

The Commonwealth of Massachusetts

REPORT OF THE SPECIAL COMMISSION ESTABLISHED FOR THE PURPOSE OF MAKING AN INVESTIGATION AND STUDY OF THE MANAGEMENT, OPERATION, CONTROL AND FINANCES OF THE NEW BEDFORD, WOODS HOLE, MARTHA'S VINEYARD AND NANTUCKET STEAMSHIP AUTHORITY.

STATE HOUSE, BOSTON, April 15, 1954.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts.

The Legislature in 1953 enacted a special resolve known as chapter 87 of the Acts and Resolves of 1953, and is as follows:—

CHAPTER 87.

RESOLVE PROVIDING FOR AN INVESTIGATION AND STUDY BY A SPECIAL COMMISSION RELATIVE TO THE MANAGEMENT, OPERATION, CONTROL AND FINANCES OF THE NEW BEDFORD, WOODS HOLE, MARTHA'S VINEYARD AND NANTUCKET STEAMSHIP AUTHORITY.

Resolved, That an unpaid special commission to consist of three members of the senate to be designated by the president thereof, five members of the house of representatives to be designated by the speaker thereof and three persons to be appointed by the governor, is hereby established for the purpose of making an investigation and study of the management, operation, control and finances of the New Bedford, Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, including the subject matter of current senate document numbered 493 and current house documents numbered 1721 and 1723, relative to said Authority, and of current house document numbered 2402, the report of the special commission relative to local transit companies.

Said commission shall be provided with quarters in the state house or elsewhere, may hold public hearings, may travel within and without the commonwealth, shall have the power to summon witnesses and

to require the production of books, records and papers and the giving of testimony under oath, and may expend for expert, technical, legal, clerical and other services and expenses such sums as may be appropriated therefor. Said commission shall report to the general court the results of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry such recommendations into effect by filing the same with the clerk of the senate on or before the last Wednesday of December in the current year.

Approved July 2, 1953.

The members of your Special Commission consisted of Senator Harold R. Lundgren, Worcester, chairman; Senator Edward C. Stone, Osterville; Senator Edmund Dinis, New Bedford; Representatives Cornelius J. Murray, Beverly, vice-chairman; Cyrus Barnes, Nantucket; Joseph A. Sylvia, Oak Bluffs; Allison R. Dorman, New Bedford; and Leo J. Normandin, New Bedford; and the Governor appointed Clarence G. McDavitt, Jr., Winchester; Captain Soren Willesen, Malden; and C. Clark Macomber, Newton.

One particular provision of the statute creating the New Bedford, Woods Hole, Martha's Vineyard and Nantucket Steamship Authority (Acts and Resolves of 1948, chapter 544) lies in the way of making many constructive recommendations for legislative changes.

Section 6 of that chapter provides as follows:—

While any bonds issued by the Authority remain outstanding, the powers, duties or existence of the Authority shall not be diminished or impaired in any way that will affect adversely the interests and rights of the holders of such bonds.

This provision is effective at the moment since there are bonds presently outstanding. While perhaps some of us might think that certain recommendations might not "affect *adversely* the interests and rights of the holders of such bonds," the right thus expressly granted for the benefit of the bondholders is one of which they or any one of them might avail themselves in court proceedings. We feel constrained, therefore, to make only such recommendations as we feel could not be questioned by any bondholder.

The subject which first suggests itself for consideration has to do with the scope of service to be given by the Authority, which up to a certain extent has been determined by the Supreme Court decision in the case of City of New Bedford, *et al. v. New Bedford, Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, et al.*, decided September 14, 1953, and found in the Advance Sheets, pages 703, *et seq.*

The following excerpts are taken from the opinion in that case, being found on page 712. The Court says: —

It will be seen from what has been said that in our opinion the trial judge went too far in ruling that as a matter of law the Authority must maintain continuous service at New Bedford at all seasons of the year. We think it is within the power of the Authority in its discretion for cause to suspend service to New Bedford during the seasonal periods of reduced traffic. Whether it could similarly suspend service to one of the islands or between the islands and Woods Hole is another matter, because of the vital necessity of maintaining some service at all seasons between the islands and the mainland. We do not consider these questions.

