

ORIGINALDecision No. 70203

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 WALTER R. TOMSON, an individual doing
 business as W. R. Tomson-Enterprises,
 of Modesto, California, for a permit
 to operate as a Charter-Party Carrier
 of Passengers (File No. TCP-46).

Application No. 47484
 Filed March 25, 1965

Francis W. Halley, for Walter R. Tomson, applicant.
McCutchen, Doyle, Brown, Trautman & Enersen, by
Craig McAtee, for Greyhound Lines, Inc.;
Russell & Schureman by R. Y. Schureman, for
 American Buslines, Inc., Continental Pacific
 Lines, Gibson Lines and Transcontinental Bus
 System, Inc., protestants.
W. K. Miller, for Charter Bus Operators Associa-
 tion of California; A. B. Allen, for Allen
 Transportation Company, interested parties.
John C. Gilman and W. H. Eastham, for the Commis-
 sion staff.

O P I N I O N

Applicant applied on March 25, 1965 for a permit to operate throughout the State of California as a charter-party carrier of passengers. Several protests were filed and the matter was heard on July 20 and 21, 1965, in Modesto, before Examiner Fraser. It was submitted after Greyhound Lines, Inc., filed a petition for a proposed report.

The applicant owns and operates an advertising firm called "Transitize Company" which owns benches and leases space on local buses in Modesto, where advertising cards and materials can be displayed. He owns a 1947 35-passenger Brill bus and a 1945 37-passenger G.M.C. His application shows that he has had 14 years experience in the transportation of passengers by motor vehicle. His financial statement (dated March 22, 1965) shows total assets

of \$43,510.32, with \$17,650 in notes receivable, \$17,200 in motor vehicle equipment and a \$2,000 miscellaneous entry included in the total. Liabilities are totaled at \$5,340.72, with \$1,337.72 as accounts payable and \$4,093 as the balance due on motor vehicle equipment.

The Commission hereby takes official notice of Decision No. 69055, dated May 11, 1965, in Case No. 7875, wherein the applicant was ordered to cease and desist operating as a passenger stage corporation and as a charter-party carrier of passengers without first obtaining authority from this Commission.

The applicant testified as follows: He operated from April 5, 1962 to March 15, 1963 under the authority of Charter-Party Permit No. TCP-46 issued by the Commission. This permit was canceled on May 28, 1963 at his request since he operated from March 15, 1963 until January 9, 1964, under the authority of a permit held by the Santa Cruz Transit Company. Applicant leased two buses to Santa Cruz Transit Company and was its manager during this period. The applicant organized the Travel Tour Club and operated from January 10, 1964 to June 13, 1965 under a presumption that the club could lawfully operate without authority from this Commission. A copy of Decision No. 69055, in Case No. 7875, was served on May 24, 1965. He ceased operating on June 13, 1965, the effective date of the decision. He leased both buses for \$300 a month to Lincoln Bus Lines of Stockton on June 11, 1965 and since June 13, 1965 has been operating under the lease as the Modesto branch of Lincoln Bus Lines. He is the owner of approximately 25 benches in the City of Modesto as a part of his advertising business. Some of these still advertise the Travel Tour Club and have his phone number displayed. These advertisements have not been removed

due to the resignation of one of his employees who was maintaining the benches. Tomson is no longer associated with the club and has no connection with it at the present time.

The lease mentioned above was received in evidence as Exhibit No. 17. It provides that Lincoln Bus Lines (the lessee) will have exclusive possession, use and control of the buses and will maintain the buses without cost to the lessor (applicant). It further provides that the lessee will pay all wages to the drivers along with Social Security, Unemployment Taxes, Workmen's Compensation Insurance and all taxes and fees. The lessee is to have absolute control of the drivers and is to provide public liability and property damage insurance.

The owner of Lincoln Bus Lines testified as follows regarding the lease. The applicant's buses carried 15 charter groups for Lincoln Bus Lines during the period from June 18 to July 15, 1965. The applicant arranged 10 of these charters. The buses are operated by the same three drivers the respondent used prior to the lease and the vehicles are still stored and maintained in Modesto by the applicant. The latter pays the drivers along with all operating expenses, including storage and maintenance, out of the money received from groups chartering his buses. The Modesto office managed by the applicant has no "Lincoln Bus Co." sign, but is identified by a small card in the window which reads "Bus Tours," "Charter Bus Tours." Lincoln Bus Lines pays no rent on the Modesto office and has never been charged for the office phone. No rental payments (\$150 per bus per month) have been made as yet to the lessor. It has been agreed that the applicant is to retain a portion of the charter payments received as his compensation. The fraction to be retained has not been determined by the parties. The applicant has full authority from Lincoln Bus Lines to negotiate

and accept charters. The lessee has never inspected the buses and is leaving the operation of the Modesto office entirely in the hands of the applicant. The lease was negotiated by the owner of Lincoln Bus Lines to obtain the charter business of the applicant.

Discussion

It is obvious that the applicant has disregarded Commission Decision No. 69055 and that he is still providing the charter service without having procured the requisite authority from this Commission. It is not necessary to discuss the legality of the lease since both parties disregarded it as soon as it was executed. The applicant made no serious effort to identify himself with Lincoln Bus Lines. Under the circumstances it would be difficult for him to do so, since the public would continue to identify him with the charter operation he was ordered to terminate. An additional consideration would be the effect of a grant of authority on public opinion. A grant of authority to operate as a charter party carrier of passengers, under all the circumstances, would be tantamount to approval of applicant's prior unlawful operation and of his current lease, which both parties disregarded and which appears to have been executed by the applicant as a device to continue his operation. The application should be denied.

Findings

1. Decision No. 69055, dated May 11, 1965, in Case No. 7875, ordered the applicant herein to cease and desist from operating as a passenger stage corporation and a charter-party carrier of passengers without authority.

2. Applicant continued to operate without authority up to June 13, 1965, the effective date of the decision. He operated after the effective date of the decision as a branch office of

Lincoln Bus Lines, under the terms of a written contract executed by the parties on June 11, 1965.

3. Neither party provided the consideration to put the lease in effect. The lessee failed to pay any rent, did not take possession of the buses and made no effort to exercise control over the leased equipment. The lessor (applicant) retained possession of the buses, continued scheduling charters, paid all operating and office expenses, continued to pay his own employees and failed to identify the office he used as a branch of Lincoln Bus Lines.

4. The request to file briefs and for a proposed report should be denied.

Based upon the above findings we therefore conclude that:

1. The applicant has failed to establish reasonable fitness to conduct the proposed service because of a history of unlawful operation as a charter-party carrier and continued violation and disregard of Commission Decision No. 69055.

2. The purported lease of applicant's equipment to another bus company does not justify applicant's continued charter operation as a branch office of the lessee, in complete disregard of a prior Commission decision which ordered the applicant to cease operating until proper authority was obtained.

3. Applicant has violated Sections 5371 and 5378 of the Public Utilities Code.

4. Application No. 47484 should be denied.

O R D E R

IT IS ORDERED that:

1. The petition for a proposed report and the request to file briefs are hereby denied.

2. Application No. 47484 is hereby denied.

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

Dated at San Francisco, California, this 11th day of JANUARY, 1966.

[Signature] President

[Signature]

[Signature] Commissioners

We concur, except that we would have preferred to have the Examiner issue a proposed report.

Frederick B. Hohlhoff
George H. Crover