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Record No. 4642

PETITION FOR WRIT OF MANDAMUS

In the
Supreme Court of Appeals of Virginia
at Richmond

J. LINDSAY ALMOND, JR., ATTORNEY
GENERAL OF VIRGINIA

v.

SIDNEY C. DAY, JR., COMPTROLLER
OF VIRGINIA

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

199VA1

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 4642

VIRGINIA:

In the Supreme Court of Appeals held at the Masonic Building in the City of Staunton on Tuesday the 4th day of September, 1956.

J. LINDSAY ALMOND, JR., ATTORNEY GENERAL OF
VIRGINIA, Petitioner,

against

SIDNEY C. DAY, JR., COMPTROLLER OF VIRGINIA,
Respondent.

Upon a Petition for Writ of Mandamus

This day came the Attorney General of Virginia and presented to the Court a petition praying that a Writ of Mandamus do forthwith issue requiring and compelling Sidney C. Day, Jr., Comptroller of Virginia, to issue proper warrants upon the State Treasurer for payment of such amounts as may be authorized by the vouchers of the State Highway Commission pursuant to the provisions of the State Revenue Bond Act, Code of Virginia of 1950, Sections 33-227 to 33-255, inclusive, as amended by Chapter 319 of the Acts of Assembly of 1954.

And the petitioner further prays that the said Sidney C. Day, Jr., Comptroller of Virginia, be made a party defendant to this petition and be required to answer same.

And it appearing to the Court that a copy of the notice of this application and of said petition have been duly served upon the said respondent, it is ordered that the cause be docketed; that George D. Gibson, Esquire, be, and he is hereby, appointed to represent the said respondent; that depositions, if desired by either party, be taken and filed with the Clerk on or before October 1, 1956; that the record be printed; that the petitioner file with the Clerk 25 copies of his printed brief on or before October 22, 1956; that the respondent file with the Clerk 25 printed copies of his brief on or before November 12, 1956; and this cause is continued for further consideration by the Court.

RECORD

* * * * *

NOTICE.

To the Honorable Sidney C. Day, Jr., Comptroller of Virginia:

Take notice that on the 3rd day of September, 1956, at 9:30 A. M., or as soon thereafter as I may be heard, the undersigned will make application to the Supreme Court of Appeals of Virginia at Staunton, for a writ of mandamus directing you to issue warrants upon the State Treasurer for payment of such amounts as may be authorized by vouchers of the State Highway Commission for cost and expenditures incurred in the acquisition and maintenance of bus facilities necessary for the transportation of passengers through or over the Hampton Roads Crossing Project as provided by the terms of the State Revenue Bond Act, as amended by Chapter 319 of the Acts of Assembly of 1954.

J. LINDSAY ALMOND, JR.
Attorney General of Virginia.

Service of this Notice, together with a copy of the Petition for a writ of mandamus attached thereto, is hereby acknowledged on this 17th day of August, 1956.

SIDNEY C. DAY, JR.
State Comptroller.

* * * * *

Rec'd 8-27-56. \$1.50 pd.

A. L. L.

PETITION FOR WRIT OF MANDAMUS.

Your Petitioner, J. Lindsay Almond, Jr., Attorney General of Virginia, by this petition for a writ of mandamus, respectfully represents unto this Court the following:

1. By virtue of the State Revenue Bond Act (Code of Virginia of 1950, Sections 33-227 to 33-255, inclusive), as amended by Chapter 319 of the Acts of Assembly of 1954, the State Highway Commission is authorized and empowered to construct as a Revenue Bond Project the Hampton Roads Crossing Project, from a point or points in the Cities of Newport News, Hampton or Warwick on the northwest shore of Hampton Roads, across Hampton Roads to a point or points in the City of Norfolk or in the County of Norfolk on the southeast shore of Hampton Roads.

