

ORIGINAL

Decision No. 77467

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GOODHEW AMBULANCE SERVICE,  
INC., a California corporation,

Complainant,

vs.

MEDI-CAB, INC., a California  
corporation and MEDI-VAN, INC.,  
a California corporation,

Defendants.

Case No. 8977  
(Filed October 1, 1969)

SOUTHERN CALIFORNIA AMBULANCE ASSOCIATION,  
a California corporation,

Complainant,

vs.

MEDI-CAB, INC., a California corporation,  
MEDI-VAN, INC., a California corporation,  
MEDI-CAR OF SAN GABRIEL VALLEY, a  
California corporation,  
MEDI-BUS, a California corporation,  
CARE CONVALESCENT AMBULANCE,  
a California corporation,

Defendants.

Case No. 9004  
(Filed December 10, 1969)

Robert Bergmann, for Goodhew Ambulance Service,  
Inc., and Southern California Ambulance  
Association, complainants.

Martha S. Hubbard, for White's Medi-Bus, Inc.;  
Buchalter, Hemer, Fields & Savitch, by  
Richard Bronner, for Medi-Van, Inc.,  
defendants.

Roger Arnebergh, City Attorney, by Charles  
E. Mattson, Deputy City Attorney, for  
the City of Los Angeles; Sergius M. Boiken,  
Counsel, for the Commission staff,  
intervenor.

Darrell V. Harvey, for Special Transportation  
Service, and Louis Fossner, for the City of  
Long Beach, interested parties.

O P I N I O N

Case No. 8977 is a complaint by Goodhew Ambulance Service, Inc., a California corporation, against Medi-Cabs, Inc., a California corporation, and Medi-Van, Inc., a California corporation. The gist of the complaint is that complainant, a private ambulance owner provides transportation for litter passengers on an emergency and non-emergency basis; that the equipment and personnel furnished by complainant to its litter passengers meets standards required by the City of Los Angeles, the County of Los Angeles and the United States Government; that the defendants, presently operating under permits issued under the provisions of the Charter Party Carrier's Act (Chapter 8 of Division 2 of the California Public Utilities Code), do not comply with the requirement of said act, specifically Section 5401 of the California Public Utilities Code<sup>1/</sup>, in that they charge for transportation on an individual fare basis, and their vehicles do not comply with Section 5359 in that they do not have a seating capacity of more than five persons, excluding the driver.

On December 3, 1969, Medi-Cabs, Inc., filed an answer wherein it denied charging for litter and wheelchair passengers on an individual fare basis and alleged its vehicles have a seating capacity of more than five passengers, excluding the driver.

On December 15, 1969, Medical Transport Services, Inc., doing business as Medi-Van (erroneously sued as Medi-Van, Inc.) filed an answer in which it denied that it provides service on an individual fare basis and that the vehicles do not seat five or more passengers exclusive of the driver.

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<sup>1/</sup> Hereinafter all references will be to California Public Utilities Code sections.

Case No. 9004 is a complaint by Southern California Ambulance Association, a California corporation, against Medi-Cabs, Inc., a California corporation; Medi-Van, Inc., a California corporation; Medi-Car of San Gabriel Valley, a California corporation; Medi-Bus, a California corporation; and Care Convalescent Ambulance, a California corporation. The allegations of the complaint are, in general, the same as the allegations in Case No. 8977.

Answers were filed by Jack R. Dossett and Carl J. Richardson, partners doing business as Care Convalescent Ambulance, sued erroneously as a corporation; Medical Transport Services, Inc., doing business as Medi-Van (erroneously sued as Medi-Van, Inc., a California corporation); Medi-Bus, Inc., a California corporation; and Medi-Cabs, Inc., a California corporation. These defendants generally set up the same defenses as the defendants in Case No. 8977.

No pleading was filed by Medi-Car of San Gabriel Valley, a California corporation. The City of Los Angeles (as to Case No. 8977) and the Commission staff (both cases) were granted permission to intervene without broadening the issues.

