

Decision No. 32326

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of LUCIAN MARTIN, an individual doing business under the name of BIG TREES SIGHTSEEING TOURS, for certificate of public convenience and necessity to operate passenger service between Santa Cruz and San Francisco and Treasure Island; Santa Cruz and Big Sur; Santa Cruz and Big Basin (passenger and express); Santa Cruz and Saratoga Gap; Santa Cruz and Mt. Hamilton.

In the Matter of the Investigation on the Commission's own motion into the operations, rates, charges, contracts, and practices of LUCIAN MARTIN and K.M. WILLIS.

ORIGINAL

Application No. 22708

Case No. 4426

FRED A. WATKINS, for Applicant

H. C. LUCAS, for Pacific Greyhound Lines and California Parlor Car Tours, Protestant

F. X. VIEIRA, for Southern Pacific Company, Protestant

DOUGLAS BROCKMAN, for The Gray Line, Inc., Protestant

DONAHUNE, RICHARDS & HAMLIN, by THOMAS K. MCCARTHY, for Key System, Protestant

J. B. HELD, for Peerless Stages, Inc., Protestant

E. F. ROOPER, for Mt. Hamilton Stages, Protestant

KIRKBRIDE & WILSON, by W. J. LOCKE, Interested Party

BY THE COMMISSION:

O P I N I O N

By his application, as amended, Lucian Martin, an individual operating under the name and style of Big Trees Sightseeing Tours, seeks a certificate of public convenience and necessity to establish and operate an automotive sight-seeing service as a common carrier

of passengers principally from and to Santa Cruz as a common point of origin and destination. Applicant proposes to operate six tours embracing (1) Treasure Island, (2) San Francisco and points in Marin and Alameda Counties, (3) Big Basin, (4) Boulder Creek- Big Basin - Waterman Gap, (5) Mt. Hamilton, and (6) Pacific Grove - Big Sur territories. Additionally, applicant proposes to transport passengers and express between Santa Cruz and Big Basin connecting with Pacific Greyhound Lines at Boulder Creek in both directions for sight-seeing passengers only, subject to a restriction that no local passenger and express service is to be performed between Santa Cruz and Boulder Creek and intermediate points between Santa Cruz and Boulder Creek.

Case No. 4426 is an investigation on the Commission's own motion into the operations, rates, charges, contracts and practices of Lucian Martin and K.M. Willis, hereinafter termed respondents, for the purpose of determining whether or not they have jointly or individually engaged as a common carrier for compensation in the ownership, control, operation or management of any motor vehicle or motor vehicles used in the transportation of persons over the public highways between fixed termini of Santa Cruz, on the one hand, and San Francisco and/or Treasure Island, on the other hand, as a passenger stage corporation as such is defined in section 2 $\frac{1}{2}$ of the Public Utilities Act, without possessing a prior right to do so or without first having obtained a certificate of public convenience and necessity from the Railroad Commission authorizing such operation as required by section 50 $\frac{1}{2}$ of said Public Utilities Act and whether or not either of said respondents has aided or abetted the other in such operation as a passenger stage corporation as described herein.

A public hearing in Application No. 22708 was held in Santa Cruz on May 26 and in San Francisco on June 6, 1939, before Examiner McGettigan, at which time and place Case No. 4426 was also heard, the matters consolidated both for hearing and decision, duly submitted and they are now ready for decision.

The granting of this application was protested by Pacific Greyhound Lines, California Parlor Car Tours, Southern Pacific Company, The Gray Line, Inc., Key System, Peerless Stages, Inc. and E.F. Roper, doing business as Mt. Hamilton Stage Lines.

Applicant Martin testified in his own behalf and also presented the testimony of Dr. F.K. Camp of Brookdale Lodge, B. Dickinson of Ben Lomond, C.D. Hinkle, Mayor of Santa Cruz, Miss B.B. Wilder of Ben Lomond and M.C. Hall of the Santa Cruz Chamber of Commerce.

