

ORIGINALDecision No. 76147

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Charter Sedan Service, a corporation,)

Complainant,)

vs.)

National Executive Service, a)
corporation,)

Defendant.)

Case No. 8821
(Filed July 16, 1968)Mercury Transportation Service,)
a corporation,)

Complainant,)

vs.)

National Executive Service, a)
corporation,)

Defendant.)

Case No. 8822
(Filed July 17, 1968)In the Matter of the Application of)
NATIONAL EXECUTIVE SERVICES, INC.,)
for authority to operate as a)
passenger stage corporation between)
points in Santa Clara, San Mateo,)
San Francisco, Marin, Contra Costa)
and Alameda Counties and airports)
therein.)Application No. 50494
(Filed August 20, 1968;
Amended November 27, 1968)Daniel W. Baker and Jeffrey Howard, for National Executive Services, Inc., as defendant in Cases Nos. 8821 and 8822 and applicant in Application No. 50494.Charles Bagby and C. R. Jernberg, Jr., for Charter Sedan Service as complainant in Case No. 8821 and protestant in Application No. 50494.Robert Morton, for Mercury Transportation Service as complainant in Case No. 8822 and protestant in Application No. 50494.David M. Dooley, for William G. Melbern; Ray R. DeNoon, for Golden Sedan Service, Inc., and John G. Lyons, for Barrett Transportation, Inc.; protestants in Application No. 50494.Robert Nyben, for Bob's V.I.P.'s Associated Limousine; Robert A. Burrowes, for Lincoln Bus Line; and Paul J. Dinoia, for the City and County of San Francisco, interested parties.Elmer Sjostrom, Counsel, and Hilton Nichols, for the Commission staff.

O P I N I O N

By their complaints filed July 16 and 17, 1968, Charter Sedan Service, a corporation (hereinafter at times referred to as Charter), and Mercury Transportation Service, a corporation, alleged that National Executive Services, Inc. (hereinafter at times referred to as NES), had exceeded the scope of its certificated authority as a charter-party carrier by transporting passengers on an individual fare basis in violation of Section 5401 of the Public Utilities Code.^{1/} On August 20, 1968, NES filed an application requesting

authority to operate as a passenger stage corporation for the transportation of passengers and their baggage between points in the Counties of Santa Clara, San Mateo, San Francisco, Marin, Alameda, and Contra Costa, on the one hand, and the San Francisco International Airport, Oakland International Airport, San Jose Municipal Airport, Palo Alto Airport, Hayward Airport, San Carlos Airport, and Buchanan Field at Concord, on the other hand.

Public hearing was held before Examiners Daly and O'Leary at San Francisco with the matters being submitted on March 6, 1969, upon the receipt of briefs since filed and considered.

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During the course of hearing Mercury Transportation Service requested that its complaint be dismissed.

^{1/} "5401. Charges for the transportation to be offered or afforded by a charter-party carrier of passengers shall be computed and assessed on a vehicle mileage or time of use basis, or on a combination thereof, which charges may vary in accordance with the passenger capacity of the vehicle, or the number of persons to be transported, but it shall not be lawful for a charter-party carrier of passengers to directly or through his agent, or otherwise, or for a broker, to contract, agree, or arrange to charge or to demand or receive compensation for the transportation offered or afforded which shall be computed, charged, or assessed on an individual-fare basis, except schoolbus contractors who are compensated by parents of children attending public, private, or parochial schools."

Case No. 8821

The record indicates that on July 1, 1968, a Miss June Pederson, at the request of Allied Management Consultants, called NES and placed a reservation for Donald S. Tahl to be transported from the St. Clair Hotel in San Jose to the San Francisco International Airport. Miss Pederson was assertedly told that the charge would be \$8. On July 2, 1968, Mr. Tahl and Mr. Carl Jernberg, who is the manager of Charter, were picked up by a vehicle of NES at the St. Clair Hotel and during the course of the trip to the airport were told by the driver that the charge would be \$8 per person. Confirmation of the individual charge was made by the radio dispatcher. Upon arrival at the airport, each passenger paid the driver \$8, for which each was given a receipt (Exhibits 1 and 2).

