

**ORIGINAL**

Decision No. 71482

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
TANNER MOTOR TOURS, LTD. for a  
certificate of public convenience  
and necessity to operate as a  
passenger stage corporation in the  
transportation of persons in sight-  
seeing service in and around the  
City of Los Angeles. )

) Application No. 47365  
) (Filed February 26, 1965;  
) Amended March 18, 1965)

Application of SOUTHERN CALIFORNIA  
SIGHTSEEING COMPANY, INC. for  
certificate of public convenience  
and necessity and authority to  
establish fares and to issue  
securities and application of  
GREYHOUND LINES, INC. to acquire  
control of SOUTHERN CALIFORNIA  
SIGHTSEEING COMPANY, INC. )

) Application No. 47382  
) (Filed March 3, 1965;  
) Amended June 4, 1965)

- John L. Hughes, for Tanner Motor Tours, Ltd., applicant in Application No. 47365; Berol, Loughran and Geernaert, by Edward M. Berol and Bruce Geernaert, for Tanner Motor Tours, Ltd., protestant in Application No. 47382.
- McCutchen, Doyle, Brown, Trautman & Enersen, by William W. Schwarzer and Craig McAtee, for Southern California Sightseeing Company, Inc., applicant in Application No. 47382.
- Milton McKay and Howard Beardsley, for Southern California Rapid Transit District, protestant in Application No. 47382, interested party in Application No. 47365.
- Leonard Swenson, for American Transit, inc., protestant in Application No. 47382.
- R. W. Russell, by K. D. Walpert, for the City of Los Angeles, interested party in Applications Nos. 47365 and 47382.
- James H. Lyons, for M & M Charter Lines, interested party in Applications Nos. 47365 and 47382.
- Henry E. Jordan and Louis Possner, for the City of Long Beach, interested party in Application No. 47382.
- James H. Lyons, for Airport Service, Inc. and Airport Coach Service, interested parties.
- Ivan McWhinney, for Airporttransit, interested party.
- R. C. Wilson, by Lorne Franklin, for Teamsters Local 640, interested party.
- Louis Possner, for Long Beach Chamber of Commerce, interested party.
- Fred Ballenger and William R. Kendall, for the Commission staff.

INTERIM OPINION

On May 20, 1966 the proposed report of Examiner Richard D. Gravelle in the above-entitled application was filed. Exceptions to the proposed report were filed by Southern California Sightseeing Company, Inc. (Southern), on June 9, 1966. Reply to the exceptions was filed by Tanner Motor Tours, Ltd. (Tanner) on July 8, 1966.

The Commission has considered all of the evidence of record herein, the statement of position of the parties to the proceeding, the proposed report and the exceptions and the replies thereto. The proposed report accurately sets forth the material issues raised by the parties and the pleading. The Commission concurs in the discussion set forth in the proposed report (mimeo) on pages 1 through all but the last two lines of page 11 and adopts it, with exceptions hereinafter noted, as if set forth at length herein. Our findings and conclusions are different from those reached by the examiner, and furthermore we do not adopt the following of pages 1 through all but the last two lines of page 11 of the proposed report: Last sentence of second paragraph on page 10 and all of last paragraph on page 10.

The proposed report found, among other things, that public convenience and necessity required the granting of both applications but that the last sentence of Section 1032 of the Public Utilities Code<sup>1</sup> precluded the granting of a certificate to Southern until Tanner had been given an opportunity to correct certain service deficiencies which were the subject of other findings in the proposed report.

<sup>1</sup> "The commission may, after hearing, issue a certificate to operate in a territory already served by a certificate holder under this part only when the existing passenger stage corporation or corporations serving such territory will not provide such service to the satisfaction of the commission."

Southern takes exception to two specific findings in the proposed report. As quoted from Southern's document they are:

"Tanner has displayed in this record a willingness to perform any of the services proposed by Southern upon request of the Commission." and

"9. The last sentence of Section 1032 of the Public Utilities Code precludes the granting of a certificate of public convenience and necessity to Southern California Sightseeing Company, Inc."<sup>2</sup>

In support of its first exception, Southern apparently relies upon that part of the record in these proceedings which refers to complaints having been made to Tanner by persons dealing with Tanner, which complaints remained unsatisfied as far as the witnesses were concerned. Southern contends Tanner's lack of response to the complaints means that it "will not provide such service." Tanner responds that the use of the words "will not" necessarily implies notice and that Southern's interpretation would actually change the statutory language from "will not" to "have not." Section 1032 requires that it is "the satisfaction of the Commission" which must be met, hence if the Commission has given no notice of its dissatisfaction even though members of the public have made complaints to the passenger stage corporation it cannot be fairly said that the operator has had notice and has refused to provide such service. We find that Southern's first exception is unfounded. Tanner, through its corporate officer witnesses and through its counsel in both brief and reply to exceptions, has unequivocally stated that it will provide any service proposed by Southern should the Commission find it necessary to do so.

