

ORIGINAL

Decision No. 43031

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of GOLDEN GATE TOURS, a corporation, for a certificate of public convenience and necessity to operate sight-seeing motor tours within the San Francisco Bay Area; and for authority to issue stock.

Application No. 27125

WALLACE L. WARE and JAMES J. BROZ for Applicants.  
McCUTCHEM, THOMAS, MATTHEW, GRIFFITHS & GREENE, Attorneys, by  
ALLEN P. MATTHEW and ROLAND J. HERNING for The Gray Line, Inc.,  
and Fialer's Limousines, Inc., Protestants.

OPINION ON REHEARING

In this application, Golden Gate Tours, a corporation, seeks a certificate of public convenience and necessity as required by Section 50 $\frac{1}{2}$  of the Public Utilities Act, to operate five described sight-seeing tours by motor bus in the San Francisco Bay area.

Hearings were first held on the application during January, 1948. Briefs were thereafter filed, and on June 2, 1948, the Commission rendered its Decision No. 41694 denying the application. Applicant then petitioned for a rehearing, and the Commission on September 22, 1948, granted that petition. Six days were devoted to rehearing before Commissioner Rowell and Examiner Cannon during December, 1948, when the matter was again taken under submission.

The two protestants to the application are The Gray Line, Inc., and its subsidiary, Fialer's Limousines, which together may be referred to as Gray Line. The Commission's Decision No. 41694 found that each of the five sight-seeing bus tours proposed by applicant would be a virtual duplication of like services being rendered satisfactorily by Gray Line.

Applicant's petition for rehearing asserts broadly that the findings

made by the Commission are not supported by the record, and stresses the following points underlying its demand for reconsideration. Applicant contends that the service it offers is essentially a new and different service in several respects, it being claimed that there are added attractions and improvements afforded on three of its proposed tours; that its intended use of the Astraview bus is something essentially new; that its proposed employment of uniformed hostess lecturers is likewise essentially new; and that its expected membership in the newly organized American Sightseeing Association will offer new and stimulating competition to the existing Gray Line Association of which protestant Gray Line is a member. Applicant then declares that it is offering to the public an improved and more efficient sight-seeing service than is now available, and alleges that the service given by Gray Line is inadequate and inefficiently conducted.

Although applicant asserts that the service it offers is something new and different from that now rendered, it seemingly recognizes that before the certificate prayed for can be granted the Commission must make the finding required by the proviso added in 1931 to Section 50 $\frac{1}{2}$  of the Public Utilities Act to the effect that the existing operator will not provide service to the satisfaction of the Commission. Applicant says the Commission should make that finding. It further contends that the Commission must appraise the inadequate character of the existing service as of the day applicant filed its request to enter the field.

The date on which this application of Golden Gate Tours was filed was December 4, 1945. The recitals contained in that application were brief. Five tours were proposed. Both buses and limousines were to be used. No mention was made of bus equipment of special type, nor of the employment of hostess lecturers. No allegation was made that the existing service was inadequate.

About one year after the filing of that application, applicant's attorney responded to an inquiry of the Commission relating to the date of hearing by stating that there was no reason for setting the matter for hearing in the immediate future.

On August 1, 1947, a document was filed for the purpose of substituting the present attorneys for the one appearing on the application, and they then requested that the hearing date set for September 3, 1947, be continued over for several months because, as they stated, other personnel and capital might be made available to the corporation.

An amended application was then filed on September 10, 1947. The parties named as officers and intended investors in the capital stock of the corporation differed completely from those listed in the original application. The recitals with respect to the type of service proposed indicated that motor buses only would be utilized, and applicant stated that it was intended to implement each bus with a specially trained and uniformed hostess who will lecture throughout each tour. Glass top buses were not mentioned. No assertion was made that the existing sight-seeing services were inadequate.

It was at the initial hearings in January, 1948, that applicant explained its intention to operate with Astraview buses. A considerable part of its evidence was directed to the claimed superiority of this type of sight-seeing bus, and to show also that Gray Line, in disregard of its public obligation, was continuing to operate antiquated and unattractive bus equipment.

On rehearing applicant presented evidence supplementary to that originally given on nearly all aspects of its case, but again its testimony was in large part directed to the claim that the sight-seeing service performed by Gray Line is inadequate and unsatisfactory.

