

Decision No. 31031

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
TANNER MOTOR TOURS, LTD., a corporation,
and THE GRAY LINE, INC., a corporation,
doing business under the name of
TANNER-GRAY LINE CALIFORNIA LIMOUSINE
TOURS AGENCY, for a Certificate of
Public Convenience and Necessity to
Operate Automobile Sedan and/or Limousine
Service as a Common Carrier between Los
Angeles, California, and San Francisco,
California.

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) Application No. 20603
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O. R. CUMMINS and ROBERT A. McMILLAN, for Applicants;
E. C. LUCAS, for California Parlor Car Tours Company
and Pacific Greyhound Lines, Inc., Protestants;
BROBECK, PELEGER & HARRISON, by James S. Moore, Jr.,
for the Yosemite Park and Curry Company,
interested party.

BY THE COMMISSION:

O P I N I O N

By their application as amended, Tanner Motor Tours, Ltd., a corporation, and The Gray Line, Inc., a corporation, seek a certificate of public convenience and necessity, the title to which shall be vested in Tanner-Gray California Limousine Tours Agency, an agency representing the two corporations jointly, authorizing the establishment and operation of an automotive sight-seeing service to be conducted between Los Angeles and San Francisco via the coast and the valley routes, using sedans and limousines, and providing for interchange of passengers at Merced and Fresno with

Yosemite Park and Curry Company, for sight-seeing tours to Yosemite Valley.

A public hearing was had before Examiner Austin at Los Angeles, when evidence was offered, the matter submitted, briefs filed, and it is now ready for decision.

In their original application, applicants Tanner Motor Tours, Ltd. and The Gray Line, Inc. sought a certificate to conduct a service of similar character between Los Angeles and San Francisco and intermediate points. This contemplated two distinct three-day tours over the coast and the valley routes, respectively, for each of which a total fare of \$60.00 per passenger would be charged. Over the coast route passengers will be accommodated the first night at the Biltmore Hotel in Santa Barbara, and on the second night at Del Monte Hotel. On the valley tour, passengers will spend the first night at the California Hotel in Fresno, and the second night at the Ahwahnee Hotel in Yosemite Valley. Various points of interest will be visited en route.

By the amended application filed during the course of the hearing, applicant Tanner Motor Tours, Inc. and The Gray Line, Inc. sought a certificate for a service identical to that described in the original application, to be issued to Tanner-Gray Line California Limousine Tours Agency, a joint agency created by an agreement entered into between applicants for the purpose of holding the title to any certificate granted, authorizing the operation of a sedan or limousine sight-seeing service, as a common carrier, between Los Angeles and San Francisco and intermediate points. This agreement, a copy of which accompanied the amended application,

provided that the agency should be joined as a party to this application. In addition to the grounds alleged in the original application as justification for the granting of the certificate sought (repeated in substance in the amended application), it was stated that the Commission previously had granted to Tanner Motor Livery, a corporation, predecessor of applicant Tanner Motor Tours, Ltd., a certificate ⁽¹⁾ authorizing the operation of an automotive sight-seeing service between Los Angeles and San Francisco and intermediate points, following practically the same route as that described in the pending application. Subsequently, it was alleged, this certificate was amended as to the route, the fares, the minimum number of passengers, and the elimination of the requirement for a round-trip.

California Parlor Car Tours Company, Pacific Greyhound Lines, Inc., and Southern Pacific Company appeared as protestants against the granting of this application, while Yosemite Park and Curry Company appeared as an interested party. The principal showing, by way of protest, was confined to California Parlor Car Tours, Inc.

At the hearing evidence was offered describing the service applicants proposed to render, and also that performed by protestant California Parlor Car Tours, Inc. Applicants called representatives of various hotels and travel bureaus, who related the inquiries and requests they had received pertaining to a service of this character.

Some confusion appeared to exist in the minds of applicants' representatives and counsel concerning the nature, scope,

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This certificate was granted by Decision No. 22644 on Application No. 16541, dated July 9, 1930 (35 C.R.C. 22).

and extent of the existing operative rights of Tanner Motor Tours, Ltd. Quite apparently, they have labored under the impression that this applicant cannot, under its existing certificates, render a service of the character for which a certificate is now sought. However, since it appears from the Commission's decisions, offered in evidence by reference, that Tanner Motor Tours, Ltd. is actually possessed of an operative right to conduct such a service, it does not appear necessary to enter upon a detailed consideration of the evidence bearing upon the question of public convenience and necessity. There remains, then, for our consideration only the question whether the present proceeding should be dealt with as an application on the part of Tanner Motor Tours, Ltd. to transfer to its co-applicant, The Gray Line, Inc., a half interest in its existing operative right over this route.

