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BEFORE  
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: A-00107294 Bucks County Transport, Inc. For a  
brokerage license evidencing the Commission's approval  
of the beginning of the right and privilege to operate  
as a broker, for the transportation of persons, between  
points in the County of Bucks. Initial hearing.

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Page 1 to 63, inclusive

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**FOLDER**

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SECRETARY'S OFFICE  
Public Utility Commission

HOLBERT ASSOCIATES  
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Suite 401, Kunkel Building  
301 Market Street  
Harrisburg, Pennsylvania 17101

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**CERTIFIED ORIGINAL**

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THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: A-00107294 Bucks County Transport, Inc. For a  
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Stenographic report of hearing held in  
Hearing Room Number 1, North Office  
Building, Harrisburg, Pennsylvania,

Thursday,  
May 28, 1987  
at 10:15 a.m.

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BEFORE  
ROBERT CHRISTIANSON, ADMINISTRATIVE LAW JUDGE

- - - - -

APPEARANCES:

JAMES D. CAMPBELL, ESQUIRE  
Campbell, Spitzer, Davis & Turgeon  
130 State Street  
P.O. Box 1000  
Harrisburg, Pennsylvania 17108  
Appearing on behalf of Applicant

MICHAEL A. TIER, ESQUIRE  
Suite 1300  
1401 Arch Street  
Philadelphia, Pennsylvania 19102  
Appearing on behalf of Protestants Caral Lines  
and Pennsylvania Tracey Tours

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1 JUDGE CHRISTIANSON: I'm Administrative Law Judge Robert  
2 Christianson. We've been off the record for several minutes  
3 concerning background. I'll go over briefly what the  
4 discussion included.

5 First, we do have a couple of motions which I will  
6 probably address after both counsel have had a chance to open.  
7 I have a motion filed by Applicant way back a couple of months  
8 ago to dismiss the protest of Caral Lines essentially for lack  
9 of standing, for lack of any related authority.

10 When I got the case, when the hearing notice came out, I  
11 was ready to act quickly on it until I realized that there was  
12 another protest in the case. Then it became a little bit less  
13 important. Two protestants, as well, are represented by the  
14 same counsel.

15 I just didn't see a need to address that quickly once I  
16 realized the situation.

17 About a week ago I got an answer to a motion filed by the  
18 protestants. I did not have a copy of the motion. I thought I  
19 would just wait until I got the file. The motion had not yet  
20 gotten to the Commission's file a day or two ago when it was  
21 brought up to my office.

22 I suspect it will be getting to the file. Mr. Tier has  
23 provided me a courtesy copy. I might check to make sure -- I  
24 can check our computer to make sure it is recorded as having  
25 been received. If I don't see it recorded, I will send a copy

1 of my copy down to the file.

2 It was sent in with a letter dated May 14, 1987. I was  
3 fairly sure of what the motion contained because the answer  
4 filed by Mr. Campbell was fairly complete. I haven't had a  
5 good opportunity to review the memorandum of law which was  
6 attached. I'll do that, I think, as I sit here and rule  
7 definitively a little bit later this morning, I expect.

8 I am inclined at this point, as I probably said, to grant  
9 the motion to dismiss the one protest. I'm also inclined to  
10 deny the motion to dismiss the application. I understand the  
11 problem about the same legal personality being a broker and a  
12 carrier.

13 If the matter has been resolved definitively by the  
14 Commission, I think it's been resolved in favor of allowing  
15 dual responsibility, the dual role. I may be wrong on this.  
16 I'm just relying my memory. My memory is of a time when the  
17 question came up. I think either in relation to a case out in  
18 Westmoreland County or maybe a case up toward Erie. I really  
19 don't remember.

20 I'm not even sure if the Commission has taken a clear  
21 position. In any case, we have here an applicant for broker  
22 authority and for actual motor carrier authority. We do not  
23 yet have the dual problem.

24 Certainly I'm not willing now to dismiss this application  
25 just on the possibility that the other application might be

1 granted and raise a problem. It is a problem which the  
2 Commission might ultimately address.

3 I realize the anti-trust and other implications. I'm  
4 aware of old precedent about anti-trust concepts being  
5 relevant. I think I referred to that old case a couple of  
6 times myself.

7 I think it's an old decision written by Judge Rhoads of  
8 Superior Court who wrote a lot of good precedent for Commission  
9 proceedings.

10 In any case, I see the problem but don't see it as a  
11 reason to bar the application at this point. There may be a  
12 lack of competition, but in franchising the role of my  
13 Commission is largely to limit competition. Competition has  
14 been opened up considerably by recent Commission pronouncement,  
15 especially that policy statement at Section 41.14.

16 Beyond that I'm aware of broker precedent. I issued a  
17 decision on at least one broker case. I had to work up a  
18 precedent there. It really appears to me the entry is fairly  
19 easy for brokers.

20 There may be state involvement here or something of that  
21 nature. That can be developed on the record.

22 You have got my inclinations, but you haven't yet gotten  
23 my rulings because something may sway my views one way or the  
24 other.

25 We did discuss a couple of other points off the record.

1 I mentioned the recent assessment case of Brokcal Corporation.  
2 Just for the record the docket on that is M-850036. There is a  
3 fairly recent Commission decision back in March which indicates  
4 a lack of jurisdiction over carriers working for the Department  
5 of Public Welfare.

6 As I indicated -- and I think off the record Mr. Campbell  
7 tended to agree -- the opinion is rather a weak opinion, which  
8 seems to me to try to avoid being really definitive about that  
9 pronouncement.

10 I can't speak for the Commission, of course. I had taken  
11 a position that we have jurisdiction.

12 Then I think I said probably more than I have to say to  
13 set up a case. We can hear from counsel. First from Mr.  
14 Campbell if he has any opening comments.

15 MR. CAMPBELL: Yes, your Honor, I do. I will try to make  
16 them fairly brief. First of all, with respect to the motion to  
17 strike the protest of Caral Lines, there is a statement in  
18 there that the protest of Caral Lines, Inc., is the only  
19 protest which has been filed in this matter.

20 On March 11th when I submitted that motion that was true  
21 to the best of my knowledge. However, on March 16th I received  
22 the protest of Tracey Tours which was dated March 4th, 1987, by  
23 Mr. Tier. I just didn't know about it at the time. That's the  
24 reason for the misstatement in my motion.

25 JUDGE CHRISTIANSON: Yes, I remember that. You got me

1 excited until I saw the other protest.

2 MR. CAMPBELL: That was an innocent misrepresentation,  
3 your Honor. I do think that the carrier lacks standing. This  
4 is a broker application, as you indicated. The standard is  
5 very liberal. It's a fitness only type of proceeding as I read  
6 the statute and as I read Commission precedent.

7 Shall I go on and speak to my other issues at this time?

8 JUDGE CHRISTIANSON: You might as well, yes.

9 MR. CAMPBELL: With respect to denying the application to  
10 dismiss, your Honor raised a question as to whether there was  
11 any precedent for such operations as both carrier and broker.  
12 I would refer to the statute itself which says no such person  
13 or corporation by virtue of a brokerage license shall render  
14 service as a motor carrier unless he holds a Certificate of  
15 Public Convenience or permit, as the case may be.

16 Clearly contemplating that possibility, the regulations,  
17 I believe, also speak and perhaps the statute, as well, to the  
18 fact that if you deal as broker and carrier you must  
19 nevertheless observe certain rules with respect to  
20 impartiality, keeping separate books and records and so on.

21 Probably the most interesting precedent here, your Honor,  
22 is that this very protestant Tracey Tours, Inc., holds both  
23 broker's authority and common carrier authority.

24 I find it somewhat strange that they take the indignant  
25 position that this applicant shouldn't be able to do it when

1 they have held group and party authority since 1985 and were  
2 granted broker's authority, the same corporation, about three  
3 years before that.

4 I don't think there is any statutory prohibition. I  
5 don't think there is any regulatory prohibition. I think the  
6 protestant itself gives a precedent that the Commission says,  
7 "Yes. As long as you keep your books up and behave properly,  
8 you're entitled to do that."

9 I would like to complete my preliminary statement by  
10 dealing with the question of jurisdiction which also bears upon  
11 fitness, which is obviously an issue in this case.

12 The applicant is going to come to you and say, "Yes,  
13 we're operating right now." The position of the applicant is  
14 that it is doing so in good faith, not in any effort to  
15 disregard the powers of the Commission but in reliance upon  
16 opinions of counsel, including those that you referred to, and  
17 including their own solicitor's opinion that they as an alter  
18 ego of Bucks County are not subject to regulation.

19 We are defending the complaint case that was brought by  
20 the Commission very vigorously and taking that position, that  
21 we are outside the scope of regulation and relying in part upon  
22 Brokcal.

23 What are we doing here you might ask. Well, you have  
24 pointed out that you took the position that there is  
25 jurisdiction. Other bright lawyers take the position there is

1 no jurisdiction.