The Commission is now called upon to determine whether the facts disclosed by the entire record afford an adequate basis upon which it may find that public convenience and necessity require the granting of the application. After a thorough reconsideration of the record made at the initial hearings, the Commission is convinced that its Decision of June 8, 1948 was fully supported by the evidence then before it. In now determining whether a different conclusion is justified on the whole record, our attention may be directed largely to the additional evidence presented on rehearing, and this may appropriately be considered

under the various subject heads which applicant has emphasized in its petition for rehearing, as summarized above.

With respect to applicant's claim that some of the routes or tours it offers are different and distinct from any afforded by Gray Line, the evidence does not permit the Commission to alter the finding made in its earlier decision. It there said that, with the exception of the routing of one proposed tour to pass by Hunters Point Drydock, applicant did not propose to serve any point not presently served by Gray Line. New evidence reveals that subsequent to the hearings in January 1948, the authorities at Hunters Point removed previously existing restrictions upon the entrance of the public into the shipyard and suggested to Gray Line the routing of one of its sight-seeing tours through that property. Authority to revise the routing of one of its tours was then obtained from the Commission by order issued July 20, 1948, and Gray Line has since routed a tour through the reservation.

The Commission finds, therefore, that the sight-seeing service for which applicant seeks a certificate of public convenience and necessity would be along substantially the same routes that are followed by Gray Line tours, would not serve points that are not now served, and would be a service within the same territory as that now served.

In making the contention that the sight-seeing service afforded by Gray Line is inadequate and unsatisfactory, applicant appears not to stress any particular claim of negligence or inefficiency. Yet it says that the Commission must find that Gray Line cannot be trusted to render a satisfactory service. We shall here refer briefly to certain asserted shortcomings in the present service and summarize the evidence on those points.

The first relates to the asserted inferior type of bus equipment which Gray Line has operated. The record clearly shows that after the lifting of war-time restrictions on the use of motor equipment for sight-seeing purposes, Gray Line proceeded diligently to acquire new bus equipment of as satisfactory a type as could then be obtained in order to resume the tours previously conducted and

as authorized by certificates issued by this Commission. The record completely refutes applicant's critical characterization of the Gillig buses then purchased by Gray Line. Throughout these hearings applicant has sought also to convey the impression that Gray Line should have acquired buses of later design, such as the glass top buses applicant has offered to operate.

The evidence shows that the development of a sight-seeing bus with overhead windows has been in progress since the ending of the war, and that Gray Line itself has contributed to that development by submitting suggested designs for a bus of that type. The record now makes clear one fact which completely negatives any intimation that Gray Line has been dilatory in obtaining equipment of that type, for it is now shown that no satisfactory glass top bus was produced by any manufacturer until some time in the Spring of 1948, and only a relatively few had been manufactured at the time this matter was reheard in December 1948. Gray Line had ten such buses on order since December 1946, for delivery when they could be constructed to its specifications. The first one completed by the manufacturer was delivered to Gray Line in November 1948. The Commission cannot find in the evidence any basis for criticizing the specifications which Gray Line insisted on having incorporated in the buses it purchased, including large side windows as well as roof windows. Nothing in the record justifies the conclusion that this operator has been indifferent to its obligation to provide equipment of satisfactory quality and design.

At the earlier hearings general opinion evidence was given by a number of witnesses respecting the quality of the sight-seeing service now afforded in the Bay area. On rehearing, additional evidence of the same nature was given by Carter Judah, who is a travel service advisor on a national scale, and by J. S. Ratchford, who also is engaged nationally in arranging conducted tours. Mr. Judah has not used Gray Line's service in recent years. Although he expressed the opinion that its equipment was not up to standard, he stated that he had never heard any complaint against its service. Mr. Ratchford has been conducting annually five tours through San Francisco, using Gray Line service. He stated that he had

found the service satisfactory and had not received complaints from his patrons regarding it.

Another witness for applicant was an employee of a local travel service agency. This witness recited particular instances of asserted failures of Gray Line to show proper consideration for the convenience of its patrons. The circumstances surrounding the acts of Gray Line which were criticized by this witness are not sufficiently clear to justify the conclusion that his criticisms were wholly merited. Some did not relate to Gray Line's certificated sight-seeing service.

