

ORIGINAL

Decision No. 56944

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
DAL GRETTEBERG for a certificate)
under the provisions of Sections)
1007 to 1009 of the Public Utilities)
Code.)

Application No. 39808

Ashton, Drohan & Marchetti, by Harry Ashton, for
applicant.
Mark A. Soden, attorney, for Balboa Pavilion Company,
interested party.
Al Anderson, protestant.

O P I N I O N

Public hearing was held in this matter on May 6, 1958,
before Examiner Grant E. Syphers, at Newport. On that date evidence
was adduced and the matter submitted.

The applicant presently operates three boats in a sightsee-
ing service in and about Newport Harbor. The first of these boats
is the Bay Queen, a 65-passenger motor sailer with a length of 40
feet and a beam of 16 feet, powered by a 105-hp Chrysler auxiliary
engine, and documented under a weight of 13-gross tons and 8-net tons.
The second of these is the Show Boat, an 80-passenger cruiser having
a length of 40 feet and a beam of 16 feet, powered by a 200-hp
Chrysler engine, and documented under a weight of 13-gross tons and
8-net tons. The third is the Belle of Balboa, an 80-passenger motor
boat having a length of 43 feet and a beam of 15 feet, powered by a
120-hp engine, and while not documented, it is estimated to be of
13-gross tons and 11-net tons.

For the past eight years the applicant has conducted a sightseeing service in and about Newport Bay. He also conducts sightseeing service within a radius of ten miles of the bay, being limited in this service by the United States Coast Guard to operating within one mile of the shore.

The instant application was filed because applicant now believes that his operations are subject to the certificating requirements of the Public Utilities Code. He has been operating, and proposes herein to operate, three tours in the Newport Bay area. Trip No. 1 covers the western half of the bay, Trip No. 2 the eastern half, and Trip No. 3 is an alternate route to replace Trip No. 2 during periods of high tide which may cause lack of clearance under the bay bridge. He conducts these operations from a loading pier at 702 Edgewater, Balboa, California, and, in addition to this, he has access to a second pier at 506 Edgewater which he will use in case of emergency.

All of the three boats have been inspected and passed by the U. S. Coast Guard, and are operated by licensed operators. A financial statement is attached to the application and discloses no reason which would prohibit the applicant financially from conducting these operations.

A representative of the Balboa Pavilion Company appeared as an interested party and stated that company had been conducting sightseeing operations in the same area for a number of years. It was the position of that company that if a certificate is necessary for these operations it does not desire to be precluded from obtaining such a certificate as a result of the instant application.

There was one protestant who advised that he controlled the pier from which this applicant formerly operated, which pier is in the vicinity of 506 Edgewater. The applicant recently has moved from this pier and the protestant stated that he now intended to institute an additional sightseeing service with other boats.

A consideration of all of the evidence adduced herein discloses and we now find that applicant is qualified to conduct the proposed operations. We further find that public convenience and necessity require these operations inasmuch as the record discloses that there are numerous sightseers who take these trips, particularly during the summer months.

As a matter of law, the parties requested a Commission determination as to whether or not this type of operation is subject to the certificating requirements. The applicable statutes define a common carrier to include:

"Every corporation or person, owning, controlling, operating, or managing any vessel engaged in the transportation of persons or property for compensation between points upon the inland waters of this State or upon the high seas between points within this State, except as provided in Section 212. 'Inland waters' as used in this section includes all navigable waters within this State other than the high seas." (Public Utilities Code, Sec. 211(b).)

A vessel is defined as follows:

"'Vessel' includes every species of water craft, by whatsoever power operated, which is owned, controlled, operated, or managed for public use in the transportation of persons or property, except rowboats, sailing boats, and barges under 20 tons dead weight carrying capacity, and other water craft propelled by steam, gas, fluid naphtha, electricity, or other motive power under the burden of five tons net register." (Section 238.)

It is obvious from the testimony adduced in this record and we now find, that the boats operated by this applicant come under the definition of a vessel as set out in the statutes.

The law further provides:

"No corporation or person shall begin to operate or cause to be operated any vessel for the transportation of persons or property, for compensation, between points in this State, without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation . . ." (Section 1007.)

The pertinent part of the above statute, so far as the instant operation is concerned, is "between points in this State." It was contended that since the applicant primarily conducts his operations from one pier he is not operating between points. We now hold that applicant's operations do come under the requirements of Section 1007 and, further, that a certificate should be issued, subject to the restrictions hereinafter set out. (See Shearwater, Inc., Decision No. 53849, dated October 1, 1956, in Application No. 37865; 55 Cal. P.U.C. 235.)

The rates proposed to be charged for the harbor cruises are 85 cents per adult passenger and 35 cents for children under 12 years of age. Children under 5 years of age are transported free of charge when accompanied by an adult. For ocean cruises outside of the harbor, the fare is \$1.50 per adult passenger, 65 cents for children under 12 years of age, and no charge for children under 5 years of age. These rates appear to be reasonable and will be authorized herein.

Dal Grettenberg 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 as to the number of rights which may be given.

O R D E R

Application as above entitled having been filed, public hearing having been held thereon, the matter having been submitted and the Commission being fully advised in the premises,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity, as provided in Section 1007 of the Public Utilities Code, be and it hereby is granted to Dal Grettenberg, an individual, authorizing the establishment and operation of a sightseeing service as a common carrier for the transportation of persons by vessel from a pier at 702 Edgewater in Balboa, and/or a pier at 506 Edgewater in Balboa, via Newport Bay and all places in the bay and in the coastal waters between Balboa and Laguna Beach, to the point of origin.

(2) That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- a. Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.
- b. Within sixty days after the effective date hereof, and on not less than ten days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs and schedules satisfactory to the Commission to reflect the authority herein granted.
- c. Subject to the authority of this Commission to change or modify such passenger vessel operation at any time, Dal Grettenberg shall conduct such operation via the following described route:

From a pier at 702 Edgewater, Balboa, and/or a pier at 506 Edgewater, Balboa, via Newport Bay and all places in the bay and in the coastal waters between Balboa and Laguna Beach, to the point of origin.

Applicant may pick up or discharge passengers at any suitable point enroute provided each and every passenger be required to pay the applicable rate for the entire trip. However, applicant shall not transport passengers from points on Balboa Island to other points in Newport Harbor.

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

Dated at San Francisco, California,
this 8th day of July, 1958.

[Signature]
President

[Signature]

[Signature]

[Signature]

[Signature]
Commissioners