That applicant Tanner Motor Tours, Ltd. is authorized to conduct the service for which it here seeks a certificate clearly appears from the decisions of this Commission dealing with the operative rights of that company and its predecessor. We shall briefly review them.

By Decision No. 20803 on Applications Nos. 14582 and 14583 dated February 19, 1929 (32 C.R.C. 682), a certificate was granted Tanner Motor Livery, a corporation, authorizing the operation of a sight-seeing tour consuming thirteen days, and at a fare of \$208.50 from Los Angeles to San Francisco via the coast route, and returning via the San Joaquin Valley. Northbound, the route embraced such intermediate points as Ventura, Santa Barbara, Santa Maria, San Luis Obispo, Paso Robles, King City, Salinas, Del Monte Hotel, Monterey, Watsonville, Santa Cruz, Big Trees, Los Gatos, Stanford

University, San Mateo, Burlingame, and San Francisco. Included in the tour were trips throughout the Bay region and also to points north of San Francisco, such as Petrified Forest, Petaluma, Santa Rosa, and Vallejo. Southbound, the route traversed the San Joaquin Valley, connection being made at Merced for a sight-seeing trip to Yosemite Valley under a joint arrangement with Yosemite Transportation System. Leaving Merced, the tour continued down the Valley to Fresno and Bakersfield, and over the Ridge route to Los Angeles. The service authorized was of a seasonal nature, to be furnished at least once a week during the months of February, March, and the first half of April of each year. Though the opinion recites this service would be provided by motor buses of from twenty to twenty-five passenger capacity, nothing appears in the decision prescribing or in any way limiting the type of equipment to be used; in fact, the use of limousines for small parties appears to have been contemplated.

The operation of Tanner Motor Livery was consolidated and an in lieu certificate granted to that company by Decision No. 22644 on Application No. 16541 dated July 9, 1930 (35 C.R.C. 22). By its order in said proceeding, the Commission found that public convenience and necessity required the operation by that company of "an automobile sight-seeing service over and along the following routes," specifying thirty tours and including, as Tour No. 15, a thirteen-day tour between Los Angeles and San Francisco and return, to which we have referred. In the decision this tour was described as follows:

"Leaving Los Angeles via Santa Monica and Roosevelt highway through Ventura to Santa Barbara, visiting points of interest in and around Santa Barbara, thence through Santa Maria, San Luis Obispo, Paso Robles and Salinas to Monterey, visiting points of interest in and around Monterey, including Carmel Mission, Point Lobos and Pacific

Grove; thence through Watsonville and Pajaro Valley to Santa Cruz, visiting points of interest in and around Santa Cruz, including Felton Grove of giant redwoods; thence through Los Gatos to Stanford University, visiting Stanford University; thence through Redwood City and San Mateo to San Francisco, visiting points of interest in and around San Francisco; thence through Sausalito and San Rafael to Sonoma, visiting points of interest in and around Sonoma; thence to Santa Rosa; thence to Calistoga, visiting Petrified Forest and Calistoga geysers and through Napa Valley, Vallejo, Richmond and Berkeley to Oakland, visiting points of interest in and around Berkeley and Oakland, including grounds of University of California; thence through Hayward, Tracy and Modesto to Merced; thence, after completion of Yosemite Valley sight-seeing trip and return to Merced via cars of Yosemite Park and Curry Company proceeding through Fresno, Bakersfield and state highway to Los Angeles."

In this decision no reference was made to the type of equipment to be used in conducting the service, nor were any seasonal restrictions imposed or even mentioned.

Pursuant to authority granted by Decision No. 22863 on Application No. 16859 dated September 13, 1930 (35 C.R.C. 922), the certificates of public convenience and necessity granted to Tanner Motor Livery by Decision No. 22644, and the business assets and properties used in connection therewith, were transferred to Tanner Motor Tours, Ltd., the applicant herein.

