

ORIGINAL

Decision No. 67453

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of

CALIFORNIA ESCORT TOURS, INC., for a certificate of public convenience and necessity to operate a per capita customer sightseeing service within California pursuant to Section 1032-P.U. Code.

Application No. 45865
(Filed October 14, 1963)

Robert A. Heil, for applicant.
McCutchen, Doyle, Brown, Trautman & Enersen,
by Craig McAtee, for Greyhound Lines, Inc.,
Western Greyhound Lines Division, California
Parlor Car Tours Division, The Gray Line, Inc.;
Russell & Schureman, by R.Y. Schureman, for
American Buslines, Inc., Continental Pacific
Lines and Transcontinental Bus System, Inc.;
John L. Hughes, for Tanner Motor Tours, Ltd.;
protestants.
R.W. Russell, by K.D. Walpert, for the Department
of Public Utilities and Transportation; inter-
ested party.
Fred G. Ballenger and Wm. R. Kendall, for the
Commission staff.

O P I N I O N

Applicant seeks a certificate of public convenience and necessity to operate a "custom tour" sightseeing service, state-wide and unrestricted as to termini and routes. The application is protested by the principal certificated passenger stage corporations engaged in the sightseeing business.

A public hearing was held on March 18, 1964, in Los Angeles, before Examiner Chiesa. Oral and documentary evidence having been adduced the matter was submitted for decision.

At the hearing applicant's president and only shareholder, Robert A. Heil, described the proposed service as a "custom tour operation" which would be operated anywhere within the state, along any and all routes and without schedules and, principally, for foreign tourists. The equipment used would be of various sizes and the tours would include bilingual escorts. The tours would depend on the desire of the individuals or groups, or would conform to an itinerary previously arranged for the tourists by a foreign travel agent. The tourist would pay the applicant, or travel agent, the compensation for the sightseeing tour on an individual basis either separately or as a part of his tour transportation fare or cost. Sightseeing in California would be only a part of applicant's "custom tour operation" as it also proposes such other services for the tourists as meeting them on arrival, providing bilingual escorts during their visit and on tours, providing transportation to and accommodations at hotels, handling luggage, taking care of tips, providing shopping advice, arranging for restaurant, night club and theater reservations.

In 1963 applicant had a Charter Party permit, since expired, and operated pursuant thereto somewhat in the manner hereinabove related. Upon being informed by a member of the Commission's staff that its operations were not being performed as a charter-party carrier and that a certificate of public convenience and necessity was necessary in order to operate in the manner it was operating, this application was filed. Applicant's president does not think it is possible for applicant to qualify for a certificate because under its proposed "custom tour operation" it could not operate between fixed termini or over a regular route; his testimony was as follows:

"I have no legal counsel here today for in my estimation, technically speaking, the Public Utilities Code does not provide for the kind of service California Escort Tours proposes to provide.

"We operated it for nearly a year under the charter party permit of the PUC until it became apparent that it was impossible to continue trying to find the solution to our problems of authority under that permit.

"The only alternative to the charter party permit in the Code is the certificate of convenience and necessity which the subject application covers.

"At the outset of my discussions and negotiations with the Public Utilities Commission, that is, when we started our business, I contended that since our operation essentially did not have fixed termini, fixed routes and fixed schedules, they did not qualify as a passenger stage operation.

"Since it has been proved to us that we cannot operate successfully under the charter party permit, however, the only alternative remaining is to apply for the certificate.

"Since in my own mind the legal defense of this application is impossible, because our operation doesn't fall into that category, I am even not here represented by legal counsel. It must strictly be the judgment of the Commission as to whether they can interpret the passenger stage code section of the Code broadly enough to allow for any point in the state as a terminus, routes between all these termini as the routes and the schedules chosen by the clients as the fixed schedules. If the Commission cannot allow for that broad an interpretation of the code, there is no defense of this application, no amount of legal argument will alter the situation.

"I therefore decided not even to attempt a legal defense of this application.

"At the beginning of our service we examined the code and discussed the situation with our attorneys, as well as officials of the PUC.

"It was immediately apparent there was a problem, but I felt that there must be a solution to this problem where the need for a service exists and it is not now provided.

"For the reasons mentioned before, we decided that the certificate of convenience and necessity does not suit our needs. We therefore applied for and were granted a charter party permit.

"It is the apparent narrow interpretation put on the charter party permit which finally compelled us to find some other operating authority.

"My entire case is built upon logic rather than law. If the Commission decides they cannot interpret the Code broadly enough to allow this kind of service, then, the only alternative remaining is that of legislation to change the Code."

Public witnesses were not called in support of the application.

A balance sheet filed with the application shows applicant's financial condition as of September 30, 1963, as follows: Total assets, \$18,787.48; total liabilities, \$32,326.90; capital deficit, \$13,539.42. The capital account shows capital stock outstanding, \$12,000; contributed capital, \$58,000; total deficit, \$83,539.42. Testimony at the hearing indicated that applicant's financial condition at the time of the hearing had further deteriorated. Applicant is not now conducting any business, owns no equipment and has no employees.

Protestants presented evidence of their respective sight-seeing operations and services within the state. Their tours are between fixed termini or over regular routes. A detailed recitation of said services is not necessary. However, there is substantial evidence of record that protestants' tours are performed throughout the state in de luxe type equipment of various kinds, by trained personnel, and offering, when requested, at extra cost, bilingual escorts. Several of the protestants also operate charter-party trips as well as the certificated tours.

Although applicant's president was of the opinion that a certificate of public convenience and necessity would not suit its

needs, he did not offer any good reason why applicant could not operate between fixed termini or over regular routes, such as protestants are operating.

Based upon the evidence the Commission finds that:

1. Applicant has failed to show that the proposed service would be operated between fixed termini or over regular routes as required by Section 226 of the Public Utilities Code.

2. Applicant has failed to show that public convenience and necessity require the operation of a passenger stage service as proposed in the application.

Based upon the foregoing findings we conclude that the application should be denied.

ORDER

IT IS ORDERED that Application No. 45865 of California Escort Tours, Inc., a corporation, be and it hereby is denied.

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

Dated at San Francisco, California, this 30th day of JUNE, 1964.

 President

[Signature]

 Commissioner

[Signature]

 Commissioner

[Signature]

 Commissioners

[Signature]

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.