

Decision No. 22578

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
FIALER'S, INC.,  
a corporation, and THE GRAY LINE, INC.,  
a corporation, to transfer operative  
rights to FIALER'S LIMOUSINES, Inc.,  
a corporation, and FIALER'S LIMOUSINES,  
INC., to issue stock; also for amend-  
ment of operative right.

Application No. 22578

Douglas Brookman, for applicants.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Railroad Commission is asked to make an order authorizing Fialer's, Inc. and The Gray Line, Inc. to transfer certain certificates of public convenience and necessity to Fialer's Limousines, Inc., and authorizing the latter corporation to issue one thousand shares of its common capital stock of the aggregate par value of \$1,000.00.

The Commission further is asked to make an order amending the certificate of public convenience and necessity granted by Decision No. 22534, dated June 13, 1930, in Application No. 16540,, so that such certificate will permit operations between the Cities of San Francisco and Oakland on the one hand and the airports in Alameda County on the other hand, rather than between the specific addresses in said cities, as set forth in the decision, all as hereinafter set forth.

This application originally was filed with the Commission on February 14, 1939. Thereafter, on April 21, 1939, and May 31, 1939, further applications were filed supplementing the requests contained in the original application. It now appears that the matter is ready for

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decision and an order accordingly now will be entered on the original and the two supplemental applications.

Applicants Fialer's, Inc. and The Gray Line, Inc. are engaged in operating sedan or limousine motor vehicles between San Francisco and other points, all as hereinafter set forth, for sightseeing tours, and for air line passengers and their baggage. It is proposed by those in control of the two corporations, to merge into one company and under one ownership and management, these operations and the certificates of public convenience and necessity under which they are conducted. It is alleged that by doing so, economies can be effected.

The certificates of public convenience and necessity to be transferred by Fialer's, Inc. to Fialer's Limousines, Inc., are those granted by the Commission by Decisions Nos. 26263, 26469, 29288 and 29791, which permit service as follows:-

1. Decision No. 26263, dated August 21, 1933, in Application No. 18217, authorizes the operation of-

"....a sightseeing transportation service by means of standard type sedan or limousine motor vehicles seating not more than seven passengers, 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".

2. Decision No. 26469, dated October 23, 1933, in Application No. 18217, amends the certificate granted by Decision No. 26263, so as to read--

".....a sightseeing limousine service between San Francisco and (a) points on the San Francisco peninsula, including Stanford University and the dirigible base at Moffett Field, (b) Oakland, Piedmont, Berkeley, and (c) Muir Woods and Mt. Tamalpais, as a common carrier of passengers".

3. Decision No. 29288, dated November 23, 1936, in Application No. 18217, amends the certificate granted by Decision No. 26263, as amended by Decision No. 26469, so as to permit the operation as a common carrier of passengers for sightseeing purposes via the San Francisco-Oakland Bay Bridge as an alternate route only, and in addition to

operation via the ferries of the Southern Pacific Golden Gate Ferries, Ltd.

4. Decision No. 29791, dated May 24, 1937, in Application No. 21190, declared that Fialer's Inc. may--

".....at its option, in the conduct of its sightseeing tours between San Francisco, Muir Woods and Mt. Tamalpais, operate such tours via Golden Gate Bridge and/or common carrier ferry route between San Francisco and Sausalito".

The decision also granted a certificate of public convenience and necessity for--

".....the establishment and operation of a sightseeing transportation service by means of standard type sedan or limousine motor vehicles seating not more than seven passengers beginning at San Francisco and thence over the public highways and the Golden Gate Bridge and the new highway to Waldo Point returning to San Francisco via Highway 101 to Sausalito, thence to San Francisco via either the Golden Gate Bridge or the common carrier ferry route."

Fialer's, Inc. reports that it has continuously operated the service authorized by the Commission by its certificates of public convenience and necessity. During 1938 it reported operating revenues of \$50,623.71 and operating expenses of \$56,209.73, resulting in a net loss of \$5,586.02.

