

ORIGINALDecision No. 52105

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 PEERLESS STAGES, INC., requesting
 authority for modification of certain
 of its routes between Los Gatos and
 San Jose.) Application No. 37166

Application of SHS ENTERPRISES, INCORPORATED,
 a California Corporation, to purchase and
 CLAUDE A. KINGSBURY to sell an automotive
 passenger line operated between Almaden and
 San Jose, California; and the application
 of SHS Enterprises, Incorporated, to issue
 shares of its common stock.) Application No. 37077

In the Matter of the Application of SHS
 ENTERPRISES, INC., a Corporation, dba
 ALMADEN STAGE LINES, for a certificate of
 public convenience and necessity to
 operate motor coach transportation over
 extensions of applicant's present route
 and to discontinue service over portions
 of applicant's present routes.) Application No. 37244

John F. Balaam, for Peerless Stages as applicant and as
 protestant to Application No. 37244.
Herman J. Mager and Nathan F. Newcomer, for SHS Enterprises,
 Inc., and Claude A. Kingsbury, as applicants and as
 protestants of Application No. 37166.
C. V. Shawler and Charles W. Overhouse for the Commission staff.

O P I N I O N

Application No. 37166 filed July 28, 1955, as amended
 September 1, 1955, requests three changes in the route descriptions
 of Peerless Stages, Inc., so that this certificated passenger stage
 corporation may better serve new housing developments in its service
 area. Application No. 37077 filed June 28, 1955, requests an order
 authorizing Claude A. Kingsbury to sell passenger stage operative
 rights to SHS Enterprises, Incorporated, and authorizing the latter
 to assume the payment of indebtedness and to issue \$1,600 par value
 of common stock. Application No. 37244 of SHS Enterprises, Inc.,

August 23, 1955, on behalf of Almaden Stage Lines requests one minor route change so that some of its schedules may be operated along Seventh Street between Keyes Street in San Jose and Tully Road in County territory and requests a certificate of public convenience and necessity for an extension of Almaden Stage Lines service to parallel and cross the lines of Peerless Stages so as to serve Cambrian Park Plaza located southeasterly of Campbell, California. This latter extension would also involve an abandonment of service along Kirk Road and Barnham Avenue.

Public hearing was held before Examiner Rowe, in Campbell, California, September 16, 1955, on each of the above applications. Notice of the changes and of the incidental abandonments by Peerless Stages was duly posted as required by the Commission. No one appeared to testify against these abandonments. No evidence was introduced to show compliance by applicant SHS Enterprises, Inc., with a similar requirement as to posting notice. By stipulation all three matters were heard upon a consolidated record. All said proceedings were duly submitted for decision.

The evidence on behalf of applicant Peerless Stages was ample and uncontradicted that each of the route changes requested is in the public interest. The minor abandonments involved will inconvenience few customers and the changes of route will serve many more residents in the areas involved. Nine public witnesses living in or near the Cambrian Park subdivision testified that there is a public need for more service in this area. Some of these witnesses living near Foxworthy Avenue testified that there was a need for service from that area into the shopping area in the Cambrian Park subdivision. There is insufficient evidence to justify the granting of a certificate of public convenience and necessity to SHS Enterprises, Inc., for bus service from the Foxworthy Avenue area into the shopping area in the Cambrian Park subdivision. The evidence of most of the witnesses

that the primary need was for transportation from Cambrian Park to San Jose favors not only the application of SHS Enterprises, Inc., but also that of Peerless Stages as each will operate into San Jose. The Commission finds that public convenience and necessity require the changes proposed by Peerless Stages, and that proposed by SHS Enterprises, Inc., along Seventh Street.

