

ORIGINAL

Decision No. 69055

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, charges, and practices of
W. R. TOMSON, doing business as
SKYWAY CHARTER BUS LINES and
TRAVEL TOUR CLUB.

Case No. 7875

Francis W. Halley, for respondent.
McCutchen, Doyle, Brown, Trautman and Enersen,
by Craig McAtee, for Greyhound Lines, Inc.;
A. B. Allen, for Allen Transportation
Company, interested parties.
John C. Gilman, for the Commission staff.

O P I N I O N

This investigation was instituted on April 14, 1964 on the Commission's own motion for the purpose of determining whether respondent has violated Section 1031 of the Public Utilities Code by operating as a passenger stage corporation as defined by Section 226 of said Code without a certificate of public convenience and necessity; whether respondent has violated Section 5371 of the Public Utilities Code by operating as a charter-party carrier of passengers as defined by Section 5360 of said Code without a charter-party carrier permit; and whether respondent has violated Section 5401 of the Public Utilities Code by acting as a broker and contracting to charge on an individual-fare basis for transportation to be furnished by a charter-party carrier.

Public hearings were held in Modesto before Examiner Fraser on September 1 and 2, 1964. The matter was submitted on December 16, 1964, after opening and closing briefs were filed by the Commission staff, Greyhound Lines, Inc., and the respondent.

The facts are not in dispute and may be summarized as follows: Respondent operated from April through December 1963 as Skyway Charter Bus Lines. During this period he advertised "free trips to Lake Tahoe" in Modesto newspapers, the telephone directory and by large signs placed in restaurants and hotels. Readers were advised to telephone a given number for further information. Those who called the number were told where the bus loaded (usually in front of a well-known hotel) and the date, time of departure and destination of the next bus scheduled to leave. Buses owned by respondent and labeled as "Skyways" carried passengers on regularly scheduled tours from designated pickup points in the Modesto area to South Shore and Crystal Bay at Lake Tahoe. The passengers debussed in a parking lot or at the edge of the highway on the California side of the Nevada State Line. A contract placed in evidence (Exhibit No. 6) indicates that the passengers then either walked or were transported to a nearby gambling casino which paid the respondent either \$7 or \$8 per passenger, with the smaller sum being paid for week-end deliveries. The passengers were not charged for the transportation furnished by respondent.

During January of 1964 a Commission representative telephoned the respondent to advise that respondent's Skyway Charter Bus Lines appeared to be operating as a passenger stage corporation without the certificate of public convenience and necessity required by Section 1031 of the Public Utilities Code. Respondent

replied that a travel tour club was being organized which would be exempt from regulation as a private club. Respondent later wrote a letter to the Commission, dated January 18, 1964 (Exhibit No. 2), which enclosed a club membership card (Exhibit No. 3), a club information bulletin (Exhibit No. 4) and a blank application for membership (Exhibit No. 5) which provides that upon signing the applicant becomes a member of the club.

The record shows that those who sign the applications for membership receive a numbered membership card by mail along with an information sheet. Anyone who boards a bus without a membership card is furnished with a membership application which is signed and returned to the driver. The signer is then treated as a member and receives his membership card later. Apparently everyone who applies is accepted as a member; there are no initiation fees and no club dues, no club officers have ever been elected and no club meetings have ever been scheduled. Various club correspondence and information bulletins identify the respondent as the former owner of Skyway Charter Bus Lines and the organizer, president and tour director of the Travel Tour Club. Several witnesses testified that the secretary-treasurer of the club is the wife of the respondent. A club information bulletin (Exhibit No. 10) lists N. O. (Nick) White as the vice president.

The method of advertising (Exhibits Nos. 18 and 19) and service provided by the Travel Tour Club is essentially the same as that previously described for Skyway Charter Bus Lines. An information letter dated January 21, 1964 (Exhibit No. 13) advertises five - free - scheduled trips to Tahoe every week,

leaving on Tuesday, Thursday, Friday, Saturday and Sunday. The first information bulletin of the club (Exhibit No. 9), dated August 1964, advised the members that free trips to the Tahoe area leave Modesto at 8:30 p.m. on Friday and Saturday and at 8:30 a.m. on Tuesday, Thursday and Sunday. Other pickup points are identified in Atwater, Turlock, Manteca and Lodi. The bulletin states that travel tour trips are for the whole family, although only adults can go to Tahoe because the casinos admit only adults.

Two witnesses employed by Greyhound testified as follows: Skyway Charter buses were observed discharging passengers in the Tahoe area as late as February 8, 1964 and possibly after this date; the Skyway buses were fitted about this time with labels which identified them as Travel Tour buses; passengers were observed walking from buses parked on the California side of the State Line to a casino located in Nevada; the driver of the bus was observed walking with the passengers and on one occasion was observed in the act of handing what appeared to be a passenger list to the cashier of the casino; Travel Tour buses were frequently observed (on an average of three a week) in Tahoe during the short two and three day visits the witnesses make to Tahoe every week. On April 30, 1964 it was noted that the license plates on the buses were changed from the commercial plates to three letters followed by three numbers, which is the type of plate issued to a privately owned vehicle.