And then finally, on page 712, the Court says: —

A final decree is to be entered declaring that the Authority cannot lawfully abandon any of the ports mentioned in the act, but that it can for cause suspend service at New Bedford in the slack season, even for as long a period as from the latter part of September until the latter part of April; but what constitutes cause is to be determined by the Authority and not by courts, so long as the Authority refrains from capricious, whimsical or arbitrary action; and that action taken will be presumed valid until the contrary is shown.

From the testimony of many witnesses, including at least former members of the Authority and some of the existing members, it is plain that a substantial difference of opinion exists as to the correct definition of the words "adequate transportation" in the phrase of the act "in order to provide adequate transportation of persons and necessities of life for the islands of Nantucket and Martha's Vineyard," which words are quoted from the enabling act.

It seems clear from the decision quoted that the Authority must provide the transportation of persons and necessaries of life to and from the mainland and between the islands at all seasons of the year, whereas it is within the discretion and power of the Authority for what seems to them to be reasonable cause "to suspend service to New Bedford during the seasonal period of reduced traffic."

From all this it would seem clear that the Authority should be required to provide, and the taxpayers required to underwrite a deficit of, only such service as is necessary to provide such minimum transportation as is necessary to maintain habitation on the islands. Whatever may be the situation as respects New Bedford, it is clear that as respects the islands, depending as they do for the necessaries of life upon transportation, the least that can be furnished is that which will give transportation necessary to maintain habitation on the islands.

It seems clear, also, to the Commission that, under capable and efficient management, service very substantially in excess of these minimum requirements could and should be provided certainly to the islands, and that this additional service can be provided not only without creating or increasing a deficit, but in all probability producing a profit which would reduce any deficit possibly resulting from minimum operation.

As respects transportation to and from New Bedford the decision makes it clear that the Authority "can for cause suspend service at New Bedford in the slack season even for as long a period as from the latter part of September until the latter part of April." Moreover, "what constitutes cause is to be determined by the Authority and not by courts." The Commission cannot suggest legislation which would further restrict service to and from New Bedford without laying it open to action under section 6.

We believe, therefore, that it must be left with the Authority to decide the seasons during which service to New Bedford is to be given or to be taken away, since

that is a matter to be determined by the Authority and not by courts "so long as the Authority refrains from capricious, whimsical or arbitrary action"; and it is further noted "that action taken will be presumed valid until the contrary is shown."

No recommended legislation seems to be necessary, since the existing law as construed by the court seems adequate to meet the situation.

STEAMSHIP AUTHORITY MEMBERSHIP.

Since operation of the service may result in a deficit and thereby incur a tax liability for property owners in Nantucket, Martha's Vineyard, New Bedford and Falmouth, it is essential that the taxpayers of these areas be represented on the Authority lest there be in effect taxation without representation. We strongly feel, moreover, that the members of the Authority with the responsibilities thus put upon them as respects citizens and taxpayers should provide for at least the administrative officials of the towns and cities affected to have access to the records of the Authority and to the benefit of conference with the members of the Authority individually and as an Authority at all reasonable times and all reasonable intervals.

Much testimony was presented to the Commission to indicate that the members of the Authority seldom were in agreement and frequently disagreed. The Commission recognizes that in part disagreements of this sort were the natural result of the understandable and human desire on the part of each individual member of the Authority to take care of and to advance the interests of his own home community.

The Commission believes that this apparent dilemma can be avoided simply by a change in concept of duties and responsibilities of the members of the Authority, and all this without any change in the statute.