NES made no showing in Case No. 8821.

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NES has been operating since November 20, 1967, pursuant to a charter-party carrier certificate. In addition to such service it proposes to operate as a passenger stage corporation between all San Francisco Bay area points and the airports therein. It owns and operates 10 vehicles, eight of which are 1968, six-passenger Lincoln Continentals. Four eight-passenger Lincoln Continentals are on order. Additional equipment will be acquired as needed. Each car is equipped with two-way radios.

Applicant has 48 employees, 40 of whom are drivers. All drivers are required to take a special training course. They are uniformly dressed and many are bilingual.

As of December 31, 1967, applicant indicated a deficit net worth in the amount of \$26,027; however, it has established an open-end credit account with the Bank of America based upon the

personal guarantee of Mr. Lawrence Larson. The personal guarantee extends to the amount of \$150,000.

The proposed on-call service would be available 24 hours a day, seven days a week. It is primarily designed to meet the business needs and requirements of corporate executives and visiting dignitaries.

Representatives of the following companies testified on behalf of the proposed service:

1. Sylvania Products, Mountain View
2. Varian Associates, Palo Alto
3. FMC Corp., San Jose
4. Foremost Foods Company, San Francisco
5. Field Research Corp., San Francisco
6. Philco Ford Corp.
7. Lenkurt Electric Co., San Carlos
8. Wendell West Transportation Service, San Francisco
9. Standard Oil of California, San Francisco
10. Pan American Airways, San Francisco
11. Taft Travel Service, San Rafael
12. Air West Inc., San Francisco.

Briefly summarized they testified that they are presently using applicant's service under its present authority; they use the service for certain employees, executive officers and visiting customers; the service is expeditious and a convenience. Several found the feature of bilingual drivers important in accommodating foreign dignitaries. All stated that they would use the proposed service if authorized.

Protestants' Showing

(1) Barrett

The protest of Barrett Transportation Inc., was withdrawn upon the stipulation that applicant's offer of service would be restricted to the extent that no service would be provided from the San Francisco International Airport to San Francisco unless made pursuant to a reservation placed at least two hours prior to pickup.

(2) Mercury

Mercury Transportation Service made no affirmative showing in support of its protest. By Decision No. 73678 dated January 30, 1968, Mercury Transportation Service was authorized to transport passengers and their baggage between Fremont and Newark, in Alameda County; Atherton, Woodside, Menlo Park, San Mateo, Redwood City, San Carlos, and Hillsborough, in San Mateo County; and Palo Alto, Los Altos Hills, Los Altos, Mountain View, Sunnyvale, Santa Clara, San Jose, Saratoga, Los Gatos, Monte Sereno, Morgan Hill, San Martin, Gilroy and Milpitas, in Santa Clara County, on the one hand, and the San Francisco International Airport, the Oakland International Airport and the San Jose Municipal Airport, on the other hand.

(3) Charter

By Decision No. 73678 dated January 30, 1968, in Application No. 49556 Charter was 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.

Charter contends that applicant has been diverting business from its operations and was instrumental in forcing Charter into bankruptcy. On February 7, 1969, the referee in bankruptcy ordered Charter to transfer its certificate to the trustee in bankruptcy and no operations are being conducted pursuant to said authority at the present time. By Decision No. 75987 dated August 5, 1969, in Application No. 51024, the Commission authorized Charter by John Billmeyer as Trustee in Bankruptcy to sell and transfer said certificated authority to NES.

