

ORIGINALDecision No. 70711

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of CLARENCE CRARY, an individual, dba Crary Tours; FANNY C. MacENROE, an individual, dba Merry Mac Tours; and EILEEN WOODYARD, an individual.

Case No. 7848
(Filed February 25, 1964)

Fanny C. MacEnroe and Eileen Woodyard, for themselves; and Albert C. S. Ramsey, for Clarence Crary, respondents.

McCutchen, Doyle, Brown, Trautman & Enersen, by Craig McAtee, for Greyhound Lines, Inc.; K. D. Walpert, for City of Los Angeles; John L. Hughes, for Tanner Motor Tours, Ltd.; Daniel T. Shelley, for California Charter Buses; David D. Canning, for Los Angeles Metropolitan Transit Authority; Henry E. Jordan, for City of Long Beach; and Thomas J. Knight, for Knight of the West Tours, interested parties.

John C. Gilman, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion to determine whether any or all of the respondents: (1) violated Section 1031 of the Public Utilities Code by operating as a passenger stage corporation without an appropriate certificate of public convenience and necessity; (2) violated Section 5371 of the Public Utilities Code by operating as a charter-party carrier of passengers without a permit issued by this Commission; (3) violated Section 5401 of the Public Utilities Code by acting as a broker and charging or demanding individual fares for transportation offered or afforded by charter-party carriers of passengers; or (4) violated Section 5402 of the Public Utilities Code by selling transportation, by passenger stage, on an individual fare basis for sightseeing trips on routes for which passenger stage corporations have obtained certificates of public convenience and necessity, and

chartering passenger stages at rates per passenger which are less than the individual fares for which such transportation is sold.

The matter was set for hearing on June 24, 1964, when, at the request of one of the respondents, it was called and continued until July 15, 1964. A duly noticed public hearing was held before Commissioner Grover and Examiner Jarvis at Los Angeles on July 15 and 16, 1964. On August 2, 1965, the Proposed Report of Commissioner Grover was filed in the matter. Exceptions to the Proposed Report and replies thereto were filed by interested party Greyhound Lines, Inc. and the Commission staff.

The Commission has considered all of the exceptions.

Finding of Fact No. 1 in the Proposed Report finds that:

"1. None of the respondents has engaged as a common carrier, for compensation, in the ownership, control, operation or management of any passenger stage over any public highway in this State between fixed termini or over a regular route."

In discussing the evidence on the question of whether any of the respondents is a passenger stage corporation, the Proposed Report stated:

"None of the respondents is a passenger stage corporation as defined in Section 226 of the Public Utilities Code, which in part provides that:

"Passenger stage corporation" includes 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 highway in this State between fixed termini or over a regular route . . ."

None of the respondents owns a passenger stage. The only control, operation or management exercised by the respondents is to indicate where a bus which has been chartered is to go and, sometimes, the route it is to take. Whether this constitutes control, operation, or management

within the purview of Section 226, will not be considered because, even if this be assumed, the facts in this record would not support a conclusion that the operations involved were between fixed termini or over a regular route."

The Commission finds that Finding of Fact No. 1 is too broad, and that it should read as follows:

"None of the respondents has offered or sold bus transportation over regular routes or between fixed termini."

In all other respects the Commission agrees with the discussion, findings and conclusions of Commissioner Grover in the Proposed Report. Commissioner Grover's findings of fact and conclusions of law, as corrected in the light of our holding hereinabove, are here restated and made the findings and conclusions of the Commission as follows:

Findings of Fact

1. None of the respondents has offered or sold bus transportation over regular routes or between fixed termini.

2. Each respondent organizes tours or trips within the State of California (1) to attend specific events, such as baseball games, movies, concerts, etc., or (2) to observe scenic attractions. Respondents themselves usually conduct the tours or trips which they organize. Each respondent engages the services of a charter-party carrier of passengers having appropriate authority from this Commission to provide transportation for such trips or tours. Each respondent pays to such charter-party carrier of passengers a charge for the transportation furnished which is calculated in accordance with Section 5401 of the Public Utilities Code. None of the respondents receives any discount or gives any rebate to any charter-party carrier in connection with the transportation which he purchases.

3. Each respondent sells transportation for said trips or tours on an individual fare basis and in most instances charters a passenger stage in California at a rate per passenger which is less than the individual fare for which the transportation is sold.

4. Each respondent has organized and conducted sightseeing trips in California within the meaning of Public Utilities Code Section 5402, but there is no substantial evidence in this record that any said trips was on a route for which a passenger stage corporation has obtained a certificate of public convenience and necessity from this Commission.

Conclusions of Law

1. None of the respondents has violated Section 1031 of the Public Utilities Code by operating as a passenger stage corporation without having secured a certificate of public convenience and necessity from this Commission.

2. None of the respondents is a charter-party carrier of passengers as defined in Section 5360 of the Public Utilities Code.

3. None of the respondents is an agent of a charter-party carrier of passengers or a broker within the purview of Section 5401 of the Public Utilities Code.

4. The tours or trips conducted by respondents to specific events, such as baseball games, movies, concerts, etc., are not sightseeing trips within the meaning of Section 5402 of the Public Utilities Code. None of the respondents has violated Section 5402 of the Public Utilities Code by charging individual fares for the transportation for said tours or trips to said specific events and chartering a passenger stage to provide the transportation at a rate per passenger which is less than said individual fares.

5. Respondents should be admonished that if they conduct any sightseeing trips on a route for which a passenger stage corporation has

a certificate of public convenience and necessity or grandfather rights and if they charge individual fares for such sightseeing trips and charter a passenger stage at a rate per passenger which is less than the individual fare for which transportation is sold, they will be in violation of Section 5402 of the Public Utilities Code.

6. The investigation should be discontinued.

ORDER

IT IS ORDERED that:

1. Each respondent herein is admonished not to sell transportation on an individual fare basis for a sightseeing trip in California where such sightseeing trip is on a route for which a passenger stage corporation has a certificate of public convenience and necessity and where the respondent charters a passenger stage, to provide the transportation involved, at a rate per passenger which is less than the individual fare for which the transportation is sold.

2. This investigation is hereby discontinued.

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

Dated at San Francisco, California, this 17th day of MAY, 1966.

Frederick B. Hildebrandt
President

John P. ...

George H. Hoover

William W. Bennett
Commissioners

Commissioner A. W. GATOV
present but not voting.