For protestants Pacific Greyhound Lines presented the testimony of T. Finkbohner its Superintendent of Transportation. Southern Pacific Company presented the testimony of C.G. Muller and E.C. Pool passenger traffic special representative and representative division of research and transportation, respectively. In its behalf, The Gray Line, Inc., made a part of the record by reference its tariffs and time schedules and Key System introduced by reference decisions in Applications Nos. 21788 and 21789 in regard to Key System ferry, rail and motor coach service to and from Treasure Island, Oakland and San Francisco.

The record in the two proceedings involved herein shows that applicant Martin is primarily engaged as a school bus operator under contract to the Soquel Grammar School near Santa Cruz and the Santa Cruz High School, and in addition, has conducted various "charter car" operations for groups such as the 4H Clubs, Townsend

Clubs, Ham and Egg Clubs, school groups and others. Applicant has in operation four pieces of equipment, viz: a 28 passenger Ford V8, a 22 passenger International, and two 7 passenger Plymouth sedans. The record shows that applicant is a resident of Santa Cruz and has been augmenting his school bus revenues by catering to various groups on a charter basis, providing them transportation facilities for attending meetings, picnics and other excursions. Although ostensibly furnishing his equipment on a flat basis or charge to the groups, the record shows that on several occasions he was not averse to, and in fact did, "fill in" his loads by arranging for the transportation of additional passengers at so much per person, regardless of whether or not said passengers were members of the groups originally chartering his busses. In this he was aided and abetted by Mrs. K.M. Willis, an art teacher of Santa Cruz, and several trips were made during April and May where this condition existed. This is particularly exemplified in the testimony of two Commission investigators in Case No. 4426 who had no difficulty on more than one occasion in obtaining transportation,⁽¹⁾ for which they paid individual fares, to and from Santa Cruz and Treasure Island. These specific instances also occurred subsequent to a warning⁽²⁾ from the Commission to Martin advising him verbally that the operations he was conducting were unlawful. That neither Martin nor Mrs. Willis fully understood these warnings is evidenced in the record by allegations to the effect that Mrs. Willis, rather than Martin, assessed the fares and thereby removed the unlawful factors referred to.

(1) May 7 and May 13th.

(2) April 10th.

Subsequent also to the warnings above referred to, and prior to others ⁽³⁾ Martín filed the instant application for a certificate of public convenience and necessity to establish and operate the sight-seeing tours above referred to, alleging that numerous requests had been made to him for the establishment of this service.

Under his proposal he will operate the six tours referred to heretofore. No. 1, the Treasure Island Tour will leave Santa Cruz at about 7:30 A.M., proceed over Highway No. 101 into San Francisco and thence direct to Treasure Island via the San Francisco-Oakland Bay Bridge where the bus will discharge passengers and lay over until its return leaving Treasure Island at 8:00 P.M. From the time the passengers leave the bus on Treasure Island until they gather for the return trip, passengers will be free to select their own points of interest. Very little, if any, strictly sight-seeing service appears to be involved in this tour and an analysis of this proposal leads to the conclusion that it is primarily a common carrier passenger stage service from Santa Cruz to Treasure Island and return. A minimum of sixteen (16) passengers is required before this trip will be made.

Tour No. 2 will also leave Santa Cruz at approximately 7:30 A.M. and proceed to San Francisco over Highway No. 101 where it is scheduled to arrive at 10:45 A.M. and thence proceeds to visit a number of points of interest in San Francisco and further includes a trip over the Golden Gate Bridge as far as the Sausalito Lateral and return via the Presidio, visiting remaining San Francisco points of interest, thence over the San Francisco-Oakland Bay Bridge to Oakland, through Alameda Tube, to Neptune Beach, visiting Oakland Airport with the return trip via Highway No. 17 through San Leandro, Mission San Jose and San Jose to Santa Cruz where it will

(3) April 28 and May 17.

arrive at 9:30 P.M. As in the case of Tour No. 1, applicant requires a minimum of 16 passengers for this trip.

Tour No. 3 is proposed as a daily service from approximately May 1 to October 1, between Santa Cruz and Big Basin via State Highway No. 9 picking up sight-seeing passengers only at Ben Lommond, Felton, Brookdale Lodge and Boulder Creek, and proposes also to connect with Pacific Greyhound Lines at Boulder Creek for passengers desiring to make the scenic Big Basin tour. It is on this route that applicant desires to transport passengers generally and also express limited to 100 pounds per shipment on passenger vehicles.