2 We are not interested in wasting the assets of the  
3 Commission and the assets of this corporation and the assets of  
4 Bucks County in going to the Commonwealth Court and beyond to  
5 try to resolve of the complaint case.

6 We would prefer to say, "Okay. You say there is  
7 jurisdiction. We submit." We have no problem with submitting  
8 to jurisdiction. That's why we may seem a bit inconsistent to  
9 you in the one case defending a complaint case and saying there  
10 is no jurisdiction and the other one coming in and saying,  
11 "We're applying for authority."

12 The reason for the confusion, your Honor, is because the  
13 applicant wants to abide by the law and not waste endless years  
14 litigating something if we can get a practical solution.

15 That completes my preliminary matters.

16 JUDGE CHRISTIANSON: Fine. Do you have the docket number  
17 on that complaint case handy?

18 MR. CAMPBELL: Yes, sir, I do.

19 MR. TIER: C-860967.

20 MR. CAMPBELL: Correct.

21 JUDGE CHRISTIANSON: Thank you. I just might look it up.  
22 Just out of interest, what lawyer is handling it for the  
23 Commission?

24 MR. CAMPBELL: Kirk House, your Honor.

25 JUDGE CHRISTIANSON: That happens to be someone different

1 from the lawyer who handled Brokcal, who was Mr. Smith. I know  
2 these people communicate, especially on this issue.

3 MR. CAMPBELL: I might say on the record that Mr. House  
4 has indicated to me that the Commission very strongly agrees  
5 with your position that there is jurisdiction. That's why they  
6 brought this complaint. They want to litigate it. I don't  
7 mean that like it sounds, that they are going to persecute us.

8 I just mean that they feel strongly there is  
9 jurisdiction, which is all the more reason for us to say, "If  
10 that many people think there is jurisdiction, we're going to  
11 come in and try to get proper authority." That would render  
12 the complaint case mute.

13 JUDGE CHRISTIANSON: Yes. That's my feeling from  
14 enforcement staff. You said the Commission. I think the  
15 Commission wants to avoid the whole issue. The commissioners  
16 who sit here once a week where I sit, I think they would like  
17 to avoid it but may not be able to do it indefinitely.

18 It is a very difficult area. The Commission has  
19 difficult problems really coming out where they want. I guess  
20 motor carrier has caused them grief over jurisdiction over many  
21 years but have questions about transportation of waste products  
22 and many other problems. It makes life interesting for  
23 lawyers, I suppose.

24 Mr. Tier, go ahead and speak to these issues or speak  
25 however you would like to speak.

1 MR. TIER: Your Honor, first addressing the motion to  
2 dismiss Caral Lines. I should first like to indicate to your  
3 Honor that, in fact, Caral Lines does not possess a broker  
4 carrier license, nor does Tracey Tours possess a common carrier  
5 license. They are two separate corporations. Grant it, there  
6 is some common ownership. It is not total common ownership  
7 concerning Tracey Tours and Caral Lines.

8 Beyond that, your Honor, I think the gist of my motion  
9 was to link in what I subsequently placed before the Commission  
10 in my motion to dismiss the application. That is that Caral  
11 Lines certainly has a right to come in as a provider in light  
12 of, Number 1, the subsequent filings of this applicant and,  
13 secondly, because they are a common carrier I think that they  
14 have standing to come in from the viewpoint that it will impact  
15 on the general public interest, which is a concern of the  
16 Commission, of granting applications to people for the  
17 providing of services which will impact upon the public.  
18 Almost like a friend of the court approach, your Honor.

19 In that regard I would argue that they have standing. Of  
20 course, I would argue they have standing because of the  
21 subsequent, what I would characterize now, as havoc reeked  
22 among some of the common carriers in Bucks County as a result  
23 of the administration of this program by the present applicant.

24 As to that motion, your Honor, I would say that they have  
25 standing. To otherwise rule would say that anyone who is not a

1 broker but will be directly affected by this application has no  
2 standing and they have to stand in the wings.

3 It's almost an obligation, I would think, of the carrier  
4 themselves to come forward and place the issue before the court  
5 for the purpose of determination.

6 As to my motion to dismiss the application, your Honor, I  
7 understand your Honor's approach and theory that really this  
8 motion is not ripe because no application -- strike that--  
9 that this motion is ripe because the authority has not yet been  
10 granted the applicant. In that regard, your Honor, I would  
11 have to concede that point.

12 I do want it on the record, though, for the purposes of  
13 demonstrating that it's not something that we acquiesce to in  
14 any regard and that, in fact, it is a real potential hazard if  
15 this application is granted and the subsequent application is  
16 granted.

17 JUDGE CHRISTIANSON: Thank you. I do see the general  
18 problem, but we'll just have to see how the two proceedings  
19 progress as far as the motion.

20 I was just looking up the contents of 3.381. It's a  
21 basic regulation here. I'm trying to refresh my recollection  
22 about standing protests.

23 As I recall at one point Staff took the position that  
24 even, for instance, a taxi cab could protest a para-transit. I  
25 think the Commission backed down from that position.

1           Here we have got a carrier protesting a broker. I guess  
2 in the broader sense of intervention there might be some sort  
3 of an interest.

4           Let me just think a little bit about Mr. Campbell's  
5 motion way back in March. I hesitate to exclude a party when  
6 it really doesn't matter. Let me just think on that.

7           As far as the motion to dismiss the application, that  
8 motion is denied in a sense, I guess, without prejudice.  
9 Conceivably it could be raised later, and the Commission might  
10 be interested in it.

11           I really don't see the problem even of having one legal  
12 personality hold both broker and carrier authority. As  
13 Mr. Campbell indicated there might be a need for some  
14 limitation or some accounting and other requirements, but I  
15 don't see the fundamental problem.

16           One background thing is another provision in the statute  
17 which allows one entity to hold common carrier authority along  
18 with contract carrier authority if the Commission finds it's in  
19 the public interest or words to that effect.

20           The Commission historically has not been willing to make  
21 that finding but they sort of ducked the issue by giving  
22 another Class D right to the common carrier.

23           I think one or two dual operations situations have been  
24 allowed to exist. That, I think, is related to some  
25 indications Mr. Campbell mentioned about allowing the dual

1 broker/common carrier situation.

2 In any case at this point the motion is dismissed. I  
3 will keep the motion to dismiss the protest for a few moments  
4 as we sit here just because I'm a little bit reluctant to knock  
5 that one entity out where really it doesn't burden the  
6 proceeding much at all to keep it in. I'm holding that one.  
7 I'm not granting or denying it at this point. If something  
8 comes up and I feel inclined to act on it, I will either today  
9 or a little bit later.

10 Then we can go ahead and proceed. Mr. Campbell, I guess  
11 you're ready to introduce your first witness.

12 MR. CAMPBELL: Yes, sir. We'll call Mr. Volpe.

13 VINCENT J. VOLPE, called as a witness, having been duly  
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. CAMPBELL:

17 Q Sir, would you give your name and business address for  
18 the record?

19 A My name is Vincent J. Volpe. Our address is Box 2619,  
20 Doylestown, Pennsylvania.

21 Q By whom are you employed and in what capacity?

22 A I am employed by Buck County Transport, Incorporated,  
23 as the executive director.

24 Q How long have you been so employed?

25 A I have been employed as executive director since

1 around October of 1985 when the non-profit corporation was  
2 established.

3 Q Sir, in your capacity as executive director, are you  
4 familiar with the operation and facilities of Buck County  
5 Transport, Incorporated?

6 A Yes, I am.

7 Q For ease of reference is Buck County Transport,  
8 Incorporated, sometimes referred to as BCT?

9 A Yes, it is.

10 Q If I ask you questions with respect to BCT, we'll all  
11 know what I'm talking about. What is BCT and what is its  
12 business?

13 A BCT is the designated recipient in Bucks County of the  
14 Section 302 Program and the Medical Assistance Transportation  
15 Program. We're also the designated entity to administer these  
16 programs by the county.

17 We provide, coordinate transportation for the  
18 medically needy population and for senior citizens for the most  
19 part. We do that by contracting with carriers or providing the  
20 service ourselves where necessary.

21 Q Prior to your employment as executive director of BCT,  
22 what was your occupation?

23 A I was the department manager of the Office of Public  
24 Transportation, which was a county department.

25 Q You worked for the county?

1 A Yes, I did.

2 Q When you describe BCT as a designated recipient, do  
3 you mean designated by the county or by PennDOT or by DPW, or  
4 could you clarify that for the record?

5 A We are the designated recipient of the Section 203  
6 Program in Bucks County. That designation was made by PennDOT.  
7 The county is really the recipient of the medical assistance  
8 grant, and the county has designated BCT to administer that  
9 program on their behalf.

10 Q Very good. Would you explain for the judge and for  
11 the Commission the background of the creation of BCT? It came  
12 about in October of '85 or thereabouts. Explain what you know  
13 about its creation.

