

Decision No. 62028**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own )  
 motion into the operations and practices )  
 of THOMAS B. CROWLEY, an individual, )  
 A. HOOPER & CO., a corporation, HARBOR )  
 TUG AND BARGE CO., a corporation, HARBOR )  
 TOURS, INC., a corporation, and GOLDEN )  
 GATE SCENIC STEAMSHIP LINES, INC., a )  
 corporation. )

Case No. 6480  
 (Amended)

Reginald L. Vaughan, for Harbor Tours, Inc.,  
 and Golden Gate Scenic Steamship Lines,  
 Inc., respondents.  
Herman F. Selvin, for Thomas B. Crowley,  
 A. Hooper & Co., Harbor Tug & Barge Co.,  
 respondents.  
Boris H. Lakusta, Graham, James & Rolph,  
 for Russell G. Lewis, interested party.  
Franklin G. Campbell, for the Commission  
 staff.

O P I N I O N

This is an investigation on the Commission's own motion to determine whether Thomas B. Crowley and certain named corporations have violated Section 1007 of the Public Utilities Code by operating or causing to be operated vessels for the transportation of persons for compensation between points in this State without first obtaining from this Commission a certificate of public convenience and necessity.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis on October 5, 1960, at San Francisco when the matter was submitted subject to the filing of briefs by the parties. All the briefs have been filed and the matter is now ready for decision.

At the hearing, Russell G. Lewis, who holds operating authority which is in part similar to the operating authority held by one of the respondents, sought to enter an appearance pursuant to Rule 46 of the Commission's Rules of Procedure. The presiding

Examiner permitted Russell G. Lewis to enter an appearance in accordance with the rule.

The Commission staff contends that the respondents are violating Public Utilities Code Section 1007 by conducting a loop sight-seeing operation upon San Francisco Bay without having first secured from this Commission a certificate of public convenience and necessity. No other violations of Section 1007 are alleged by the staff.

Russell G. Lewis agrees with the position taken by the Commission staff. In addition, he contends that respondents have also violated Section 1007 by conducting vessel operations between San Francisco and Angel Island without a certificate of public convenience and necessity.

The alleged violations of Section 1007 relate to different types of operations and will be separately considered.

#### Loop Sight-seeing Operations

Some of the respondents conduct a vessel loop sight-seeing operation on the waters of San Francisco Bay. The facts concerning the operation are not in dispute. The Commission staff and the respondents entered into a stipulation of fact detailing the loop sight-seeing operations. The Commission finds, in accordance with the stipulation, the facts to be as follows:

1. Golden Gate Scenic Steamship Lines, Inc., a California corporation, owns, controls, operates and manages a sight-seeing service consisting of the transportation of passengers on the waters of San Francisco Bay, State of California, for compensation on an individual fare basis, with vessels departing on regularly advertised schedules from a pier in San Francisco and moving in a loop on the waters of San Francisco Bay and returning to the point of departure without touching at any other point of land. None of the vessels, when engaged in said sight-seeing service, operate between two

different land points. Said sight-seeing service was commenced on or about June 1947 and is now so operating.

2. Harbor Tours, Inc., a California corporation, handles ticket sales and advertising for Golden Gate Scenic Steamship Lines, Inc., in connection with its above-described sight-seeing operations. Harbor Tours, Inc., performs no other functions. As compensation for its services to Golden Gate Scenic Steamship Lines, Inc., Harbor Tours, Inc., receives a sum equal to 25 percent of the proceeds of ticket sales, excluding proceeds from charters for private parties and sales by vendors and brokers.

3. All vessels operated by Golden Gate Scenic Steamship Lines, Inc., are chartered on bareboat charters from the respective owners of such vessels.

4. Each vessel chartered by Golden Gate Scenic Steamship Lines, Inc., is owned by a separate California corporation. Each of these corporations is a wholly owned subsidiary of the Harbor Tug and Barge Company, a California corporation.