The corporation legal entity concept is pertinent. In every corporate organization the Board of Directors rep-

resents the shareholders. In a similar fashion the Authority members should represent the taxpayers of their respective communities. If we carry the comparison further, the members of the Authority should, like a Board of Directors, make broad policy decisions determined on the basis of the greatest benefit for all interested parties. They must, of course, attend to those financial and similar matters for which they alone are responsible under the law, but like a Board of Directors they must elect competent management to conduct the business of operating the Steamship lines, and like a Board of Directors the Authority should allow management, or those picked out to manage the conduct of the business of operating the Steamship lines, to perform those duties, continually, of course, verifying their judgment as to the competence of their managers by examining the results produced. The Authority should *not*, just as a Board of Directors should not, usurp or encroach in any way upon the prerogatives of management. Dissatisfaction with management, if it should develop, would result in a change in management but not an attempt to take over the duties of management. Like a Board of Directors, the Authority should also be concerned with proper continuity in management.

The success of procedure like this has been demonstrated and is daily being demonstrated in the successful operation of thousands of corporations. Since any one of these successful business operations will serve as a model, it should not be necessary to detail this method of organization and operation further. It is the opinion of the Commission that most of the dissatisfaction expressed about the operation of the service can be traced to the failure of the Authority to organize and operate in the manner herein described.

Two new members have been appointed to the Authority, including a new chairman. The Commission has every confidence in their ability to solve all existing problems. It is further apparent to the Commission that the general good would be served if the remaining mem-

bers of the Authority should resign, and their places filled by new appointments, thus creating an entirely new Authority without prejudice and with full responsibility for their acts.

MEMBERSHIP.

Compensation for Authority members is not provided for in the act. No change is advocated by the Commission, since it believes that the requirements of time and effort, if limited as recommended, are fundamentally comparable to the requirements of a great many municipal offices which many citizens undertake as a civic duty and without compensation.

In order to avoid any conflict of interests, the Commission recommends that any member of the Authority will be declared ineligible to hold membership on the Authority if he is directly or indirectly, or becomes directly or indirectly, interested in, connected in any capacity with, or employed by any corporation, partnership or individual (1) doing business with the Authority, or (2) providing transportation of passengers or freight in any form between the islands of Martha's Vineyard and Nantucket or between the mainland and said islands, or (3) providing service, whether for the Authority or otherwise, incidental to transportation, whether parking, vehicle-serving, express or freight handling, furnishing meals or drink, or concessions of any sort on the vessels or property owned by the Authority, or otherwise. Legislation to accomplish this is set forth in Appendix A.

RATE SCHEDULES AND OPERATIONS.

The Commission regards all questions of rate schedules and operations as a duty and responsibility of management. The Commission assumes that competent management will naturally strive to procure the largest possible amount of business, and that they will, therefore, arrange schedules and rates to encourage the maximum amount of income consistent with the cost of the service

provided; all recommendations of management, however, carefully to be studied by the members of the Authority, and approved by them before being promulgated.

FINANCES.

While the Commission believes that it would be of great benefit to all if chapter 544, as amended, should again be amended in order to clarify the definition of "deficit," any recommendations along those lines would run counter to section 6 of chapter 544. However, members of the Authority are bound by the provisions of the act, and when it becomes a part of their duty to determine what the deficit is, it should be determined by the use of readily available figures so that it would be possible for town and city officials and committees to know very shortly after the end of any calendar year the amount, if any, of the deficit for which they must provide in their respective budgets. While the Commission has considered it not proper to have both depreciation charges and bond payments included in computing the cost of service, it has been advised by counsel for the trustee for the bondholders that to provide differently from what is now provided might reduce accordingly the amount in the first instance to be provided by the Commonwealth and thereafter assessed upon the various communities, and would deprive the bondholders of an important source of revenue which might be used directly or indirectly for the payment of their bonds. Hence, any suggested amendment along these lines could not be made to the act.

The economy and development as well as the health and safety of the islands are dependent upon the uninterrupted and continuous passage of the authority's vessels from the mainland to the islands, and therefore should be protected in every way.

The help of chapter 150B of the General Laws (see chapter 596 of the Acts of 1947), may well be needed under certain circumstances, and as that act does not bring

within its purview transportation of passengers, at least on vessels by water routes, the Commission recommends that the act be amended accordingly, and submits herewith the necessary amendment in Appendix B.