14 A I would like to go back to roughly November of '84  
15 when I first arrived at the Office of Public Transportation. I  
16 was asked to come there to try and straighten out the operation  
17 which was in basically a state of disrepair as far as its  
18 contractual obligations with the state, providing quality  
19 service, fulfilling the contracts with PennDOT and medical  
20 assistance as far as paperwork that they required on a weekly  
21 or monthly basis, reports, keeping statistics, administering  
22 the service or providing the service.

23 Q Excuse me. You said when you arrived at the  
24 Department of Transportation you found these problems which  
25 needed correction. You're referring to the Bucks County

1 Department of --

2 A Yes, the Office of Public Transportation.

3 Q Go ahead.

4 A I was also asked, Number 1, to bring the program into  
5 some sort of compliance -- well, bring it into compliance with  
6 all the regulations and to financially and fiscally set  
7 controls on the operation and to provide the service that it  
8 supposedly was supposed to provide.

9 We're also asked to find a way that it could become an  
10 independent entity apart from being a county department since  
11 it was determined that the county really was not set up to  
12 operate a transportation system.

13 They felt that some other entity, as long as it was  
14 under the direct control of the county, could do a much better  
15 job. That took me approximately a year to straighten things  
16 out. We made the recommendation that a non-profit corporation  
17 be set up.

18 The county evaluated that position. They looked at  
19 the --

20 MR. TIER: Your Honor, excuse me. Not to be discourteous  
21 and interrupt, but I think I'm going to have to object at this  
22 time as to all these conversations he's relating to the  
23 Commission through you. Apparently it's hearsay. It goes,  
24 perhaps, to the very heart of the fitness issue. I would like  
25 to object.

1 JUDGE CHRISTIANSON: I really must admit I was not paying  
2 close attention to the details of hearsay. I think the witness  
3 was giving background. I might necessarily have gotten into  
4 that. We'll try to be careful.

5 MR. CAMPBELL: I'll caution the witness, your Honor.

6 JUDGE CHRISTIANSON: Go ahead. We might be able to make  
7 progress without much trouble. I'll try to be more careful.

8 BY MR. CAMPBELL:

9 Q Continue to explain the background, but speak only  
10 from facts within your own knowledge. If you know that a  
11 decision was made by the county to form a non-profit  
12 corporation, that's fine; but don't go into conversations that  
13 somebody else told you. Go from facts and your own knowledge.

14 A Okay.

15 Q Was a decision made to form a non-profit corporation?

16 A A decision was made to form a non-profit corporation.  
17 The basis for that decision was the -- can I speak off the  
18 record for a second?

19 JUDGE CHRISTIANSON: Let's be off the record.

20 (Discussion off the record.)

21 JUDGE CHRISTIANSON: We were off the record for a moment  
22 about this hearsay problem. The objection has been made. To a  
23 degree in administrative proceedings we have to be concerned  
24 about the hearsay issue.

25 I don't feel I have to be quite as careful as I would be

1 if I were a judge working with a jury. I would ask the witness  
2 to try to avoid the more obvious hearsay problems. That is I  
3 do not want something to come in for the truth of the matter if  
4 the witness really doesn't know the situation.

5 I will allow references to what other people have said if  
6 this was a source of the witness' information or if it has to  
7 setup a background for a situation.

8 If the statements concern statements by other people, I  
9 will not be relying on this witness' assertion for the ultimate  
10 truth of the statement by the other person because we have the  
11 obvious question of cross-examination and confrontation.

12 I realize the problem, and I think we can progress  
13 without too much trouble. Go ahead and be a little more  
14 relaxed than we had been at one point.

15 MR. CAMPBELL: Perhaps, your Honor, I could ask a few  
16 specific questions at this point to try to tie it rather  
17 closely.

18 JUDGE CHRISTIANSON: Go ahead.

19 BY MR. CAMPBELL:

20 Q You mentioned formation of the non-profit corporation.  
21 Were you personally involved in the decision-making process to  
22 go that route?

23 A It was my recommendation that that be the route to go.

24 Q In part was your recommendation based upon information  
25 including a staff opinion of the chief counsel of the Public

1 Utility Commission?

2 A Yes, it was.

3 Q The gist of that opinion was what?

4 MR. TIER: Your Honor, I think that this is a critical  
5 element. If he has a copy of the letter, I would be very happy  
6 to review that or have it marked and maybe that could speak for  
7 itself. He could testify as to his reactions, but I really  
8 have to object to him interpreting what the chief counsel said.

9 JUDGE CHRISTIANSON: I think we can get the witness'  
10 response to the letter or whatever the document was. Again,  
11 the document can speak for itself if it's put into evidence. I  
12 think I'm familiar with the letter or memo in question,  
13 whatever it was.

14 If we want to get it in the record, fine. If we're just  
15 getting this witness' response to it, I can accept that. I  
16 will agree with counsel that the witness cannot speak for chief  
17 counsel of the Commission or something else.

18 Also, the witness isn't a lawyer but he's working in this  
19 area. As a practical matter, he has to form his own  
20 understanding based upon what he receives. Again, I'll allow  
21 latitude.

22 MR. CAMPBELL: Maybe we can solve this, your Honor.

23 BY MR. CAMPBELL:

24 Q I show you a document dated July 29, 1983, from  
25 Charles F. Hoffman, Chief Counsel, to Drew DeCandis, Office of

1 Policy, Planning and Evaluation. I ask if that's the legal  
2 opinion which you just mentioned in your testimony.

3 A Yes, it is.

4 Q Was it based upon that opinion that the decision was  
5 made to go ahead as you have outlined?

6 A Yes, it was.

7 MR. CAMPBELL: Your Honor, could we mark this opinion  
8 Applicant's Exhibit 1 for identification. I'll provide copies  
9 before the day is out.

10 JUDGE CHRISTIANSON: It's Applicant's Exhibit Number 1.  
11 I'm familiar with this memo. It was the memo I referred to  
12 earlier when I discussed the Brokcal case. Counsel can make  
13 copies later, two copies for the court reporter and one for  
14 Mr. Tiers as necessary. I don't need my own copy because I  
15 have a copy.

16 (Applicant's Exhibit No. 1 was produced and marked for  
17 identification.)

18 BY MR. CAMPBELL:

19 Q Let's move on then, Mr. Volpe. After the corporation  
20 was formed, what did it commence to do or what was your--  
21 first of all, were you its initial executive director? Have  
22 you been executive director since it began?

23 A Yes, I have.

24 Q Once the corporation was formed and went into  
25 business, what did it do? How was it staffed and so on?

1 Explain that for the judge, if you could.

2 A The existing staff that was operating the Office of  
3 Public Transportation, which was a county department, was  
4 transferred to the non-profit corporation.

5 Q What functions did the corporation perform after that  
6 occurred?

7 A The corporation essentially performed the same  
8 functions that it had done previously as a county department,  
9 except for the fact that it became necessary for the non-profit  
10 corporation to provide transportation in two instances.

11 In one instance there was a contractor in upper Bucks  
12 County which was Ashbourne Transportation, which was a PUC  
13 contractor. They were purchased by Laidlaw Transportation.  
14 Laidlaw came to us subsequently and asked to be relieved from  
15 their contract.

16 MR. TIER: Objection.

17 JUDGE CHRISTIANSON: Again on hearsay?

18 MR. TIER: Yes, your Honor.

19 JUDGE CHRISTIANSON: I'll overrule the objection. I  
20 think this witness has to state what people said to him. I  
21 will view them as events which occurred to which this witness  
22 had to respond.

23 THE WITNESS: We were asked to relieve them from their  
24 contract. Since there was no one else in the area that was  
25 able to provide the service, we took over the service

1 ourselves.

2 In one other instance there was a contractor, a company  
3 that had been a contractor in central Bucks County. That  
4 contractor, for reasons, refused to sign any contracts to tell  
5 us who their employees were or to even identify their  
6 employees.

7 They were also notified in a letter from the state, which  
8 came through the county controller's office, that they had not  
9 paid any worker's comp for about two years.

10 It was the opinion of the board of directors of BCT, our  
11 solicitor and the county that any more association with this  
12 contractor would not be in the best judgment of BCT or the  
13 county or the people that this contractor was providing service  
14 to.

15 Therefore, we had to undertake the transportation for  
16 people living in the central Bucks area.

17 BY MR. CAMPBELL:

18 Q When you speak of contractors, just so we know the  
19 frame of reference here, by that term do you mean certificated  
20 carriers of the PUC who contracted with the county to provide  
21 para-transit service under these programs?

22 A Yes.

23 Q Fine. Just so that's clear. In those certain  
24 instances, BCT provided transportation itself to the public, is  
25 that correct?

1 A Yes, it did.

2 Q In other instances has BCT made arrangements such as a  
3 broker would make for the provision of transportation using  
4 other certificated carriers?