5. Golden Gate Scenic Steamship Lines, Inc., and Harbor Tours, Inc., are wholly owned subsidiaries of the Harbor Tug and Barge Company.

6. Neither Golden Gate Scenic Steamship Lines, Inc., nor Harbor Tours, Inc., has a certificate of public convenience and necessity from this Commission nor have they or either of them applied therefor, based upon their contention that this Commission is without jurisdiction over said sight-seeing operations.

The respondents take the position that this Commission has no jurisdiction over vessel sight-seeing operations which embark from a point, traverse California waters, or the high seas, without touching land, and return to the point of origin. The respondents contend that none of them has violated Section 1007 of the Public Utilities

Code because that section does not require a certificate of public convenience and necessity for the operations which they conduct. The argument in support of respondents' contentions is primarily one of statutory construction.

Public Utilities Code, Section 1007, provides in part as follows:

"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 ...." (Emphasis added.)

Respondents first argue that none of them is engaged in the "transportation" of persons within the meaning of Section 1007 because the word "transportation" means to carry or convey from one place to a different place.

None of the cases cited by the respondents in support of their contention of the meaning of "transportation" in Section 1007 deals with a factual situation similar to the one here under consideration. The stipulation of facts entered into by the respondents and the Commission staff states that "Golden Gate Scenic Steamship Lines, Inc., .... owns, controls, operates and manages a sightseeing service consisting of the transportation of passengers on the waters of San Francisco Bay, State of California, for compensation ...." (Emphasis added.) In addition, one of the authorities cited by respondents: People v. Western Airlines, 42 Cal. 2d 621, refers to a definition of "transportation" in Curtis-Wright Flying Service v. Glose, 66 Fed. 2d 710,712, where "transportation" is defined as "a carrying across" without respect to different geographical places of origin and termination. The Commission finds and concludes that for the purpose of regulatory statutes, and particularly Section 1007, "transportation" means "a carrying across" without reference to

different geographical places of origin and termination. (See also United States v. Twentieth Century-Fox Film Corp., 235 F. 2d 719.)

The Commission finds that the activities of respondent Golden Gate Scenic Steamship Lines, Inc., and Harbor Tours, Inc., constitute the transportation of persons for compensation. The critical question is whether the transportation involved is "between points in this State" within the meaning of Section 1007.

Respondents contend that the phrase "between points in this State" should be interpreted to mean "between different geographical points within this State." To support this contention respondents compare the language in Section 1007 with other sections of the Public Utilities Code and conclude that the Legislature, by enacting the language in Section 1007, intended to exclude from regulation the type of movement here involved. The Commission is of the opinion that the proffered conclusion does not follow from the language relied upon by respondents.

Respondents further contend that their interpretation of the phrase "between points in this State" is fortified by the grandfather rights portion of Section 1007 which provides that:

"no .... certificate shall be required as to termini between which any such corporation or person is lawfully operating vessels in good faith under this part as it existed prior to August 17, 1923, under tariffs and schedules of such corporations or persons, lawfully on file with the commission ...."

It is argued that the words "termini between which" indicate different geographical places, and that the rights protected by the grandfather clause would be identical to those brought under regulation. This argument assumes the point at issue. The word "termini" is the plural of "terminus" which is defined as a "boundary; border; limit." (Webster's New International Dictionary of the English Language, 2d Ed., Unabridged (1948).) "Termini" is also

defined as "Ends; bounds; limiting or terminating points." (Black's Law Dictionary, 3rd Ed. (1933).) Thus, if the grandfather clause in Section 1007 is read as "no certificate shall be required as to limits or limiting or terminating points between which any such corporation or person is lawfully operating vessels in good faith .... prior to August 17, 1923," we are back again to the question of whether this means separate geographical places.