Applicant Kingsbury is engaged in the operation of a passenger stage line between Almaden and San Jose. He acquired his operative rights and equipment from Lillian A. Hotchkiss pursuant to authorization granted by Decision No. 46654, dated January 15, 1952, in Application No. 32989, for the sum of \$4,600, of which \$1,941.32 remains unpaid. He has been transporting approximately 22,000 passengers a year and has reported his revenues and expenses as follows:

	<u>Revenues</u>	<u>Expenses</u>	<u>Net</u>
1952	\$4,476.15	\$3,658.19	\$ 817.96
1953	4,802.06	4,957.56	(155.50)
1954	4,924.07	8,187.63	(3,263.56)
1955 (to May 31)	3,664.82	4,382.37	(717.55)

Analysis shows that the increases in expenses during 1954, which were carried over into 1955, consisted primarily of increased costs for repairs, servicing equipment, tires and tubes, and wages.

It now appears that applicant Kingsbury desires to dispose of his operations and that he has made arrangements to sell to David K. Summerville his operative rights and a 14-passenger Chevrolet bus, 1945 model, and a 29-passenger Yellow bus, 1941 model, for the sum of \$3,691.32, of which amount \$1,191.32 is said to represent the value of the equipment and \$2,500 the value of the operative rights. David K. Summerville, along with Wayne H. Snyder and Norman W. Holmes, has organized SHS Enterprises, Incorporated, applicant herein, to take possession of said rights and equipment of applicant Kingsbury.

Under the agreement of purchase and sale the purchaser will pay applicant Kingsbury \$1,000 in cash and \$750 within one year, the

deferred payment to be represented by a one-year note executed by David K. Summerville, and will assume the unpaid balance of the indebtedness of \$1,941.32 in favor of Lillian A. Hotchkiss, which indebtedness is payable in monthly installments of \$50 and is secured by a chattel mortgage on the equipment. Said Lillian A. Hotchkiss has agreed to the transfer of the stage line.

Applicant corporation has obtained the \$1,000 cash down payment from its three incorporators. It proposes to issue to them \$1,000 par value of its stock in satisfaction of the amount thus advanced, and to sell \$600 par value of stock to the same individuals to provide working capital. In addition, it will assume the payment of the \$750 note issued by David K. Summerville.

The evidence shows that the purchaser intends to continue the operations now performed by applicant Kingsbury. The Commission is advised that the organizers of the corporation are familiar with the results of the operations heretofore conducted by applicant Kingsbury, that they are willing to pay the agreed purchase price in the face of the past operating losses, and that they are willing to invest the additional sums necessary to equip the operations. Upon reviewing the matter it appears to us, and we so find, that the transfer of the operations to applicant SHS Enterprises, Inc., will not be adverse to the public interest.

Under the terms of the Public Utilities Code, we have no authority to authorize the capitalization of the agreed price of \$2,500 to be paid for the operative rights. It appears, however, that the issue of \$1,000 of stock in payment for the equipment may be authorized, as well as the issue of the stock to pay for working capital, and we will enter our order granting the corporation's requests in this respect. Applicants are hereby placed on 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 as to the number of rights which may be given.

The action taken herein shall not be construed to be a finding of the value of the rights and properties herein authorized to be transferred.

O R D E R

Public hearing having been held in the above-entitled matters and the Commission having found that the route changes hereinafter authorized are in the public interest and that the minor discontinuance of service by Peerless Stages along Almaden Road and Union Avenue, along Fruitdale Avenue and along Almaden Road and Union Avenue will not adversely affect the public interest, and that the money, property or labor to be procured or paid for by the issue of the shares of stock herein authorized is reasonably required by applicant SHS Enterprises, Inc., for the purposes specified herein, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income, therefore,

IT IS HEREBY ORDERED:

(1) That Claude A. Kingsbury, on or after the effective date hereof and on or before December 31, 1955, may transfer his operative rights and equipment to SHS Enterprises, Incorporated.

(2) That SHS Enterprises, Incorporated, may issue not exceeding \$1,000 par value of its common stock in payment for the equipment herein authorized to be transferred and may issue and sell, at par, not exceeding \$600 of its common capital stock to provide working capital.

(3) That none of the stock authorized by paragraph 2 hereof shall be sold or issued unless and until applicant corporation first shall have selected an escrow holder and said escrow holder shall have been first approved in writing by the Commission; that when issued, all documents evidencing any of said stock shall forthwith be deposited with said escrow holder, to be held as an escrow pending the further written order of the Commission; that receipt of said escrow holder for said documents shall be filed with the Commission, and that the owner or persons entitled to said stock shall not consummate a sale or transfer of said stock, or any interest therein, or receive any consideration therefor, until the written consent of the Commission shall have been obtained so to do.