5 A Yes. We currently use Langhorne Transport, which was  
6 a contractor under the county and remained a contractor with  
7 BCT. They are a PUC certified carrier.

8 Q Does BCT itself hold any operating authority or broker  
9 authority from the Pennsylvania Public Utility Commission at  
10 the present time?

11 A No, it does not.

12 Q If you do not why are you presently operating both  
13 transportation service and brokerage service?

14 A For reasons that I have just previously stated, that  
15 it became necessary to do this in order to continue to provide  
16 transportation to the elderly citizens of Bucks County in  
17 certain areas and the medical assistance needy people in Bucks  
18 County.

19 If we did not provide that service, then that  
20 transportation and that service would stop for hundreds of  
21 people.

22 Q Is it your position that you are required to have  
23 authority from the PUC to render those services?

24 A It is our position that as long as we are under the  
25 substantial control of Bucks County regarding hours of service,

1 levels of services, fares, et cetera, that that is not  
2 necessary.

3 Q Do you take the position that you are under such  
4 control by the county?

5 A Yes.

6 Q The PUC challenged your operations by filing a  
7 complaint against BCT?

8 A Yes, they have.

9 Q What is the status of that complaint at this moment?

10 A I believe it's being prosecuted, but we haven't had a  
11 date for a hearing.

12 Q Mr. Volpe, you have taken the position that your  
13 transportation is exempt from PUC regulation in the complaint  
14 case. Why have you filed this present application for broker  
15 authority and why have you sought to acquire certain carrier  
16 authority by transfer from another under jurisdiction of this  
17 Commission?

18 A There are several reasons. One is that if we go to  
19 hearings and it is determined by the PUC that we do have to  
20 have a license then it's conceivable that transportation would  
21 stop in these areas of Bucks County, which would be a very sad  
22 situation for the elderly people and the medical needy people  
23 in those areas.

24 On other hand, we feel that we want to comply with the  
25 Commission in any and all regards. If they feel that it is

1 necessary for us to have a broker certificate and a PUC  
2 certificate to provide transportation in upper Bucks County--  
3 which I might add, the majority of the area that the license is  
4 being transferred to us, there are no certificated carriers at  
5 all in that area. The people that live in those rural areas  
6 would probably not be serviced by anyone else.

7 We feel in order to continue the transportation  
8 service for those people that we are willing to comply with the  
9 Public Utility Commission as they see fit. We don't  
10 particularly want to spend our resources and the resources of  
11 the Commission and other people's resources to fight a point  
12 just because there is maybe a point to be made.

13 We're more interested in the continuity of service.  
14 That's why we're here.

15 The other reason, too, is that since we're the  
16 designated recipient by PennDOT for the 203 Program in some of  
17 their regulations they have indicated that we should comply  
18 with the Public Utility Commission regarding licenses for  
19 brokers, et cetera. We want to also comply with PennDOT's  
20 wishes also.

21 What we're saying essentially is that we're willing to  
22 do what is necessary and what is right in order to not let this  
23 transportation service stop for the elderly and handicapped  
24 people and medical assistance people of Bucks County.

25 (Applicant's Exhibit No. 2 was produced and marked for

1 identification.)

2 BY MR. CAMPBELL:

3 Q Sir, I now show you a document which has been marked  
4 for identification as Applicant's Exhibit 2. I ask you if that  
5 is a balance sheet which applies to Bucks County Transport,  
6 Incorporated.

7 A Yes, it is.

8 Q It doesn't have a date on it. Do you know from your  
9 own knowledge what date that statement is as of?

10 A That would be December 31st, 1986.

11 Q By this application, Mr. Volpe, do I understand you  
12 are seeking the right to provide service as a broker between  
13 points in Bucks County only?

14 A Yes, sir.

15 Q Are you willing to hold yourself out to the public to  
16 arrange charter trips, sightseeing tours, that kind of thing?

17 A No, sir.

18 Q Is the purpose of this application simply to deal as a  
19 broker with the clientele which BCT presently services, that is  
20 the elderly and the medically disadvantaged?

21 A Yes, sir.

22 Q If this application were approved, how would BCT  
23 function as a broker? What carriers would you use?

24 A We would use any and all certificated carriers that  
25 are available in Bucks County and that would be eligible to

1 provide the service.

2 Q Would you continue to use Langhorne taxi or Langhorne  
3 transit, whatever the proper name is?

4 A We would expect that -- we are also involved with  
5 PennDOT under their new coordination regulations to look at the  
6 possibility of bidding out all the service in Bucks County. We  
7 have filed a grant application with PennDOT at their request to  
8 study the possibilities of this.

9 I cannot really say that if we would bid out the  
10 service in Bucks County how it would be bid out or if Langhorne  
11 would continue to be a contractor or who would be the  
12 contractors. That's something that, I guess, remains to be  
13 seen.

14 Q To the extent that it's within your power, would you  
15 permit all certificated carriers holding proper authority to  
16 submit proposals to you?

17 A Yes.

18 Q If there were no carriers holding an entire county--  
19 holding the entire county, I should say, of Bucks that has  
20 operating authority, would you then deal with carriers that  
21 held authority within a part of the county?

22 A We would so, yes.

23 Q If Caral Lines, the protestant in this case, held  
24 appropriate para-transit rights within a portion of the county,  
25 would you exclude them from consideration?

1 A No.

2 Q Sir, are you familiar with the Commission's  
3 regulations dealing with brokers?

4 A Yes, sir.

5 Q You have reviewed those regulations?

6 A Yes, sir.

7 Q Would you keep your records in the manner prescribed  
8 by those regulations?

9 A Yes, sir.

10 Q If any common carrier authority should issue as a  
11 result of your other pending application, would you keep those  
12 records entirely separate from your brokerage records?

13 A Yes, sir.

14 Q Is BCT in a position to provide security for the  
15 protection of the public as required under the brokerage  
16 regulations?

17 A Yes, sir.

18 Q Mr. Volpe, in the performance of services for Bucks  
19 County up to and including the present time, has it been your  
20 intention to violate the public utility law?

21 A No, sir.

22 MR. CAMPBELL: Your Honor, that completes my direct  
23 examination. I would tender the witness for cross-examination  
24 and offer Applicant's Exhibits 1 and 2 subject to cross-  
25 examination.

1 JUDGE CHRISTIANSON: We can go ahead with cross,  
2 Mr. Tier, or we can pause for a couple of moments.

3 MR. TIER: I'm prepared to proceed, your Honor.

4 JUDGE CHRISTIANSON: Let's go ahead. I'll accept the two  
5 exhibits subject to possible motions to strike. I'm accepting  
6 Applicant's Exhibit 1, the Chief Counsel Hoffman memo, subject  
7 to the applicant providing the appropriate copies. I'm  
8 accepting Exhibit 2, the statement of financial condition.

9 You may proceed with cross-examination.

10 CROSS-EXAMINATION

11 BY MR. TIER:

12 Q Sir, you just testified that, in fact, you would  
13 permit all certificated carriers in Bucks County to submit a  
14 proposal for service, is that correct?

15 A Yes, sir.

16 Q You are assuming now that you have been awarded the  
17 broker authority, is that correct?

18 A Yes, sir.

19 Q You also filed an application for provider or carrier  
20 authority, common carrier authority, did you not?

21 A Yes.

22 Q If you would accept the services of people who are  
23 already certified carriers in Bucks County, why do you need a  
24 common carrier's certificate?

25 A Well, the majority of the area that we are -- my

1 understanding is that the majority of the area of upper Bucks  
2 County is not covered by any PUC carrier.

3 Q Are you testifying that, in fact, you want to limit  
4 your authority to just upper Bucks County?

5 A I would say that we would want to provide, if  
6 necessary, transportation in the area that is covered by this  
7 authority, which is basically upper Bucks County and a small  
8 portion of eastern Bucks County.

9 Q Can you sitting here today tell me every certified  
10 carrier that exists in Bucks County?

11 A I could probably give you a good try, but I don't know  
12 if I do know every single one.

13 Q Is it fair to say you don't know the extent of their  
14 authority?

15 A That would be fair to say. I'm not intimately  
16 acquainted with their authority, no, sir. I have a basic idea  
17 of what their authorities are, but I couldn't give you  
18 specifics.

19 Q You have essentially functioned as a broker in the  
20 last several years, haven't you?

21 A Yes.

22 Q As a broker functioning over the last several years,  
23 would you say it would be fair to assume that you would be  
24 familiar with, Number 1, certified carriers in Bucks County  
25 and, Number 2, the extent of their authority?

1           A I'm familiar with the certified carriers and the  
2 extent of the authority with the contractors that we have been  
3 using or have had contracts with the county. It's conceivable  
4 that there are people that hold certificates or some sort of  
5 charter certificates that I'm not aware of.

