

ORIGINAL

Decision No. 65899

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
JEROME E. PHILLIPS and MOLLIE)
PHILLIPS, a partnership, doing)
business as GOLDEN ARROW CHARTER)
SERVICE, of San Jose, for a permit)
to operate as a charter-party)
carrier of passengers. (File)
No. TCP-94))

Application No. 45304

Jerome E. Phillips, Mollie Phillips, Stuart B. Merlin, and Norman W. Holmes, for applicants.
George H. Hook and William J. Blair, for the San Jose City Lines, Inc.; and Lloyd E. Cole, for Peerless Stages, Inc.; protestants.
E. Nebelung, for Western Greyhound Lines, interested party.
B. A. Peeters and E. H. Mattoon, for the Commission staff.

O P I N I O N

Applicants herein applied on February 28, 1963 for a permit to operate as a Charter Party Carrier of passengers under Sections 5371, 5372 and 5375 of the Public Utilities Code. The Commission refused to issue the permit on the ground that the applicants did not have the "reasonable fitness and financial responsibility" required by Section 5374 of the Public Utilities Code. Thereafter hearing was held in San Jose on May 9 and 27, 1963, before Examiner Fraser and the matter was submitted.

The applicants testified substantially as follows: they have been in operation as a charter party carrier of passengers since May of 1960; their business lost \$3,000 in 1961 and \$492 in 1962; they lost \$395 during the first three months of 1963 due to a lack of snow, but hope to show a profit for the year; they now have

seven buses as indicated on their application; they own four of these and lease three from a Mr. Norman Holmes, who formerly owned and operated the Mayfair Lines; they purchased Mr. Holmes' bus operation and since 1959 lent him \$9,000 on unsecured notes, in addition to purchasing a bus from him for \$6,000 during the same year; they lease their terminal area and three buses from Holmes, with all rentals being applied to reduce the total owed by Holmes on the loans; Mr. Phillips works five days a week as a welder (eight hours) and works on the buses in the evenings and on weekends; Mrs. Phillips devotes most of her time to the business, either working in the office, or as a driver of a school bus; Holmes works for the Western Pacific Railroad, and also acts as manager of the business, dispatching buses, doing some driving and determining the rates to be charged on charters; applicants also employ one full-time and five part-time drivers, in addition to their son, who is employed full time as a mechanic; the buses have traveled 167,180 miles since they started operating; their vehicles have been involved in two minor accidents during this period, but neither was charged to their driver; they stated they have never knowingly dispatched an unsafe bus. One of their drivers testified that he has been driving for 12 years and has been associated with the Golden Arrow Charter Service for about two years. He stated he has never had an accident and has never been charged with a moving violation; he has completed some of the maintenance performed on the buses used by the applicants and he has never seen them dispatch an unsafe bus. The applicants introduced their profit and loss statement (Exhibit 1) for the period from January 1 to March 31, 1963, which indicates that the applicants and Mr. Holmes draw no salaries from the business.

The only wages paid are to drivers and for maintenance, with \$30 listed under office salaries. Exhibit 2 is a "Daily Inspection Report" form, which the applicants testified is used by their drivers after a tour is completed.

A Financial Examiner from the Commission staff testified that he is a certified public accountant and that he made a financial analysis of the Golden Arrow Charter Service, which was summarized in a document received in evidence as Exhibit 3. He further testified that the financial status of the applicants is shaky due to a \$5,000 note they owe which becomes due in June of 1963 and to the unsecured loans they have made to Mr. Holmes. He also testified that the applicants draw no salaries from the business, and that Mrs. Holmes is paid \$10 a month for answering the telephone and arranging for drivers.

An assistant motor carrier operations supervisor from the Commission staff testified that he inspected the applicants' terminal and six buses on March 11, 1963 and found it necessary to place four of the vehicles out of operation (Exhibit 4) due to a failure to comply with several of the safety requirements required by Commission General Orders Nos. 98 and 116. The witness testified that the worst violations were broken wheel studs on the rear wheels of four of the buses, steering drag links loose on three vehicles and brake violations, which were present on all six buses. He testified a letter dated March 15, 1963 (Exhibit 5) was mailed to advise the applicants of the violations noted on their equipment and a reply was received dated April 10, 1963 (Exhibit 6), which stated that all deficiencies noted in the letter of March 15, 1963 had been

corrected. The witness testified that he made a second inspection of applicants' terminal and equipment on April 15 and 16, 1963 (Exhibit 4) and discovered that not all of the original violations had been corrected. He placed one bus out of operation due to defective brakes and five other buses were cited for items such as loose pitman arms and drag links in the steering mechanism, cracked windows and windshield, loose exhaust pipes and mufflers and loose screws and bolts on the universal joint and body springs.