Other witnesses presented by applicant to testify as to the unsatisfactory service of Gray Line were two female employees of a private detective agency. These women had taken a number of the Gray Line tours in company with shorthand reporters who recorded in full the lectures and remarks made by the drivers. These witnesses commented upon the poor grammar used by some of the drivers in that they used double negatives and ended sentences with prepositions. The drivers were characterized as unfriendly in their attitude toward patrons of the tours, and were criticized for not offering to assist women passengers upon entering or leaving the bus. One driver was said to have been guilty of four traffic rule infractions during the course of a single tour.

Although these witnesses testified that they did not then know by whom they were employed, it is obvious that they conceived it to be their duty to make note of such conduct on the part of Gray Line's drivers as may have appeared to them to be a subject of criticism. Their testimony is not convincing. There is no evidence of record which indicates that its traffic violations or accidents have been unusual in number. Their criticisms based on the seeming disinclination of drivers to assist women passengers in leaving the bus are without meaning, for there was no indication that any passenger solicited such assistance, or was infirm and obviously in need of such assistance. The Commission must give far greater weight to the many letters placed in evidence on rebuttal by Gray Line, these being unsolicited letters from patrons of its tours complimenting the drivers for

both their courtesy and the interesting talks they gave during the course of the tours.

In considering the degree of proof which must be made by an applicant for a certificate under Section 50<sup>1</sup> when its proposed operations invade a field of service already occupied, the Commission is not permitted to disregard the conditions imposed upon it by that section of the Act. Those provisions certainly cast upon the applicant the burden of showing something more than occasional or minor transgressions by the existing operator. But applicant seems to contend that the evidence given in this proceeding compels the Commission to find that Gray Line cannot be trusted adequately to serve the public in the future. No such finding could possibly be justified on the record made. And the Commission cannot accept applicant's suggestion that such a finding should be rested upon conditions obtaining on December 4, 1945, the day it filed its application, for the record shows that any deficiencies in Gray Line's service at that time were occasioned by conditions over which it had no control.

Some additional comment should be made with respect to applicant's offer to provide each sight-seeing bus with a specially trained and uniformed hostess lecturer. The evidence given on rehearing does not materially add to that first given. It appears that no motor bus sight-seeing company in the country has adopted such an innovation. There are some expressions of opinion in the record that it might be a desirable innovation, but there is just as strong opinion testimony to the contrary. Until such a plan is somewhere put to actual test and is shown to be economically feasible as well as receiving general tourist acceptance, this Commission cannot accord this proposal the degree of importance that applicant suggests.

Another contention of applicant is that its intended membership in the American Sightseeing Association will bring new and stimulating competition into the sight-seeing business of the Bay area. The argument is that more competition will of itself be beneficial in the development of greater tourist business and in securing the highest standard of sight-seeing operations. There is some opinion

evidence in the record to that effect. But the testimony given by those best qualified to express an unbiased judgment as to the sight-seeing needs in the San Francisco area was overwhelmingly to the effect that the existing services were adequate and satisfactory. Even Mr. Judah, who testified that an additional service should be afforded, admitted that he had heard no complaints against Gray Line service. Other witnesses who were in a position to appraise the needs of the traveling public for sight-seeing service in this area, were of the opinion that the existing services are sufficient.

Further evidence was also presented on rehearing with respect to applicant's prospective financial results should its application be granted. It need not here be commented upon. Even though the accuracy of its estimated revenues and expenses be accepted, the Commission has arrived at the conclusion that its application must be denied on the other grounds discussed. Nor is it necessary for the Commission to consider the sufficiency of applicant's showing in support of its request for the issuance of common stock in the amount and for the purposes set forth in the application.

#### ORDER ON REHEARING

A rehearing having been granted by the Commission on the above entitled application of the Golden Gate Tours, a corporation, and further hearing having been had, and the Commission having fully considered all of the facts of record, including those arising since the making of its Decision No. 41694 on June 8, 1948, and being of the opinion that no good cause appears for changing or modifying said order or decision, therefore



IT IS HEREBY ORDERED that Decision No. 41694 rendered in the above  
entitled Application, No. 27125, on June 8, 1948, be and hereby is affirmed.

Dated at San Francisco, California, this 21<sup>st</sup> day of  
June, 1949.

R. E. Dickinson

Justus F. Gassen

Joseph P. Puccio

Harold H. Kild

Kenneth P. Potter

Commissioners.