

ORIGINAL

Decision No. 74232

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of CLARENCE L. YARD, an individual, dba HAPPY DAY WORKERS AGENCY, Northridge, Los Angeles County, to transfer a Class "A" charter-party carrier of passengers certificate to PALM SPRINGS SIGHTSEEING AND CHARTER COMPANY, INC., a corporation.

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) Application No. 50062
) (Filed February 13, 1968)
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Covey & Covey, by Jules J. Covey,
for applicants.
W. L. McCracken, for Western Greyhound
Lines (Division of Greyhound Lines,
Inc.); John L. Hughes, for The Gray
Line Tours Company; and D. A. Mannino,
for M & M Charter Lines, Inc. and
California Sightseeing Tours, Inc.;
protestants.
Warren K. Miller, for Charter Bus
Operators Association of California,
interested party.
William R. Kendall, for the Commission
staff.

O P I N I O N

By the herein considered application, Clarence A. Yard (seller) requests authority to transfer his Class "A" charter-party carrier of passengers certificate to Palm Springs Sightseeing and Charter Company, Inc. (buyer).

A public hearing on the application was held in Los Angeles before Examiner Rogers on April 11, 1968 and the matter was submitted. During the hearing, Western Greyhound Lines (Division of Greyhound Lines, Inc.) (protestant) filed a petition for a proposed report. We can see no reason for the issuance of a proposed report in this matter. The petition will be denied.

The law relative to charter party carriers of passengers is contained in Chapter 8 of Division 2 of the California Public Utilities Code, commencing with Section 5351.

The law was enacted in 1961 and substantially amended in 1967.

As originally enacted, Section 5353 thereof excluded from the act services all of which were within a single city or city and county, school children carried pursuant to a contract with a school district, passenger stage operations, transportation of farm employees in specified instances, transportation by publicly-owned transportation systems, and passenger vehicles carrying passengers on a non-commercial basis. In 1967 the act was amended to exclude taxicabs regulated by cities or counties.

Section 5371 of the original act required that the carrier have a permit to be issued annually by the Commission. In 1967 the section was amended to require a certificate of public convenience and necessity, and Section 5371.1 was added as follows:

"Section 5371.1. Notwithstanding any other provisions of this chapter:

- (a) The commission shall issue an initial annual certificate to any charter-party carrier of passengers holding a valid operating permit issued by the commission prior to July 1, 1967, provided the application therefor shall have been filed with the commission not later than 90 days after the effective date of this section; 1/ and thereafter annually reissue any certificate initially issued hereunder, if the commission finds that the applicant possesses satisfactory fitness and financial responsibility to initiate or continue to conduct the authorized transportation services, and has heretofore and will continue to faithfully comply with the rules and regulations adopted by the commission with respect thereto as well as the rules and regulations promulgated by the California Highway Patrol with respect to safety of operation;

1/ November 8, 1967.

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- (b) No charter-party carrier of passengers initially issued a certificate shall be restricted as to point of origin or destination in the State of California; and
- (c) Every application for an initial certificate or annual reissuance thereof shall be accompanied by the appropriate fee as specified in Sections 5373 or 5373.1."

On January 30, 1968, the seller received his grandfather certificate of public convenience and necessity pursuant to said section (Exhibit 1). Such a certificate is referred to as a Class "A" certificate and is unrestricted as to territory which may be served.

A charter-party certificate, including a grandfather certificate, may not be transferred without authority from the Commission (Section 5377.1, added 1967). The statute contains no stated qualifications for the transferee of a Class "A" certificate, nor does it require a showing of public convenience and necessity in a proceeding seeking to transfer such a certificate. It is reasonable to assume that the transferee should be required to show "reasonable fitness and financial responsibility to initiate and conduct the proposed transportation services" (Section 5374).

The seller has a grandfather certificate as a charter-party carrier of passengers.^{2/} He testified that he operated as a permitted charter-party carrier of passengers for three years prior to the 1967 amendments; that he has never abandoned the service; that he desires to transfer the certificate to the buyer; that all of his transportation has been in the county of Los Angeles; and that all he desires to transfer to the buyer is the grandfather certificate.