6           The type of transportation that we provide is  
7 essentially transportation for a specific group of people. The  
8 carriers that were providing the service when I came there were  
9 the ones that I used for the most part. No one else approached  
10 us and asked us if they could provide service.

11          Q How does the 203 Program work, sir?

12          A In what respect?

13          Q As far as being paid, the providers getting  
14 reimbursement for their services.

15          A The county or the designated recipient is reimbursed.  
16 Then it's up to the designated recipient to reimburse the  
17 contractor, the provider.

18          Q You have to be recognized, do you not, by the--  
19 strike that. PennDOT, sir, actually is the coordinating  
20 authority for the 203 Program, is that not correct?

21          A They are the administrating authority.

22          Q Fair enough. They require each year an application be  
23 filed to renew your grant for 203 funding, is that correct?

24          A Yes.

25          Q From year to year they could either select or not

1 select you as the third party paid or the contracted individual  
2 or grant individual for Bucks County, isn't that correct?

3 A I think that PennDOT has the option to do whatever  
4 they want to do in that program.

5 Q You would agree that from year to year you have to  
6 resubmit an application and that application has to be approved  
7 by PennDOT before you actually receive the 203 grant monies, is  
8 that correct?

9 A That's true with anyone who is in the 203 Program.

10 Q How much of your program, sir, is devoted to 203? For  
11 the record, why don't you first explain what 203 is?

12 A 203 is a grant that is administered by PennDOT to  
13 various counties, non-profit corporations, private entities.  
14 That grant provides reimbursement to a certain extent and to a  
15 certain limit for transportation provided senior citizens.

16 It's a semi-demand type of transportation. It's not  
17 demand responsive, or it's not taxi type transportation. It's  
18 para-transit. It requires reservation at least one day in  
19 advance and various record keeping and statistics data,  
20 et cetera.

21 Q Isn't one of the requirements of the 203 Program that  
22 before a grant is given -- in other words, before an individual  
23 or organization is identified as being able to provide the  
24 service for which they would get reimbursement from the state,  
25 PennDOT has to actually approve their application, correct?

1           A For any entity, yes.

2           Q The various certificated carriers in Bucks County  
3 could themselves apply directly for these grant monies, is that  
4 correct?

5           A At one time that was correct.

6           Q The percentage of your business done or the percentage  
7 of your services provided in Bucks County under the -- strike  
8 that. What is the percentage of your total business devoted to  
9 203 in Bucks County?

10          A I would say it's probably 30, 40 percent.

11          Q What is the quarter mile rule?

12          A I believe the quarter mile rule indicates or says that  
13 if a person lives a quarter of a mile from a bus stop or a bus  
14 line where the bus will stop on the road and that the person is  
15 physically able to walk that quarter mile and get on the bus  
16 and the bus will take them to within a quarter of a mile of  
17 their destination that a person should use -- let's say a  
18 senior citizen should use the public transportation instead of  
19 using transportation, para-transit transportation when public  
20 transportation is available.

21          Q In other words, the quarter mile rule really is if  
22 they can use an established bus route they should do that in  
23 lieu of using 203 funds.

24          A Well, there are a lot of stipulations. I don't think  
25 it's ever really been clarified or whatever by PennDOT or

1 anyone else specifically what that means. At one time there  
2 was a movement to implement that, but there were a number of  
3 agencies in Philadelphia, I think, that protested this.

4 PennDOT pretty much relaxed it and just asked you to  
5 self-certify that people that you're providing transportation  
6 for cannot really be using public transportation.

7 Q Did you complete your application for the 203 grant  
8 for the next coming fiscal year?

9 A Yes.

10 Q Have you submitted it?

11 A Yes.

12 Q Anywhere within the application was there a request to  
13 submit a plan to encourage use under the quarter mile rule,  
14 fixed transportation?

15 A Yes.

16 Q Did you so submit that?

17 A Yes. I'm sure we complied with all the rules and  
18 regulations. We may have indicated on the application that we  
19 were referencing our same plan that we had supplied to PennDOT  
20 previously under other applications.

21 Q What was that plan, sir?

22 A That we essentially self-certify people, that we asked  
23 people -- there are very few bus routes in Bucks County. If  
24 anyone is living to our understanding -- we asked people if  
25 they were living on a bus route, and we asked them if they can

1 use that first. If they can, they do. If not, we schedule  
2 them for transportation.

3 Q What other methods do you have in place to comply with  
4 the 203 regulations?

5 A Could you be more specific in the regulations you're  
6 referring to because there are a number of different  
7 regulations?

8 Q How do you confirm a person's eligibility for  
9 reimbursement under 203 funds?

10 A Well, people aren't reimbursed under 203.

11 Q The provider is.

12 A All right, the provider. I thought you meant the  
13 people that were carried. How do we --

14 Q Yes, sir.

15 A -- determine eligibility?

16 Q No. How do you insure that the person meets the  
17 requirements of eligibility under the 203 Program?

18 A They have to supply us with a PUC certificate for  
19 para-transit.

20 Q How about the users of the service? How do you insure  
21 that those individuals meet the eligibility requirements to  
22 obtain rights under the 203 Program?

23 A PennDOT sets up specific guidelines which we follow.  
24 People have to fill out forms, have to give certain  
25 information, give us information showing that they are 65 years

1 of age or older.

2 Q What information? I'm asking specifically what  
3 information.

4 A Specifically a birth certificate, a driver's license,  
5 that kind of thing.

6 Q Do you have paperwork to insure that that's done?

7 A Yes. We have a file on every person that rides with  
8 us.

9 Q I'm going to show you what has been marked Applicant's  
10 Number 1, which is dated July 29th, 1983.

11 A I have a copy of it right here.

12 Q You indicated when you arrived in Bucks County  
13 sometime in 1985 that the -- you arrived, I'm sorry, in  
14 November of 1984 for the purpose of straightening out the  
15 problems that existed.

16 A Yes.

17 Q At that time did you review this document?

18 A First, it wasn't necessary for me to review that  
19 document. That was not my -- my main job at that point was to  
20 administer the program and to --

21 Q I don't want to interrupt you. I'm really just --

22 A I can't tell you when the first time was that I saw  
23 this letter to tell you the truth. I would imagine it would be  
24 sometime in early '85, but I don't really recall.

25 Q It occurred sometime before there was a decision to

1 set up the non-profit organization, correct?

2 A Yes.

3 Q Did the fact that this was dated 1983 and you were  
4 reviewing it sometime in 1985 hold any significance for you?

5 A What type of significance?

6 Q Did you seek additional or legal counsel before going  
7 into a non-profit organization, or did you rely solely on A-1?

8 A I don't recall all of the meetings that took place,  
9 but there were a number of meetings with the county solicitor  
10 and with the person who was going to be our solicitor. There  
11 was a great deal of consideration given to how BCT should be  
12 set up and what had to be done to specifically indicate that it  
13 was under the jurisdiction of the county as regarding this and  
14 maybe other opinions that I might not be aware of or whatever  
15 the lawyers decided.

16 Q Well, did you supply any information to the attorneys?

17 A I guess I supplied this or referenced it. I don't  
18 know if I gave them my specific letter.

19 Q You're talking about A-1 when you say this?

20 A Yes. I don't recall any other specific documents.  
21 There may have been, but it's a couple of years ago. I don't  
22 really remember specifically. There were so many meetings.

23 Q Do you recall if they ever identified relying on any  
24 other information or any other documents in rendering a  
25 decision?

1 A I can't recall.

2 Q It didn't trouble you that you were looking at a  
3 document that was two years old, which document referenced  
4 cases which are on appeal?

5 MR. CAMPBELL: I object, your Honor. I don't think the  
6 witness was asked to evaluate this document as a lawyer. I  
7 just asked him if he was aware of it and if it was a decision  
8 that was relied upon in the county's determination to go ahead  
9 with the formation of a non-profit corporation. I don't think  
10 he should be asked to interpret it or whether it troubled him  
11 that some of the cases were on appeal. It's not proper cross-  
12 examination.

13 JUDGE CHRISTIANSON: I'll let the cross-examination  
14 proceed for now. I'm aware of at least one opinion appealed,  
15 which I think was later withdrawn. I have that information  
16 only through counsel in the Brokcal case.

17 I think the witness can be cross-examined. If he has no  
18 knowledge, he can say so. I think we can make progress that  
19 way.

20 BY MR. TIER:

21 Q You can answer the question.

22 A Could you repeat it, please?

23 MR. TIER: Could you?

24 (Whereupon, indicated question read by reporter.)

25 THE WITNESS: It seemed to be a document that was

1 available for consideration by the attorneys. Not being a  
2 lawyer, I can't really give you any opinion as far as what the  
3 implications were and what was in there.

4 BY MR. TIER:

5 Q Had you presented a written plan to the Bucks County  
6 commissioners in regards to the service which was to be  
7 provided by the non-profit organization known as BCT?