2. By Chapter 319 of the Acts of Assembly of 1954, the State Highway Commission is authorized to include in the aforesaid Project bus facilities for the transportation of passengers through or over such Project if the Commission should determine to acquire such facilities and provide such service.

3. By Section 702 of the Trust Indenture between the State Highway Commission and the National Bank of Commerce of Norfolk as Trustee, dated September 1, 1954, the State Highway Commission covenanted to either

“(a) acquire bus facilities in accordance with the plan therefor which shall have been approved by the Consulting Engineers and that such bus facilities will be available for the transportation of passengers through or over such Project not later than the opening of the Project for traffic, or (b) enter into a contract or contracts for the operation of bus

facilities by an independent operator for the transportation of such passengers in accordance with the plan therefor which shall have been approved by the Consulting Engineers; * * *.”

Copy of such Trust Indenture is attached hereto as a part of this petition, being designated as Exhibit No. 1.

4. On August 8, 1956, the Honorable Sidney C. Day, Jr., Comptroller of Virginia, notified your Petitioner, in writing, that he entertains some doubt as to the constitutionality of the statutory provisions authorizing the State Highway Commission to provide bus facilities for the transportation of passengers through or over the Hampton Roads Crossing Project as contemplated, and that he will refuse to honor the vouchers submitted for any cost or expenditure made by the State Highway Commission for such purpose until there has been an adjudication by the Supreme Court of Appeals of Virginia as to the validity of the statutory provisions above mentioned. A copy of the letter of notification is attached hereto as a part of this petition, being designated as Exhibit No. 2.

5. Your Petitioner represents to this Court that such notification by the Comptroller of Virginia to your Petitioner constitutes sufficient ground for this Court to exercise jurisdiction in this case and resolve the question presented by this petition, such jurisdiction being expressly conferred in Section 8-714 of the Code of Virginia of 1950, as amended.

6. Your Petitioner believes, and so avers, that the Comptroller of Virginia has questioned the constitutionality of the statutory provisions referred to hereinabove in the belief that such enactments are violative of the prohibition of Section 185 of the Virginia Constitution that forbids the State to “become a party to or become interested in any work of internal improvement.”

7. Your Petitioner avers that the acquisition of bus facilities for the transportation of passengers through or over the Hampton Roads Crossing Project as contemplated by the State Highway Commission is in conformity with the State Revenue Bond Act as amended by Chapter 319 of the Acts of Assembly of 1954, and that such Act is a valid enactment of the General Assembly of Virginia; that such Act is not in violation of Section 185 of the Virginia Constitution; that the bus facilities to be provided by the State Highway Commission is not an undertaking by the State in which it becomes a party to or becomes interested in any work of internal improvement so as to bring the operation within the purview of the inhibition of Section 185 of the Virginia Constitution.

Wherefore, for the reasons stated herein, your Petitioner files this petition and prays that this Honorable Court will adjudge and decree the provision of the State Revenue Bond Act, as amended by Chapter 319 of the Acts of Assembly of 1954, authorizing the State Highway Commission to acquire bus facilities and provide service for the transportation of passengers through or over the Hampton Roads Crossing Project, as contemplated, is a valid enactment of the General Assembly of Virginia, and is not in violation of Section 185 of the Virginia Constitution; and your Petitioner further prays that the said Sidney C. Day, Jr., Comptroller of Virginia, be made a party defendant to this petition and be required to answer the same; that a writ of mandamus be issued by this Honorable Court directed to the said defendant, Sidney C. Day, Jr., State Comptroller, requiring him to issue warrants upon the State Treasurer for payment of such amounts as may be authorized by the vouchers of the State Highway Commission, pursuant to the provisions of the State Revenue Bond Act.

And your Petitioner will ever pray, etc.

J. LINDSAY ALMOND, JR.
Attorney General of Virginia.

* * * * *

This is to certify that a copy of the foregoing petition was served upon Sidney C. Day, Jr., Comptroller of Virginia, at his office this 17th day of August, 1956.

