

ORIGINALDecision No. 75387

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of CHARTER SEDAN SERVICE by JOHN)
 BILLMEYER, Trustee, to sell and)
 transfer a passenger stage corpo-)
 ration certificate to NATIONAL)
 EXECUTIVE SERVICES, INC.)

Application No. 51024
 (Filed April 24, 1969)

Daniel W. Baker, of Handler, Baker and Green,
 for Charter Sedan Service, by John Billmeyer,
 Trustee in Bankruptcy, and National Executive
 Services, Inc., applicants.
Don C. Alexander, for National Executive
 Services, Inc., applicant.
R. W. Hannam, for the Commission staff.

O P I N I O N

By this application, Charter Sedan Service (Charter) by John Billmeyer, Trustee in Bankruptcy, seeks authority to transfer and National Executive Services, Inc., (NES) seeks authority to acquire a passenger stage corporation certificate of public convenience and necessity.

A public hearing was held before Examiner O'Leary at San Francisco on June 20, 1969. The matter was submitted on the basis of the application. No protestants appeared at the hearing.

By Decision No. 73678, dated January 30, 1968, in Application No. 49556, Charter was granted a certificate of public convenience and necessity authorizing operations as a passenger stage corporation for the transportation of passengers and their baggage between San Jose, Campbell, Los Altos, Saratoga, Cupertino, Sunnyvale, Los Gatos, Mountain View, Palo Alto, Menlo Park, Woodside, Redwood City and Portola Valley, on the one hand, and San Jose Municipal Airport, San Francisco International Airport, Oakland International Airport and the Fremont Railway Station, on the other hand.

The application states that:

On June 5, 1968, in Proceeding No. 107632-M, the United States District Court, Northern District of California, adjudicated Charter Sedan Service to be bankrupt, appointed John Billmeyer Trustee of the Estate of said bankrupt and ordered the assets of the corporation to be liquidated pursuant to the provisions of the Bankruptcy Act. Attached to the application as Exhibit "A" is a copy of the order of adjudication and appointment of the Trustee. The general manager of the bankrupt corporation, Mr. C. R. Jernberg, Jr., refused to discontinue the operation of the company, alleging the certificate was not an asset transferable in bankruptcy and the Trustee was required to file an application with the Federal Court asking that the certificate be turned over to the Trustee. Such an order was granted by the Court on February 7, 1969, and the operation by Mr. Jernberg under the authority was discontinued. Attached to the application as Exhibit "B" is a copy of the turnover order of the Court. On March 17, 1969, the passenger stage corporation certificate issued in Decision No. 73678 to the bankrupt was sold by the Trustee to NES. A copy of the order of the Court confirming the sale is attached to the application as Exhibit "C". The purchase price of \$3,600 represents the consideration for the sale of two certificates issued to the bankrupt by this Commission. Of that consideration, \$2,800 is the purchase price for the passenger stage certificate considered herein. The remaining \$800 is for a charter-party carrier of passengers Class "A" certificate issued under File No. TCP-116A.

NES is a California corporation. It is presently operating as a charter-party carrier of passengers under a Class "A" certificate issued in Docket No. TCP-47-A.

NES has pending before the Commission Application No. 50494 which was filed on August 21, 1968. By that application, it seeks authority to operate as a passenger stage corporation for the transportation of passengers and their baggage between points in Santa Clara, San Mateo, San Francisco, Marin, Alameda and Contra Costa Counties, on the one hand, and, on the other hand, the San Francisco International Airport, Oakland International Airport, San Jose Municipal Airport, Palo Alto Airport, Hayward Airport, San Carlos Airport, and Buchanan Field in Concord. Hearings were held on the application on November 20 and 21, 1968, and January 13, 15 and March 6, 1969. The matter was submitted after the filing on concurrent briefs. No order has been issued therein.

The application herein alleges that Charter Sedan Service was founded by George Van Hooser in 1955, as a sole proprietorship, and initially, was engaged in the business of furnishing limousines and chauffeurs for weddings, funerals, and other similar activities. In 1961, the business was incorporated and was thereafter expanded to provide for the transportation of passengers to and from the San Francisco International Airport and the San Jose Municipal Airport and adjacent areas. Mr. Van Hooser died in 1965 and his interest in the corporation was left to his wife who thereafter acted as president and principal officer of the company. At the time of the hearing, August 2 and 3, 1967, on Application No. 49556, Charter was transporting approximately 2,000 passengers per month and was operating six Cadillac sedans and four station wagons. It employed in its operation four full-time and one part-time office employees and sixteen drivers. Charter subsequently experienced financial problems and filed for relief under Chapter XI of the Bankruptcy Act and proposed to submit

a plan of arrangement. Ultimately, Charter was not able to offer such a plan and the Court adjudged it bankrupt. The Trustee, thereupon, was appointed and directed by the Court to liquidate the assets and pay creditors of the company. Pursuant to that order, sale of the certificate involved herein was effected and confirmed by the Court.

