

**ORIGINAL**Decision No. 74858

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 HAROLD H. BRIGHTON, an individual, )  
 doing business as H. & J. BRIGHTON )  
 BUS CO., of Santa Maria, California, )  
 for a Class "B" certificate to oper- )  
 ate as a charter-party carrier of )  
 passengers, (File No. TCP-4-B). )

Application No. 50147  
 (Filed February 13, 1968)

John A. Van Ryn, for applicant.  
W. L. McCracken, for Western Greyhound Lines,  
 and Arthur L. Melni, for Melni Bus Service,  
 protestants.  
William R. Kendall, for the Commission staff.

**O P I N I O N**

By this application, Harold H. Brighton, an individual, doing business as H. & J. Brighton Bus Co., seeks a Class "B" passenger charter-party carrier certificate. Applicant's terminal is located at 1202 West Betteravia, Santa Maria.

A Class "B" certificate is defined in Sections 5383 and 5371.2 of the Public Utilities Code. Section 5383 states that the holder of a Class "B" certificate may provide passenger charter-party carrier service "from any point within the territory of origin specified in the certificate to any points in the state, or territory of origin". Section 5371.2 limits the service area or territory of origin within which the Class "B" operator may originate charters to an area to be determined by the Commission which shall in no case encompass more than a radius of 40 air miles from the home terminal designated by applicant.

Public hearing was held before Examiner Mooney in Santa Maria on May 16, 1968. The matter was submitted upon the filing of applicant's reply brief on July 8, 1968.

Applicant has not heretofore been issued operating authority by the Commission. The application shows that he has had experience in the transportation of passengers over the public highways, including the operation of school, prison and U.S. Army buses, and that he has assets of \$21,275 and liabilities of \$10,000. He has three school type buses and one GMC, 39 passenger, air conditioned bus with reclining chairs which is used exclusively for charter service. One of the school buses will accommodate 59 adults or 76 small children sitting three to a seat. The other two school buses hold 53 and 49 passengers, respectively. Applicant's office is located in his home at 1095 McCoy Lane, Santa Maria. He and his wife operate the business, and he employs one driver. Applicant's wife does the bookkeeping, answers the phone and takes care of the office. Applicant, in addition to operating the business, drives a bus.

At the outset of the hearing, applicant's attorney explained that applicant was in the hospital and that applicant's wife would appear as a witness. She testified as follows: The buses were purchased from Superior Leasing of Fresno in January 1968; there were no other locally based passenger charter-party carriers in Santa Maria at that time; prior thereto, applicant had not operated a passenger bus business; all of the buses have been checked by the California Highway Patrol; applicant immediately commenced operating a school bus service for St. Joseph's High School in Santa Maria; he was informed by the seller of the

equipment that if 75 percent of his business was for schools, he would not be required to obtain any authority from the Commission and could perform charter work for the general public; based on this erroneous information, applicant performed one charter in the early part of 1968 for an organization in Santa Maria; he then became aware that he required authority from the Commission and filed the instant application for a Class "E" certificate; in March 1968, applicant leased all of his equipment to Santa Barbara Transit which operates in Santa Barbara and holds a Class "A" <sup>1/</sup> certificate.

The witness explained the lease arrangement as follows: Santa Barbara Transit (SBT) pays a flat fee of \$500 per month for the buses, irrespective of whether or not they are used; applicant and his wife are employed by SBT as its agents and managers in Santa Maria and are paid a salary; they do not receive a commission; applicant's driver has also been placed on SBT's payroll; three of the leased buses have had the lessee's name painted on the side, and the remaining bus has "H. & J. Brighton, leased to Santa Barbara Transit" painted on the side; all advertising by applicant makes reference to the lease arrangement, with the exception of several recent small ads in the local newspaper which, due to

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<sup>1/</sup> A Class "A" certificate was issued only to a charter-party carrier of passengers holding a valid operating permit issued by the Commission prior to July 1, 1967, provided that an application was filed with the Commission not later than March 7, 1968. (Sec. 5371.1, Public Utilities Code.) Said certificate authorizes passenger charter bus operations "from any point or points within the state to other points in or out of this state". (Sec. 5383, P.U.C.)

inadvertent error, show applicant's name only; applicant informs all customers that his equipment is leased to SBT and their checks are made out to SBT; if the customer places an order for charter service with applicant, ten percent of the amount collected is remitted to SBT; if the order is placed with SBT, it keeps an additional amount; the balance of the money, together with the income from the school bus service, is deposited in a SBT account in a Santa Maria bank; all operating expenses are paid by applicant from this account; although applicant need not obtain prior authority from SBT before chartering any of the leased equipment, he informs SBT by telephone when said equipment has been chartered; a charter record is maintained by applicant for SBT and is forwarded to SBT on the first and fifteenth of each month; if SBT wishes to use any of the leased equipment, it will be furnished, if available, and likewise SBT will furnish additional available equipment in the Santa Maria area when required.

