

**ORIGINAL**Decision No. 69231

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of CHARLES F. STAEL, dba PIONEER )  
SKATE ARENA of Hayward, Califor- )  
nia, for a permit to operate as )  
a charter-party carrier of )  
passengers (File No. TCP-189). )

Application No. 46788  
Filed April 20, 1964

Charles F. Stahl, in propria persona,  
for applicant.  
Hilton H. Nichols, for the Commission  
staff.

O P I N I O N

By this application, Charles F. Stahl, doing business as Pioneer Skate Arena, seeks a charter-party carrier of passengers permit.

Public hearing was held before Examiner Mooney at San Francisco on September 11, 1964.

Applicant testified that he owns and operates the Pioneer Skate Arena at Hayward and leases and operates two additional skate arenas located at Carmichael and Suisun; that he is employed by the Southern Pacific Company as a locomotive engineer; that he owns a 1954 Superior bus which has a seating capacity for 56 passengers; that he also has a second bus which he described as a reserve bus to be used only if the 1954 Superior bus could not be operated for any reason, and that his financial position is substantially the same as set forth in the statement for the year 1962 attached to the application, which shows a net worth of over \$38,000.

Applicant stated that the 1954 Superior bus had been used to pick up prospective patrons in front of a particular grocery store

in San Ramon and to transport them to his skate arena in Hayward (a distance of approximately 11 miles) on certain evenings during the week; that the passengers were expected to purchase an admission ticket to the arena at the regular price charged all patrons, although there was no requirement that this be done; that return transportation was also provided several hours later, and that no charge was made for the transportation service. The witness stated he had also experimented with this type of service to his other skate arenas at Carmichael and Suisun but discontinued it to them. He explained that the bus has been out of operation due to mechanical difficulties which have now been corrected. Applicant stated his equipment is regularly checked and serviced by an experienced mechanic in Carmichael. He testified that his personal injury and property damage liability insurance and the safety and maintenance program for his equipment met the requirements and standards of the Public Utilities Commission and the California Highway Patrol.

Applicant admitted he has not previously applied for operating authority from the Commission. He explained he was not aware that the type of service he was performing was subject to Commission regulation until informed by letter from the Commission staff that he could not transport passengers without first obtaining authority to provide such service. The witness testified that upon receiving this information he filed the instant application.

Applicant stated that if the sought authority is granted, he will provide round-trip bus service from San Ramon to the Hayward arena on Friday evenings and would consider providing a similar type of service to the Carmichael and Suisun arenas on other evenings during the week, and that he would occasionally accommodate groups, such as boy scouts, church and similar organizations, if they

requested him to provide round-trip transportation for their members, to meetings, conventions, outings or other group events. He stated that, at present, he did not intend to charge for any of the proposed services but that he was giving this matter further consideration and might charge for them; that he understood that charter-party carriers of passengers cannot charge on an individual fare basis, and that his purpose in performing the transportation service would be to advertise his skate arena business and thereby stimulate increased patronage for it. He stated that if he were to withdraw from the skate arena business, he would most likely not be interested in owning any buses or holding a charter-party carrier of passengers permit.

An engineer from the Commission staff assisted in the development of the record through extensive cross-examination of applicant. The engineer stated that it was the position of the Commission staff that the proposed operation to the skate arenas would be a passenger stage operation and not a charter-party operation. No other evidence was presented, and no one protested the application.

#### Discussion

Applicant proposes to provide two types of service. One is transportation of prospective customers to and from his skate arenas. The second is transportation of various groups and organizations at their request to and from events they wish to attend, such as meetings, conventions, sporting events and the like. Each type of service will be discussed separately.

#### 1. Transportation to and from Skate Arenas

The initial question to be considered in connection with the skate arena service is whether it is a common carrier passenger stage operation.

Section 211(c) of the Public Utilities Act states that a "passenger stage corporation" is a common carrier. "Passenger stage

corporation" is defined in Section 226 of the Code as including "every corporation or person engaged as a common carrier, for compensation, in the ownership, control, operation or management of any passenger stage over any public highways in this State between fixed termini or over a regular route." Certain exceptions noted in Section 226 relate to the transportation of school and university students and intracity operations which are not involved herein.