By Decision No. 24075 on Application No. 17683 dated September 28, 1931 (36 C.R.C. 925), Tanner Motor Tours, Ltd. was authorized to reduce this tour (Tour No. 15) from thirteen to ten days' duration, to reduce the fares, and to abandon that portion of the operations north of San Francisco. In this connection the application recited that passengers, if they so

desired, could patronize tours conducted by The Gray Line, reaching these points.

The route traversed by Tour No. 15, as amended by this decision, was as follows:

"Leaving Los Angeles via Santa Monica and Roosevelt Highway through Ventura to Santa Barbara, visiting points of interest in and around Santa Barbara; thence through Santa Maria, San Luis Obispo, Paso Robles and Salinas to Monterey, visiting points of interest in and around Monterey, including Carmel Mission, Point Lobos and Pacific Grove; thence through Watsonville and Pajaro Valley to Santa Cruz, visiting points of interest in and around Santa Cruz, including Felton Grove of giant redwoods; thence through Los Gatos to Stanford University visiting Stanford University; thence through Redwood City and San Mateo to San Francisco, visiting points of interest in San Francisco; thence to Oakland and Berkeley visiting points of interest in and around Oakland and Berkeley; thence through Hayward, Tracy and Modesto to Merced; thence, after completion of Yosemite sightseeing trip and return to Merced via cars of Yosemite Park and Curry Company, proceeding through Fresno and Bakersfield via State Highway to Los Angeles, arriving on evening of tenth day."

The time allotted to this tour was again reduced by Decision No. 26569 on Application No. 19161 dated November 25, 1933 (39 C.R.C. 805). By this decision applicant Tanner Motor Tours, Ltd. was authorized to operate over this route seven-day and four-day tours. The fares were further reduced, and the route was changed so as to permit operations beyond Felton Grove to be conducted over the Skyline Boulevard to San Francisco, instead of through Los Gatos, Stanford University, Redwood City, and San Mateo. In addition, passengers completing the Yosemite side-trip were permitted, at the carrier's option, to resume the tour at either Merced or Fresno, reaching the latter point over the lines of Yosemite Park and Curry Company via Wawona Tunnel and Wawona. Permission also was sought to operate this tour throughout the year, conditioned upon obtaining a minimum of four passengers for

any specific operation. Since the decision provided generally that the application was thereby granted without qualification, it necessarily follows that the applicant herein was therein authorized to conduct this service daily throughout the year whenever the prescribed minimum number of passengers requested the service.

Additional optional schedules over this tour were authorized by Decision No. 27163 on Application No. 19477 dated June 18, 1934 (39 C.R.C. 816). Here, the operation of two, three, five, and six-day schedules was authorized, subject to a minimum of five passengers, the fares were reduced, and optional changes were permitted in the routes. These changes included the diversion of passengers between Monterey and Merced, via Pacheco Pass instead of San Francisco, and, on the two and three-day tours, by operating north of Salinas via San Jose, Palo Alto, and San Francisco, as an alternate to the Skyline Boulevard route.

That this applicant then conceived its operative rights to embrace the operation of sedans or limousines appears from the language found in paragraph VIII of the application in that proceeding, viz.:

"This tour will continue to be operated by high grade, modern limousines or parlor car sightseeing buses, as such equipment is set forth in Applicant's existing tariffs."

From a consideration of these decisions, it is clear that when applicant Tanner Motor Tours, Ltd. filed its application in the instant proceeding, it possessed ample authority to conduct daily, over the route described therein, without any seasonal restrictions, sight-seeing tours providing for schedules of two, three, four, five, six, and seven-day trips. Also optional routes existed, including a tour via Pacheco Pass from Monterey to Merced, elimin-

ating San Francisco entirely, and alternative routes north of Salinas to San Francisco. Thus, this applicant is now the owner of the very operative right for which a certificate is sought in the instant proceeding.

It appears that when the proceeding was instituted, applicant, The Gray Line, Inc., held no operative right between San Francisco and Los Angeles.

Protestant, California Parlor Car Tours Company, is authorized to provide substantially the same service as that accorded by applicant Tanner Motor Tours, Ltd. under its Tour No. 15, over the Coast route, and through a connecting carrier at Merced to Yosemite Valley.

