

ORIGINALDecision No. 71068

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
EMERALD CHARTER LINES, INC. for a
certificate of public convenience
and necessity to operate special
school routes in San Mateo County
and vicinity.

Application No. 48378
(Filed April 6, 1966)

Jerome Phillips, for applicant.
Warren K. Miller, for Bayshore Transit Lines,
protestant.
Michael R. Nave, of Moroney, Prior and Lenam,
for Notre Dame College and High School; and
Walter J. Leaf, for the Department of the
California Highway Patrol, interested parties.
Hilton H. Nichols, for the Commission Staff.

O P I N I O N

This application was heard before Examiner Fraser at Belmont on May 23, 1966, on which date the matter was submitted. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules. A protest was filed by Bayshore Transit Lines. Applicant presently operates under a permit as a charter-party carrier of passengers.

Emerald Charter Lines, Inc., is a California corporation with its principal office in San Jose, California. It applies herein for a certificate to authorize the operation of three morning and four afternoon bus routes in San Mateo County to transport school children between their homes and school. The buses will pick up only children in the uniform worn by those who attend Notre Dame Elementary and High School, since this is the only school to be served. The proposed fare will be \$11.00 for a monthly (round-trip) booklet, \$6.00 for a monthly (one-way) booklet

and 35 cents for an individual (one-way) fare. These routes will be operated only when school is in session. The equipment to be used consists of three city transit type buses, which seat from 41 to 45 passengers.

The record shows that the applicant provided the bus service described herein under a contract with Notre Dame Elementary and High School, until the California Highway Patrol advised that only fully-equipped and qualified school buses can be used to haul children, unless the operation is excluded by the terms of Vehicle Code Section 545 (amended in 1965). The following portions of the Vehicle Code Section are pertinent:

"545. School Bus. A 'school bus' is any motor vehicle while being used for the transportation of any school pupil to and from a public or private school or to and from public or private school activities, except the following:

"(b) A motor vehicle operated by a common carrier subject to the jurisdiction of the Public Utilities Commission, except when any said vehicle is in use exclusively for the transportation of school pupils."

"(d) A motor vehicle operated by a common carrier, on scheduled runs but not used exclusively for the transportation of school pupils."

"(e) A motor vehicle operated by a common carrier which is periodically, but not exclusively, used for the transportation of pupils to and from public or private school activities."

The president of the applicant corporation testified that he has been operating a charter bus service in the San Jose area since 1960; he has provided the service described herein for eighteen months under contract after a representative of the school advised that the service was needed and could not be obtained elsewhere; the Vehicle Code was amended in 1965 and after

it was changed he was advised by the California Highway Patrol that he would have to use approved school buses if he continued this operation as a charter-party carrier; none of his vehicles are school buses and they cannot be altered sufficiently to qualify; new school buses cost about \$24,000 each due to a special frame, seating, lights, etc., and are not suitable for ordinary charter hauls; the applicant will haul 130 high school and 35 grade school children; three buses will be used on the three routes in the morning, starting at 7:00 A.M. and arriving at the school from 8:00 to 8:25 A.M.; two buses will be used to return the children in the afternoon; the elementary school classes will be released at a sufficient interval before the high school classes to enable a single bus to take the elementary school children home and then return for a second trip for the high school children; each bus will average 35 to 40 passengers a trip; the school has guaranteed a minimum daily income in the past and applicant will request a \$75.00 a day minimum for the proposed operation. The vehicles to be used have passed all of the California Highway Patrol safety inspections that pertain to charter buses; the buses will not be identified as school buses but will merely have the word "charter" just over the windshield; the applicant will operate with a 1942 White, 1945 G.M.C., 1946 ACF. Brill, 1947 ACF. Brill, a 1947 Mack, two 1947 Whites and a 1948 G.M.C. bus. The applicant's balance sheet and profit and loss statement for the year ending on December 31, 1965 shows gross receipts of \$52,669, operating expenses of \$51,057 and a net profit of \$1,612; current assets total \$3,943 and current liabilities \$3,882.

None of the other parties presented evidence. The applicant did not refute the statement by a representative of the California Highway Patrol that the present application has admittedly been filed in an attempt to establish applicant as a

certificated passenger stage corporation rather than a school bus operator, for the purpose of avoiding the requirement of operating approved "school buses." The representative further stated that new school buses can be purchased for considerably less than the sum mentioned by the applicant's witness and that used school buses are usually available at a reasonable price.

The Commission finds as follows:

1. The applicant holds a permit as a charter-party carrier of passengers and has been transporting 135 school children, on the days school is in session, between their homes and Notre Dame Elementary and High School in Belmont. This transportation was performed under a contract by which the school authorities reimbursed the applicant directly for the service.

2. The applicant was advised by representatives of the California Highway Patrol that since the operation involves only the transportation of school children, approved school buses must therefore be used.

3. Applicant applies herein to continue the operation it performs as a charter-party carrier of passengers, but under the authority of a certificate of public convenience and necessity.

The Commission concludes that:

1. The proposed operation described in the application does not warrant nor require a certificate of public convenience and necessity.

2. The applicant already holds sufficient authority, insofar as the Public Utilities Statutes are concerned, to perform the operation described.

3. Application No. 48378 should be denied.

ORDER

IT IS ORDERED that Application No. 48378 is denied.

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

Dated at San Francisco, California, this 2nd day of AUGUST, 1966.

John E. Hatcher
President

George H. Hoover

Frederick B. Holdhoff

Augustin

William C. Merrill
Commissioners