Tour No. 4 embraces a trip originating in and destined to Santa Cruz via Highway No. 9 to Boulder Creek, Big Basin and Waterman Gap. A minimum of ten (10) passengers is required on this trip, and it is proposed to leave Santa Cruz at 2:30 P.M. and arrive back at Santa Cruz by 7:30 P.M.

Tour No. 5 will operate from Santa Cruz via Highway No. 17 to Los Gatos, take in the Winchester Mystery House and thence proceed to Mt. Hamilton. Leaving time of this tour is 3:30 P.M., with arrival at Mt. Hamilton at 7:00 P.M. Returning, the bus will leave Mt. Hamilton at 8:00 P.M. and arrive in Santa Cruz at 10:30 P.M. A minimum of sixteen (16) passengers is required for this tour.

Tour No. 6 operates from Santa Cruz at 7:30 A.M. proceeds via State Highway No. 1 to Watsonville, thence to Castroville, Moss Landing, Monterey, Pacific Grove and Big Sur, arriving there at 11:30 A.M. Returning, the bus leaves Big Sur at 2:00 P.M. and arrives in Santa Cruz at 5:00 P.M. A sixteen (16) passenger minimum applies on this tour also.

During the course of the public hearings in these matters, it was clearly revealed that applicant Martin was attempting to

establish a rather extensive service which appeared to be far beyond his experience and facilities to adequately perform in its entirety. The six tours outlined, which Martin proposes to operate daily based upon a certain minimum number of passengers for each tour heretofore set forth, represents a combined total of some 750 miles based upon his own figures. Aside from his own statements, Martin presented little direct public witness testimony to support his proposal. The testimony so presented consisted solely of some general statements by witnesses that such a service would be of benefit, and dealt principally with the need of service in the localized area about Santa Cruz. Applicant is not familiar with the basic requirements of this specialized sight-seeing business; has no organization as such; possesses no terminal facilities; has no definite plan of pickup for sight-seers, and is unfamiliar with the various tariff rules and regulations governing sight-seeing operations. Also, he has made no preparation or provision for the hiring of extra drivers and guides definitely indicated as needed were he to be able to proceed with this program. Furthermore, he has not "clocked" or checked his tours for time, mileage or terrain, and shows a distinct lack of knowledge as to a number of the various points he proposes to serve, particularly in the San Francisco Bay area. His estimate of the cost of providing the service is limited to a statement showing the average cost of operation would amount to 9.48 cents per bus mile.

Applicant on the record, has apparently given little, if any,

consideration to the obvious and primary necessity of providing sufficient equipment and personnel to take care of even the minimum number of patrons he might be called upon to transport should there occur a situation requiring the operation of all of his proposed tours in any one day. While it cannot be anticipated from this record that any such rush of patronage will occur, it is obvious that applicant should be able to prove, conclusively, his ability to provide both equipment and personnel sufficiently adequate to satisfy the obligations imposed by his offer of service as represented by the individual tours proposed or should offer substantial testimony to show that such facilities can be readily made available. This, applicant has distinctly failed to do, based upon the record. Incidentally, applicant Martin did not satisfy the Commission as to his ability to fully discharge his obligatory duties under his school contracts (which he proposes to retain) during the school year and at the same time be in a position to perform his contemplated sight-seeing services with the limited equipment at his disposal.

Applicant's proposals appear to be based, first, upon a desire to achieve, through the granting of Application No. 227 08, continuance of an operation now under investigation, in part, in this proceeding as to its unlawfulness upon past performance, and secondly, upon a further desire to enter this common carrier field of transportation with a hope that somehow it could be made to fit into his past type of services, and, under the sanction of the Commission, survive in the future.

It now appears from a general discussion and consideration of the record in this matter that sufficient evidence exists to warrant a partial finding for applicant in accordance with the following summation of the proposed operations.

Tour No. 1 - Santa Cruz-Treasure Island

The record in regard to this tour, reveals little more than a desire on the part of applicant to establish a common carrier passenger, rather than a sight-seeing, service to the Golden Gate International Exposition and applicant's allegations as to numerous requests for this service have not been substantiated. A denial of this portion of the application is indicated.