The authorities cited by respondents are not determinative. In State v. Haynes, 175 Ark. 645, 300 S.W. 380, the Arkansas Supreme Court held that a statute requiring a license to operate "between cities and towns" dealt with intercity operations and did not apply to sight-seeing operations. In United States v. 12536 Gross Tons of Whale Oil, 29 Fed. Supp. 262, the United States sought the forfeiture of a cargo of whale oil which was transported by a Norwegian ship from an American factory ship in Australian waters to Norfolk, Virginia. At that time, the pertinent portions of the Merchant Marine Act provided that "No merchandise shall be transported by water .... on penalty of forfeiture thereof, between points in the United States .... in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States ...." The Court then held that the American factory ship in Australian territorial waters was not a "point in the United States" for the purposes of the Merchant Marine Act.

Section 1007 does not contain any language indicating that it deals only with transportation between separate geographical places. It is not restricted to transportation between "different" points or "from one point in this State to another." (See United States v. Twentieth Century-Fox Film Corp., supra, at p. 721.)

Article XII, Section 20 of the California Constitution, provides that "no .... transportation company shall raise any rate or charge for the transportation of freight or passengers .... under any circumstances whatsoever, except upon a showing before .... [the Public Utilities Commission] that such increase is justified ...." Section 22 of Article XII provides that the Public Utilities Commission "... shall have the power to establish rates of charges for the transportation of passengers and freight by .... transportation companies ...."<sup>1/</sup> Section 17 of Article XII declares transportation companies to be common carriers, and Section 23 declares every common carrier to be a public utility subject to the jurisdiction of this Commission.

Sections 20, 22 and 23 of Article XII of the California Constitution are self-executing. (People v. Western Air Lines, 42 Cal. 2d 621,636 - 38.)

The Commission finds that respondents Golden Gate Scenic Steamship Lines, Inc., and Harbor Tours, Inc., are transportation companies as defined in Sections 20, 22 and 23 of Article XII of the California Constitution. As transportation companies they are subject to rate regulation by this Commission under the cited constitutional provisions. There are, in addition, areas in which the Legislature is empowered under Section 22 of Article XII to confer additional regulatory powers upon this Commission, e.g., safety, restriction of entry into the common carrier or utility field, issuance of securities and others.

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<sup>1/</sup> There is a restriction in Section 22 prohibiting transportation companies from demanding, receiving, or collecting a greater or less or different compensation "between the points named in any tariff of rates" than rates established by this Commission and specified in such tariff. However, the grant of power to this Commission in Section 22 does not mention the word "points."

Public Utilities Code Section 1007 restricts the right of a person to become a common carrier by vessel unless there is a determination that public convenience and necessity require the service. Public Utilities Code Sections 556, 581, 761, 791, 816 and 851 regulate the facilities, reports, safety and adequacy of facilities and practices, books, securities, and transfer and encumbrance of properties of utilities. Public Utilities Code Section 216 follows the constitutional definition and provides that the term "public utility includes every common carrier ...." Section 211(b) in part defines a common carrier as "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."

Section 212 excludes certain persons operating tank vessels from the statutory definition of a common carrier and Section 238, which defines "vessel", recognizes the self-executing constitutional rate regulation provisions and provides in part as follows: "Nothing in this code except those provisions relating to the regulation of rates shall apply to the transportation by water of liquid cargoes in bulk in tank vessels designed for use exclusively in such service."

From the foregoing, it is clear that the Legislature has enacted a comprehensive plan for the regulation of common carrier vessel operations. Where the Legislature has decided to refrain from regulation it has clearly delineated the non-regulated area. (Public Utilities Code Sections 212, 238 (c).)



All of the regulating sections as well as Section 1007 apply to (a) vessels, (b) transporting persons or property (c) between points in this State.<sup>2/</sup> The respondents concede that these sections apply to sight-seeing trips and excursions where the vessel touches two different geographical points. It is difficult, therefore, to see why the Legislature would regulate the safety and facilities of a vessel transporting persons, for example, from San Francisco to Angel Island for a picnic and thence back to San Francisco and not regulate the safety and facilities of a vessel transporting passengers from San Francisco around Angel Island and back to San Francisco without touching land.