The certificates of public convenience and necessity to be transferred by The Gray Line, Inc. to Fialer's Limousines, Inc. are those referred to in Decisions Nos. 22534, 25478, 30226, 30952 and 31698, as amended by Decision No. 31804.<sup>(1)</sup> The Commission's records in this connection show the following:-

1. Decision No. 22534, dated June 13, 1930, in Application No. 16540, granted to one Joe Ferrant a certificate of public convenience and necessity for the operation of an automotive passenger stage service

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(1) The Gray Line, Inc. owns other certificates of public convenience and necessity under which it conducts sightseeing tours by buses. Such certificates are not included in this proceeding.

for the transportation of passengers and their baggage between

" (a) 661 Market street, San Francisco, and the San Francisco Bay Airdrome, Alameda County, over the route via either the Southern Pacific Company Oakland mole, Seventh street to Harrison street in the city of Oakland to Webster street in the city of Alameda, or the Southern Pacific Company Alameda mole, to Main Street, to Pacific avenue to Webster street in the city of Alameda.

(b) The Palace Hotel at New Montgomery and Market streets and the Alameda Airport, Alameda County, over the route via either the Southern Pacific Company Oakland mole, Seventh street to Harrison street, in the city of Oakland, to Webster street, to Pacific avenue, to Main street in the city of Alameda, or the Southern Pacific Company Alameda mole.

(c) 320 Geary street, San Francisco, and the Oakland Municipal Airport, Alameda County, over the route via either the Southern Pacific Company Oakland mole to Seventh street to Harrison street in the city of Oakland, to Webster street to Central avenue to High street to Encinal avenue to Post street, to Madison street to Peach street to county road to Maitland drive in the city and county of Alameda, or the Southern Pacific Company Alameda mole to Main street to Central avenue continuing on the next above described route in the city and county of Alameda.

(d) Hotel Oakland, Fourteenth and Harrison streets, Oakland, and the San Francisco Bay Airdrome, Alameda County, over the route via Harrison street in the city of Oakland to Webster street in the city of Alameda.

(e) 1621 Broadway, Oakland, and the Alameda Airport, Alameda County, over the route via Seventeenth street to Harrison street, in the city of Oakland to Webster street to Pacific avenue to Main street in the city of Alameda ".

It was provided that no service be given except between the termini above set forth and except to the passengers of the airplane transportation companies using the above mentioned airports.

2. Decision No. 25478, dated December 23, 1932, in Application No. 18601, authorized said Ferrant to establish an automotive service as a common carrier for compensation for the transportation of passengers and their baggage between San Francisco and San Francisco Municipal Airport, Mills Field, San Mateo County, over and along the Bay Shore Highway, subject, among others, to the following condition:-

"1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen(15) days from the date hereof, stipulating in said acceptance that the service to be rendered is only for passengers for airplane transportation to or from Mills Field and not from any point intermediate to San Francisco."

The statement, pursuant to this condition, was filed with the Commission by Ferrant on December 24, 1932.

3. By Decision No. 26912, dated April 2, 1934, Joe Ferrant was authorized to transfer the certificates thus granted him by said Decisions Nos. 22534 and 25478 to Airdrome Transport, Ltd. However, under authority granted by Decision No. 30226, dated October 11, 1937, in Application No. 21491, the transaction was reversed and said certificates were transferred back to Joe Ferrant.

4. By Decision No. 30952, dated June 6, 1938, in Application No. 21978, Joe Ferrant was authorized to transfer to The Gray Line, Inc. one of the present applicants herein, the certificates acquired by him under said Decision No. 30226, which, as set forth above, were created by said Decisions Nos. 22534 and 25478.