Notice of hearing was served on all parties in conformance with the Commission's rules of procedure and a public hearing on the two consolidated complaints was held before Commissioner Sturgeon and Examiner Rogers in Los Angeles on April 9, 1970. At this hearing only two defendants appeared, Medical Transport Services, Inc., doing business as Medi-Van (sued as Medi-Van, Inc.) and White's Medi-Bus, Inc. (sued as Medi-Bus, Inc.) The attorney for Medical Transport Services, Inc. stated that the company is in

chapter 11 proceedings (federal bankruptcy) and that the receiver had given his law firm no authority to represent the company in this proceeding. The attorney was permitted to withdraw as the company's legal representative. No one thereafter appeared for Medical Transport Services, Inc.

At the conclusion of the hearing the appearing parties were given until May 11, 1970, in which to file concurrent briefs. The complainants and the City of Los Angeles filed briefs. The matters were submitted.

The representative of White's Medi-Bus, Inc., advised the Commission that this company has a permit from the City of Azusa and that it has no vehicles with a seating capacity of more than five passengers, excluding the driver (Section 5359). The complainants requested that the complaint be dismissed as to this defendant. This request will be granted and we will dismiss the complaint against White's Medi-Bus, Inc.

The complainants' attorney requested that the complaint be dismissed as to Care Convalescent Ambulance for the reason that this carrier is operating pursuant to a permit issued by Orange County and not one by the Public Utilities Commission. This request will be granted and we will dismiss the complaint against Care Convalescent Ambulance.

An inspector for the Department of Public Utilities and Transportation for the City of Los Angeles testified that on December 23, 1969 he visited the office of the defendant Medi-Cabs, Inc., at 5250 Santa Monica Boulevard in the City of Los Angeles; that at that time and place he inspected this defendant's vehicle No. 25; that he took a picture of the interior of this vehicle (Exhibit No. 1)

and made a diagram thereof (Exhibit No. 2); that this vehicle had room for not to exceed six persons; that spaces were provided for one litter, three wheelchairs, one passenger and the driver. The witness further testified that early in February 1970, he saw vehicle No. 25 and an identical vehicle No. 26 in the defendant's yard with the drivers; that the vehicles showed the name of the company, the telephone number thereof, and a phrase indicating they were non-emergency vehicles; that at said time he inspected the records for the month of January 1970; that the records showed that during January, 1970, vehicle No. 25 made 32 pick ups in Los Angeles and vehicle No. 26 made 33 pick ups in Los Angeles;<sup>2/</sup> and that other vehicles having capacities of seven or more persons (including the drivers) made 84 pick ups in Los Angeles (Exhibit No. 3).

The Assistant General Manager for the Department of Public Utilities and Transportation of the City of Los Angeles testified that the department regularly employs investigators to determine what vehicles are operating for hire in the City of Los Angeles; that for hire vehicles operating in the City, other than taxicabs, operate pursuant to permits by the Department of Public Utilities and Transportation; that vehicles Nos. 25 and 26 of Medi-Cab<sup>2</sup>, Inc., do not have such permits to operate; and that the vehicles operate pursuant to a charter-party carrier permit issued by this Commission.

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<sup>2/</sup> In no case is the destination point shown. In some instances the pick ups were made in cities other than Los Angeles, e.g. Monterey Park, Alhambra, Glendale, Inglewood, and Lynwood. In some cases pick up was made in County territory, e.g. Montrose.

The witness further testified that, in his judgment, the vehicles do not meet the requirements of Section 5359, and are properly within the jurisdiction of his department and would not be allowed to operate without the proper City permits.

The witness further testified that he is familiar with Medi-Van and that it is operating pursuant to a permit issued by this Commission and has no City permit.

Pursuant to stipulation between the appearing parties, Exhibits Nos. 4 and 5 were introduced in evidence.