(4) Golden Sedan

Golden Sedan Service, Inc., originally appeared in the proceeding as an interested party, but on March 6, 1969 changed its appearance to that of a protestant. By Decision No. 75422 dated March 11, 1969, in Application No. 49376, the Commission authorized Golden Sedan Service, Inc. to operate between all points within Santa Clara County and the Cities of Menlo Park and San Carlos, on the one hand, and the San Francisco International Airport and San Jose Municipal Airport, on the other hand. This protestant contends that the proposed service would have an adverse effect upon the existing carriers.

(5) Airport Limousine

William J. Melbern, doing business as Airport Limousine Service, is presently authorized to operate between the Corte Madera Shopping Center in Marin County and the San Francisco International Airport. In an attempt to remove Mr. Melbern's protest, NES amended its application by excluding therefrom any authority to serve between the Corte Madera Shopping Center and two miles thereof and the San Francisco International Airport. On January 10, 1969, Mr. Melbern filed Application No. 50805 wherein he seeks to extend service to all points in Marin County. Public hearing on the application has been set for September 12, 1969.

Issues Raised in Briefs

Only William J. Melbern and NES filed briefs and the issues were limited to the following: (1) the need for service to and from points within the County of Marin; and (2) whether the proposed

service falls within the meaning of a "passenger stage corporation" as defined by Section 226^{2/} of the Public Utilities Code.

With respect to the first issue Mr. Melbern argues that most of the testimony related to points other than in Marin County; however, the record indicates that six witnesses testified that their respective companies would have occasion to use the proposed service to and from points in Marin County.

As for the second issue Mr. Melbern, through his attorney, contends that since Section 226 provides that a "passenger stage corporation" is limited to a common carrier operating between fixed points or over regular routes the proposed service does not qualify, because it is designed to meet the exclusive needs of large companies rather than the needs of the public generally and because it will be provided from the residence or business office of its customers and therefore cannot be conducted between fixed points or over regular routes.

2/ "226. 'Passenger stage corporation' includes every corporation or person engaged as a common carrier, for compensation, in the ownership, control, operation, or management of any passenger stage over any public highway in this State between fixed termini or over a regular route except those, 98 percent or more of whose operations as measured by total route mileage operated, are exclusively within the limits of a single city or city and county, or whose operations consist solely in the transportation of bona fide pupils attending an institution of learning between their homes and such institution.

"For the purposes of this section, the percentage of the route mileage within the limits of any city shall be determined by the Public Utilities Commission on the first day of January of each year, and such percentage so determined shall be presumed to continue for said year.

"'Passenger stage corporation' does not include that part of the operations of any corporation or person engaged in the ownership, control, operation or management of any passenger stage over any public highway in this State, whether between fixed termini or over a regular route or otherwise, engaged in the transportation of any pupils or students to and from a public or private school, college or university, or to and from activities of a public or private school, college or university, where the rate, charge, or fare for such transportation is not computed, collected, or demanded on an individual fare basis."

Although applicant's proposed service may find greater support with one segment of the traveling public it has not been restricted to that segment and is being offered to the public as a whole. The Commission has granted many area-type certificates where it has been established that the public convenience and necessity would be better served.

After consideration the Commission finds as follows:

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1. NES is presently operating pursuant to a charter-party carrier certificate.

2. On July 2, 1968, NES transported two individuals in the same vehicle from San Jose to the San Francisco International Airport for which each was charged and each paid a fare of \$8.

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1. NES owns and operates ten limousines and at the time of the hearing was in the process of acquiring four additional vehicles. It presently employs 48 individuals.

2. NES, with the personal guarantee of Mr. Lawrence Larson, possesses the necessary financial ability to inaugurate the service herein proposed.

3. A number of business establishments within the proposed service area have expressed a need for the type of service that NES intends to provide.

The Commission concludes as follows:

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On July 2, 1968, NES received compensation for the transportation of passengers on an individual fare basis and was therefore in violation of Section 5401 of the Public Utilities Code.