Applicant's wife further testified as follows: If the application is granted, applicant will terminate his lease arrangement with SBT but will continue to act as its agent in Santa Maria; applicant could then operate on his own, and it would be economically advantageous to him; if the application is not granted, he will continue said lease arrangement; if a charter originates at a point beyond Santa Maria, deadhead time is charged; a substantial number of orders for charter service have been placed with applicant by the Boy Scouts, Y.M.C.A., Senior Citizens and various other organizations; public convenience and necessity require the proposed service; applicant's financial position is substantially the same as shown in the application.

An employee of the Santa Maria Valley Y.M.C.A., the principal of the high school in Santa Maria for which the school bus service is performed, and a resident of Santa Maria who had been a councilman for 18 years and mayor for four years testified in support of the application. All stated that there is a need for applicant's proposed service in the Santa Maria area. The Y.M.C.A. employee stated that the Y.M.C.A. had chartered applicant's equipment on two occasions. The school principal testified that although the school had not yet chartered applicant's equipment, it would in the future for athletic events. Both stated that they have used other charter carriers and pointed out that there is a deadhead charge when charter equipment is obtained from other areas. The former mayor and councilman stated that the school bus service is only for nine months and that applicant requires the charter authority to supplement this and round out his operation.

A witness who until three weeks before the hearing had been the manager of the Convention Bureau of the Santa Maria Chamber of Commerce testified that the Convention Bureau informs conventions of the availability of Greyhound's charter equipment in San Luis Obispo and applicant's charter equipment in Santa Maria; that the bureau does not recommend either carrier; that there is a deadhead charge to bring Greyhound's equipment from San Luis Obispo to Santa Maria; that for this reason and because of applicant's convenient location, some of the conventions have been chartering applicant's equipment; and that he had never received any complaints regarding any charter carrier.

The application was protested by Western Greyhound Lines and Melni Bus Service. Both hold Class "A" charter-party carrier of passenger certificates.

The Director of Traffic of Western Greyhound Lines testified as follows: San Luis Obispo is within the 40-air mile radius of Santa Maria sought to be served by applicant; Greyhound has a company terminal in San Luis Obispo and five smaller agency terminals within said area, including one in Santa Maria; it provides regular scheduled bus service in the area; all of Greyhound's equipment available for charter in the area is air conditioned with reclining seats and lavatory equipped and is based in San Luis Obispo; generally there are five buses available for this purpose and more could be made readily available from other areas if necessary; Greyhound chartered 144 buses in the sought service area during the twelve month period from April 1967 through March 1968; the majority of the charters originated in San Luis Obispo; if the application is granted, some of Greyhound's charter revenue would be diverted to applicant; Greyhound has been experiencing a decline in passenger traffic on its scheduled, regular route service resulting from increased competition from airlines and private automobiles; charter revenue is vital to Greyhound to offset this loss.

The owner of Melni Bus Service testified as follows: His office and terminal are located in Santa Barbara; he is primarily a school bus operator which is seasonal; the financial stability of his overall operation is dependent on the success of his charter service; he advertises his charter service and has personally contacted organizations in Santa Maria and has an

answering service there; he has originated charters in Santa Maria and in the vicinity thereof; he has six over-the-road buses with reclining seats and two school type buses that are licensed for charter service; he also has other equipment that could be licensed for charter service; he also has authority to operate a sight-seeing service from Santa Barbara to Solvang; he is contemplating opening a branch office in Santa Maria and stationing some of his charter equipment nearby; if the application is granted, there would be more competition in the area for charter business.

Discussion

The Legislature has set out in Sections 5375 and 5375.1 of the Public Utilities Code specific facts that must be established by an applicant for a Class "B" certificate. Section 5375 requires that an applicant establish and the Commission find that public convenience and necessity require the proposed transportation service; that applicant possesses satisfactory fitness and financial responsibility to initiate and conduct the proposed service; and that applicant will faithfully comply with the rules and regulations of the Commission relating thereto. If an applicant desires to operate in an area already served by the holder of a certificate, Section 5375.1 further requires that applicant establish and the Commission find that the existing carrier is not providing services which are satisfactory and adequate for the public. Additionally, Section 5375.1 directs the Commission to refrain from issuing more certificates than public convenience and necessity require and to place any restrictions upon the certificate which reasonably may be necessary to protect any existing carriers.