Exhibit No. 4 advertises "Medi-Cabs, Inc.," for low cost, non-emergency 'medical transportation'. Exhibit No. 5 is the schedule of maximum allowances for ambulance calls for Medi-Cabs. This document lists charges as follows:

#### SCHEDULE OF MAXIMUM ALLOWANCES AMBULANCE CALLS

	<u>Maximum Allowance</u>
Response to call:	
1 patient	\$25.00
2 patients (each \$18.00)	36.00
Mileage one way--per mile	1.00
Night call--7:00 p.m. to 7:00 a.m.	5.00
Emergency run	5.00
Oxygen--per tank	5.00
Waiting time over 15 min.--each 15 min.	5.00

#### NONURGENT TRANSPORTATION

Response to call:	
1 patient	7.00
2 patients (each \$6.50)	13.00
3 patients (each \$6.00)	18.00
4 patients (each \$5.50)	22.00
Wheelchair use	.50
Response to call (litter or stretcher case)	10.00
Extra attendant (litter or stretcher case)	3.00
Mileage one way--per mile	.50
Taxi--not to exceed franchise rate	By Report
Unlisted	By Report

An ex-employee of Medi-Van, (Field Representative April 1st to August 15, 1969) testified that Medi-Van's rates during his employment were as follows:

MEDI-VAN RATES ONE-WAY

PRIVATE PATIENTS

1. Ambulatory --  
\$8.00 for the first mile after pick up.  
\$ .50 per mile each mile thereafter to destination.  
(unlimited distance)
2. Wheelchair --  
\$10.00 for the first mile after pick up.  
\$ .55 per mile each mile thereafter to destination.  
(unlimited distance)
3. Stretcher -- (deluxe ambulance type-all level bed)  
includes driver and attendant.  
\$14.00 for the first mile after pick up.  
\$ .75 per mile each mile thereafter to destination.  
(unlimited distance)

MEDI-CAL PATIENTS

Response to call:	1 patient	\$ 7.00
	2 patients (each \$6.50)	13.00
	3 patients (each \$6.00)	18.00
	4 patients (each \$5.50)	22.00
Wheelchair use		.50
Response to call (litter or stretcher case)		10.00
Extra attendant (litter or stretcher case)		3.00
Mileage - one way - per mile		.50

(Exhibit No. 6)

The witness further testified that the reduced rates listed above, e.g. \$7.00 for one patient and for two patients, \$6.50 each, were effective only for two or more patients picked up at one point and that two patients picked up at two locations were \$7.00 each. These charges, he said, were in addition to the mileage charges and other charges listed and that the 50 cents per mile was for each patient carried. The witness further testified that during the time he worked for Medi-Van, the secretary kept route sheets and forwarded them to him each month; that these route sheets reflected the point of pick up, point of delivery, the vehicle used and charges; that he had a copy of such record for the period of July 11 to August 1, 1969 (Exhibit No. 7); this record shows pick ups and deliveries at points in various cities in Los Angeles County as well as county territory; that during the time he was employed by Medi-Van, the company had 14 vehicles; that out of the 14 vehicles used while he was employed by the company only one vehicle had a capacity of more than five persons in addition to the driver; that the basis of charges for this one large vehicle (11 passengers plus the driver) was time plus number of passengers; and that while he was with Medi-Van, it picked up passengers in the City of Los Angeles.

The operator of an ambulance service (Schafer's Ambulance Service, Inc.) testified that Medi-Van, is in bankruptcy under chapter 11; that the equipment (14 vans) formerly owned by Medi-Van, has been purchased by Schafer's; that the equipment was re-possessed and Schafer's bought it from the original seller to



Medi-Van; that when Schafer purchased the vans they were being used pursuant to authority under the Charter Party Carriers Act; and that Schafer has a charter party carriers' permit.

