piers and then up to Lambert's Point coal piers, during which time the narration of the tour is pointing out the various points of interest.

And we pass by Craney Island which we consider to be of major interest because it is the site of the disposal of all the spoils in the harbor. Then, we go up past Craney Island to Norfolk International Terminals which is one of the world's largest container terminals, and we are very proud of it. And from there up past Sewell's Point and then up to the Naval Station, the Destroyer and Submarine Piers, the Naval Supply Depot, up to Pier 12 and then he turns around and comes back.

CHAIRMAN SHANNON: But your testimony here is supporting for the charter service as a charter carrier rather than as a sight-seeing carrier because you would not take your people out on a sight-seeing tour to view these facilities would you?

WITNESS NELSON: Yes, sir. But I, myself, have gone on the tour many times, other than the occasions which I have spoken of.

CROSS EXAMINATION

BY MR. BRADBERRY:

Q Mr. Nelson, what is your position with the Virginia Port Authority?

A Assistant Director of Public Relations.

Q Mr. Nelson, you deal, of course, with vessels all the time that are basically under charter, don't you, in the Port Authority?

A Yes, sir.

Q Everything that comes into the Port Authority has a charter; right? And, if during the Azalea Festival, for whatever reason you decided that the Queen and court would stay at the Holiday Inn complex which has the marina in the Portsmouth side, and you wished to run a tour for the Queen and her court you would have hesitation in calling Captain McDowell and saying: Would you pick us up at Holiday Marina, would you?

A No, sir.

Q For convenience.

A I think the point here, though, sir, is we don't arrange the schedule. The City of Norfolk does.

Q All right. The City of Norfolk. But if

you were arranging the schedule, whoever is responsible for it, I mean it wouldn't make any difference to you whether it was the Omni, the Holiday Marina, some other place, but when the boat is chartered you expect to use it for the convenience for the party chartering the vessel don't you?

A Yes, sir.

Q To the best of your knowledge, has Captain McDowell ever had a pick-up point at Holiday Marina?

A Not in his dealing with us, sir.

Q All right. Does he regularly pick up passengers for his noon or two o'clock, four o'clock or six o'clock tour at the Omni Hotel to the best of your knowledge?

A No, sir.

Q You've always done that down at the foot of High Street haven't you?

A Yes, sir.

Q All right, sir. So that when you go to the Omni Hotel, or when he comes to the Omni Hotel to pick up he is there for the express convenience of the persons renting his vessel and his services; is that not correct?

A This is true.

Q And this is the nature of the charter boat business, is it not?

A Yes, sir.

Q The carrier who has the vessel goes where the person who rents the vessel directs for the convenience and service of the person leasing the vessel?

A This is true.

MR. BRADBERRY: All right. I don't have any further questions.

CHAIRMAN SHANNON: Any redirect, Mr. Strople?

MR. STROPLE: No, sir.

CHAIRMAN SHANNON: All right. You may stand down, Mr. Nelson. Thank you very much.

I beg your pardon, Mr. Newton. Oh, yes. Nelson.

* * * * * * * * * *

WITNESS STOOD ASIDE

Q. What hours of the day do you run that cruise?

A Ten o'clock each morning except Saturday and Sunday, twelve daily, two and four.

Q All right. What cruise do you run at night?

A Six p.m. when we take the Hampton Roads' tour at that time and cover the Naval Base as well as the Submarine Piers.

Q All right. Does this particular brochure show here that the tours your boat has at the present time, the Carrie B, during the day?

A Yes. This is a '73 brochure but it's the same.

Q Let me see if I can find a '77. Yes. How about this one here?

CHAIRMAN SHANNON: All right. It will be identified as Exhibit 6.

WITNESS McDOWELL: It's the same tour.

BY MR. STROPLE: (Continuing)

Q Now, you have incorporated and formed a

corporation, Harbor Tours, Inc.; is that correct?

A Yes.

Q At the present time you are the sole stock owner in that corporation; is that right?

A Yes.

Q Do you plan to continue the same type of service that you have as an individual as with the corporation?

A The same, or better.

Q Captain McDowell, have you kept a record of passengers that you've carried from Norfolk and Portsmouth from June 1977 until July 11, 1977?

A Yes, I did.

CHAIRMAN SHANNON: That will be identified as Exhibit 7.

BY MR. STROPLE: (Continuing)

Q I show you this exhibit. Does that show you the number of passengers you carried each day either from Norfolk or Portsmouth on that day?

A Yes, that is right.

five grand apiece, or he is operating within a reasonable interpretation of the Statute.