FRANCIS C. LEE
Assistant Attorney General of Virginia.

This day appeared before me Francis C. Lee and on oath stated that he is an Assistant Attorney General of Virginia and that the statements in the foregoing Petition are true to his knowledge and belief.

My commission expires: July 19, 1959.

August 17, 1956.

NERHEA S. EVANS
Notary Public.

Exhibit No. I—Trust Indenture (not printed).

EXHIBIT NO. 2.

COMMONWEALTH OF VIRGINIA.

Office of the Comptroller
P. O. Box 6-N
Richmond 15

Sidney C. Day, Jr.
Comptroller
C. P. Miller, Jr.
Asst. Comptroller

August 8, 1956.

Honorable J. Lindsay Almond, Jr.
Attorney General of Virginia
Richmond, Virginia

My dear Judge Almond:

The State Highway Commission contemplates the acquisition of land, buses and other facilities necessary to provide for transportation of passengers through or over the Hampton Roads Bridge-Tunnel Crossing Project as authorized by Title 33, Chapter 3. Article 8 of the Code of Virginia of 1950 as amended (State Revenue Bond Act). I have been requested to advise the State Highway Commission whether or not vouchers for such expenditures will be honored when presented for payment from the State Treasury pursuant to the provisions of the State Revenue Bond Act.

I entertain some doubt as to the constitutionality of the statutory provisions authorizing the State Highway Commission to provide bus facilities through or over this project as contemplated. Accordingly, I shall refuse to honor any vouchers submitted for any cost or expenditure made by the State Highway Commission for this purpose until there has been an adjudication by the Supreme Court of Appeals of Virginia as to the validity of the statutory provisions in question.

Very truly yours,

SIDNEY C. DAY, JR.
Comptroller

SCD:d

cc: General J. A. Anderson
State Highway Commissioner
Richmond, Virginia

* * * * *

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 8th day of October, 1956.

* * * * *

This day came the Richmond Greyhound Lines, Incorporated, and the State Corporation Commission, by counsel, and presented petitions to the Court praying for permission to intervene in this cause and requested that they be made party respondents; and as such party respondents, prayed for leave to file briefs and to participate in the oral argument of this cause, and for other relief. Also came the petitioner and respondent, by counsel, and opposed the requests to intervene and the requests to participate in the oral argument of this cause, but raised no objection to petitioners being permitted to file briefs on the constitutionality of the question presented in the petition for writ of mandamus.

Upon mature consideration whereof, leave is hereby granted Richmond Greyhound Lines, Incorporated, and the State Corporation Commission to file with the Clerk 25 printed copies of their respective briefs on or before November 12, 1956, but said briefs are to be limited to the argument of the constitutionality of the question raised in the petition for writ of mandamus heretofore filed in this cause.

* * * * *

ANSWER.

In answer to a petition filed in the Supreme Court of Appeals of Virginia, at Staunton, by J. Lindsay Almond, Jr., Attorney General of Virginia, your Respondent, Sidney C. Day, Jr., Comptroller of Virginia, says:

1. Respondent admits paragraphs 1, 3, 4 and 5 of the petition.

2. Respondent admits paragraph 6 of the petition but adds the remainder of the prohibition of Section 185 of the Virginia Constitution that forbids the State to "become a party to or become interested in any work of internal improvement, except public roads and public parks, or engage in carrying on any such work; * * *"

3. Respondent denies paragraphs 2 and 7 of the petition. Respondent is advised that Chapter 319 of the Acts of As-

sembly of 1954 is unconstitutional, because its provisions are in conflict with Section 185 of the Virginia Constitution.

SIDNEY C. DAY, JR., Respondent,
Comptroller of Virginia.
By GEORGE D. GIBSON

GEORGE D. GIBSON, p. d.
HUNTON, WILLIAMS, GAY,
MOORE & POWELL
Electric Building
Richmond, Virginia

Rec'd 9/28/56.