A Commission transportation engineer testified that on April 3, 1970 he visited the offices of Medi-Car of San Gabriel Valley at 563 East San Bernardino Road, Covina; that he photographed the vehicles the defendant used in its business (Exhibits Nos. 8-A and 8-B); that one of the vehicles (Exhibit No. 8-A) has a rear bench seat which will accommodate three people, two bucket seats in front (a driver and a passenger); that the general manager of Medi-Car told him that this vehicle is used to carry one or two wheelchairs; that when wheelchairs are carried they are fastened inside with straps; that 95 percent of the time the vehicle carries one person in a wheelchair and that 5 percent of the time there are two persons in wheelchairs in the vehicle.

The engineer further testified that the other vehicle (Exhibit No. 8-B) carries passengers in stretchers and/or wheelchairs; that the general manager told him that the vehicle is used to haul four wheelchairs or two wheelchairs and two stretchers; that this combination has never happened; that 20 percent of the time this vehicle carries one person and stretcher; that 5 percent of the time it carries one person in a wheelchair and one person in a stretcher; that 75 percent of the time it carries only persons in wheelchairs and the most common use is one person in a wheelchair. The engineer stated that it would be possible for each vehicle to carry six passengers, excluding the driver.

Medi-Car rates are as follows (Exhibit No. 10-C):

Wheelchair and ambulatory basic charge, one way	\$ 7.00
Gurney, basic charge, one way	13.00
Mileage per mile, from pick up to destination	0.50
Waiting time, first ten minutes	free
Group and long distance rates	

The Commission staff counsel did not take a position in the matters and consequently did not file a brief. At the conclusion of the hearing he posed three questions:

1. Under the evidence presented, which shows different arrangements of the interiors of the vehicles so that on some occasions it would be possible to have over five passengers, excluding the driver, and on other occasions less than five passengers, excluding the driver, is the vehicle a 'motor vehicle' as defined in Section 5359 of the Public Utilities Code which provides:

"'Motor Vehicle' means every self-propelled vehicle with a seating capacity of more than five persons excluding driver."?

2. If some of the vehicles operated by a charter party carrier of passengers are 'motor vehicles' as defined in Section 5359 of the Public Utilities Code and some of the equipment does not comply with the Section 5359 requirements, is the non-qualifying equipment subject to local authority?

3. Are the defendant licensees herein involved assessing their charges in accordance with Section 5401 of the Public Utilities Code which insofar as pertinent reads as follows:

"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 of passengers to directly or through his agent, or otherwise, or for a broker, to contract, agree, or arrange to charge or demand or receive compensation for the transportation offered or afforded which shall be computed, charged or assessed on an individual-fare basis, ---"?

3/  
brief. None of the defendants furnished the Commission with a

In their brief, the complainants raise two points, to-wit:

1. The defendants are in violation of Section 5401 and the permits under which they operate in that they are now, and have been, basing their charges for transportation of litter passengers and wheelchair passengers on an individual fare basis.

2. The defendants use as modes of transporting litter passengers and wheelchair passengers motor vehicles which do not qualify as 'motor vehicles' within the provisions of Sections 5359 and 5360 in that they do not provide seating capacity for more than five persons excluding the driver.

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3/ White's Medi-Bus, one of the original defendants (Case No. 9004) presented evidence that it never carries more than five persons, excluding the driver; it usually carries only one person plus the driver; it is licensed by the City of Azusa; it operates throughout the County of Los Angeles; and each passenger is carried on an individual fare plus mileage basis, the same as the remaining defendants.

The position of the City of Los Angeles is that the specialized transportation offered by the defendants to persons confined to wheelchairs and stretchers does not normally require a vehicle with a seating capacity of more than five persons excluding the driver and that the Commission should find the operations are properly subject to local regulations.