CHAIRMAN SHANNON: I understand that.

MR. BRADBERRY: I will say he has operated within a reasonable --

CHAIRMAN SHANNON: Your client is in the same situation.

MR. BRADBERRY: Yes, sir; yes, sir.

COMMISSIONER BRADSHAW: You are not seeking exclusive charter rights at the Omni hotel, are you?

WITNESS McDOWELL: No.

COMMISSIONER BRADSHAW: Okay.

WITNESS McDOWELL: We cannot. I don't think we will ever be able to pick up passengers there unless they are staying at the Omni as a group, or singly, either one. Because they do not have parking space for any people to come in there to take a tour from the Omni.

COMMISSIONER BRADSHAW: Right. Do you pick up charter parties now at any other spot other than Omni?

WITNESS McDOWELL: No.

COMMISSIONER BRADSHAW: Is there any other spot on your authorized territory to stop and pick up people?

WITNESS McDOWELL: No, we don't have any and don't expect to ask for any because to be safe loading a boat, all you need is a dock that you can load at, and it was brought up as to whether we pick up at the Holiday Inn.

The Holiday Inn does not have any dock space. It would not be safe to stop there and pick up passengers anyway.

COMMISSIONER BRADSHAW: But if they built a pier later?

WITNESS McDOWELL: If they built a pier later --

COMMISSIONER BRADSHAW: And wanted you to come over there, you feel like you could go over on your Charter party.

WITNESS McDOWELL: Then I would be back here to get authority to do that. Just like I am now for the Omni.

CHAIRMAN SHANNON: Go ahead.

BY MR. STROPLE

A Yes.

Q And a speaker system?

A Yes.

Q Have you ever had any accident in the operation of your boat since you have been operating, Captain McDowell?

A No, we haven't.

Q Has there ever been any claims made against you?

A There was one claim filed against me in the City. Some woman said she fell as she got off the dock onto the street, and she sued the City and me, and it was thrown out of court because she didn't even say anything about it until two weeks later.

Q But you have never had any boating accidents yourself?

A No.

Q And your Application at the Omni is solely for the purpose of seeking the pick-up of charter groups?

A It is for the convenience of the Omni, the City, and the Port Authority. They are the ones that have chartered the boat.

Q But you don't intend to make this a stopping point on a regular basis, an additional stopping point on your route, is that correct?

A No.

Q How far is the Omni, the dock -- the Omni from the dock where you stop right now on West Main Street?

A It is about three or three and a half blocks. It is on the same tract of land.

CHAIRMAN SHANNON: Do you have any charter parties of the Omni lined up in the future?

WITNESS McDOWELL: Yes, we do.

BY MR. STROPLE

Q I believe I have one other exhibit. Have you prepared a map showing where your routes will be?

A Yes.

16

17 BY MR. BRADBERRY: (Continuing)

18 Q Now, Mr. McDowell, when you went to the

19 Omni dock during the year 1976 to pick up charters you

20 did not feel you were breaking the law did you?

21 A Well, in '76 I was not breaking the law.

22 Q All right. Did you feel you were breaking

23 the law in 1977 when you went to pick up these thirteen

24 tours?

A Not really breaking the law.

MR. STROPLE: I'm not sure that is really relevant, is it? It's a matter of law for the members of the Commission and anyone else to interpret, not Captain McDowell.

CHAIRMAN SHANNON: Well, what Captain McDowell did as an individual I don't think is in issue before us here, because suppose we have to consider the fitness of the corporation and the corporation is made up officers, so I'm going to go ahead and let him ask these questions.

MR. BRADBERRY: Your Honor, if I may, I would also ask the question for this reason. I think the law needs to be interpreted in light of the common usage in the particular industrial trade to which the law is to be applied, and the contemplation of the parties that would normally be regulated. And that's why I'm

asking it.

COMMISSIONER BRADSHAW: I don't think he is the proper one to interpret the law.

MR. BRADBERRY: Well, Your Honor, I would agree that the duty evolves upon the Court to interpret the law as it is to be applied. But I don't think that the Court can ever reasonably ignore common usage and understanding.

I mean, this is an accepted part of the interpretation of the law.

COMMISSIONER BRADSHAW: All right.

BY MR. BRADBERRY: (Continuing)

Q Now, Mr. McDowell, in 1977 when you went to pick up those thirteen parties did you think you were breaking the law when you went to pick them up?

A No. I didn't.

Q All right. And on January 1st, 1976 you had never picked up anybody on a charter at the Omni Hotel had you?