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With the ever-increasing growth and development of air travel there is developing a corresponding need for expeditious public transportation to and from our airports. The service herein

offered is primarily designed to meet the business needs and requirements of companies in transporting their personnel traveling on company business between their homes or places of business and the airports; however, the service as proposed would also be available to anyone who wishes to make use of it.

The service proposed has some of the characteristics of a taxi operation or limousine service and it would appear that a charter-party permit would be adequate authority. However, more than one person or group would be carried at the same time by the same vehicle and individual fares will be charged. Charter-party carriers are prohibited from charging individual fares (Section 5401 of the Public Utilities Code) and so a passenger stage certificate appears necessary. In view of the characteristics of the proposed service we will look at the need for the service and the granting of the certificate somewhat differently than we might in the case of a more conventional type bus operation.

A number of companies indicated that their personnel reside at points throughout the Bay Area; as a consequence, there is ample support in the record for a carrier with a wide territorial coverage. Although Mercury Transportation Service and Golden Sedan Service, Inc. are presently authorized to serve some of the proposed points, their protests have been greatly minimized as a result of the recent acquisition by NES of the Charter certificate, which duplicates to a great extent the operating authority of these protestants.

In any event the record discloses that it is a common practice among existing limousine operators, serving the airports within the San Francisco Bay Area, to transfer requests for service to other operators when the demand for service exceeds equipment capacity or availability. According to one limousine operator who

testified, transfers of service are made regardless of the operating authority held by the carrier providing the service and in many cases regardless of the lack of any authority.

To the extent that a duplication of service would exist as a result of the granting of this application it would help to limit the practice of transferring transportation service to non-regulated carriers.

The Commission therefore concludes that public convenience and necessity require the granting of the application as amended.

The City and County of San Francisco requested that if a certificate is granted authorizing service to the San Francisco International Airport that it be conditioned upon applicant first acquiring from the City and County of San Francisco all necessary permits to use the airport facilities. The Commission is of the opinion that this is a matter of local jurisdiction that can best be determined by the appropriate local authorities.

O R D E R

IT IS ORDERED that:

1. National Executive Services, Inc. shall cease and desist from computing, charging or assessing fares on an individual fare basis as a charter-party carrier.
2. A certificate of public convenience and necessity is granted to National Executive Services, Inc., a corporation, 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.

3. 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.

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant 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-C.
- (b) Within one hundred twenty days after the effective date hereof, applicant 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) Applicant 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.

4. Concurrent with the tariff and timetable filings required by Ordering Paragraph 3(c) hereof the operating authority granted by Decision No. 75987 dated August 5, 1969, in Application No. 51024 is hereby revoked.

5. Case No. 8822 is hereby dismissed.

The Secretary of the Commission is directed to cause personal service of this order to be made upon National Executive Services, Inc. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 10th
day of SEPTEMBER, 1969.

William J. Sullivan
President

James J. Sullivan
James J. Sullivan

James J. Sullivan
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

GENERAL AUTHORIZATION, RESTRICTIONS,
LIMITATIONS AND SPECIFICATIONS.

National Executive Services, Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport passengers and their baggage between points in the Counties of Santa Clara, San Mateo, San Francisco, Marin, Alameda, and Contra Costa, on the one hand, and the San Francisco International Airport, Oakland International Airport, San Jose Municipal Airport, Palo Alto Airport, Hayward Airport, San Carlos Airport, Buchanan Field at Concord, and Fremont Railway Station, on the other hand.

- (a) No passengers shall be transported except those having point of origin or destination at one of the above specified airports.
- (b) No passengers shall be transported between the Corte Madera Shopping Center in Marin County and the San Francisco International Airport.
- (c) No service shall be provided from the San Francisco International Airport to San Francisco unless provided pursuant to a reservation placed at least two hours prior to pickup.
- (d) 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.
- (e) Service shall be provided with vehicles seating no more than nine passengers including the driver.

Issued by California Public Utilities Commission.

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