The application further alleges that NES was organized in 1965 for the specific purpose of establishing a charter passenger bus operation and a limousine service similar to that conducted by Charter between airports in and adjacent to the San Francisco Bay Area. It presently holds and operates under a Class "A" charter-party carrier of passengers certificate and has on file the aforementioned Application No. 50494 to provide a service as a passenger stage corporation between the San Francisco Bay Area airports and areas in and adjacent thereto. Its operations to and from the airports were initiated in 1967, after investigations were made by NES's management of operational procedures, costs and activities, two studies by Price-Waterhouse Company of cost, feasibility, and three-year projections, and a financial study by Guardian Management Company. The company, as predicted and anticipated by the Price-Waterhouse study, has experienced losses in establishing and developing the operation. However, as expected by that study, the service is now being performed at a profit and the operations in the future should continue to be profitable. If any further funds are required for the operation, NES has established a current line of credit with the Bank of America whereby funds in the amount of \$178,000 are available in the event additional investments or operating funds are required. The growth of the company, since its inception, has been about 15% per month, and is about 16% ahead of the three-year projection. At present, NES is transporting between 500 and 600 passengers per week.

NES's airport operation is now being conducted with eight 1969 Cadillac Sedans, one 1969 Pontiac Station Wagon, one 1967 Cadillac Limousine and three 1968 Continental Sedans. These units are equipped with two-way radios and the company has a radio transmitter and receiver at its principal office at Burlingame. In addition to the offices maintained at Burlingame, there is, at that facility, a large garage for storing, repairing and servicing vehicles. It presently has 48 employees, consisting of 40 drivers and airport coordinators, four reservation clerks and dispatchers, one office and three supervisory and sales employees. It maintains insurance coverage of \$500,000 for public liability, \$50,000 for property damage and \$10,000,000 for general liability coverage. Since its inception, there has been no chargeable accident against the company's drivers and all drivers are required to submit to a comprehensive training program before they are authorized to participate in the company's operations.

After consideration, the Commission finds that the proposed transfer would not be adverse to the public interest.

National Executive Services, Inc. is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, these rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

The authorization herein granted shall not be construed as a finding of the value of the rights herein authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before December 31, 1969, Charter Sedan Service by John Billmeyer, Trustee, may sell and transfer, and National Executive Services, Inc. may purchase and acquire, the operative rights referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, purchaser 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. Purchaser shall amend or reissue the tariffs and timetables on file with the Commission, naming rates and rules governing the common carrier operations herein to show that it has adopted or established, as its own, said rates and rules. 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 consummation of the transfer herein authorized. The tariff and timetable filings made pursuant to this order shall comply in all respects 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. Failure to comply with and observe the provisions of General Orders Nos. 79 and 98-A may result in a cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the consummation of the transfer as herein authorized, purchaser 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.

5. In the event the transfer authorized in Paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to National Executive Services, Inc., authorizing it to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendix A attached hereto and made a part hereof.

6. The certificate of public convenience and necessity issued in ordering paragraph 5 above is granted upon the following condition:

The applicant, National Executive Services, Inc., shall provide service with vehicles seating no more than nine passengers including the driver.

7. The certificate of public convenience and necessity granted in Paragraph 5 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 73678, which certificate shall be revoked effective concurrently with the effective date of the tariff filings required by Paragraph 3 hereof.

8. Within thirty days after the effective date hereof, purchaser shall file a written acceptance of the certificate, the transfer of which is herein authorized. Purchaser is placed on notice that, if it accepts such certificate, 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-C.

9. Purchaser 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 twenty days after the date hereof.

Dated at San Francisco, California, this 5th
day of AUGUST, 1969.

William J. Lyons, Jr.
President
August
W. B. M. Massey
Hubert
T. A. ...
Commissioners

GENERAL AUTHORIZATIONS, RESTRICTIONS,
LIMITATIONS AND SPECIFICATIONS

National Executive Services, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers and their baggage between San Jose, Campbell, Los Altos, Saratoga, Cupertino, Sunnyvale, Los Gatos, Mountain View, Palo Alto, Menlo Park, Woodside, Redwood City and Portola Valley, on the one hand, and the San Jose Municipal Airport, the San Francisco International Airport, the Oakland International Airport and the Fremont Railway Station, on the other hand, over the most appropriate routes subject to the following provisions:

- (a) No passengers shall be transported except those having point of origin or destination at one of the following places:
 - 1. San Jose Municipal Airport
 - 2. San Francisco International Airport
 - 3. Oakland International Airport
 - 4. Fremont Railway Station
- (b) When service is rendered on an "on-call" basis, tariffs and timetables shall show the conditions under which such "on-call" service will be operated.
- (c) Service shall be provided with vehicles seating no more than 9 passengers including the driver.

Issued by California Public Utilities Commission.

Decision No. 75987, Application No. 51024.