8 A There was a transition plan that was prepared by a  
9 group of people including myself, yes. I might add that there  
10 was also an independent evaluation done by a transportation  
11 consultant whose recommendation was --

12 MR. TIER: Your Honor, I would object to this.

13 JUDGE CHRISTIANSON: Fine. If the question has been  
14 answered, we can proceed to the next question. I think the  
15 witness was attempting to be complete, but if counsel wants to  
16 cut him off, it's his right.

17 BY MR. TIER:

18 Q You indicated that you came to realize that it was  
19 necessary to provide transportation as a result of being unable  
20 to secure transportation for 203 people, is that correct?

21 A Yes.

22 Q What efforts or measures did you take to attempt to  
23 secure additional service?

24 A There was only one contractor in Quakertown who--  
25 they only had a PUC certificate for a small area and, before my

1 time at the BCT and Office of Public Transportation, had  
2 indicated that he did not want to contract for transportation  
3 anymore and had essentially walked out of the contract.

4 There was also a contractor in the Sellersville area.  
5 He had gone out of business the end of '84, I believe. At that  
6 time in '85 there was no one else in that area that I was aware  
7 of that could provide the service and provide the service the  
8 way it had been provided, essentially by the existing  
9 contractor.

10 Q What measures did you take to determine whether there  
11 were any other providers available?

12 A It was my understanding that weren't any.

13 Q How did you come by that understanding?

14 A From knowledge of the area and knowledge of the people  
15 we were working with and discussions with staff and the  
16 previous person that sat in my seat before I came there.

17 Q Is it fair to say that you relied to a great degree in  
18 determining there were no other providers upon your staff and  
19 the information they acquired?

20 A To a certain extent, yes.

21 Q Have you personally ever attempted to determine  
22 whether your staff's determinations were accurate?

23 A To the best of my knowledge they are accurate.

24 Q The resolution of the Bucks County commissioners dated  
25 December 18th, 1985, which essentially permitted you to form

1 the Bucks County Transport company as a non-profit  
2 organization, allowed only for the purposes of coordinating--  
3 to serve as a coordinating agent, did it not?

4 MR. CAMPBELL: Object, your Honor. If he's referring to  
5 a document, I think the witness is entitled to look at it  
6 before he says what it says or the document can be put into  
7 evidence and can speak for itself.

8 MR. TIER: I was just testing his knowledge and his  
9 understanding, your Honor. I think what has been advanced,  
10 your Honor, is that if they have, in fact, operated without  
11 proper authority it's been done inadvertently. I'm testing his  
12 knowledge.

13 MR. CAMPBELL: I object to the characterization and  
14 argument contained in that statement, your Honor. He didn't  
15 say it was inadvertent. He testified that it was done very  
16 deliberately under the opinion that it was lawful  
17 transportation because it was exempt from Commission  
18 regulation.

19 JUDGE CHRISTIANSON: I will allow counsel to say what he  
20 wants. I do have -- well, I'm a little fuzzy as to where we're  
21 going on this particular issue. If counsel wants to go ahead  
22 and examine the witness without providing the document, I'll  
23 allow it on counsel's statement that he's trying to test the  
24 witness.

25 I think ultimately whatever enactment occurred on

1 December 18th, 1985, should be allowed to speak for itself. I  
2 guess the implication is that the commission has then only  
3 authorized broker service. I would expect that if people  
4 thought it was a problem it took care of broadening the mandate  
5 of this particular legal personality when the taking of the  
6 transfer on the operating authority was contemplated.

7 Let's go ahead. If you want to probe the witness on his  
8 memory, go ahead.

9 BY MR. TIER:

10 Q What was your understanding of the authority granted  
11 by that resolution, sir?

12 A The authority that was granted by that resolution was  
13 for us to set up a non-profit corporation and to do whatever  
14 was necessary to provide, coordinate, whatever, to keep the  
15 transportation available for the people that were to be  
16 benefited by that; namely, senior citizens of Bucks County and  
17 the medical assistance population.

18 MR. TIER: Your Honor, if I may have this marked. I  
19 apologize. I don't have any copies. I'll be sure that some  
20 are made.

21 JUDGE CHRISTIANSON: We can manage to make copies of  
22 brief documents. You can call it Protestants' Exhibit 1.

23 (Protestants' Exhibit No. 1 was produced and marked for  
24 identification.)

25 JUDGE CHRISTIANSON: I would like to take a look at it at

1 this point so that we know what is going on. It's just one  
2 page. We can certainly make copies.

3 (Pause.)

4 JUDGE CHRISTIANSON: Protestants' Exhibit 1 appears to be  
5 a document from Bucks County, the Bucks County commissioners.  
6 It's identified subject to the making of copies, which we can  
7 probably do at a break.

8 BY MR. TIER:

9 Q I now show you, sir, what has been marked Protestants'  
10 Exhibit 1 and ask you, sir, if you have ever seen that document  
11 before.

12 A I have.

13 Q Is that the document of December 1985 which we just  
14 spoke of?

15 A Yes.

16 Q Other than this document, sir, did you rely on any  
17 opinions or any other documentation for the purposes of  
18 providing service, the actual transportation of people and  
19 persons, para-transit type service in Bucks County?

20 A Are you referring to other contracts with the county  
21 that specify providing service?

22 Q Let's stay with the 203 Program.

23 A I'm referring to the 203 Program.

24 Q Yes, sir, for the providing of transportation, the  
25 actual physical transportation of people. Did you rely on any

1 other document other than P-1?

2 A We have a contract with the county for the Area Agency  
3 on Aging to provide and/or contract Section 203 transportation.  
4 I don't have that contract with me, but it's available.

5 Q When you in fact bid or when you in fact solicited  
6 that contract, what did you represent as your authority to  
7 provide transportation service?

8 A I believed that that contract was in basically the  
9 same contract that had been between the old Office of Public of  
10 Transportation and the Area Agency on Aging, which was the same  
11 one that Bucks County Transport had with the Area Agency on  
12 Aging, which is the county.

13 Q Do you know of some authority that the Office of  
14 Public Transportation of Bucks County had to provide services,  
15 transportation services to individuals under 203?

16 A It was --

17 MR. CAMPBELL: I object, your Honor. I don't know where  
18 this is going. What the county did, what the county's  
19 authority -- the county didn't require any authority to render  
20 transportation service.

21 JUDGE CHRISTIANSON: I'll allow this question to be asked  
22 and request the witness to try to answer it. I wonder where  
23 we're going myself. I'm assuming this is related to fitness,  
24 but I'll allow that question.

25 THE WITNESS: The answer to your question is that it was

1 the -- I recall that it was the opinion of our solicitor, the  
2 county solicitor, that as long as BCT, Inc., was under the  
3 substantial control of the county regarding levels of services,  
4 fares, anything else that was part of the county that we would  
5 be exempt from the PUC.

6 BY MR. TIER:

7 Q Have you heard of an organization known as Doylestown  
8 Taxi?

9 A Yes.

10 Q How about a Mr. Russell F. Maxwell?

11 A Yes.

12 Q How did you come to know this individual?

13 MR. CAMPBELL: Your Honor, I object for the reason that  
14 we're going beyond the scope of direct examination. I don't  
15 know what the purpose is.

16 JUDGE CHRISTIANSON: Again, I'll allow counsel some  
17 latitude because I guess he's trying to probe into fitness.  
18 Mr. Campbell may feel free to renew his objection. We might  
19 want to take a break soon. If we're all comfortable, we'll  
20 progress for a while. We should be taking a break fairly soon.  
21 We'll let counsel proceed. The last question was how did you  
22 meet Mr. Maxwell.

23 THE WITNESS: When I first came to Bucks County, he was a  
24 contractor with the county.

25 BY MR. TIER:

1 Q Did he subsequently request that you utilize his  
2 services under these 203 programs?

3 A What time frame are you referring to?

4 Q After the institution of BCT.

5 A That's hard to say. He refused to sign a contract  
6 that our other subcontractors had signed. I can't say that he  
7 was officially requesting to be a contractor since he refused  
8 to sign a contract for us that we had given him for several  
9 months.

10 Q Can you share with us, sir, how it is that you secure  
11 a contract with the Department of Transportation, the 203,  
12 without having held a PUC certificate?

13 A I can't answer that question.

14 Q Is one of the requirements for the entering into a  
15 contract with the Department of Transportation for 203 services  
16 that the provider has to have a Certificate of Public  
17 Convenience from the PUC?

18 A I can't second guess PennDOT's actions. They  
19 contracted with us for several years.

20 Q Did that ever appear in the application as a  
21 requirement?

22 A There are a number of different -- on the bottom of  
23 the front page they ask you what your entity is. That's  
24 basically it.

25 JUDGE CHRISTIANSON: Let me ask a question and try to

1 clarify something in my mind. Has this applicant, Bucks County  
2 Transport, Incorporated, ever actually provided transportation  
3 service itself?

