

Decision No. 20968

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
A. THOMPSON for certificate of public
convenience and necessity to operate a
sight-seeing tour of the East Bay
Section including Oakland, Berkeley,
Piedmont and Alameda.) Application No. 20968.

Laurence R. Chilcote, for applicant.
Edward I. Fitzgerald for the Gray Line, Inc., protestant.
McCarthy, Richards & Carlson, for East Bay Transit Co.,
and Key System, interested parties.
H. Albert George, for the City of Alameda.
John W. Collier and F. B. Fernhoff for City of Oakland,
supporting the application.

WAKEFIELD, COMMISSIONER:

OPINION

A. Thompson, applicant herein seeks a certificate of public convenience and necessity to operate a passenger sight-seeing tour as an automotive common carrier between various points of interest in the County of Alameda.

After public hearing in Oakland on March 25, 1937, the matter was submitted and is now ready for decision.

The proposed tour covers practically all major points of interest in the East Bay District from Grizzly Peak to the Beaches and Airports and represents a round trip of 51.6 miles. The equipment to be used by applicant comprises three buses of 27, 28 and 33 passenger capacity, respectively, and a 7 passenger sedan. Two complete tours daily are to be operated the year round leaving at 9:30 a.m. and 1:30 p.m. and the transportation charge will be \$2.50.

Under the rules and regulations of applicant's proposed tariff as they appear in amended exhibit A of his application,

no minimum is set up as to the number of passengers required to present themselves before a tour is operated it being his announced intention to operate the complete tour for one or more passengers reserving only the right to operate a sedan when six tickets or less for any one tour have been sold.

Thompson testified that he had been engaged in "charter car" work since 1932, carrying some 3,000 persons a year on lodge and club outings principally, and had for nearly a year operated a seasonal sightseeing tour in the City of Oakland.

The record shows that this applicant has received the endorsement of the City of Oakland and, furthermore, there was introduced into evidence resolution No. 30750 of the Board of Supervisors of the County of Alameda endorsing and approving Mr. Thompson's application. In addition some twenty letters from East Bay business, lodge, civic, military, travel and hotel bodies were received in evidence in endorsement of the proposed operation. A travel agent and an American Legion representative each testified they have had several requests during the past year for a sightseeing tour similar to that proposed by applicant. A teacher in the public schools of Oakland who for several years has had charge of recreational activities at the University of California during summer session testified that he received from seventy-five to one hundred requests during each summer session for information regarding a sightseeing tour through the East Bay territory.

Although the record is practically void of any evidence relative to probable operating revenues and expenses, it appears somewhat doubtful that the service proposed would,

at the outset, be a financial success. However, applicant is desirous of establishing a local East Bay tour and is of the opinion that with an aggressive advertising campaign and the cooperation of the hotel interests and others the operation will become profitable.

Protestant Gray Line, Inc., placed the testimony of four employee witnesses in the record and developed therefrom the fact that protestant had in the past, and still does operate, a purely East Bay Tour for which there had been very slight demand and extremely limited patronage, resulting in an unprofitable operation. It was further developed from the record that The Gray Lines, Inc. has in the past only maintained an agency office in Oakland and that subsequent to the filing of the instant application on January 20, 1937, namely March 1, 1937, it took steps to and has established an Oakland office with a resident agent in charge. Exhibits of protestant introduced comprised travel pamphlets of their tours and a sheaf of patrons' reports commending Gray Line on the excellence of its service and tours. These last, however, were, practically without exception, the results of tours originating in San Francisco and therefore not strictly applicable to the instant problem.

Bearing in mind that the authority sought is for an East Bay Tour only, originating and terminating in Oakland; that the tour proposed encompasses a good deal more territory than the comparable tour of protestant and further considering that protestant Gray Line has been unable to develop any appreciable patronage on their one tour confined strictly to East Bay Territory, coupled with the evident fact that applicant Thompson

has undoubtedly been definitely favored with endorsement and promised future support of both civic bodies and other organizations in a position to aid him in his venture and, considering that the bulk of Gray Lines' patronage originates in San Francisco with little likelihood of their being adversely affected by the entry of Thompson into the field with a tour limited to East Bay points of origin and destination, I believe that the application should be granted.

A. Thompson 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 reasonable 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.

I recommend the following form of order.

O R D E R

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
HEREBY DECLARES that public convenience and necessity require the operation by A. Thompson of an automotive sightseeing service as a common carrier of passengers between points of interest in Alameda County named in the application over and along the following route:

20th and Broadway to 19th Street to Alice Street to 13th Street to Webster Street to 12th Street to Franklin Street to 11th Street to Harrison Street thru Posey tube to Alameda Webster Street to Central Street to Encinal to Paru St. to Dayton Ave. to Grand

Street to Central Ave. to High Street to San Jose Ave. to Peach Street to Maitland Drive to Oakland Air Port. Oakland Air Port to Hegenberger Road to San Leandro Street to Seminary Ave. to Camden Street to Hopkins Street to Mills College entrance. Thru Mills College to Seminary Ave. to Mountain Blvd. to Redwood Road to Skyline Blvd. to Grizzly Peak Blvd. to Euclid Ave. (Berkeley) to Hearst Ave. to Oxford Street to University of California. Thru Campus thence back to Oxford Street. Around east side of University of California to Dana Street to Bancroft Way to Piedmont Ave. to Memorial Stadium to Greek Theatre thence to Bancroft Way to College Ave. to Durant Ave. to Telegraph Ave. to 42nd Street (Oakland) to Mather Street to Piedmont Ave. to Mountain View Cemetery thence back to Piedmont Ave. to Pleasant Valley Ave. to Moraga Ave. to Highland Ave. (Piedmont) to Mountain Ave. to Sea View to Hampton to King Ave. to Farragut to Crocker Ave. to Mandana Ave. (Oakland) to Lake Shore Ave. to Grand Ave. Thru Lakeside Park back to Grand Ave. to Lake Shore Ave. to 12th Street to 14th Street to Oak Street to Lakeside Drive to 19th Street to Broadway to starting point.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same is, hereby granted to A. Thompson subject to the following conditions:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file in triplicate and concurrently make effective on not less than ten days' notice to the Railroad Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which in volume and effect, shall be identical with the rates and rules shown in the amended exhibit attached to the application in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.
3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five days' notice to the Railroad Commission and the public, time schedules 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 obtained.

5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant 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.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of April, 1937.

Walter A. ...
Leon ...
Frank ...
Ray ...
Ray & ...
COMMISSIONERS.