

Decision No. 45288

ORIGINAL

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
WALTER R. McCOY, doing business as )  
McCOY LIMOUSINE SERVICE for certificate )  
of public convenience and necessity to )  
operate limousine and bus service to ) Application No. 31651  
nonschedule air lines between Inter- )  
national Airport Bldg., and Oakland )  
and San Francisco. )

Frank Loughran, for applicant.

Roland J. Henning, for Fialer's Limousines, Inc.,  
protestant.

John Cunningham, for Piedmont Limousine Service,  
protestant.

Edward A. Goggin, for Oakland Board of Port  
Commissioners, interested party.

O P I N I O N

Walter R. McCoy herein seeks a certificate of public convenience and necessity authorizing him to transport passengers arriving by non-scheduled air lines at the Oakland Municipal Airport to Oakland, Treasure Island and San Francisco.

Public hearings were held in San Francisco before Examiner Gillard on September 26 and 27, 1950, and the matter submitted on briefs which were filed December 20, 1950.

At the Oakland Municipal Airport, the passengers of the five interstate scheduled air lines are processed through the Administration Building. About 300 feet from this structure is the International Terminal Building, through which there are processed the passengers of all non-scheduled air lines, and two intrastate scheduled air lines - Pacific Southwest and California Central. The latter two lines became certificated scheduled

operators only recently, but continue to serve their passengers through the International Terminal Building.

The passengers arriving at the Oakland Municipal Airport through August of each of the past three years, as tabulated by the airport authorities, are as follows:

	<u>1948</u>	<u>1949</u>	<u>1950</u>
Scheduled air lines	34,211	36,702	43,856
Non-scheduled air lines	6,916	28,457	43,860

The non-scheduled air lines do not operate on time tables, but they tend to fall into a pattern: most arrive at the airport between 10 a.m. and 2 p.m., and depart between 7 p.m. and 8:30 p.m. The scheduled lines concentrate their departures between 7 a.m. and 10 a.m., and between 7 p.m. and 9 p.m., and concentrate their arrivals between 6 p.m. and 8 p.m. Thus the non-scheduled plane arrivals do not correspond with any of the arrivals or departures of the scheduled air lines.

Applicant proposes to serve only the passengers arriving at the Oakland Municipal Airport on non-scheduled air lines. Passengers would be discharged in Oakland at the St. Marks Hotel, Leamington Hotel, and Greyhound Bus Depot; at Treasure Island; in San Francisco at 248 Powell Street and 440 Post Street. The proposed fares per passenger are \$1.25 to Oakland and \$1.50 to Treasure Island and San Francisco. Service will be performed twenty-four hours a day on an on-call basis, meeting all non-scheduled air line arrivals. Applicant's equipment consists of a fourteen passenger Chevrolet bus and an eight passenger Chrysler limousine. Applicant is notified by the air line concerned, either at the airport or by telephone at his home, of the time when a

plane leaves Burbank. Through the communications center at the airport, to which applicant has access, he then ascertains the approximate time of arrival. He parks his vehicle, in a space assigned to him by the Superintendent of the airport, at the International Terminal Building, assists the passengers with their baggage at that point, and transports those who desire his service.

Applicant has been operating in the manner described for two years. He averages eight to twelve passengers per trip and has rendered service at all hours of the day and night. He grossed \$4,482 in passenger revenues in 1949. The record indicates that applicant possesses the experience and the resources necessary to conduct the limited service proposed.

At the time of the hearing, there were 22 different non-scheduled lines using the Oakland Municipal Airport. Eleven of these have been served by applicant, and representatives of five testified in support of this application. They have used applicant exclusively for the past 18 months to two years to furnish ground transportation on an individual fare basis to their incoming passengers. Some of these carriers also use Fialer's Limousines, Inc., to transport their passengers, but only on a charter basis, i.e., the air line involved charters and pays for an entire bus to transport a special group of passengers to or from the airport. All of these witnesses testified applicant was rendering an adequate service and they would continue to use him if he secures a certificate herein.

Protestant, Fialer's Limousines, Inc., hereinafter called Fialer's, is presently certificated to transport air line passengers in both directions between the Oakland Municipal Airport,

on the one hand, and Oakland, Alameda, Treasure Island and San Francisco, on the other hand, and between Oakland and San Francisco, on the one hand, and the San Francisco Municipal Airport, on the other hand. Fialer's was originally certificated to render service to and from the Oakland Municipal Airport in 1939 (Decision No. 32071, dated June 6, 1939) but the record herein shows without contradiction that such service was not commenced until April 30, 1946.

Fialer's owns eleven Cadillac limousines of ten and fourteen passenger capacity, and twelve Flxible 23-passenger buses. Of this equipment, five of the Cadillacs and one bus are assigned to the Oakland Airport operation to pick up all incoming passengers at the airport, to pick up in San Francisco and Oakland at all air line agencies all outgoing passengers, and all charter operations. Also available to Fialer's on a lease basis is the equipment of its affiliated companies, The Gray Line, Inc. and Airport Limousine Company.