The respondent did not testify. Several witnesses presented by the respondent testified that trips of the Travel Tour Club have been made to Disneyland and that at least one trip was made to a major league baseball game in San Francisco. One

witness stated he was planning on scheduling future club meetings or barbecues at his ranch. The witnesses testified that other trips for club members are in the planning stage (Exhibits Nos. 14, 15 and 16) and will be scheduled in the near future if sufficient people are interested. Several stated that on trips to the Tahoe area the drivers will stop wherever the passengers prefer for lunch and rest stops and will occasionally vary the route if requested by the passengers. It was noted that the bus drivers are all paid by the Travel Tour Club.

The Commission staff and Western Greyhound Lines argued that the respondent and the Travel Tour Club were operating unlawfully as passenger stage corporations without the required authority. Respondent argued that the Travel Tour Club is not subject to Commission regulation since it is a private club whose facilities can be used only by the members. On October 2, 1964 the staff and Western Greyhound Lines filed a request to set aside the submission and to have a subpoena issued to require the respondent to testify and to bring with him all corporate records of the Travel Tour Club, Inc. Neither W. R. Tomson, Skyway Charter Bus Lines nor Travel Tour Club hold any operating authority from the Public Utilities Commission.

Where a club advertises and offers free membership to all who apply and is organized for the principal purpose of providing regularly scheduled transportation for its members, with the bus fares paid either by the riders or by some organization to whom the passengers are delivered, it is subject to regulation by this Commission and depending upon the facts must possess either a certificate to operate as a passenger stage corporation or a permit to provide charter-party service, or both.

Based upon the record the Commission makes the following findings of fact:

1. Respondent W. R. Tomson operated as an individual, doing business as Skyway Charter Bus Lines, from April through December of 1963 and during the early part of 1964.

2. The operation consisted of a round-trip bus schedule operating on a timetable five days of the week between the Modesto-Manteca-Lodi area and two places on the California side of the California-Nevada State Line at Lake Tahoe.

3. Everyone who applied was allowed to take the trip to Tahoe if there was room on the bus and the applicant was over twenty-one years of age.

4. Individual fares were charged to and paid by the Nevada gambling casinos to whom the passengers were delivered.

5. Skyway Charter Bus Lines was advertised extensively in local newspapers, telephone directories, and by signs placed in hotels and restaurants.

6. Only passengers over twenty-one years of age were driven to the Tahoe area and they traveled free.

7. The Travel Tour Club was incorporated by the respondent W. R. Tomson and started operating in January or February of 1964.

8. The Travel Tour Club provides the same service over the same routes and between the same points as Skyway Charter Bus Lines.

9. Everyone is eligible for membership in the Travel Tour Club although trips to the Tahoe area are provided only for members over twenty-one years of age. All who apply become members as soon as the application for membership is signed.

10. The club was organized and incorporated as a private club for the principal purpose of providing a travel service to

Tahoe, with the passenger fares to be paid by the Nevada gambling casinos.

11. The club has no dues or fees, holds no meetings, has no elected officers, has never issued a financial statement or status report to its members and is managed and controlled by the respondent and his wife, who are the only club officers known to the members who testified.

12. At least one trip to Disneyland and another to a major league baseball game in San Francisco were scheduled by the Travel Tour Club and future trips to these and other areas are planned if sufficient people are interested. Individual fares are charged the passengers on these trips.

13. Neither W. R. Tomson nor the Travel Tour Club hold any operating authority from this Commission and even though the Travel Tour Club was organized as a nonprofit private social club it does not, as such, become exempt from Commission regulation.

14. Respondent W. R. Tomson is the owner, operator, manager and controller of the Travel Tour Club and the latter, although apparently incorporated, should be disregarded as a separate entity.

15. The petition of the staff and Greyhound Lines, Inc. for an order setting aside submission and for the issuance of subpoenas should be denied.

Based on the foregoing findings, the Commission concludes that:

1. W. R. Tomson, doing business as Skyway Charter Bus Lines and also operating under the name "Travel Tour Club", has operated as a passenger stage corporation within the meaning of

Section 1035 of the Public Utilities Code and thereby has violated Section 1031 of said Code, which requires that a certificate of public convenience and necessity be obtained from this Commission before operation is commenced.

2. Some of the operations of W. R. Tomson are those of a passenger stage corporation, while others are those of a charter-party carrier of passengers.

ORDER

IT IS ORDERED that:

1. W. R. Tomson shall cease and desist from operating as a passenger stage corporation as defined by Section 226 of the Public Utilities Code, unless and until he first obtains from this Commission a certificate of public convenience and necessity authorizing such operations as required by Section 1031 of the Public Utilities Code.

2. W. R. Tomson shall cease and desist from operating as a charter-party carrier of passengers as defined by Section 5360 of the Public Utilities Code, unless and until he first obtains from this Commission a permit authorizing such operations as required by Section 5371 of the Public Utilities Code.

The Secretary of the Commission is directed to cause personal service of this order to be made upon W. R. Tomson. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 11th day of MAY, 1965.

[Signature] President
George T. Dwyer
[Signature]
[Signature] Commissioners

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.