Since the Commission believes that improvement can and will be achieved by organization changes, and some remedial legislation is recommended herein, we do not believe that passage of any of the following 1953 petitions is necessary or desirable, Senate, No. 493, House, No. 1721, House, No. 1723, and House, No. 2402.

Respectfully submitted,

HAROLD R. LUNDGREN,

Chairman.

CORNELIUS J. MURRAY,

Vice-Chairman.

SOREN WILLESEN.

CLARENCE G. McDAVITT, JR.

C. CLARK MACOMBER.

LEO J. NORMANDIN.

EDWARD C. STONE.

ALLISON R. DORMAN.

JOSEPH A. SYLVIA.

EDMUND DINIS.

MINORITY REPORT.

The majority report of the Special Commission on the Steamship Authority shows that the purpose of the General Court in appointing the Commission was utterly frustrated by a misconception on the part of certain members of the Commission of the rights of holders of bonds issued by the New Bedford, Woods Hole, Martha's Vineyard and Nantucket Steamship Authority.

The General Court specifically directed the Commission (chapter 87, Acts and Resolves of 1953) to make "an investigation and study of the management, operation, control and finances of the New Bedford, Woods Hole, Martha's Vineyard and Nantucket Steamship Authority" and to "report to the general court the results of its investigation and study and its recommendations, if any."

The obvious purpose of the investigation was to provide the Commission with a factual basis on which the Commission should determine whether the Steamship Authority was efficiently performing its duties as set forth in chapter 544, Acts and Resolves of 1948, as amended. The obvious duty of the Commission was to reach a conclusion on this question, to present the facts and its conclusion to the General Court, and — if the Commission found that the Authority was not functioning efficiently — to offer suggestions as to how the Authority might be aided.

In its majority report the Commission has given to the General Court no definite, clear-cut statement of the present condition and functioning of the Authority. In its majority report the Commission has provided the General Court with no body of specific organized facts as to the management, operation, control and finances of the Authority. In its majority report the Commission presents no decision as to the efficiency of the functioning of the Authority, nor does the majority report pro-

vide the General Court with the factual basis upon which the General Court itself might reach a decision.

In its majority report the Commission explains its failure to carry out the directions of the General Court as set forth in chapter 87, Acts and Resolves of 1953, by quoting section 6 of chapter 544, Acts and Resolves of 1948, and adding: "We feel constrained, therefore, to make only such suggestions as we feel could not be questioned by any bondholder."

The Commission failed to carry out the specific directives of the General Court because certain members of the Commission believed that a bondholder *might* object.

No one will deny that justice and sound financing require that the rights of a bondholder be zealously protected, whether the bond be issued by private business, government or government instrumentality. But no one in his right mind can assert that a bondholder can prevent the General Court of the Commonwealth of Massachusetts from obtaining and studying facts concerning the functioning of an administrative agency created by the General Court in the interests of the public welfare. No one can deny that the General Court has the right, through subsidiary boards or otherwise, to draw up tentative plans and procedures for improving the work of its instrumentalities. No one can assert that *any* change of *any* kind in the management, operation, control and finances of the Authority will necessarily diminish or impair the interest of the bondholders. If that were true, all change, all improvement, all increase in efficiency of every governmental instrumentality would be prohibited.

Nevertheless, this preposterous misconception of the rights of the bondholders of the Authority so blurred the minds of some members of the Commission that the majority report fails to set forth what the investigation clearly proved, — that the Authority is not fulfilling its legal duty — is not providing adequate transportation facilities for the island of Nantucket.

The investigation impressively reaffirmed certain well-known facts and conclusively established newer facts, all

of which convincingly reveal the inadequacy of the transportation facilities provided by the Authority for the island of Nantucket.