4 THE WITNESS: Yes, your Honor.

5 JUDGE CHRISTIANSON: Fine. Proceed.

6 BY MR. TIER:

7 Q On how frequent a basis have you provided that type of  
8 transportation?

9 A As I related I indicated what time we began providing  
10 that transportation, and we have been doing it ever since.

11 Q Can you perhaps give us a number of trips, let's say,  
12 in a six-month period?

13 A Thousands. I can't give you a specific number.  
14 Several thousand trips.

15 MR. TIER: I have no further questions.

16 JUDGE CHRISTIANSON: Let's be off the record briefly.

17 (Discussion off the record.)

18 (Whereupon, a brief recess was taken.)

19 JUDGE CHRISTIANSON: I understand there is redirect.  
20 Counsel may proceed.

21 REDIRECT EXAMINATION

22 BY MR. CAMPBELL:

23 Q Mr. Volpe, you were asked on cross-examination how you  
24 got a 203 contract without having a PUC certificate. Are the  
25 persons or entities that may apply for grants under this

1 program limited to PUC certificated carriers?

2 A No, sir.

3 Q I show you Chapter 425 of the regulations of the  
4 Department of Transportation which appear in 67 Pa. Code  
5 Section 425.3. I ask you who are enumerated eligible  
6 applicants under that regulation.

7 A Transportation companies, local transportation  
8 organizations, county transportation systems.

9 Q Getting back to the resolution, Mr. Volpe, which was  
10 marked for identification as Protestants' Exhibit 1. I notice  
11 there is a reference to a previous resolution that the board of  
12 commissioners, in order to carry out their resolution of  
13 October 2, 1985, and their contract of 1985, do certain things.  
14 What did that previous resolution authorize, if you remember?

15 A It authorized BCT to operate the Office of Public  
16 Transportation for approximately a three, four-month interim  
17 period until January 1, 1985, and to carry out all the work,  
18 transportation requirements, et cetera, that had been  
19 originally been carried out by the Office of Public  
20 Transportation management.

21 Q I think you misspoke. Do you mean January 1986?

22 A I'm sorry. You're right.

23 Q That covered a three-month transition period?

24 A Yes.

25 Q Did BCT's new organization, if you will, conduct the

1 functions of the County Department of Transportation during  
2 those three months?

3 A Yes.

4 Q During those three months did the county itself render  
5 any transportation using its own vehicles as opposed to getting  
6 services from certificated carriers?

7 A Yes.

8 Q Did you understand that when this resolution of  
9 December 18, '85, was passed that that was to limit or restrict  
10 you from the previous activities that the county was  
11 performing?

12 MR. TIER: Objection, your Honor. That's just a wee-bit  
13 leading I think.

14 JUDGE CHRISTIANSON: Well, to be careful at this point,  
15 you can rephrase it. I think counsel is attempting to be brief  
16 rather than to lead the witness. Let the witness speak for  
17 himself.

18 MR. CAMPBELL: I'll try to rephrase, your Honor.

19 BY MR. CAMPBELL:

20 Q This resolution which has been identified as  
21 Protestants' Exhibit 1, as I read it, Mr. Volpe, doesn't say,  
22 "Thou shall operate motor vehicles to provide transportation,"  
23 does it?

24 A No, sir.

25 Q It doesn't even say, "Thou shall act as a broker." It

1 just provides that you will be the county coordinating agency.

2 A Yes, sir.

3 Q Did you understand from this resolution that you were  
4 limited to providing a - quote - coordination function?

5 A Our understanding was that we were to do everything  
6 that had been done or was necessary to provide the service,  
7 provide transportation service, to do everything that had been  
8 done by the county and to do everything that was necessary in  
9 the future to continue the service and to provide the service.

10 MR. CAMPBELL: That's all the questions I have, your  
11 Honor.

12 JUDGE CHRISTIANSON: One thing I can do now, if counsel  
13 would be amenable, is I can accept Protestants' Exhibit 1 for  
14 the record. I don't think we did that.

15 MR. CAMPBELL: No objection.

16 JUDGE CHRISTIANSON: It is accepted into the record. We  
17 have all three exhibits that are a part of the record. Any  
18 recross?

19 MR. TIER: Just a few, your Honor.

20 REXCROSS EXAMINATION

21 BY MR. TIER:

22 Q I believe you indicated on cross-examination, sir,  
23 that one of the ways that you insure that people are meeting  
24 the guidelines of 203 reimbursement is to have the providers  
25 actually show you a copy of their Certificate of Public

1 Convenience.

2 MR. CAMPBELL: Object, your Honor. That's not based on  
3 my redirect.

4 MR. TIER: Your Honor, if I may.

5 JUDGE CHRISTIANSON: Go ahead. Let him answer the  
6 question. I think it might be beyond the scope, but I'll allow  
7 that.

8 THE WITNESS: That is one of the ways, yes.

9 BY MR. TIER:

10 Q You just testified on redirect that it wasn't  
11 necessary to have a PUC certificate as far as your  
12 understanding was concerned to be in the 203 Program under  
13 PennDOT, is that correct?

14 A It wasn't necessary to apply for funds.

15 Q But, it's necessary for those funds to be reimbursed  
16 to have a PUC certificate.

17 A No.

18 Q It's not?

19 A No. You're referring to my contractual arrangement  
20 with carriers. That's all I was referring to is my contractual  
21 arrangement with the carriers.

22 Q Why would you require your contractors have PUC  
23 certificates to be reimbursed if it's not necessary to have  
24 them?

25 A The contractors held themselves out as PUC carriers.

1 Those contractors were there prior to my coming there. Their  
2 PUC certificates were on file in our files. I think that  
3 answers your question, I hope.

4 Q You referred to an agreement of October 2nd, 1985, in  
5 your redirect. Do you recall that?

6 A Yes.

7 MR. TIER: I'm not going to have this marked, your Honor;  
8 but may I show it to the witness?

9 JUDGE CHRISTIANSON: Yes. Go ahead.

10 BY MR. TIER:

11 Q Is that a copy, sir, of that agreement?

12 A I believe so, yes. I haven't read the whole thing,  
13 but it's been a while since I looked at it. It should  
14 essentially -- well, whatever it says it says.

15 JUDGE CHRISTIANSON: We'll progress. It appears to be  
16 the agreement that he's talking about.

17 BY MR. TIER:

18 Q Do you recall, sir, what your authority limit was, if  
19 there was an authority limit, in this agreement?

20 A It's my understanding that there was never any -- the  
21 concept of authority limit was never discussed when any of  
22 these arrangements or agreements were being put together. In  
23 your description of authority or context of authority, that  
24 never came up in any of the meetings that we had.

25 Just simply we were supposed to carry on and to do

1 whatever was necessary to provide the transportation,  
2 coordinate or whatever, apply for funds and make sure that the  
3 program -- the end product was that the program should carry  
4 on.

5 Q I ask you to read, sir, the third whereas clause on  
6 page 1.

7 A "Whereas, the said OPTS contracts with private  
8 taxi/para-transit companies to provide the above said  
9 transportation service and also receives costs and schedules  
10 rides for persons using the services, provides and maintains  
11 most of the vehicles used by the carriers, monitors the  
12 performance of the carriers, applies for and receives grants  
13 necessary to operate the service and assembles and maintains  
14 the records necessary to satisfy funding agencies; and..."

15 Q OPTS is the Office of Public Transportation Services,  
16 is that correct?

17 A Yes.

18 Q When you took over for the OPTS, did you first review  
19 this agreement?

20 A That agreement wasn't written until essentially the  
21 demise of OPTS.

22 Q It was signed on October 2nd, 1985.

23 A Right. I had come in November of 1984. That wasn't  
24 written until a year later, essentially.

25 Q This was in a three-month hiatus period, correct? The

1 BCT took over from --

2 A Right.

3 Q The paragraph you just read, was that a paragraph you  
4 relied on to determine what your functions were to be on the  
5 BCT system?

6 A I think once again I have to say that it was our  
7 understanding that we were to do whatever was necessary to have  
8 the transportation provided for the senior citizens and the  
9 people who are medical assistance.

10 Q Is it fair to say that you came by that understanding  
11 by way of something other than this document?

12 A I think there were a number of inputs that would have  
13 me believe that, yes.

14 Q Other than the document?

15 A Yes.

16 MR. TIER: Thank you, your Honor. I appreciate your  
17 courtesy.

18 JUDGE CHRISTIANSON: Anything further for the witness?

19 MR. CAMPBELL: No, your Honor.

20 JUDGE CHRISTIANSON: The witness is excused. You may  
21 call your next witness.

22 MR. CAMPBELL: I call Mr. Baur.

23 AUGUST A. BAUR, called as a witness, having been duly  
24 sworn, was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. CAMPBELL:

2 Q Sir, would you give your full name and business  
3 address for the record?

4 A August A. Baur, B-a-u-r; Bucks County Courthouse,  
5 Board and Court Streets, Doylestown, PA.

6 Q By whom are you employed and in what capacity?

7 A I am employed by the County of Bucks as the assistant  
8 county administrator.

9 Q Have you been authorized to appear and testify here  
10 today?

11 A I have.

12 Q In your capacity as assistant county administrator,  
13 are you familiar with the operation of Bucks County Transport,  
14 Incorporated?