With regard to Southern's second exception, the two applicants are diametrically opposed as to the interpretation to be given the last sentence of Section 1032. Each relies to a certain extent

<sup>2</sup> Omitted by Southern in its quote of Finding No. 9 is the additional language "... until Tanner Motor Tours, Ltd. has been given an opportunity to correct the deficiencies set forth in findings 4 through 8 hereof."

upon the same cases to support its view of the meaning of that sentence.

Southern basically relies upon Re Fialer's Inc., 38 C.R.C. 880 and other Commission decisions which cite that case. Its strongest argument lies in the fact that review of Fialer was denied by the California Supreme Court and that subsequent thereto our Legislature twice had the critical sentence of Section 1032 before it and made no changes. The Southern conclusion then is that both the Court and the Legislature have approved the Commission interpretation of Section 1032 as announced in Fialer.

Tanner's response to this argument is that the interpretive language in Fialer was merely dictum, that the actual result of Fialer was the grant of a certificate because the proposed operations were different from those provided by the existing operator (while here they are directly duplicative) and that if Fialer were presented to the Commission now the result would most likely be contrary to the decision of 1933. Tanner distinguishes other cases cited by Southern such as Re Santa Fe Transportation Company, 41 C.R.C. 239 (which reiterated the language of Fialer), on the basis that the Commission therein recognized that the existing carrier would not and could not provide the service proposed by the applicant; Re Bay Rapid Transit, 56 Cal. P.U.C. 353 on the basis that both applicants were new to the territory and that the Commission recognized Section 1032 by limiting the pickup authority of one of the applicants; Re Worthington, 47 Cal. P.U.C. 539 on the basis that it involved Section 1061, not Section 1032 and was not concerned with the critical sentence here involved.

Both applicants rely on Re San Mateo-Burlingame Transit Co., 62 Cal. P.U.C. 721 and Re Martinez Bus Lines, 50 Cal. P.U.C. 220

but for different reasons. Both of these decisions quote with approval the Fialer decision yet both result in award of certificates to the existing carrier serving the territory on the basis of a lack of showing that they "will not" provide the service. The decisions support the position of Tanner, not that of Southern, even though some of the language therein may be construed to support the position of Southern.

The only case cited by Southern to which Tanner does not respond is Re McCoy, 51 Cal. P.U.C. 113 in which a certificate was granted to a competing carrier. It is interesting to note that in McCoy the protestant was Fialer's Limousine Service, the beneficiary of the 1933 decision. McCoy, however, does not find that the protestant (existing carrier) was willing to provide the service proposed by applicant. Here, of course, Tanner has expressed such a willingness.

Tanner relies heavily upon Re Ferris, 53 Cal. P.U.C. 201 (1954) which Southern distinguishes on the basis that said decision did not find a need for service, inadequacy of the existing carrier or a request for service. The protestant in Ferris was Pacific Greyhound. The proposed service was a seven passenger jitney operation. Ferris, which seems to be the antithesis of Fialer in both language and result, was settled squarely upon the last sentence of Section 1032 concerning which the Commission said:

"Be that as it may, however, we cannot say on the basis of this record, that Greyhound, in the language of the statute, '... will not provide such service to the satisfaction of the Commission.' It follows that the application must be denied."

Southern sums up its position on Section 1032 by stating:

"The obvious purpose of Section 1032 is to protect the existing carrier against competitive certificates so long as it does a good job. When the Commission finds -- as the Examiner has recommended -- that the carrier is not doing a good job, it is authorized to grant a certificate to another carrier to perform a similar service. No other purpose could reasonably be attributed to the Legislature."

However reasonable and sufficient might be Southern's understanding of the extent to which the existing carrier was to be protected, it is not supported by the unambiguous language of Section 1032 and the weight of authority lies with Tanner.