These facts are:

1. *The only reason for the existence of the Authority is to assure to Martha's Vineyard and Nantucket adequate transportation of persons and necessities of life between the mainland and the islands.*

That is the only reason set forth in chapter 544, Acts of 1948, which established the Authority. In fact, it is to be observed that chapter 544 does not authorize the Authority to provide transportation facilities between mainland ports. Furthermore, it is evident that, as was stated in evidence given to the Commission, "without these two islands there would be no excuse for operating a boat line. Any mainland boat line terminal is merely a passageway to these Atlantic outposts."

"It is apparent," said the Supreme Judicial Court in 329 Mass. 243, "that steamship service is vital to the economic survival of the Islands at all seasons, but is not a matter of life or death to either Falmouth or New Bedford at any season."

2. *The economic life of Nantucket depends on the resort business.*

This well-known fact was reaffirmed by evidence presented to the Commission. Furthermore, it was pointed out that Nantucket's vacationist business is not only absolutely essential to Nantucket but is a great asset to the state. Visitors go to Nantucket from every state of the Union and from many foreign lands, give part of their business in passing through the state to many other communities, acquaint thousands with the advantages of Massachusetts, help to build up not only in Nantucket but elsewhere in Massachusetts the growing vacation business which becomes more and more important as the competition against Massachusetts industry grows greater from other sections of the country.

3. *Nantucket's resort business depends upon ready, convenient, sufficient transportation of persons, cars and freight to and from the island.*

Nothing was more clearly brought out in the investigation than that Nantucket's resort business is hampered, lessened and endangered by the lack of convenient and sufficient steamship transportation. Most vacationists today hesitate to go to Nantucket if they experience difficulty or unreasonable delay in getting accommodations on shipboard for themselves and their cars, as well as baggage and freight. The testimony presented instance after instance of vacation business lost because vacationists, hindered and offended by inability to get transportation, went elsewhere, prejudiced against Nantucket, disgusted with Massachusetts.

4. *Present steamship facilities are less than they were ten years ago.*

Although the population of Nantucket, dependent upon the resort business, has increased to 3,500 year-round residents; although the resort business, despite hampering, has increased; although vacationists more than ever wish to bring cars with them, there are fewer ships and fewer daily trips to and from the mainland than there were just before the war. Two ships — the "New Bedford" and "Naushon" — were taken for war service. These ships have not been returned nor have they been replaced. Instead of five incoming and five outgoing steamer trips daily, there is now but one, and in the summer but three such round trips.

In the last ten years hotels and guest houses have increased from 70 to 250. Nantucket has the facilities to handle increased business and to induce increased resort business. Despite hampering lack of convenient and sufficient steamship transportation, Nantucket's resort business has increased and will continue to increase if that absolutely necessary element — convenient, sufficient transportation — is provided. But vacationists

will not endure unreasonable delay or difficulties. Nantucket's continued existence as a self-supporting community requires improved steamship transportation.

5. *Establishment of a steamer ferry type shuttle service between Woods Hole and Nantucket is necessary to provide Nantucket with the adequate transportation facilities which chapter 544 enjoins the Authority to provide.*

Between Woods Hole and Martha's Vineyard a steamer ferry shuttle facilitates constant, convenient, ready and sufficient transportation between that island and the mainland. A similar direct operation between Nantucket and Woods Hole will offer to vacationists that speedier, more frequent, more convenient, more comfortable transportation which today's vacationist demands. It will secure to Nantucket its present self-supporting status and will permit Nantucket's resort business to increase as its permanent population increases.

A steamer ferry shuttle will be more economical to operate, more efficient, more remunerative, and more profitable to the Authority than the present schedules and methods of operations. Such a type of steamship service will, far from impairing the rights of a bondholder, add to his rights and strengthen his security.

SUMMARY.

The mandate of the General Court as expressed in chapter 544 requires the Steamship Authority to provide adequate transportation facilities to Nantucket and Martha's Vineyard.

No evidence was presented that the Authority has failed to provide adequate service to Martha's Vineyard.