Tour No. 2 - Santa Cruz-San Francisco-Marin-Alameda.

The record in regard to this tour fails to warrant a finding that public convenience and necessity require or will support a sight-seeing tour such as proposed. Several sight-seeing tours of San Francisco are available and connecting services from Santa Cruz appear reasonably adequate and sufficient. Here also, applicant's allegations as to numerous requests for the service fall short of conclusively showing a public need for this service. A denial of this portion of the application is also indicated.

Tour No. 3 - Santa Cruz-Big Basin, including Ben Lomond, Felton, Brookdale Lodge and Boulder Creek; including regular stage service and sight-seeing service.

Tour No. 4 - Santa Cruz-Boulder Creek-Big Basin-Waterman Gap.

Tour No. 6 - Santa Cruz-Big Sur.

These three tours as described, due primarily to the fact that no comparable services now exist, and the further fact

that some modicum of public interest was developed, may be considered in a more favorable light. The record does indicate, albeit slightly, that a local sight-seeing service out of Santa Cruz to the various and comparatively nearby scenic and historical points would be in the public interest. The Commission believes that these tours are more readily adaptable to the limited facilities of this applicant and will not impose undue operating expenses. They embrace territory with which applicant is fairly familiar, and appear to present the advantages of fewer transportation difficulties, lesser mileage and will not require the personnel needed for more extensive tours. These advantages should afford applicant greater likelihood of success for himself and enable him to more adequately serve the public patronizing his service. As a resort and tourist center, Santa Cruz appears capable of supporting and in need of such a service. Applicant, a willing local resident will be given the opportunity to establish it.

Referring to applicant's proposal to operate a combination sight-seeing and passenger stage corporation service, as contemplated in his Tour No. 3, the Commission is of the opinion that as a practical matter the proposal presents conflicting operating problems which would not be conducive to the establishment and maintenance of an adequate public service. However, subject to the condition that applicant shall divorce his sight-seeing activities from his other service on this route and shall further assign a specific piece of equipment⁽¹⁾ to the run to be used solely for the transportation of passengers, (other than sight-seers) and express, the Commission will also grant authority to applicant to establish and operate an automotive service as a common carrier of passengers, baggage and express between Santa Cruz and Big Basin and intermediate points,

(1) A 7 passenger Sedan was proposed to be utilized in the combined service originally contemplated and seems a logical choice.

subject to the restriction that no passengers, baggage or express having both point of origin and destination between Santa Cruz and Boulder Creek (both points inclusive) and points intermediate thereto may be transported. As restricted, applicant here proposes to establish a service not now being rendered by a common carrier.

Tour No. 5 - Santa Cruz-Mt. Hamilton

Applicant's showing for his proposed service to Mt. Hamilton embraced little more than a description of the tour and his own opinion concerning the need therefor, and thus failed completely to stand the test of conclusive showing of public convenience and necessity. This portion of applicant's request should be denied.

In granting Lucian Martin the limited authority heretofore set forth the Commission is cognizant of the fact that unless he receives the full support and co-operation of the local communities involved, his chances for success are limited. However, in view of his local connections and experience and the further fact that no comparable common carrier service, sight-seeing or otherwise, now exists and as there is no question of the existence and availability of the scenic beauties and points of interest depended upon for business, it remains for applicant and his supporters to develop the opportunity now being afforded them and upon the communities involved rests the obligation to support a service which they, allegedly, desire to have. In view of applicant's expressed intention to continue as a school bus operator the Commission will impose a condition applicable to the sight-seeing tours authority herein granted that services so authorized shall be operated only during the period in which the schools, with which he is connected, are closed.

With respect to the allegedly unlawful operations of respondents as set forth in Case No. 4426, it is clearly apparent from the record that respondents Lucian Martin and K. M. Willis, individually and collectively have been operating or have caused to be operated, for compensation, motor vehicles with common carrier status as a passenger stage corporation, as such is defined in section 2½ of the Public Utilities Act, between the fixed termini of Santa Cruz, on the one hand, and San Francisco on the other hand, without first having obtained a certificate of public convenience and necessity from the Commission and without prior right or other authority to so operate.