(4) That SHS Enterprises, Incorporated, may assume the payment of outstanding indebtedness represented by the note for \$1,941.32 in favor of Lillian A. Hotchkiss.

(5) That on not less than five days' notice to the Commission and to the public, applicants shall supplement or reissue the tariffs and timetables on file with the Commission naming rates, rules, regulations and schedules governing the common carrier operations involved to show that Claude A. Kingsbury has withdrawn or canceled and SHS Enterprises, Incorporated, has adopted or established, as its own, said rates, rules, regulations and schedules.

(6) That SHS Enterprises, Incorporated, shall file with the Commission monthly reports as required by General Order No. 24-A, which order, in so far as applicable, is made a part of this order. It shall file, as soon as available, the journal entries used to record on its books the acquisition of the properties of Claude A. Kingsbury.

(7) That Almaden Stage Lines route description numbered 1 in Ordering Paragraph (1) of Decision No. 50480 dated August 31, 1954, in Application No. 35668 be, and it hereby is, amended by adding

thereto the following:

"Also beginning at the intersection of First Street and Keys Street, thence along Keys Street, Seventh Street and Tully Road to Monterey Road."

(8) That operations over the route described in ordering paragraph 7 herein shall be subject to the restriction that SHS Enterprises, Incorporated, shall not pick up passengers between the intersection of First Street and Keys Street and the intersection of Seventh Street and Humboldt Street, whose destinations are between said intersections, or between said intersections on the one hand and restricted areas on said applicant's present routes on the other hand.

(9) That in all respects not provided in ordering paragraphs herein numbered 1 to 8 inclusive Application No. 37244 be, and it hereby is, denied.

(10) That the Peerless Stages route description designated (h) Campbell to Los Gatos in the first Ordering paragraph of Decision No. 42225 dated November 16, 1948 in Application No. 29778, relating to the operations of Peerless Stages, Inc., be, and it hereby is amended to read as follows:

"Commencing at the intersection of Union Avenue and San Jose-Los Gatos Road thence along said Union Avenue, Camden Avenue, New Jersey Avenue, Wyrick Avenue, Leigh Avenue and Branham Lane to Union Avenue.

"Also between the intersection of said Union Avenue and Camden Avenue and the intersection of Los Gatos-Almaden Road and San Jose-Los Gatos Road over and along Union Avenue, Carlton Avenue, National Avenue and Los Altos-Almaden Road."

(11) That the Peerless Stages route description in the first ordering paragraph of Decision No. 39957 dated February 11, 1947, in Application No. 25206, Third Supplement be, and it hereby is, amended to read as follows:

"(g) Campbell to Los Gatos:

Commencing at the intersection of Campbell Avenue and Los Gatos-Santa Clara Road over and along Campbell Avenue, Cypress Street, Virginia Street, Hazel Avenue, Burrows Road, Pollard Road to Santa Clara-Los Gatos Road. Also from said Santa Clara-Los Gatos along Capri Drive and Hacienda Avenue to said Santa Clara-Los Gatos Road."

(12) That Peerless Stages Route No. 3 between San Jose, Los Gatos and Saratoga as defined in Service Regulation No. 2 of the order of Decision No. 35763 as amended be, and it hereby is, further amended by adding to subparagraph (d) thereof the following:

"Also along Fruitdale Avenue between Meridian Road and San Jose-Los Gatos Road."

(13) That within thirty days after the effective date hereof and on not less than five days' notice to the Commission and the public applicants SHS Enterprises, Inc., and Peerless Stages shall respectively file in triplicate and concurrently make effective such amendments to timetables and tariffs as are necessitated by the

alterations and additions of the above-described routes.

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

Dated at San Francisco, California, this 18th day of October, 1955.

E. M. Mitchell
 President

Justin J. Caserio

Paul J. Tinterman

Michael Decker

W. H. Hardy
 Commissioners