By Decision No. 23343 on Application No. 17095 dated February 2, 1931 (35 C.R.C. 789), this protestant was granted an in lieu certificate covering its operations between Los Angeles and San Francisco, and authorizing it to operate optionally between Los Angeles and Ventura via the Malibu Highway and Oxnard, or via Ventura Boulevard, and north of Ventura "via the main coast highway through Santa Barbara, Paso Robles, Del Monte, 'Seventeen Mile Drive,' Santa Cruz, Big Trees, and Palo Alto, and the Bay Shore Highway to San Francisco." Both two-day and three-day tours were authorized. The order authorized this carrier "to use equipment as required by traffic demands," thus sanctioning the use of sedans and limousines as well as buses. ⁽²⁾

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The application in this matter (paragraph V, pp. 2 and 3) requested the elimination of the restriction, applying only to the three-day tour and not to the two-day tour, which required the service to be conducted with 18 or 21 passenger buses only. In this connection California Parlor Car Tours Company sought the right "to use such capacity equipment as may at the time of use be most fitted to the service."

By Decision No. 27972 on Application No. 19892 and consolidated proceedings, dated May 20, 1935 (39 C.R.C. 235), this protestant was authorized to conduct "a parlor car or limousine sight-seeing four day all expense tour between Los Angeles and San Francisco, with night stop-overs at Santa Barbara, Del Monte and Yosemite," transportation between Merced and Yosemite Park to be provided by Yosemite Park and Curry Company. Operations between Del Monte and Merced were authorized via Los Banos, and between Merced and San Francisco via Manteca, Tracy, and Oakland. This decision, it will be noted, explicitly sanctioned the use of buses or limousines.

On the eve of the hearing of the present application, this protestant amended its tariffs and time schedules so as to provide expressly for sedan and limousine service in the operation of this tour. Thus it appears that the applicant Tanner Motor Tours, Ltd. and the protestant California Parlor Car Tours Company, when the instant proceeding was commenced, each possessed the right to use, in connection with their several sight-seeing services over the routes which they served, respectively, both sedans and limousines, on an individual fare basis. This right, though expressly granted, was nevertheless inherent in the certificates they then possessed, authorizing the operation of a "sight-seeing service."

In re Fialer's, Inc., 38 C.R.C. 280, 285.

To show the need for the proposed service, applicants called several witnesses, comprising representatives of travel bureaus and hotels. However, since we are dealing here with an operative right which already exists, it is not necessary to consider questions of public convenience and necessity. Equally immaterial

are the effect upon protestant California Parlor Car Tours Company of any competition flowing from such operations, and the contention of applicants that since that protestant made a belated entrance upon the field of limousine service, its protest must therefore be deemed unavailing.

At the outset of this proceeding, counsel for applicants announced ⁽³⁾ that applicant Tanner Motor Tours, Ltd. sought authority to transfer to The Gray Line, Inc. a half interest in the operative right then held by Tanner Motor Tours, Ltd., authorizing sight-seeing service over the route in question. This, it appears from the Commission's decisions to which we have adverted, is known as "Tour No. 15." Though the amended application is not in form one expressly seeking the transfer of an undivided interest in an existing operative right, such is plainly the purport of its provisions. The body of the application refers to the existing operative rights of applicant Tanner Motor Tours, Ltd., and the joint agency agreement, attached as an exhibit, provided that title to the certificate sought shall vest in the joint agency. This proceeding, therefore, will be considered as an application seeking authority to transfer from Tanner Motor Tours, Ltd. to Tanner-Gray Line California Limousine Tours Agency the title to the operative right owned by Tanner Motor Tours, Ltd. authorizing the operation of Tour No. 15, to be held by the agency for the use and benefit of Tanner Motor Tours, Ltd. and The Gray Line, Inc., in equal shares, each of the latter owning an undivided one-half interest in the certificate.

Some objection was voiced by protestant, California Parlor Car Tours Company, against granting a certificate to a joint

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Transcript, pp. 20, 21.

agency of the character created by the applicants. Such an agency, it was contended, is incapable of receiving a certificate. This is so, it is claimed, because it is neither an individual nor a corporation, nor, under the express terms of the joint agency agreement, may it be deemed a partnership. Clearly, however, such an agency may be created for the purpose of holding in trust for its members, the title to a certificate granted by the Commission. It is undesirable, from the Commission's viewpoint, that a certificate should be issued jointly to two corporations. For administrative reasons, it has been deemed preferable that two or more corporations seeking a single certificate should create an agency for the purpose of holding the title for their use and benefit. Such a situation is not without precedent; certificates have previously been granted to joint agencies of this character.