The second exception of Southern is unfounded and we agree with the proposed report that it cannot be found that Tanner will not provide such service to the satisfaction of the Commission. Tanner has stated it will provide such service and the Commission feels that ninety days after the effective date of this order is sufficient time in which to do so. ✓

In any subsequent consideration of the satisfactoriness of Tanner's service and as to whether or not Tanner was entitled to further protection from competition as provided by Section 1032, the Commission, while not confining itself to those items, would, of course, attach considerable importance to the testimony of witnesses experienced in the field of tourism in the Los Angeles area and who indicated deficiencies in Tanner's present service, area of service and general operations. There was stated, for example, a need for direct service from Anaheim to Marineland and an all-year service from Long Beach to Los Angeles, neither of which Tanner now provides. ✓

It was further testified that there was a need for electronic multilingual equipment on Los Angeles area tours but this is not provided by Tanner. It was established that Tanner should have but

does not now have in operation an equipment acquisition program which would enable it to establish and maintain service on an attractive up-to-date basis. It was also clear that Tanner has displayed a passive attitude towards the public needs. It has shown little initiative or imagination in business promotion, in experimentation with new points of interest or in keeping pace generally with the growth of tourism in the Los Angeles area.

Based upon the evidence, the briefs, the proposed report and the exceptions and replies thereto, the Commission finds:

1. Tanner Motor Tours, Ltd. and Southern California Sightseeing Company, Inc. have the ability and financial resources to provide the services sought in their respective applications.

2. Public convenience and necessity require the granting of a certificate as a passenger stage corporation to Tanner Motor Tours, Ltd. as prayed for in its application.

3. Absent Section 1032, public convenience and necessity would require granting of application of Southern California Sightseeing Company, Inc.

4. Tanner Motor Tours, Ltd. is not now providing a service satisfactory to the Commission.

5. Tanner is willing to provide a service satisfactory to the Commission.

Based upon the foregoing findings of fact, the Commission concludes that the application of Tanner Motor Tours, Ltd. should be granted and that further hearing should be held on February 15, 1967 to determine what efforts Tanner Motor Tours, Ltd. has made to improve its service and whether or not such service is satisfactory to the Commission. The application of Southern California Sightseeing Company, Inc. will thereafter be decided.

INTERIM ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity, as more particularly set forth in Appendix A attached hereto and made a part hereof, is granted to Tanner Motor Tours, Ltd., authorizing it to operate as a passenger stage corporation as defined in Section 226 of the Public Utilities Code.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- a. Within thirty days after the effective date hereof, Tanner Motor Tours, Ltd. shall file a written acceptance of the certificate herein granted. Tanner Motor Tours, Ltd. is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-A and insurance requirements of the Commission's General Order No. 101-B. Failure to comply with and observe the safety rules, or the provisions of General Orders Nos. 98-A or 101-B, may result in a cancellation of the operating authority granted by this decision.
- b. Within one hundred twenty days after the effective date hereof, Tanner Motor Tours, Ltd. shall establish the service herein authorized and file tariffs and timetables, in triplicate, in the Commission's office.
- c. The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the establishment of the service herein authorized.



- d. The tariff and timetable filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 79 and 98-A.
- e. Tanner Motor Tours, Ltd. shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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

Dated at San Francisco, California, this 25<sup>th</sup> day of OCTOBER, 1966

*Edward E. Mitchell*  
President

*William H. Bennett*  
*Augusta*  
Commissioners

A. 47365  
A. 47382

We concur in the result, including the order and the five numbered findings near the end of the opinion. We do not agree with certain portions of the opinion, particularly the suggestion that the last sentence of Public Utilities Code Section 1032 contemplates that the Commission must give "notice" of its dissatisfaction.

*George T. Grover*  
*Frederick B. Holdcroft*

NB \*

Appendix A

TANNER MOTOR TOURS, LTD.  
(a corporation)

Original Page 1 ✓

Tanner Motor Tours, Ltd., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport passengers in sightseeing service:

On its Night Club Tour with right of pickup and delivery in Los Angeles and Hollywood.

On its Los Angeles and Hollywood City Tour with right of pickup and delivery in Los Angeles, Hollywood, Beverly Hills, Santa Monica, Long Beach and the area around Disneyland and Knott's Berry Farm.

Issued by California Public Utilities Commission.

Decision No. 71482, Application No. 47365.