15 A I am.

16 Q Did you hear the testimony Mr. Volpe regarding the  
17 background of BCT and its operation?

18 A Yes, I have.

19 Q Is his testimony true and correct to the best of your  
20 knowledge and belief?

21 A To the best of my knowledge and belief, it is.

22 Q Particularly with reference to the formation of BCT  
23 and the manner in which the employees that formerly worked for  
24 the county moved over and worked for the new corporation, did  
25 Mr. Volpe's description of that jive with your recollection?

1 A Yes, it did.

2 Q Were you employed by the county at the time it  
3 occurred?

4 A I was, yes.

5 Q At the present time, is the county itself in any  
6 position to provide the services presently rendered by BCT if  
7 this application were disapproved?

8 A No, they are not.

9 Q Has the service rendered by BCT to the county been  
10 satisfactory in your opinion?

11 A In my opinion the service has been very satisfactory.

12 Q Can you give us any idea of the volume or number of  
13 trips or number of persons by any frame reference that is  
14 convenient to you that utilize the services provided by BCT?

15 A I believe on medical assistance trips I see the  
16 reports on a quarterly basis. If I'm not mistaken, I believe  
17 BCT provides somewhere around ten to fifteen thousand trips per  
18 quarter for medical assistance. I have a feeling that we may  
19 be talking the same number of trips or close to it as far as  
20 the 203 transportation is concerned also.

21 Q Would it be a fair statement that BCT is operating in  
22 the county on an everyday basis?

23 A Oh, yes.

24 MR. CAMPBELL: Sir, that's all the questions that I have.  
25 The witness is available for cross.

1 JUDGE CHRISTIANSON: Fine. Again, cross now or take a  
2 moment?

3 MR. TIER: Your Honor, can we go off the record?

4 JUDGE CHRISTIANSON: Off the record.

5 (Discussion off the record.)

6 JUDGE CHRISTIANSON: We can proceed with cross-  
7 examination.

8 CROSS-EXAMINATION

9 BY MR. TIER:

10 Q You testified that in your opinion, sir, if this  
11 application were not granted Bucks County could not provide the  
12 services that are presently being provided by applicant. Do  
13 you recall that testimony?

14 A Yes.

15 Q Perhaps you could help me because I'm a little  
16 confused. What services are you talking about? Are you  
17 talking about coordinating services as a broker, or are you  
18 talking about the actual physical transportation services?

19 A I'm referring to both of them--in providing  
20 transportation services for the elderly and the medically  
21 needy.

22 Q How is this funded? How is the BCT funded?

23 A BCT is funded through the 203 Program, which is the  
24 senior citizens' program, and the Department of Welfare Public  
25 Transportation Block Grant, something to that effect.

1 Q In other words, they operate on their revenues?

2 A That's correct, on grant revenues.

3 Q Are you aware that the protestant in this case, Tracey  
4 Tours, has brokerage authority for the same areas the applicant  
5 now requests?

6 A I personally am not.

7 Q Is there any reason, sir, as to why it is you feel  
8 Tracey Tours could not come in and run this for Bucks County on  
9 the same basis as the applicant presently is running the  
10 system?

11 A I have no knowledge of Tracey Tours.

12 Q When you say that Bucks County would have nothing to  
13 replace the applicant, were you referring to something within  
14 its political subdivision?

15 A I believe the question that was directed to me was was  
16 the County of Bucks in a position to provide the  
17 transportation, to which I responded that they were not.  
18 Meaning that we did not have an organization in place, nor any  
19 vehicles, nor any other means of providing the transportation  
20 as of this time.

21 Q The brokerage also, correct?

22 A No organization would imply no brokerage capability.

23 Q Are you aware of the amount of carriers that are  
24 available to pick up the same people, the MA people, medical  
25 assistance people, and 203 transportation people?

1           A I know there are several organizations within the  
2 county, but I couldn't say that I was specifically aware of  
3 each and every one of them.

4           Q When you responded to the fact that Bucks County was  
5 not in a position to provide the services if this application  
6 were not granted, specifically actual transportation services,  
7 you meant, did you not, as a political subdivision they would  
8 not be able to provide the service?

9           A I would say that's accurate.

10          Q You just stated figures of medical assistance of  
11 between ten and fifteen thousand per quarter and 203 of  
12 approximately the same. Do you recall that?

13          A That's what I said. That's really reaching. I guess  
14 I wouldn't want to be held to those numbers. I wasn't prepared  
15 to answer that question dealing with the volume of  
16 transportation. I'm just trying to give you an idea as to the  
17 -- I guess the scope of the operations of BCT.

18          Q Sir, what is your experience relative to the  
19 transportation issue?

20          A For a brief period of time I was the director of the  
21 Office of Public Transportation on an interim basis.

22          MR. TIER: I have no further questions.

23          JUDGE CHRISTIANSON: Fine. Anything?

24          MR. CAMPBELL: I have nothing further, your Honor.

25          JUDGE CHRISTIANSON: Fine. Then the witness is excused.

1           We can decide where we go from here. I think at the  
2 break I mentioned to both counsel about the possibility of  
3 further hearing. I certainly am very willing to close the  
4 record at the end of this hearing.

5           Frequently in these cases the protestants seek another  
6 day. Let me check with Mr. Tier. Do you think you want  
7 another day. Should I set one?

8           MR. TIER: Your Honor, what I would propose is that  
9 another day be set. In the interim I will speak to my client  
10 and get back to your Honor as to whether, in fact, an  
11 additional day would be necessary, unless you want to work it  
12 the other way around. I could speak to my client and then  
13 advise you.

14           JUDGE CHRISTIANSON: No. I think we can go ahead and set  
15 it. That's fine. I'll set a hearing soon. I'll write a note  
16 to the scheduler. They will set it up actually.

17           Let me put it this way. I would ask Mr. Tier to get back  
18 to me within, say, two weeks whether you want the hearing or  
19 not. The hearing will probably be set in about a month if the  
20 schedules work out that way. I would ask that protestants'  
21 counsel come back within two weeks of tomorrow, let's say, two  
22 weeks from Friday, to say whether he wants the further hearing  
23 or not. That will give sufficient time.

24           Since we're not sure about the further hearing, I have to  
25 inquire about the one other step. Do the parties contemplate

1 the filing of briefs? You can leave that for two weeks from  
2 now if you haven't made up your minds.

3 What do you think about briefs, Mr. Campbell?

4 MR. CAMPBELL: I think we would propose to ask the right  
5 to file a brief.

6 JUDGE CHRISTIANSON: If one party wants to file a brief,  
7 I will send out a briefing letter. You can either call me on  
8 the telephone or write a letter. It doesn't matter.

9 MR. TIER: Yes, your Honor.

10 JUDGE CHRISTIANSON: Then we can worry about briefs then.  
11 I expect the briefs probably will be filed. Fine.

12 Just for the information of both counsel. I will be  
13 coming out with a briefing letter. Normally it is sent out  
14 when the transcript comes in. Probably this transcript will  
15 come in after we know whether there be a further hearing.

16 When it comes in or when I'm sure we're not going to need  
17 a further hearing, I will come out with a briefing letter. If  
18 we go to another hearing, we can decide at that hearing for  
19 sure whether you want briefs or not. We can leave it there.

20 I think we have tied up the loose ends then. You two  
21 will probably be getting a scheduled hearing. We'll see in  
22 about two weeks or less if we will need the hearing. If you  
23 get back to me quickly by early next week, we may not have to  
24 send out the hearing notices.

25 I would rather get it scheduled than leave it hanging.

1 There is some reason to move the application. If there is a  
2 problem with that hearing date, that will be worked out. You  
3 may or may not be contacted. I don't know how the schedule is  
4 set for cases in small cases like this.

5 Let me check. Anything further for today from  
6 Mr. Campbell?

7 MR. CAMPBELL: Nothing, your Honor. We rest.


8 JUDGE CHRISTIANSON: The applicant rests. Anything  
9 further, Mr. Tier?

10 MR. TIER: No. Thank you, your Honor.

11 JUDGE CHRISTIANSON: We will be off the record for today  
12 with a possibility of a further hearing. If not, we'll close  
13 out the case as I indicated.

14 (Whereupon, at 12:10 p.m., the hearing adjourned.)

15 I hereby certify that the proceedings and evidence are  
16 contained fully and accurately in the notes taken by me during  
17 the hearing of the within cause, and that this is a true and  
18 correct transcript of the same.

  
\_\_\_\_\_  
Glenda S. Fink  
Reporter

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