However, Decision No. 30952, in authorizing the transfer by Ferrant to The Gray Line, Inc. refers to operating rights for-

".....the automotive transportation as a common carrier of passengers between San Francisco and Oakland on the one hand, and airports in Alameda County on the other hand, and between San Francisco, on the one hand, and the San Francisco Municipal Airport (Mills Field), San Mateo County, on the other hand."

Thus, although the original certificate (Decision No. 22534) named specific addresses as termini, the later decision (No. 30952) referred to operation between cities.

5. Decision No. 31698, dated January 30, 1939, as amended by Decision No. 31804, dated March 6, 1939, in Application No. 22485, granted to The Gray Line, Inc. a certificate of public convenience and necessity for a

".....service as a passenger stage corporation as defined in section 2-1/2 of the Public Utilities Act for the transportation of passengers and their baggage between San Francisco and Oakland on the one hand, and the Treasure Island air base on the other hand, as an extension and enlargement of the operative rights heretofore created by Decision No. 22534, dated June 13, 1930,

on Application No. 16540, Decision No. 25478, dated December 23, 1932, on Application No. 18601, and Decision No. 30226, dated October 11, 1937, on Application No. 21491."

The authorization given is subject to the following restrictions:-

"1. The service authorized herein shall be restricted to the transportation of passengers and their baggage between termini only and limited to passengers arriving or departing on airplanes which are operated to or from Treasure Island Air Base;

"2. The service shall be performed by limousine automobiles, the maximum capacity to be ten (10) passengers".

The Gray Line, Inc. reports that it has continuously operated the services authorized by the Commission. During the last six months of 1938 it appears that its revenues from its airdrome operations amounted to \$25,196.61 and its operating expenses were \$24,098.35, resulting in a profit of \$1,098.26.

In addition to the certificates of public convenience and necessity, Fialer's Limousines, Inc. will acquire nine automobiles used by The Gray Line, Inc. and seven used by Fialer's, Inc., as shown in some detail in Exhibit "A" attached to the second supplemental application. In exchange for the transfers the new corporation, as stated, proposes to issue \$1,000.00 of its stock, of which \$200 will be delivered to Fialer's, Inc. and \$800 to The Gray Line, Inc.

There remains for consideration the request for an amendment of the certificate of public convenience and necessity granted by Decision No. 22534, which has been referred to in this opinion.

It is set forth above that said Decision No. 22534 granted to Joe Ferrant a certificate naming certain specific addresses in San Francisco and Oakland as termini, whereas a subsequent decision (No. 30952) in authorizing the transfer of said certificate to the present holder, namely, The Gray Line, Inc., referred merely to operations between cities.

In this connection applicants allege that the subsequent decision had the effect of amending the original grant. They allege further that the addresses of the airplane transportation companies change from time to time in San Francisco and Oakland so that it is essential for the certificate to name the Cities of San Francisco and Oakland as termini rather than the specific addresses. They therefore ask the Commission for an order amending the original certificate accordingly, if the Commission deems such an amendment is necessary.

The Commission has considered this matter and is of the opinion that the transfers should be authorized as applied for and that an order should be entered amending the certificate granted by said Decision No. 22534. In making the order herein, however, the Commission wishes to place Fialer's Limousines, Inc. upon notice that certificates of public convenience and necessity granting operating 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 in the number of rights which may be given.

#### O R D E R

Fialer's, Inc., The Gray Line, Inc. and Fialer's Limousines, Inc., having applied to the Railroad Commission for orders authorizing the transfer of certificates of public convenience and necessity and equipment and the issue of stock, and for an amendment of an existing certificate, and the Commission ~~having considered~~ this application and being of the opinion that a public hearing is not necessary and that the requests of applicants should be granted, as herein provided,

IT IS HEREBY ORDERED as follows:-

1. Fialer's, Inc. may transfer to Fialer's Limousines, Inc., on or before October 31, 1939, the certificates of public convenience and necessity granted to it by Decisions Nos. 26263, 26469, 29288 and 29791 and the equipment referred to in Exhibit "A" attached to the second supplemental application filed in this proceeding.