While it may reasonably be conceded that these particular respondents did not wilfully transgress, the fact remains that on occasions, not refuted in the record, they knowingly engaged in and may be said to have encouraged the transportation of persons for compensation over the highways of this state between the fixed termini of Santa Cruz and San Francisco⁽⁴⁾ and assessed for said transportation service an individual fare. Under the circumstances, the Commission cannot reasonably do otherwise except to order a cessation of such activities.

An order of the Commission directing the suspension of an operation is in its effect not unlike an injunction by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a person is

(4) Including Treasure Island site of the Golden Gate International Exposition which is within the limits of the City and County of San Francisco.

adjudged guilty of contempt, a fine may be imposed in the amount of \$500, or he may be imprisoned for five (5) days or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 371.

Lucian Martin, doing business as, Big Trees Sight-seeing Tours 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.

O R D E R

The above-entitled proceedings having been duly heard and submitted, the matters now being ready for decision, and the Commission now being advised in the premises,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Lucian Martin, doing business as Big Trees Sight-seeing Tours, of an automotive sight-seeing service only as a common carrier of passengers from,

1. Santa Cruz, Ben Lommond, Felton, Brookdale Lodge and Boulder Creek, on the one hand, to Big Basin, on the other hand and return via State Highway No. 9, subject to a minimum of ten (10) passengers.
2. Santa Cruz to Boulder Creek, Big Basin and Waterman Gap and return to Santa Cruz via State Highway No. 9, subject to a minimum of ten (10) passengers.

3. Santa Cruz to Big Sur and return to Santa Cruz via State Highway No. 1 through Watsonville, Castroville, Moss Landing, Monterey and Pacific Grove, subject to a minimum of sixteen (16) passengers.

to be operated during school vacation period only.

IT IS ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is granted to Lucian Martin, doing business as Big Trees Sightseeing Tours, subject to the following conditions:

1. The authority herein granted shall lapse and be void if applicant shall not have complied with all of 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.
2. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed twenty (20) days from date hereof.
3. 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 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.
4. 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, a time schedule or time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
5. 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.

6. 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.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
HEREBY FURTHER DECLARES that public convenience and necessity require the establishment and operation by Lucian Martin, doing business as Big Trees Sightseeing Tours of an automotive service as a passenger stage corporation as such is defined in section 2½ of the Public Utilities Act, for the transportation of passengers, baggage and express between Santa Cruz and Boulder Creek and points intermediate between Santa Cruz and Boulder Creek, on the one hand, and Big Basin, on the other hand, via State Highway No. 9, subject to the following restrictions:

1. Service shall be rendered from approximately May 1 to October 1 of each year.
2. In the transportation of express no single shipment in excess of 100 pounds shall be transported and all express shall be carried on passenger vehicles.

IT IS ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is granted to Lucian Martin, doing business as Big Trees Sightseeing Tours, subject to the following conditions:

1. The authority herein granted shall lapse and be void if applicant shall not have complied with all of 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.
2. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed twenty (20) days from date hereof.
3. 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 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.

4. 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, a time schedule or time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
5. 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.
6. 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.

In all other respects, Application No. 22708 be and it is hereby denied.

It having further been found that Lucian Martin and K.M. Willis have been operating with common carrier status as a passenger stage corporation as such is defined in section 2 $\frac{1}{2}$ of the Public Utilities Act, between Santa Cruz, on the one hand, and San Francisco, on the other, without having first obtained a certificate of public convenience and necessity from the Railroad Commission and without prior right so to do,

IT IS HEREBY ORDERED that Lucian Martin and K.M. Willis shall cease and desist individually or collectively or by any subterfuge or device from operating as a passenger stage corporation

as such is defined in section 2½ of the Public Utilities Act between Santa Cruz, on the one hand, and San Francisco, on the other hand.

The Secretary of the Railroad Commission is directed to cause personal service of a certified copy of this decision to be made upon said respondents, Lucian Martin and K.M. Willis, and to cause certified copies thereof to be mailed to the District Attorneys of Santa Cruz and San Francisco Counties and to the Department of Motor Vehicles, Highway Patrol, at Sacramento.

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

Dated at San Francisco, California, this 7th day of August, 1939.

Frank P. Allen
Justice P. Calver
COMMISSIONERS