

Decision No. 25227.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of
FIALER'S INC., a corporation, for
certificate of public convenience
and necessity to operate a sight-
seeing limousine service.)

) Application No. 18217.
)

Douglas Brookman, and Abbott, Cannon, Appel & Daines,
by Ivores R. Daines, for applicant.

Richard T. Eddy, for The Gray Line, Inc., protestant.

H. C. Lucas and L. G. Markel, by L. G. Markel, for
Pacific Greyhound Lines, interested party.

Edwin G. Wilcox, for Oakland Chamber of Commerce,
intervener on behalf of applicant.

BY THE COMMISSION:

O P I N I O N

The applicant, Fialer's Incorporated, is a corporation of the State of California with offices in San Francisco. By this proceeding authority is sought under the provisions of Section 50½ of the Public Utilities Act for a certificate of public convenience and necessity to operate a limousine service between San Francisco and (1) points on the peninsula, including Stanford University; (2) Oakland, Piedmont and Berkeley, and (3) Muir Woods and Mt. Tamalpais. The Gray Line, Inc., protested the granting of the application.

A public hearing was held before Examiner Geary at San

Francisco August 23, 1932, and the matter having been duly submitted is now ready for an opinion and order.

Attached to the application and made a part thereof are exhibits setting forth the passenger fares, the routes to be followed, and maps of the territory to be traversed.

The applicant at the present time is engaged in operating sight-seeing tours entirely within the City and County of San Francisco, for passengers in limousines, and it also does a business in chartering limousine automobiles for trips within the bay area and throughout the State of California. There was testimony to the effect that repeated and insistent demands have been presented by tourist agencies and others connected with tourist transportation urging this applicant to inaugurate a common carrier sight-seeing limousine service between San Francisco and the points mentioned. The testimony submitted with reference to the necessity for the proposed services showed that there are no common carrier limousines operating where travelers may secure individual tickets such as the kind offered by this applicant. Travelers are now compelled to organize parties and charter the limousines.

A number of witnesses representing travel agencies such as the American Express Company, Cook & Son, General Steamship Corporation, etc., the Chambers of Commerce of Oakland and Marin County, and the former manager of the Mt. Tamalpais Railroad, took the stand in support of the application. Practically all of these witnesses while favoring the proposed new services, referred to The Gray Line, a competitor, and commented upon the satisfactory services rendered by the sight-seeing busses operated by that organization. They however took the position that The Gray Line did not perform a completed service, and endorsed this application upon the grounds that a certain class of travelers, especially those people

stopping in San Francisco in connection with around-the-world tours, desired the accommodation offered by this applicant.

A number of witnesses appearing on behalf of protestant, The Gray Line, recommended sight-seeing busses now being operated, and were of the opinion that a limousine service selling individual tickets would not be a success because groups of four or five travelers are not easily assembled, and without this number the operations would be at less than cost. They were of the opinion that the Gray Line busses rendered sufficient and satisfactory sight-seeing tours. The officials of The Gray Line presented testimony and exhibits and showed by their records that the sight-seeing business during the past few years has been on the decline and the net revenues were not satisfactory. They also stated that if limousine operations were demanded by the public The Gray Line would inaugurate the service.

It is not denied that The Gray Line performs an excellent service with sight-seeing busses, but it does not render the kind of services this applicant will inaugurate. The proposed services are new and different from any now open to the public, and as heretofore stated would principally meet a necessity and convenience of tourist travel. The protests to the granting of the application were to some extent based upon the contention that applicant could not make the limousine operations profitable. This risk however is one which the applicant is willing to assume.

We deem it unnecessary to discuss the exhibits presented by either applicant or protestant or to review in further detail the considerable testimony submitted during the hearing, for it appears there is a public convenience and necessity for the service.

We are of the opinion that the record reveals a need for the service here proposed, and a certificate authorizing

the application will be granted.

Fialer's Inc., is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reason - above rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

O R D E R

A public hearing on this application having been held and the matter submitted, full investigation having been had, and basing this order on the findings of fact and the conclusions contained in the preceding opinion,

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to Fialer's, Incorporated, a California corporation, to operate a sightseeing limousine service between San Francisco and (a) points on the San Francisco peninsula including Stanford University, (b) Oakland, Piedmont and Berkeley, and (c) Muir Woods and Mt. Tamalpais, as a common carrier of passengers, subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period not to exceed ten (10) days from the date hereof.
2. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days from the date hereof, on not less than ten days' notice to the Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing fares and rules which, in volume and effect, shall be identical with the fares and rules shown in the exhibit attached to the application insofar as they conform to the certificate granted herein.

3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from date hereof, on not less than five (5) days' notice to the Commission and the public, time schedules, according to form provided in General Order No.83, covering the service herein authorized, in a form satisfactory to the Railroad Commission.

4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 3rd day of October, 1952.

C. L. Leamy
Leon A. Whiteley
W. A. Lewis
W. B. Harris
J. G. Stewart
COMMISSIONERS.