Fialer's produced a profit and loss statement, for the Oakland Airport operation only, showing passenger revenues of \$36,815 in 1948, \$30,207 in 1949 and \$42,080 for the twelve month period ending June 30, 1950. These figures include inbound and outbound air passengers, but not charter operations. For the three periods noted, Fialer's suffered losses of \$18,819, \$21,957 and \$21,608, respectively, based upon allocations of costs from its entire operation. Total revenues and expenses were not disclosed, but Fialer's general manager testified that its whole operation produced a profit for each period noted, and that in 1949 that profit was approximately \$50,000 before taxes.

Representatives of three of the interstate scheduled air lines, and of both intrastate scheduled air lines, testified that Fialer's transported their passengers to and from the Oakland airport and that the service is very satisfactory. Fialer's produced no public witnesses to testify that it was rendering any service for incoming non-scheduled passengers, except one who testified he was the principal shareholder in De Luxe Air Coach, a non-scheduled air line. He testified that Fialer's "sometimes" transports non-scheduled passengers from the Oakland airport. However, he didn't state whether these were on charter, and on cross examination admitted he has never been at the airport to see his own planes arrive, and that he had been in Oakland very little and didn't know when Fialer's had transported any of those passengers.

The Superintendent of the Oakland Municipal Airport testified that three weeks prior to this hearing Fialer's requested a permit for parking space for its vehicles at the International Terminal Building. Prior to that time it had parked its vehicles only at the Administration Building where the scheduled air line passengers are processed.

Fialer's contends that it is rendering a completely satisfactory and adequate service to and from the Oakland Airport, that applicant would only be duplicating the existing service, and that under Section 504 of the Public Utilities Act this Commission has power to issue a new certificate "\*\*\*\*\*only when the existing passenger stage corporation or corporations serving such territory will not provide the same to the satisfaction of the Railroad Commission."

With reference to the latter point; we have stated (In

re Fialer's, 38 CRC 880, 884) that this Commission "\*\*\*when called upon to determine the ability of the existing utility to satisfactorily serve the public in the future, may judge it as of the day the newcomer knocks at the door."

Fialer's did not seek a permit to park at the International Terminal Building until three weeks before this hearing (about three weeks after the application was filed). This change in policy by Fialer's was therefore too late to be of help to it in this proceeding. The change would also seem to indicate that Fialer's recognized that its equipment had to be parked at that point in order to be in a position to render service to the non-scheduled air passengers.

On this record we cannot find that Fialer's is rendering an adequate service to these passengers. All the public testimony is to the contrary, and indicates that Fialer's operation is confined to the scheduled passengers plus charter trips.

Applicant, on the other hand, has been serving non-scheduled passengers exclusively for two years, during which time his revenue increased from \$3,546 in 1948 to \$4,482 in 1949. He is rendering a satisfactory service and has public support therefor. From the record we can only conclude that applicant has discovered a need for transportation in a particular field and has undertaken to serve the public therein, and that Fialer's, although certificated to render the service, has failed to do so. The non-scheduled air passenger only came into prominence, in Oakland at least, in 1949. In the period since that time, Fialer's has failed to provide him with ground transportation to the extent required of it under its certificate.

Fialer's also contends that applicant has been rendering an unlawful service and is therefore not entitled to receive a certificate which is based upon such an operation. However, we have long recognized that this situation should not be allowed to deprive the public or a particular class thereof of an essential service. This record shows a need for ground transportation for non-scheduled air line passengers. At the present time they are more numerous than scheduled passengers at the Oakland airport and certainly constitute a sufficiently large portion of the public to warrant the attention of this Commission.

Upon full consideration of the record we find that public convenience and necessity require the establishment and operation of the service proposed by applicant.

Walter R. McCoy 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

Public hearings having been held in the above entitled proceeding and the Commission based upon the evidence received having found that public convenience and necessity so require,

## IT IS ORDERED:

(1) That a certificate of public convenience and necessity be and it is hereby granted to Walter R. McCoy authorizing the establishment and operation of a service as a passenger stage corporation, as defined in Section 2 $\frac{1}{2}$  of the Public Utilities Act, for the transportation of non-scheduled air line passengers and their baggage from the Oakland Municipal Airport to the St. Marks Hotel, Leamington Hotel and Greyhound Bus Depot in Oakland, to Treasure Island and to the North American Airlines office and the Transocean Air Lines office in San Francisco.

(2) That in providing service pursuant to the certificate herein granted there shall be compliance with the following service regulations:

- a. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days after the effective date hereof.
- b. Within 60 days after the effective date hereof and on not less than 5 days' notice to the Commission and the public, applicant shall establish the service herein authorized and comply with the provisions of General Order No. 79 and Part IV of General Order No. 93-A, by filing in triplicate and concurrently making effective, appropriate tariffs and time tables.
- c. Subject to the authority of this Commission to change or modify them by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the most appropriate public streets and highways between the points authorized.

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

Dated at San Francisco, California, this 23<sup>rd</sup> day of January, 1951.

Walter R. McCoy  
Matthew J. Cassin  
Harold P. Kula  
Kenneth Kotten

COMMISSIONERS