The buyer's witness testified that it intends to use a 1956, 41-passenger, air-conditioned bus in the proposed service; that this service will be in and around the city of Palm Springs, California; that the buyer has insurance on file with the Commission in San Francisco in accordance with the Commission's requirements; and that the buyer's current financial status is about the same as it was at the time the application was filed. The statement in the application shows that the buyer has total assets valued at \$18,000, including one vehicle valued at \$13,000, and that its liabilities included a note payable for \$12,500 for the purchase of the vehicle. On cross-examination, the witness testified that he is the president of the buyer, a California corporation;^{3/} that he operates the business; that he and his father hold a one-third interest in the corporation; that one individual owns the remaining two-thirds interest; that the

2/ Exhibit 1.

3/ A copy of the buyer's Articles was filed with the Commission on April 23, 1968.

certificate proposed to be transferred will be used entirely in Palm Springs; that his first contact with the seller was relative to the acquisition of the certificate; that he will operate the business if the transfer is allowed; and that the office will be in the Palm Springs area. The witness further testified that none of the assets of the seller are to be transferred except the certificate.

The vice president in charge of traffic of Greyhound Lines, Inc. dba Western Greyhound Lines testified that Greyhound has a Class "A" certificate covering all points in California (Exhibit 2); that the protestant does operate in the Palm Springs area; and that between March 1, 1967 and August 16, 1967, it carried a total of 3,608 passengers utilizing 112 busses and had a gross revenue of \$14,923 from the business (Exhibit 3). The witness further testified that the charter service has not been discontinued and that all of the said traffic was within 30 miles of Palm Springs.

Findings

1. Prior to November 8, 1967, Clarence L. Yard held a permit as a charter-party carrier of passengers issued by this Commission pursuant to the provisions of Chapter 8 of Division 2 of the Public Utilities Code.

2. On January 30, 1968, the Commission issued to Clarence L. Yard a Class "A" certificate to operate as a charter-party carrier of passengers.

3. On February 14, 1968, Clarence L. Yard and Palm Springs Sightseeing and Charter Company, Inc. filed a joint application for authority to transfer Clarence L. Yard's Class "A" charter-party carrier of passengers certificate of public convenience and necessity to Palm Springs Sightseeing and Charter Company, Inc. This application was accompanied by a fee of \$50 as required by Section 5377.1 of the Public Utilities Code.

4. Clarence L. Yard at no time abandoned his certificate of public convenience and necessity issued pursuant to Section 5371.1 of the Public Utilities Code.

5. Palm Springs Sightseeing and Charter Company, Inc. has reasonable ability and fitness to conduct a charter-party carrier of passengers business and has the financial responsibility to initiate and conduct the proposed services.

6. The proposed transfer will not be adverse to the public interest.

7. The petition for a proposed report should be denied.

Conclusion

We conclude that the application should be granted and the petition for a proposed report denied.

O R D E R

IT IS ORDERED that:

1. Clarence L. Yard, an individual, doing business as Happy Day Workers Agency, may on or before July 9, 1968 sell and transfer to Palm Springs Sightseeing and Charter Company, Inc. his Class "A" certificate to operate as a charter-party carrier of passengers, File No. TCP 63-A, to Palm Springs Sightseeing and Charter Company, Inc. and that Palm Springs Sightseeing and Charter Company, Inc., a corporation, may purchase and acquire said Class "A" certificate to operate as a charter-party carrier of passengers, provided that Palm Springs Sightseeing and Charter Company, Inc. shall be subject to the terms, conditions and requirements specified in Clarence L. Yard's Class "A" certificate, File No. TCP 63-A, and to the provisions of Chapter 8 of Division 2 of the California Public Utilities Code.

2. Within thirty days after the consummation of the transfer herein authorized, Palm Springs Sightseeing and Charter Company, Inc., a corporation, shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

3. On or before the end of the third month after the consummation of the transfer as herein authorized, Palm Springs Sightseeing and Charter Company, Inc., a corporation, shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

4. The petition for a proposed report is denied.

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

Dated at Los Angeles, California, this 17th day of JUNE, 1968.

[Signature]
President

[Signature]

[Signature]

[Signature]
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.