

ORIGINAL

Decision No. 43299

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
BEVERLY HILLS GARAGE, INC., a
corporation, doing business as
BEVERLY MOTOR LIVERY, for a certi-
ficate of Public Convenience and
Necessity, authorizing the operation
of a special per capita tour opera-
tion as follows:)

(a) From the Beverly Hills Hotel in
the City of Beverly Hills to Hollywood
Park Race Track and return, serving
the intermediate points of Westwood
Village and the intersection of Santa
Monica Boulevard and Canon Drive,
Beverly Hills;)

Application No. 30177
Amended.

(b) From Westwood Village to Santa
Anita Park Race Track and return,
serving the intermediate points of
Santa Monica Boulevard and Canon
Drive and the Beverly Hills Hotel.)

Paul D. Holland and Glanz & Russell, by Arthur H. Glanz
for applicant; Gordon, Knapp & Hennessy, by Wyman C.
Knapp, for Tanner Motor Tours Ltd., Don L. Campbell,
R. C. Cale, and Rodney F. Williams, for Asbury Rapid
Transit System, L. Swenson and Neil Randolph, for
Swenson's Motor Livery, protestants; R. A. Hauer, Jr.,
for Pasadena City Lines, Inc., interested party.

O P I N I O N

This is an application of Beverly Hills Garage, Inc.,
a corporation, doing business as Beverly Motor Livery, for a
certificate of public convenience and necessity to operate a
passenger bus service from points in Beverly Hills and from
Westwood Village, in Los Angeles, California, to Hollywood Park

race track and Santa Anita race track. This service would be competitive with a similar service now provided by protestant Tanner Motor Tours, Ltd., from the city of Beverly Hills⁽¹⁾. Protestant Asbury Rapid Transit System operates a service to Hollywood Park race track from Hollywood which en route also serves the extreme eastern portion of Beverly Hills. Protestant Swenson's Livery, Inc., holds a certificate of public convenience and necessity to carry passengers to said race tracks from the city of Santa Monica⁽²⁾.

Public hearings were held at Los Angeles on May 24, 25, 26, and 27, 1949, before Examiner Rowe, at which time evidence, both oral and documentary, was adduced and the matter submitted for decision upon receipt of concurrent briefs now on file.

According to the testimony of applicant's president, it has sufficient equipment and financial resources and operating experience to properly carry on the proposed service. Arrangements have been made for off-street pickup and discharge of passengers in Westwood Village. Many public witnesses testified that they would use a race-track service either from the northerly portion of Beverly Hills or from Westwood. Many in the restaurant, hotel, tavern, and similar businesses stated an opinion that a need for such a service existed. The testimony also was substantial that a service from the Beverly Wilshire Hotel alone was insufficient to meet the convenience of business people and residents north of Wilshire Boulevard in Beverly Hills because of parking conditions on Wilshire, and the fact that a rather long walk would be involved unless the customers went in their own cars or used the limited public transportation.

(1) Dec. No. 40581, as amended by Dec. No. 43053.
 (2) Dec. No. 42346 on Ap. No. 29909.

The general manager of protestant, Tanner Motor Tours, Ltd., testified that said company had sufficient equipment and was able and willing to serve any points in Beverly Hills which the Public Utilities Commission should find public convenience and necessity required.

The president of protestant Swenson's Motor Livery stated that his company was ready and willing to pick up and discharge passengers wishing to go to either race track at points in Westwood Village, and he mentioned particularly Truman's Restaurant. It is at Truman's Restaurant that applicant proposes to pick up and discharge passengers as an off-street operation.

After full consideration of this matter, we find, as a fact, that public convenience and necessity require the proposed operation for the carriage of passengers from Westwood Village to Hollywood Park race track and Santa Anita race track, and return, during the respective racing seasons conducted at such tracks. With regard to serving race-track passengers from the city of Beverly Hills, however, the Commission finds, as a fact, that said city is already served by protestant Tanner Motor Tours, Ltd., a certificate holder under the Public Utilities Act, and that said passenger stage corporation serving the territory of Beverly Hills is able and willing to provide adequate service to said race tracks from all portions of said city where public convenience and necessity require it.

In its brief, filed in this matter, applicant contends that the Commission is not restricted by the 1931 amendment to Section 50½ of the Public Utilities Act where a so-called luxury service is proposed to compete with such an existing service. The limitation placed upon the Commission, however, is recognized and stated in the

recent Commission Decision No. 43031 issued after rehearing on Application No. 27125 of Golden Gate Tours, where that applicant proposed to duplicate the sightseeing tours of The Gray Line, Inc., in and around San Francisco. The Commission, in such decision, referring to said legislative restriction, said:

"In considering the degree of proof which must be made by an applicant for a certificate under Section 50 $\frac{1}{2}$, 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."

The same reasoning cannot be applied to the rights of protestant, Swenson's Livery, Inc., which include service to and from the race tracks and the city of Santa Monica, with the express restriction that it shall not pick up or discharge any race-track passengers on its route through the territory sought to be served by applicant. Consequently, the application will be granted so far as it applies to Westwood Village, and denied so far as it applies to Beverly Hills.

Beverly Hills Garage, Inc., is hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate-fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. 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

Application as above entitled having been filed, public hearings having been held thereon, the matter having been submitted, the Commission hereby finding that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to Beverly Hills Garage, Inc., a California corporation, authorizing the establishment and operation as a passenger stage corporation, as that term is defined in Section 2½ of the Public Utilities Act, for the transportation of persons between Westwood Village, on the one hand, and on the other, the Santa Anita race track at Arcadia, and the Hollywood Park race track at Inglewood, subject to the following restrictions:

- (a) The authorized service shall be rendered only during such period as horse racing is conducted at Santa Anita race track and Hollywood Park race track, respectively.
- (b) No passenger shall be picked up or discharged at points between the intersection of Westwood Boulevard and Wilshire Boulevard, on the one hand, and on the other, Santa Anita race track and Hollywood Park race track, respectively.

(2) That in providing service pursuant to the certificate hereby granted, Beverly Hills Garage, Inc., shall comply with and observe the following service regulations:

- (a) Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days after the effective date hereof.
- (b) Applicant shall, within sixty (60) days after the effective date hereof and upon not less than five (5) days' notice to the Commission and the public, establish the service herein authorized and comply with the provisions of General Order 79 and Part IV of General Order No. 93-A, by filing, in triplicate, and concurrently making effective, tariffs and time schedules satisfactory to the Commission.
- (c) Subject to the authority of this Commission to change or modify such at any time, Beverly Hills Garage, Inc., shall conduct said passenger stage operation over and along the following described routes:

(The Santa Anita Route):

From Westwood Boulevard along Wilshire Boulevard, Santa Monica Boulevard, Canon Drive, Sunset Boulevard, Vermont Avenue, Los Feliz Boulevard, Glendale Avenue, Colorado Boulevard, Linda Vista, West Holly, Orange Grove, Walnut Avenue, Foothill Boulevard, Rosemead Boulevard and Colorado Boulevard.

(The Hollywood Park Route):

From Westwood Boulevard along Wilshire Boulevard, Sepulveda Boulevard, Manchester Boulevard, and Prairie Boulevard.

IT IS FURTHER ORDERED that in all other respects the amended application of Beverly Hills Garage, Inc., be, and it hereby is, denied.

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

Dated at San Francisco, California, this 13th day of September, 1949.

R. E. Dunderman

Justus F. Coeussen

Lyndell D. Powell

Harold P. Hulse

Wm. H. Pitter
COMMISSIONERS