A It wasn't there.

TIMOTHY L. JONES, a witness called by and on behalf of the Protestant, having previously been sworn, further testifies as follows:

DIRECT EXAMINATION

BY MR. BRADBERRY:

Q You are the same Tim Jones who was subpoenaed or who was called to the witness stand by the Applicant?

A Yes, sir.

Q All right. Mr. Jones, does the City of Norfolk have a position with any exclusive rights which may be granted with regard to the Omni International Dock?

A If the application of Captain McDowell in any way implies exclusiveness, the City is categorically opposed to it.

COMMISSIONER BRADSHAW: I think he testified, or implied that earlier, that you wanted them all to come in there.

MR. BRADBERRY: All right. I don't

20 MR. SMITH: It appears that the General
21 Assembly may have been trying to accomplish
22 two things in one statute. As you know, we
23 have a sightseeing statute by bus. This
24 covers the Barton case that was in here the

first of the week, the fellow that wanted to pick up around Charlottesville. You have that statute.

You also have the charter party statute by bus. We have the A carriers that can operate all round the state; the B carriers, limited portions. I think what Mr. Bradberry is proposing is that this Commission should treat the charter work the way we treat the charter party by bus.

In other words, you have an area of origin, be it county seat or however much the Commission grants, and then you can go anywhere i n the State of Virginia.

COMMISSIONER BRADSHAW: I am inclined to agree with him.

VIRGINIA: IN THE STATE CORPORATION COMMISSION

RE: APPLICATION OF HARBOR CRUISES, INC. FOR PERMISSION TO OPERATE CHARTERS FROM THE OMNI INTERNATIONAL HOTEL, SSW-19

I S S U E

SPECIAL OR CHARTER PARTIES BY BOAT ARE NOT LIMITED TO TRANSPORTING PASSENGERS ONLY FROM THE POINT OF ORIGIN SET FORTH IN THE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY SO LONG AS ALL CHARTERS EMINATE FROM THE POINT OF ORIGIN CONTAINED THEREIN.

D I S C U S S I O N

The Code of Virginia provides that a "special or charter party by boat shall mean a group movement of persons transported under a single contract made with one person for an agreed charge for such movement regardless of the number of persons transported." VA. CODE ANN. §56-457.1. It is further provided that a certificate of public convenience and necessity shall authorize the holder named therein to transport special or charter parties from the point of origin named in the certificate over regular routes to the point or points of interest named in the certificate and back to the point of origin. VA. CODE ANN. §56-457.2. The statute does not specifically limit the embarking and/or debarking of passengers only at the one point of origin.

A charter party has long been considered to be an agreement by indenture whereby the owners of a ship and the proposed charterers covenant with each other that such a ship shall take on such a lading

and transport the same to a particular place in consideration of which the charterer is to pay a specified sum. ASHLEY v. CORNWELL, 16 Va. (2 Munf.) 268 (1811). It has been long established that it is essential to the nature of a charter party that the whole hire of the vessel should be embraced. ASHLEY v. CORNWELL, supra. As a result, the construction of a charter party contract must be liberal, agreeable to the intention of the parties involved and the usage of trade in general and of the particular trade to which the contract relates. BROWN v. RALSTON, 25 Va. (4 Rand.) 504 (1826).

The general rules as to the construction of contracts are applicable to the construction of charter parties. PENNSYLVANIA R. CO. v. MCALLISTER BROS. INC., 137 F. 2d 788 (D.C.N.Y., 1956), affd. 240 F. 2d 423 (C.A. 1957); MICHAEL v. S.S. THANASIS, 311 F. Supp. 170 (D.C. Cal. 1970); MOORE-MCCORMACK LINES, INC. v. U.S., 338 F. Supp. 1061 (D.C. N.Y. 1971). In construing such contracts, the intention of the parties controls as to the law governing the interpretation of charter parties. MANCHESTER LINERS v. VIRGINIA-CAROLINA CHEMICAL CO., 194 F. 463 (D.C.N.C. 1911), affd. 204 F. 564 (1915); IN RE INTERNATIONAL MARINE DEVELOPMENT CORP., 328 F. Supp. 1316 (D.C. Miss. 1970), affd., 451 F. 2d 763 (1971), affd. 463 F. 2d 238 (1972). Thus, the intention of the parties at the time of the making of the contract, as evidenced by the language they have employed, determines the operation of the charter.

The Terms and Conditions of the Charter Contract, attached as Exhibit 1, establish that the agreement between the parties, owner and charterer respectively, is essentially one of letting and hiring. The terms of the charter party control with respect not only to the amount to be paid by the charterer of the vessel, B. H. INC. v.