The staff witness identified and authenticated six pictures which were placed in evidence as Exhibit 7. These pictures show the vacant lot used by the applicants as a terminal. The witness testified that the applicants have no buildings on the premises and that the lot is not paved. A small shack on the premises is apparently used for storage. The witness testified in his opinion the facilities were not adequate to properly check and maintain the buses and that the vehicles themselves were not properly serviced and repaired.

The applicants testified in rebuttal that everything possible has been done to put the buses in a safe condition; that their yard is partially paved since it includes the premises of their manager who lives next door; and that the manager's yard is paved and has a large garage which is used to store equipment. It is illustrated in Exhibit 8.

The applicants testified their buses were occasionally dispatched by the Greyhound Company and by Peerless Bus Company. A witness for Western Greyhound Lines testified they have an agent in San Jose who obtains charter business for Greyhound Lines on a

commission basis. If Greyhound Lines cannot handle the charter, the agent is authorized to recommend another bus line and is then paid for the charter, deducts his commission and forwards the remainder of the fee to the charter carrier. The Greyhound Lines witness testified his company has no control over other carriers used by the agent and that other carriers employed have no connection with, or authorization from, Western Greyhound Lines. It was admitted by the applicants that they had been used on charters by the agent who represents Greyhound and not directly by Western Greyhound Lines.

The application has an equipment list attached which shows the applicants are operating with two 1942 buses, two 1946 buses, two 1947 buses and one 1948 bus. The importance of efficient maintenance of aged vehicles is obvious. It is difficult to believe that seven old buses can be continually maintained by an apprentice mechanic and two men who work full time at other jobs. Everyone works on the buses, but no one seems to be responsible for the results of their efforts. The mechanic should be initially responsible for the proper and competent performance of the repair and maintenance work, but he did not testify and took no part in the proceeding.

The applicants financial position is weak. Such a lack of financial resources together with defective and old buses are difficult obstacles to overcome. Applicants took the position that a new business should be encouraged. However against this must be weighed the likelihood of danger to the public from defective or worn out buses, particularly where, as here, there is an insufficiency of resources to install proper repair and maintenance procedures. Section 5374 of the Public Utilities Code provides:

"Before an annual permit is issued, the commission shall require (emphasis added) the applicant to establish reasonable fitness and financial responsibility to initiate and conduct the proposed transportation services." The Commission would be remiss in its duty to protect the public interest if it did not insist that applicants fully comply with Section 5374.

Based upon the evidence we hereby find that:

1. Applicants are engaged in the transportation of passengers over the public highways for compensation as a charter party carrier of passengers, without first having received authority to so operate from this Commission, as required by Section 5371 of the Public Utilities Code.

2. The buses used by the applicants are unsafe and are not properly maintained and the capital necessary to keep them in a safe condition is lacking.

3. Applicants' business is in a precarious financial condition and the owners and manager have not been able to draw any salaries.

4. Applicants do not have adequate facilities and trained personnel to properly maintain their equipment.

5. Applicants do not possess sufficient financial resources to have the maintenance and repair work performed elsewhere.

Based upon the above findings we therefore conclude that:

1. Applicants have failed to establish reasonable fitness and financial responsibility to initiate and conduct the proposed transportation services.

2. Applicants have violated Section 5371 of the Public Utilities Code.

3. Application No. 45304 should be denied.

O R D E R

IT IS ORDERED that:

1. Application No. 45304 is hereby denied.
2. Jerome E. Phillips and Mollie Phillips cease and desist from operating as a charter party carrier of passengers within the meaning of Section 5360 of the Public Utilities Code.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Jerome E. Phillips and Mollie Phillips, and this order shall be effective twenty days after the completion of such service upon either of the applicants.

Dated at San Francisco, California, this 20th day of AUGUST, 1963.

William W. Bennett
President

Robert E. ...

George T. Dwyer

Fredrick B. Haselhoff
Commissioners