Section 1031 of the Code provides that no passenger stage corporation shall commence operation over any public highway in the State without first having obtained a certificate of public convenience and necessity from the Commission. Section 1035 of the Code provides that the transportation of passengers by stage or other motor vehicle upon the public highways between points not within a single city where the fare is computed, collected or demanded on an individual fare basis, shall be presumed to be an act of operating as a passenger stage corporation.

From a review of the record, it is clear that the transportation proposed to the Hayward arena would be between fixed termini. One terminal would be a particular location in San Ramon, and the other terminal would be the skate arena in Hayward. The transportation would be intercity transportation over the public highways. Although the record does not specifically name the locations from which the transportation to the Carmichael and Suisun arenas would originate, applicant testified that the service would be similar to that performed to the Hayward arena. It is apparent, therefore, that the transportation to the Carmichael and Suisun arenas would originate at particular points beyond each city and would be transportation over the public highways between fixed termini.

The record does not state whether the proposed transportation would be over regular routes although this can reasonably be

presumed from the evidence. In any event, the statutory requirement "between fixed termini or over a regular route" is stated in the alternative and either condition is a test of common carriage.<sup>1</sup>

As to whether applicant would charge for the proposed service, the record is somewhat vague. Applicant testified in essence that he does not intend to assess a charge for this service, but that he might. This issue was not further clarified.

Should applicant charge the passengers for the service, this would obviously be transportation of passengers "for compensation." As stated in Section 1035, supra, if fares are collected on an individual fare basis, it shall be presumed to be an act of operating as a passenger stage corporation.

The question as to whether free transportation offered to prospective customers by a business enterprise is transportation of passengers "for compensation" has been considered by the Commission in several prior decisions.

As to "free" transportation, the Commission has held that free transportation by motor vehicle offered to prospective customers by a business enterprise from points outside a city to the business' location within a city is transportation of passengers "for compensation" and is an act of operating as a passenger stage corporation.<sup>2</sup> The consideration is the implied promise of the passenger that he is a prospective customer, and actual compensation is received from each passenger who uses the services or purchases the products offered by

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1 In re Fleetlines, Inc., 52 Cal.P.U.C. 298 (1952).

2 Peter J. Van Loben Sels (Valley Transit Lines) v. B. J. Smith et al., copartners (Cal. Transit Lines), 49 Cal.P.U.C. 290 (1950). See also Richard Chala v. Morris Gordon of Gordon's Outlet Store, et al., Decision No. 57356 in Case No. 6152 (1958), unreported.

the business. Furthermore, the term "individual fare basis" in Section 1035 of the Code is but one form of payment embraced in the term "compensation" as used in Section 226 of the Code.

The service to the skate arenas would be transportation of passengers by motor vehicle for compensation over the public highways between points not within a single city and meets all of the conditions set forth in Section 226 of the Code. The proposed service is that of a passenger stage corporation and is subject to regulation as such, including the requirement in Section 1031 of the Code that a passenger stage corporation obtain a certificate of public convenience and necessity from the Commission prior to commencing operations.

## 2. Transportation of Various Groups

This portion of applicant's proposed passenger transportation would involve the transportation of groups and organizations (boy scouts, church organizations, and the like) to meetings, conventions, outings and similar events. The transportation would be between the particular points selected by the group for whom the transportation was performed. It would not be transportation between fixed termini or over a regular route which is defined in Section 215 of the Code to mean "the termini or route between or over which .. .. any passenger stage corporation usually or ordinarily operates any passenger stage ...." Clearly, applicant would not be operating as a passenger stage corporation in performing such service.

The next issue to be determined is whether this service is a charter-party carrier of passengers operation. Section 5360 of the Code provides that except for the exclusions set forth in Section 5353, a charter-party carrier of passengers includes "every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public

highway in this State." Section 5353 states that transportation wholly within the corporate limits of a single city, transportation for which authority to operate as a passenger stage corporation is required, and certain other transportation services not involved herein are not subject to the charter-party carrier of passengers regulations.