Section 5353 lists the passenger operations which are not subject to the Passenger Charter-party Carriers' Act. The record herein shows that the defendants operate beyond the limits of a single city; the transportation is not that of school pupils under contract pursuant to the Education Code; the transportation does not comprise service between fixed termini or over regular routes; the transportation is not the transportation of farm labor; the defendants are not public transit systems; the defendants do not operate vehicles carrying passengers on a non-commercial enterprise basis; and the defendants do not operate taxicabs. Thus, if otherwise qualified, under the literal language of the Act they are not exempt from regulation as charter-party carriers of passengers.

Section 5360 provides:

"Subject to the exclusions of Section 5353 of this chapter, 'charter-party carrier of passengers' means every person <sup>4/</sup> engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state."

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<sup>4/</sup> Section 5357 provides that: "'person' includes an individual, a firm, or a co-partnership." Section 5356 provides that: "'corporation' includes a corporation, a company, an association, and a joint stock association." The Act is very poorly drawn but a reading of the whole Act shows that 'person' is intended to include 'corporation'."

'Motor Vehicle' is defined in Section 5359 as follows:

"'Motor Vehicle' means every self-propelled vehicle with a seating capacity of more than five persons excluding driver."

Section 5401 specifies the basis of charges for persons subject to the Act. It has been quoted, supra.

Each of the defendants operates over the public highways, and each carries persons for compensation (Exhibits Nos. 5, 6 and 10).

The motor vehicles used by the defendants, with the exception of three used by the defendant, Medi-Cabs, Inc., and one used by the defendant, Medi-Van, are capable of carrying over five persons plus the driver, are modified van-type vehicles, usually with side doors, and with moveable ramps for wheelchairs. With some exceptions they carry at least one moveable stretcher (gurney) or fastenings therefor. The vehicles are each equipped with fastenings for two to four wheelchairs (see Exhibit No. 2). The vehicles make frequent short runs both between points within single cities and between points in separate cities or points in unincorporated areas. The purpose of the vehicles is to transport on non-emergency basis, disabled or ill persons in litters or wheelchairs between their homes and the office of a doctor, a hospital or a sanatorium. The vehicles usually transport one or two persons on a single trip. By shifting the chairs and litters in the vehicles it is possible that six persons in addition to the driver could be carried in some of the vehicles. This is not the practice, however. Ordinarily one person is carried.

The Passenger Charter-party Carriers' Act is not as specific as it could be, but absurd and unjust result will never be ascribed to legislation (In Re Haines 195 Cal. 605 at 613). Where the

language of a statute is fairly susceptible of two constructions, one of which will render it reasonable, fair and harmonious with its manifest purpose, and the other of which will produce absurd consequences, the first will be adopted (Warner v. Kenny 27 Cal. 2d. 627 at 629). Except where the statutory language is clear and explicit and the meaning of the legislature is apparent, in construing a statute the courts may consider the consequences that might flow from a particular interpretation. They will construe the statute with a view to promoting rather than defeating the policy behind it (East Bay Garbage Co. v. Washington Township Sanitation Co. 52 2d 707 at 713), and wherever possible in a way that will render it reasonable, fair and harmonious with its manifest purpose and conformable to its spirit (Los Angeles County v. Frisbie 19 Cal. 2d 634 at 644).

In our opinion, the Act was never intended by the legislature to include the transportation of wheelchair or litter patients in specially designed and altered vehicles usually and ordinarily carrying less than six passengers. Although the defendants' vehicles could possibly carry more than five passengers, excluding the driver, the record does not show any occasion where this has occurred except in larger vehicles. The number transported at one time is usually one or not to exceed two persons. The Act is not intended to cover the type of operations herein considered and the defendants' vehicles, with the exception of those regularly seating over five persons in addition to the driver are not 'motor vehicles' as defined in Section 5359.