Conclusive evidence was presented to the Commission that the economic life of Nantucket depends upon its resort business; that the very life line of that resort business is sufficient steamship service; that the present operation does not provide such sufficient service; that any-

thing less in steamship service than that sufficient to maintain Nantucket's economic life is certainly not adequate transportation; that the Authority can provide adequate transportation by establishing a steamer ferry type shuttle between Woods Hole and Nantucket.

The Authority has power, without further legislation, to arrange for direct shuttle operation between Woods Hole and Nantucket.

The undersigned member hereby recommends that the Authority be instructed to arrange for this operation at the very earliest possible date.

CYRUS BARNES.

PROPOSED LEGISLATION.

APPENDIX A.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Four.

AN ACT RELATIVE TO THE QUALIFICATIONS OF MEMBERS
OF THE NEW BEDFORD, WOODS HOLE, MARTHA'S VINE-
YARD AND NANTUCKET STEAMSHIP AUTHORITY.

*Be it enacted by the Senate and House of Representatives
in General Court assembled, and by the authority of the
same, as follows:*

1 Section 14 of chapter 544 of the acts of 1948 is
2 hereby amended by adding at the end the following
3 paragraph:—
4 No member of the Authority shall be an officer,
5 director, stockholder or in the employ of, or be in
6 any way, directly or indirectly, financially interested
7 in any person, partnership, corporation or association
8 having any business or financial transactions with the
9 Authority, or which is furnishing any transportation
10 of freight or passengers in the area of the Authority,
11 or rendering any service similar to that performed by
12 the Authority.

APPENDIX B.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Four.

AN ACT PROVIDING CONTINUOUS SERVICE OF THE NEW BEDFORD, WOODS HOLE, MARTHA'S VINEYARD AND NANTUCKET STEAMSHIP AUTHORITY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 544 of the acts of 1948 is hereby amended
2 by inserting after section 14 the following section:—
3 *Section 14A.* If transportation of passengers on
4 the steamship line of the Authority is interrupted by
5 reason of any group of employees calling a strike or
6 going out on strike, or causing any such stoppage or
7 slow down, or by reason of any other labor dispute,
8 the provisions of chapter one hundred and fifty B of
9 the General Laws shall apply, in so far as they are
10 applicable.

The Commission of Education

Report of the Commission of Education

The Commission of Education was organized on July 1, 1907, by the Board of Education of the City of New York. Its purpose was to study the existing educational system and to propose reforms.

The Commission has held numerous public hearings and has received many suggestions from the public. It has also conducted extensive research into the various problems of the educational system.

The Commission believes that the present system is in need of fundamental reforms. It proposes the following changes: 1. The reorganization of the Board of Education into a single body representing the entire city. 2. The creation of a Department of Education, which would be responsible for the general supervision of the schools. 3. The establishment of a system of public schools, which would be free and compulsory for all children of the city. 4. The improvement of the methods of selecting and training teachers. 5. The improvement of the methods of selecting and training principals. 6. The improvement of the methods of selecting and training superintendents. 7. The improvement of the methods of selecting and training members of the Board of Education. 8. The improvement of the methods of selecting and training members of the Commission of Education.

The Commission believes that these reforms are essential for the improvement of the educational system of the City of New York. It urges the Board of Education to take prompt action upon these proposals.

Resolved, That the sum of \$100,000 be and it is hereby appropriated for the purpose of purchasing the land described in the following resolution, to-wit:

The land owned by the State of New York, situated in the town of ...

... and the same be and it is hereby appropriated for the purpose of purchasing the land described in the following resolution, to-wit:

The land owned by the State of New York, situated in the town of ...

... and the same be and it is hereby appropriated for the purpose of purchasing the land described in the following resolution, to-wit:

The land owned by the State of New York, situated in the town of ...

... and the same be and it is hereby appropriated for the purpose of purchasing the land described in the following resolution, to-wit:

The land owned by the State of New York, situated in the town of ...

... and the same be and it is hereby appropriated for the purpose of purchasing the land described in the following resolution, to-wit:

The land owned by the State of New York, situated in the town of ...