The record establishes that public convenience and necessity require the proposed transportation service in the Santa Maria area. The witnesses who appeared in support of the application pointed out that it is advantageous to have a passenger charter carrier with locally based charter equipment. In this connection, Greyhound's equipment is located in San Luis Obispo, a distance of approximately 30 miles away, and Melni's charter equipment is located in Santa Barbara, a distance of approximately 70 miles away. It is noted that Melni did contemplate opening a branch office in Santa Maria and basing some charter equipment nearby; however, as of the date of hearing, he had not done so. We are not concerned herein with any contemplated service that might be offered by another passenger charter-party carrier in the Santa Maria area at some future date.

We do not agree with the assertions in Greyhound's brief that applicant's fitness to initiate and conduct the proposed service is questionable or that any investigation by the Commission on this issue is required. According to the evidence, applicant refrained from performing any charter services on his own upon becoming aware that he could not do so without authorization from the Commission, and he thereupon filed the instant application for a Class "B" certificate. There is nothing in the record which would lead us to conclude that applicant did not enter into the lease arrangement with Santa Barbara Transit in good faith or that he will not faithfully comply with the rules and regulations of the Commission. Furthermore, the record supports a finding that applicant possesses satisfactory financial responsibility.



With respect to Section 5375.1 of the Code, we here need consider only the provision thereof relating to restrictions necessary to protect existing carriers within the sought 40-mile service area. Although both Greyhound and Melni hold themselves out to perform passenger charter service within Santa Maria and the immediate vicinity thereof and have performed such service therein, neither have passenger equipment based in said area. The majority of Greyhound's charter activity in this section of the state is centered around San Luis Obispo, and the majority of Melni's charter activity is outside the Santa Maria area. According to the record, applicant's equipment is the only charter equipment based in the immediate Santa Maria area. Furthermore, the fact that there are only two protestants certainly does not evidence an over abundance of available charter service for the general public within the Santa Maria area.

Based on a review of the entire record, we are of the opinion that applicant should be granted a Class "B" certificate. The service area from which applicant may operate will be restricted to a radius of 25 air miles from his home terminal in Santa Maria so as to exclude San Luis Obispo therefrom.

Findings and Conclusion

Upon consideration of the evidence, the Commission finds that:

1. Applicant has had experience in the transportation of passengers over the public highways.
2. Applicant possesses satisfactory fitness and financial responsibility.

3. Applicant has indicated a willingness to faithfully comply with applicable rules and regulations of the Commission.

4. Applicant's buses are the only passenger charter equipment based in Santa Maria.

5. Both protestants solicit passenger charter business in Santa Maria and the surrounding area and have originated charters therein. Greyhound's passenger charter equipment in this part of the state is based in San Luis Obispo, approximately 30 miles from Santa Maria and the majority of its charter activity in this section of the state is centered in San Luis Obispo. Melni's passenger charter equipment is located in Santa Barbara, approximately 70 miles from Santa Maria, and the majority of his charter activity is not within Santa Maria or the surrounding area.

6. The witnesses who appeared on behalf of applicant pointed out that there is a need for a locally based passenger charter-party carrier in the Santa Maria area. Protestants are not providing such services in a manner satisfactory to the Commission and adequate for the public in said area.

7. Public convenience and necessity require that applicant be authorized to operate as a Class "B" passenger charter-party carrier.

8. It has not been shown that the granting of the sought certificate would result in an over abundance of passenger charter-party carriers or available charter service for the general public in Santa Maria and the surrounding area.

9. To afford reasonable protection to the existing protestant carriers who have equipment based in San Luis Obispo and Santa Barbara, the service area from which applicant may operate

will be limited to a radius of 25 air miles from his home terminal in Santa Maria and will specifically exclude San Luis Obispo therefrom.

10. With the restriction of the service area provided in Finding 9, neither protestant will be seriously affected by the granting of the sought certificate.

The Commission concludes that applicant should be granted a Class "B" charter-party carrier certificate with a service area as provided in the following order.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Harold H. Brighton, an individual, doing business as H. & J. Brighton Bus Co., authorizing him to operate as a Class "B" charter-party carrier of passengers, as defined in Section 5383 of the Public Utilities Code, from a service area including all territory within a radius of 25 air miles from applicant's home terminal at 1202 West Betteravia, Santa Maria, California, with the exception of any portion of the City of San Luis Obispo.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.

Applicant will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol, the rules and regulations of the Commission's General Order No. 98-A and insurance requirements of the Commission's General Order No. 115-A.

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

Dated at San Francisco, California, this 22nd day of OCTOBER, 1968.

William J. Synovis Jr.  
President  
Stallman  
Augusta  
Fred P. Monissey  
Commissioners

I will file a dissent,  
Robert E. Leitch