In re Los Angeles Ry. Corporation, 24 C.R.C. 137;

In re Los Angeles Ry. Corporation, 32 C.R.C. 104;

In re Nevada County Trucking Co., 39 C.R.C. 470;

In re California Transp. Co. (The River Lines),
37 C.R.C. 96.

There can be no question as to the competency of applicant The Gray Line, Inc. to conduct, in conjunction with applicant Tanner Motor Tours, Ltd., the service in question. It has had long experience in this field, is well able financially to carry on. The applicant Tanner Motor Tours, Ltd. will therefore be authorized to transfer to Tanner-Gray Line California Limousine Tours Agency its operative right to conduct Tour No. 15. The Agency, in turn, will be permitted to accept the title to this operative right for the use and benefit of applicants Tanner Motor Tours, Ltd. and The Gray Line, Inc., each of which shall be deemed the owner of an undivided one-half interest in said operative right. By permitting

this transfer, the competition now existing between Tanner Motor Tours, Ltd. and the protestant California Parlor Car Tours Company will not be accentuated. There now exists a certificate authorizing the operation of this very service; by this transfer, no additional operative right has been created.

Our order will be permissive in its terms, thereby affording the parties an opportunity to carry out the agreement into which they have entered.

O R D E R

A public hearing having been had in the above entitled proceeding, evidence having been received, the matter having been duly submitted, the Commission being now fully advised, and good cause appearing:

IT IS HEREBY ORDERED that applicant TANNER MOTOR TOURS, LTD., a corporation, be and it is hereby authorized to transfer and convey unto Tanner-Gray Line California Limousine Tours Agency (a joint agency for applicants Tanner Motor Tours, Ltd. and The Gray Line, Inc.), all of its right, title, and interest in and to any operative right or operative rights, evidenced by any certificate or certificates of public convenience and necessity now held by and heretofore granted to said Tanner Motor Tours, Ltd., or its predecessor in interest, by Decision No. 22644 dated July 9, 1930, on application No. 16541, as amended or modified by Decision No. 24075 dated September 28, 1931, on Application No. 17683, Decision No. 26569 dated November 25, 1933, on Application No. 19181, and Decision No. 27163 dated June 13, 1934, on Application No. 19477,

for the operation of an automotive sight-seeing service over and along the route designated and described: "TOUR NO. 15, CALIFORNIA TOUR DE LUXE," heretofore conducted by applicant Tanner Motor Tours, Ltd.

The authority herein granted is subject to the following conditions:

1. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission, or any other rate-fixing body, as a measure of value of said property for rate fixing, or for any purpose other than the transfer herein authorized.
2. Applicant Tanner Motor Tours, Ltd. shall, within twenty (20) days after the effective date of the order herein, unite with applicant Tanner-Gray Line California Limousine Tours Agency in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicant Tanner Motor Tours, Ltd. withdrawing and applicant Tanner-Gray Line California Limousine Tours Agency accepting and establishing such tariffs and all effective supplements thereto.
3. Applicant Tanner Motor Tours, Ltd. shall, within twenty (20) days after the effective date of the order herein, withdraw all time schedules filed in its name with the Railroad Commission covering the service herein authorized to be transferred, and Tanner-Gray Line California Limousine Tours Agency shall, within twenty (20) days after the effective date of the order herein, file, in duplicate, in its own name, time schedules covering said service heretofore given by applicant Tanner Motor Tours, Ltd., which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant Tanner Motor Tours, Ltd. or time schedules satisfactory to the Railroad Commission.
4. The rights and privileges herein authorized may not be sold, leased, transferred, nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment, or discontinuance has first been obtained.
5. No vehicle may be operated by applicant Tanner-Gray Line California Limousine Tours Agency 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.
6. The authority herein granted to sell and transfer the rights and/or property shall lapse and be void if

the parties hereto shall not have complied with all the conditions within the periods of time fixed herein, unless, for good cause shown, the time shall be extended by further order of the Commission.

This order shall become effective twenty (20) days from and after the date thereof.

Dated at San Francisco, California, this 27th day
of June, 1938.

W. H. [Signature]
John [Signature]
Frank [Signature]
R. [Signature]
Ray & Riley
Commissioners.