The Commission has held on numerous occasions that "It is our interpretation of Section 1007 of the Public Utilities Code that the phrase 'between points in this State' refers to the territorial extent of the operation, and does not mean that there must be two or more separate termini." (Star and Crescent Boat Company, 54 Cal. P.U.C. 64,65; Russell G. Lewis, Decision No. 58056 in Application No. 40097; Margee Corp., Decision No. 60752 in Case No. 6374; Frank E. Hubaty, Decision No. 51777 in Application No. 40461; Dal Grettenberg, Decision No. 56944 in Application No. 39808; Shearwater, Inc., Decision No. 53849 in Application No. 37865.) The Commission is still of the opinion that this is the correct interpretation of Section 1007.

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Section 1007 requires a certificate of public convenience and necessity for the transportation of persons or property "between points in this State." Sections 556, 581, 761, 816 and 851 apply to common carriers and public utilities (a common carrier is one type of public utility). The pertinent definition of common carrier with respect to these sections is in Section 211(b) which talks about transportation "between points upon the inland waters of this State or upon the high seas between points within this State ...."

Section 212, which excludes certain operations from legislative regulation, contains language similar to that in Section 211(b).

The Commission finds that respondents Golden Gate Scenic Steamship Lines, Inc., and Harbor Tours, Inc., have violated Section 1007 of the Public Utilities Code by operating vessels for the transportation of persons for compensation, between points in this State, without having obtained a certificate declaring that public convenience and necessity require the operation.

Alleged Angel Island Operations

The Harbor Tug and Barge Company, one of the respondents herein, was granted a certificate of public convenience and necessity to operate as a common carrier by vessel for the transportation of persons between San Francisco and Angel Island State Park by Decision No. 60037 in Application No. 40241 dated May 3, 1960. Russell G. Lewis, who was a protestant in the Application No. 40241 proceeding, timely filed a petition for rehearing which stayed the order granting the certificate. The petition for rehearing was denied on September 20, 1960, and the certificate became effective on that date.

Russell G. Lewis contends herein that prior to September 20, 1960, some or all of the respondents conducted common carrier vessel operations between San Francisco and Angel Island State Park; that this was a violation of Section 1007; and that because of the alleged illegal operations this Commission should revoke the operating rights granted to the Harbor Tug and Barge Company in Decision No. 60037.

Russell G. Lewis produced two witnesses to support the charge of illegal operations. The presiding Examiner, who listened to the testimony and observed the demeanor of these witnesses while testifying under direct and cross-examination, has indicated to the Commission that this testimony was not forthright, that these witnesses were evasive, and that the Examiner did not believe that the testimony given by these witnesses accurately described the incidents

in question. It is also interesting to note that at a point during the cross-examination of one of the witnesses produced by Lewis, counsel for Lewis interjected and stated as follows:

"MR. LAKUSTA: May I request, Mr. Examiner, that you tell the witness not to be afraid to answer the question truthfully. He's very young, and I think perhaps he's fearful that he might say the wrong thing. So, as far as we are concerned, we want him to answer the truth since he's under oath.

"MR. CAMPBELL: I think that is quite unusual --

"MR. SELVIN: I think it should be appropriate that no witness should ever be afraid of telling the truth.

"MR. CAMPBELL: That's a most strange thing that counsel requested his own witness be told to tell the truth because he is under oath. Mr. Lakusta, I am a little surprised.

"EXAMINER JARVIS: I think to avoid any protracted colloquy at the counsel table that I will tell the witness that he is sworn to tell the truth as he remembers, which means, that you may answer a question directly 'yes' or 'no', or 'yes' or 'no' and qualify your answer. Or if you do not remember all of it, you may say so or if you do not remember a portion of it, you may say so."