ANTHONY M. MEYERSTEIN, INC , 149 F. Supp. 219 (D.C.N.Y. 1957), but also the duration of the voyage as well. The Charter Contract clearly delineates the times for beginning and terminating the voyage in subheading #1; the point of commencement and the cost payable in advance are distinctly set out in subheading #2. Under a time charter, the time when hire begins or ends generally depends on the provisions of the charter relative thereto. NORTH ATLANTIC DREDGING CO v. MCALLISTER STEAMBOAT CO., 202 F. 181 (1915); MARINE EQUIPMENT, INC. v. MARTIN, 184 F. Supp. 111 (D.C.la 1960). Except as its meaning may be restricted by other provisions of the charter party, the term "voyage" has been long established as referring to the whole time during which the vessel is engaged in performing the contract contained in the charter party. THE BUCKINGHAM, 129 F.975 (D.C.pa. 1904). There is even some authority that the preliminary transit to the port of loading is part of the voyage, having been held so under the language of particular charters. THE BUCKINGHAM, supra. Consequently, where a vessel has actually and in fact left her point with the manifest intent to fulfill the contract, it can be said that her voyage has begun.

C O N C L U S I O N

As long as all special or charter parties eminate from the point of origin contained in their certificate of public convenience and necessity, the charters are not specifically limited by statute to transporting passengers only from that point of origin. The intention of the parties controls the time when hire begins and the amount thereof. Since Exhibit 1 evidences the intention of the owner and charterer to let and hire the vessel from the point of origin

contained in the certificate of public convenience and necessity, the charter party cannot be precluded from receiving and discharging passengers from other points of interest named in the certificate.

Therefore, Harbor Tours, Inc. has the right, incident to a Certificate of Public Convenience and Necessity allowing the conduct of water-born tours from Norfolk and Portsmouth, to conduct charters from Norfolk and Portsmouth, and to embark and disembark passengers at places other than the points of origin specified in the Certificate during the course of the charter.

HARBOR CRUISES, INC.

BY_____
Of Counsel

PATRIOT LINES NEWPORT NEWS HARBOR CRUISES, INC.
JEFFERSON AVE. at 12TH ST., NEWPORT NEWS, VA. 23607 - PHONE 244-2424

This Charter Agreement, made at Newport News, Virginia, on _____ _____, by and between Harbor Cruises, Inc., hereinafter referred to OWNER, and _____, party of the second part, hereinter referred to as the CHARTERER, is set forth to establish the terms and ditions for the chartering, by the party of the second part of the motor sel "American Patriot", hereinafter referred to as VESSEL:

1. OWNER agrees to let and CHARTERER agrees to hire the VESSEL for voyage beginning at _____ a.m./p.m. on _____, and minating at _____ a.m./p.m. on _____.

2. Said Charter shall commence from the dock of Harbor Cruises, Inc., 12th Street, Newport News, Virginia. The cost of said Charter shall be _____, payable in advance as follows:

(A) CHARTERER shall pay $_____ deposit upon engaging d VESSEL for charter.

(B) CHARTERER shall pay the remaining charter fee on the day the rter is to begin prior to the time said VESSEL shall leave aforesaid dock.

(C) CHARTERER shall be entitled to cancel this contract and reve his deposit back in full if done thirty or more days before the scheduled rter.

(D) Any cancellation which is necessitated by acts of God, fire, od, natural disaster, inclement weather, which, in the opinion of the OWNER, ld make operation of said VESSEL hazardous and cause passengers on board to endangered, and any other extraordinary circumstances beyond the control of ER or CHARTERER shall result in a full refund to CHARTERER of any deposits, ardless of when it is necessary to effect a cancellation of said voyage.

3. OWNER warranties that the ship shall be, at all times, tight, unch, strong and, in every way, fit for the charter purpose intended by RTERER.

4. It is understood that the purpose for which the VESSEL shall be rtered on a daily basis is as a private party boat, taking daylight and ning excursions on the waters of Hampton Roads, James River, Elizabeth River, pton River, and other protected areas in the immediate vicinity.

5. Charter fee set forth in Paragraph 2 above shall include for purpose of this voyage the following:

Boat for three hours for one hundred people.....
Additional people up to forty six.....
Each Additional Hour.....
Bar Service.....
Music.....
Other.....

TOTAL _____

This contract is entered into this _____ day of _____, 197

_____
OWNER

_____
CHARTERER