2. The Gray Line, Inc. may transfer to Fialer's Limousines, Inc., on or before October 31, 1939, the certificates of public convenience and necessity represented by Decisions Nos. 22534, 25478, 30226, 30952 and 31698, as amended by Decision No. 31804, and the equipment referred to in Exhibit "A" attached to the second supplemental application filed in this proceeding.

3. Fialer's Limousines, Inc. in exchange for said certificates and equipment may issue, on or before October 31, 1939, not exceeding one thousand shares of its common capital stock of the aggregate par value of \$1,000, it being the opinion of the Commission that the money, property or labor to be procured or paid for by the issue of said stock is reasonably required for the purpose specified herein and that the expenditures for said purpose are not, in whole or in part, reasonably chargeable to operating expenses or to income.

4. The order in Decision No. 22534, dated June 13, 1930, in Application No. 16540, is hereby amended so as to set aside paragraphs (a), (b), (c), (d) and (e) thereof and to substitute in place thereof the following:-

"San Francisco and Oakland on the one hand and the San Francisco Bay Airdrome and the Oakland Municipal Airport, in Alameda County, on the other hand".

5. The authority herein granted is subject to the following conditions:-

a. 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 any purpose other than the transfer herein authorized.

b. Fialer's, Inc. and Fialer's Limousines, Inc., within twenty(20) days after the effective date of this order, shall join in a common supplement, to be filed in triplicate, to the tariffs now on file with the Commission covering service given under the certificates herein authorized to be transferred by Fialer's, Inc., said Fialer's, Inc. on the one hand withdrawing and Fialer's Limousines, Inc. on the other hand adopting and establishing as its own, said tariffs and all effective supplements thereto.

c. The Gray Line, Inc. and Fialer's Limousines, Inc., within twenty(20) days after the effective date of this order, shall join in a common supplement, to be filed in triplicate, to the tariffs now on file with the Commission covering service given under the certificates herein authorized to be transferred by The Gray Line, Inc., said The Gray Line, Inc. on the one hand withdrawing and Fialer's Limousines, Inc. on the other hand adopting and establishing as its own, said tariffs and all effective supplements thereto.

d. Fialer's Limousines, Inc. shall file, in duplicate, within twenty(20) days after the effective date of this order, time schedules covering its service under the certificates herein authorized to be transferred to it, such time schedules to be identical with those heretofore filed by Fialer's, Inc. and The Gray Line, Inc., or time schedules satisfactory to the Commission.

e. The rights and privileges herein authorized to be transferred may not hereafter be sold, transferred, leased nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission has first been secured.

f. No vehicle may be operated by Fialer's Limousines, Inc. under the authority herein granted, unless such vehicle is owned by it or is leased by it under a contract or agreement on a basis satisfactory to the Commission.

g. The authority herein granted shall lapse and be void if the parties hereto shall not have complied with all the conditions within the periods of the time fixed herein, for good cause shown, the time shall be extended by further order of the Commission.

h. Fialer's Limousines, Inc. shall file with the Commission a report of the stock issued under the authority herein granted, as required by the Commission's General Order No. 24-A.

i. It is the intent of this order to permit the transfer to Fialer's Limousines, Inc. of only such rights, and no more, as Fialer's, Inc. and The Gray Line, Inc. may have under the certificates of public convenience and necessity herein authorized to be transferred by them, and nothing in this order should be construed as authorizing Fialer's Limousines, Inc. to enlarge, extend or change any of the rights represented by said certificates, or the service given thereunder, except to the extent permitted in paragraph "4" of this order.

j. The effective date of this order shall be twenty(20) days from the date hereof.

DATED at San Francisco, California, this 6<sup>th</sup> day of June, 1939.

Ralph W. [unclear]  
Frank [unclear]  
Ray [unclear]  
[unclear]  
Justin F. Caswell  
COMMISSIONERS