The proposed service involves transportation of passengers by motor vehicle over the public highways. As hereinbefore stated applicant testified that his purpose in providing bus service would be to advertise his skate arena business and thereby stimulate increased patronage for it and that it is his intent to offer the service free although he might consider assessing a charge. If a charge is assessed, the condition "for compensation" in Section 5360, of the Code would be satisfied. Transportation furnished by business enterprises without charge is also "for compensation" if the organization sponsoring the trip receives a business benefit.<sup>3</sup> Applicant would receive a business benefit and compensation from the increased patronage for his skate arena business resulting from the advertising.

Applicant testified that he is aware of the provision of Section 5401 of the Code which prohibits a charter-party carrier of passengers from computing or assessing fares on an individual fare basis. From this it is concluded that if he were to assess a charge for the proposed service, this would be done in accordance with the requirements of Section 5401.

The proposed transportation of various groups, to the extent that it involves transportation for compensation not entirely

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<sup>3</sup> In re Passenger Charter-Party Carriers' Act and Establishment of General Orders Nos. 115 and 116, 60 Cal.P.U.C. 581, 585 (1963).

within the corporate limits of a single city would be a charter-party carrier of passengers operation and subject to regulation as such.

Any free transportation of passengers not entirely within the corporate limits of a single city offered by applicant to any group would not be subject to regulation if no business benefit were derived therefrom.

Findings and Conclusions

After consideration the Commission finds that:

1. Applicant owns and operates the Pioneer Skate Arena at Hayward and operates two additional skate arenas at Carmichael and Suisun under lease.
2. Applicant owns a 56-passenger 1954 Superior bus and an additional bus.
3. Applicant's financial position is solvent.
4. The transportation proposed to be furnished by applicant between San Ramon and the Pioneer Skate Arena, Hayward, would be transportation of passengers by passenger stage for compensation over the public highways between fixed termini not within the same city.
5. To the extent that the transportation is not between points within the same incorporated city, the transportation proposed to be furnished by applicant from and to his skate arena in Carmichael and Suisun would be the transportation of passengers by passenger stage for compensation over the public highways between fixed termini not within the same city.
6. To the extent that the transportation would not be entirely within an incorporated city, the transportation proposed to be performed by applicant for groups, associations and organizations



under special arrangements with them to transport them to and from a special event they have elected to attend is transportation of passengers by motor vehicle for compensation over the public highways not between fixed termini or over a regular route.

7. The transportation proposed to be performed by applicant "without charge" is "for compensation" since applicant's purpose is to advertise his skate arena business and thereby stimulate increased patronage therefor and actual compensation is received from each user of the service who, as a result, subsequently purchases an admission ticket to any of the arenas.

8. Applicant carries personal injury and property damage insurance on his bus equipment but has not offered proof that the limits on his policy meet the minimum standards set forth in General Order No. 115.

9. Applicant has not shown that he has complied with the safety directives of the California Highway Patrol.

Based upon the foregoing findings of fact, the Commission concludes:

1. Applicant must obtain a certificate of public convenience and necessity to operate as a passenger stage corporation before commencing the passenger transportation service proposed to be performed to and from his skate arenas where such transportation is not between points located within the same incorporated city.

2. Applicant has established reasonable fitness and financial responsibility to initiate and conduct a charter-party carrier of passengers operation for groups, organizations and the like from and to special events they have elected to attend. A charter-party carrier of passengers permit will be granted to applicant subject to prior compliance with the following order.

O R D E R

IT IS ORDERED that:

1. Upon receiving written notice from the applicant that he has complied with the insurance requirements of the Commission's General Order No. 115 and the safety rules and regulations of the California Highway Patrol, a Charter-Party Carrier of Passengers Permit shall be issued to applicant.

The Secretary of the Commission is directed to cause personal service of this order to be made upon applicant, and this order shall be effective twenty days after the completion of such service upon applicant.

Dated at San Francisco, California, this 15<sup>th</sup> day of JUNE, 1965.

Fredrick B. Holdhoff  
President

John L. [unclear]

George H. Hoover

Augustus

William L. [unclear]  
Commissioners