That the defendants do not qualify as charter-party carriers of passengers in their usual operations is demonstrated by their method of assessing charges. Each of the defendants herein charges the person transported on an individual fare basis, the only concession to numbers being that if two persons are picked up at one point and delivered at one point, the pick up charge for each person is reduced. In addition, each person carried by any defendant pays an identical mileage fee and whether one person is or five persons are transported in a vehicle at one time going from one origin point to one destination point, each is required to pay the same full mileage fee. The Act (Section 5401 thereof) prohibits such a method of charging for the transportation. If the defendants are, in any portion of their operations, charter-party carriers of passengers, as to such operations they will be required to terminate such methods of charging for service in accordance with the requirements of the Act and, in addition, they and their officers, agents or employees could be subject to severe penalties (Sections 5411 to 5416, inclusive).

#### Findings

The Commission finds that:

1. The defendants, Medi-Cabs, Inc., Medical Transport Services, Inc., doing business as Medi-Van, and Medi-Car of San Gabriel Valley, are California corporations. Each has a certificate or permit issued by this Commission authorizing it to operate as a charter-party carrier of passengers pursuant to Chapter 8 of Division 2 of the California Public Utilities Code.

2. Each of said defendants operates small van-type vehicles in which it transports litter and wheelchair patients for compensation over public highways between points in the State of California. None of the defendants confines its operations to the city limits of a single city or city and county; the transportation is not that of school pupils under contract pursuant to the Education Code; the transportation does not comprise service between fixed termini or over regular routes; the transportation is not the transportation of farm labor; the defendants are not public transit systems; the defendants do not operate vehicles carrying passengers on a non-commercial enterprise basis; and the defendants do not operate taxicabs.

3. The vehicles which the defendants use in their operations, purportedly pursuant to their charter-party carriers of passengers authority, can be so modified that more than five persons in addition to the driver can be carried at one time. The usual practice of the defendants, however, is to transport one or two litter or wheelchair patients at one time. None of the vehicles without modification can carry six litter or six wheelchair, or a combination of both, patients at one time.

4. In order to qualify as a "motor vehicle" as defined in Section 5359 of the California Public Utilities Code, defendants' vehicles must have a seating capacity for six or more passengers plus the driver. The majority of defendants' vehicles are not so constructed or used.



5. Each of the defendants charges and collects individual rates for its passenger charter-party carrier service with a reduction in rates for two or more persons picked up and discharged at the same points. In addition to the individual pick up charge, each defendant charges the person carried a mileage rate. This mileage rate is assessed against each person carried regardless of the number carried.

6. The complaints against Jack R. Dossett and Carl J. Richardson, partners doing business as Care Convalescent Ambulance, and White's Medi-Bus, Inc., should be dismissed.

Conclusions

We conclude that:

1. The defendants' vans which are so modified and used that they only carry one or two patients at one time, are not 'motor vehicles' within the meaning of Section 5359 of the Public Utilities Code of California.

2. Any vehicles operated by defendants which have a seating capacity for six or more passengers in addition to the driver are "motor vehicles" as defined in Section 5359 of the Public Utilities Code of California.

3. The defendants, as to any "motor vehicle" they use as a charter-party carrier of passengers are violating Section 5401 of the California Public Utilities Code in charging and collecting fees on an individual fare basis.

O R D E R

IT IS ORDERED that:

1. The complaints against Jack R. Dossett and Carl J. Richardson, dba Care Convalescent Ambulance, and White's Medi-Bus, Inc., are dismissed.

2. Defendants and each of them shall forthwith cease advertising that any vehicle which it operates that does not have a seating capacity for six or more persons plus the driver is operated pursuant to authority granted by this Commission under the Passenger Charter-party Carriers' Act.

3. The defendants and each of them shall forthwith cease and desist from collecting or assessing charges for service performed as a charter-party carrier of passengers on any basis other than as provided in Section 5401 of the California Public Utilities Code.

This order shall be served on each defendant personally or by registered mail. The effective date of the order as to each defendant shall be twenty days after service thereon.

Dated at San Francisco, California, this 7th  
day of JULY, 1970.

[Signature]  
Chairman

[Signature]  
[Signature]

Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.