H. G. T.

* * * * *

Rec'd 9/28/56.

H. G. T.

STIPULATION AS TO THE RECORD.

It is hereby stipulated that:

1. The record herein shall be deemed to consist of the following:

(a) The Engineering Report on Hampton Roads Project, dated August, 1954, by Parsons, Brinckerhoff, Hall & MacDonald, a copy of which is made a part hereof as Exhibit 1.

(b) The Traffic and Revenues Report of DeLew, Cather and Company and Wilbur Smith and Associates, dated August, 1954, a copy of which is made a part hereof as Exhibit 2.

(c) The Official Statement, dated October 27, 1954, used in selling the bonds for the Hampton Roads Project, a copy of which is made a part hereof as Exhibit 3.

(d) A transcript of the proceedings of November 14, 1955, before the State Corporation Commission in Case No. 12595, application of Richmond Greyhound Lines, Inc., for a certificate of public convenience and necessity, a copy of which is made a part hereof as Exhibit 4.

(e) A transcript of the proceedings before the State Corporation Commission in Case No. 12595 on January 4, 1956, a copy of which is made a part hereof as Exhibit 5.

(f) The Certificate of Public Convenience and Necessity No. P-1245-B issued by the State Corporation Commission to Richmond-Greyhound Lines, Incorporated, under date of July 9, 1956, authorizing operation through the Hampton Roads Tunnel, a copy of which is made a part hereof as Exhibit 6.

2. In addition to the copy of the Exhibits filed with this Stipulation, copies of Exhibits 1, 2 and 3 shall be supplied by the parties to each Justice and copies of the other Exhibits may be so supplied. None of the Exhibits need be printed unless the Court so direct.

3. In stipulating to the contents of the record as herein specified, each party reserves the right to deny the materiality or relevance of any portion thereof. For the convenience of the Justices copies of Exhibits 1, 2 and 3 have been marked in red to show the pages expressly referring to bus operation, but this is only for the convenience of the Court and does not limit the contents of the record or change any of the foregoing provisions.

4. The record shall also include the Petition for Writ of Mandamus and attached exhibits, the Notice thereof, the Answer of the respondent, all orders of the Court and any other papers herein that the Court shall designate by order to be filed herein.

IN WITNESS WHEREOF the parties have, subject to the approval of the Court, filed this Stipulation in Richmond, Virginia, on September 28, 1956.

J. LINDSAY ALMOND, JR.
Attorney General of Virginia
By FRANCIS C. LEE
SIDNEY C. DAY, JR.
Comptroller of Virginia.

By GEORGE D. GIBSON

* * * * *

EXHIBIT 6.

(COPY)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
CERTIFICATE NO. P-1245-B

RICHMOND-GREYHOUND LINES, INCORPORATED RICHMOND, VIRGINIA by this Certificate of Public Convenience and Necessity is hereby authorized to furnish Common Carrier Service to transport passengers and their baggage and mail, express and newspapers in the same vehicle, by means of motor propelled vehicles between NORFOLK, VIRGINIA, and WARWICK, VIRGINIA, serving Hampton and Newport News via the Hampton Roads Bridge-Tunnel Project, in accordance with Time Schedules and Tariffs of rates or fares and charges on file with the Commission, and subject to conditions and limitations noted below:

CONDITIONS:

All motor vehicles operated under and by virtue and authority of this Certificate must be operated in accordance with Chapter 129, Acts of General Assembly, 1936, and the Rules and Regulations of this Commission applicable to Common Carriers by Motor Vehicles.

Effective upon opening of Bridge-Tunnel Project for motor vehicle traffic.

LIMITATIONS:

(This certificate cancels Cert. P-1245-A)

Dated at Richmond, Va., July 9, 1956.

STATE CORPORATION COMMISSION
(Signed) By H. LESTER HOOKER
Commissioner.

A Copy—Teste:

H. G. TURNER, Clerk.

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