The testimony of the two witnesses produced by Russell G. Lewis dealt with certain incidents which occurred on September 18, 1960. This was the only evidence produced at the hearing by Lewis to substantiate the charge that respondents had violated Section 1007. Respondents also presented evidence with respect to these incidents. Based upon the evidence of record the Commission finds and concludes that on September 18, 1960, Golden Gate Scenic Steamship Lines, Inc., chartered to the Northern California Seafood Institute vessels for the purpose of an excursion from San Francisco to Angel Island State Park; that as part of the charter transaction Golden Gate Scenic Steamship Lines, Inc., furnished to the Northern California Seafood Institute a quantity of tickets used by certain of the respondents many years ago; that these tickets were furnished

to the Northern California Seafood Institute so that it could identify the members and guests who paid to go on the excursion; that none of the respondents presently uses said form of ticket in connection with its operations except to furnish these tickets to organizations chartering vessels; that the Northern California Seafood Institute sold excursion tickets to members of the public; that none of the respondents participated in the sale of these tickets; that on September 18, 1960, two persons, acting upon instructions given them by Russell G. Lewis or his agents, purchased tickets for the aforesaid excursion from an agent of the Northern California Seafood Institute; that none of the respondents exercised any control over the people who were permitted to board the vessels used in connection with the aforesaid charter; that Golden Gate Scenic Steamship Lines, Inc., physically operated the vessels in connection with said charter; and that none of the aforesaid conduct constitutes a violation of Section 1007 of the Public Utilities Code by any of the respondents.

Miscellaneous Matters

Russell G. Lewis also contends that the Commission should apply the doctrine of alter ego to the case at bar. He argues that respondents Golden Gate Scenic Steamship Lines, Inc., and Harbor Tours, Inc., are alter egos of the Harbor Tug and Barge Company; that the loop sight-seeing operations conducted by these respondents should be attributed to the Harbor Tug and Barge Company; and that the illegal loop sight-seeing operations by Golden Gate and Harbor Tours constitute a basis for revoking the certificate of public convenience and necessity authorizing the Harbor Tug and Barge Company to transport passengers between San Francisco and Angel Island State Park.

The Harbor Tug and Barge Company holds, in addition to the San Francisco-Angel Island State Park certificate, a

certificate of public convenience and necessity to conduct "a general launch, barge, tug and towboat business in 'on-call' service for the transportation of passengers between points on San Francisco and San Pablo Bays ...." (Investigation by Commission, etc., 40 C.R.C. 493, 515.) There is nothing in this record that indicates that the Harbor Tug and Barge Company is violating any provision of law or rule or regulation of this Commission in conducting operations under these certificates. Therefore, even if it be assumed for the sake of argument only that an alter ego situation exists, there would be no need under the facts here presented to invoke the severe sanctions called for by Russell G. Lewis and revoke operating authority which has no relationship to the illegal loop sight-seeing operation. This Commission has sufficient power to enforce Section 1007 without resorting to the drastic action sought by Lewis. (Public Utilities Code Sections 312, 2101 et seq.)

O R D E R

A public hearing having been held in the above-entitled matter and the Commission being fully informed therein,

IT IS ORDERED that:

1. Golden Gate Scenic Steamship Lines, Inc., a corporation, and Harbor Tours, Inc., a corporation, are, and each of them is, hereby ordered to cease and desist from operating or causing to be operated any vessel for the transportation of persons, for compensation in loop sight-seeing operations in San Francisco Bay and environs, between points in this State, without first having obtained from this Commission a certificate declaring that public convenience and necessity require such operation.

2. The Secretary of the Commission is directed to cause personal service of this order to be made on Golden Gate Scenic

Steamship Lines, Inc., a corporation, and Harbor Tours, Inc., a corporation, and this order shall become effective twenty days after the date upon which said service is made.

Dated at San Francisco, California, this 22<sup>nd</sup> day of MAY, 1961.

*Charles W. Pease*  
President

*John E. Mitchell*

*John L. Fox*

*Fredrick B. Hallock*  
Commissioners