

ORIGINAL

Decision No. 78191

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Gregory Paul Ziebarth,  
Complainant,

vs.

Mammoth Stage Lines, a  
corporation,

Defendant.

Case No. 9093  
(Filed July 20, 1970)

Jay J. Wall, Attorney at Law, for complainant.

Richard L. Cain and B.W.C. Seaman, for Mammoth  
Stage Lines, defendant.

Robert M. Dillon, for Bishop Chamber of Commerce;

H. R. Gelvin, for Mammoth Motel Association;

William H. Bouch, for himself, and N. Edward

Denton, Attorney at Law and District Attorney,

for County of Mono, interested parties.

Tack S. Joe, for the Commission staff.

## O P I N I O N

Decision No. 76671, dated January 13, 1970, in Application No. 51491, granted Gregory Paul Ziebarth, hereinafter called Ziebarth, authority to operate a passenger stage service during the ski season (only while the Mammoth Ski Lift is in operation) between the town of Mammoth Lakes and the Mammoth Mountain Ski Lifts, a round-trip distance of ten miles.

Decision No. 76672, dated January 13, 1970, in Application No. 51539, granted Richard L. Cain and Mary E. Cain, doing business as Mammoth Stage Lines and hereinafter called Cain, the authority to transport passengers, baggage and express between Bishop, Bishop Airport, Crowley Lake Lodge, Mammoth Airport, Mammoth Lakes junction, Mammoth Village area, Mammoth Ski Lifts, Mammoth Mountain Inn, June

Lake Junction, June Lake Village and the June Lake Ski Lifts. Bishop is approximately 55 miles south of the June Lake area.

The complaint alleges that Ziebarth started service several months prior to Cain; that Cain serves an area of more than 50 miles and Ziebarth only two points; that Cain's proposed Mammoth Lakes - Mammoth Ski area fares as described in Application No. 51539, filed on December 5, 1969, are not compensatory and may put both parties out of business and that Cain should be ordered to cease transporting passengers from Mammoth to the ski area or from the ski area to Mammoth. It is noted that the complainant has no objection to any other part of the Cain operation. Cain answered the complaint on August 17, 1970 and a public hearing was held in Mammoth Lakes on October 15, 1970, before Examiner Fraser.

Complainant testified that he operated from February 2 to April 14, 1970, with a single 1962 Dodge 35-passenger bus equipped with 25 external ski racks. He provided three morning and three evening round trips on weekends and holidays, in addition to one morning and one afternoon round trip on week days. Fares were \$1.00 for adults and 50 cents for children in either direction. He testified that his weekend runs were scheduled at 7:30, 8:30, and 9:30 in the morning and 3:30, 4:30, and 5:30 in the afternoon. He further testified that the first run transports the skiers who want to be there when the lifts start at 8:00 a.m.; the later schedules pick up those who prefer to sleep a little longer; no one requires transportation in the middle of the day although taxis are always available. He advised his experience indicates there is not sufficient business for either more bus schedules or another bus operator; most skiers are transported in private vehicles except during periods of bad

weather or after a heavy snow storm when skiers would rather ride in a bus to avoid putting on tire chains. He noted that the ski lifts operated, and there was sufficient snow for skiing, until late June or July of 1970; his bus was not needed after March due to the improvement in the local weather. He testified that Cain's proposed rates are described in Application No. 51539, with the minimum adult one-way fare of 50 cents being applicable to the Mammoth Lakes - Mammoth Ski area route. He advised he does not see how Cain can operate profitably while charging the rates he has adopted, but prospective customers will be attracted by the non-compensatory rate and may ride exclusively in Cain vehicles, thereby forcing both parties out of business.

Several local witnesses testified that two operators should operate profitably where 40,000 to 68,000 monthly skiers are accommodated, along with a large number of nonskiing visitors. One motel operator praised the express service Cain is providing from Bishop. Another advised of the need for more frequent winter service. She stated her husband has frequently transported guests to the ski area in a motel vehicle when they could not get their cars started. She was in favor of more frequent winter bus service.

The manager of the local taxi service testified as follows: He is certain that there is insufficient business to support another operator between town and the ski lifts; his service operates one 7-passenger, one 9-passenger and one 11-passenger vehicle year-around, with very little business; during the winter season one vehicle is parked at the ski lift and one in town, with the extra vehicle a standby; under this system no prospective customer is more than ten minutes from a taxi; business has not been good, however, so he also works as supervisor of ski-lift parking and is in charge of the free

bus service between the parking areas and the ski lifts; the free shuttle buses have an adverse effect on the taxi and bus business during the ski season; skiers can park a mile or more from the ski area and take free transportation to the foot of the lift they prefer; if the shuttles were discontinued many skiers would have to walk a half mile or more between the parking areas and the ski lifts; until 18 months ago taxi riders were charged a 50-cent-a-mile rate without a minimum; the company sustained severe losses until the rate was raised to a \$1.00 minimum with 60 cents for each additional mile; the taxi company operates under a county franchise which authorizes them to pick up anywhere in the county and to transport passengers anywhere they want to go in or out of the county, but they cannot pick up outside of the county. Two other employees of the taxi company testified they used the Mammoth Stage Lines' service on several occasions and were taken to the exact point requested, which was one-half mile off the stage route. The first cab witness also testified on this point. He advised the stage line went off route in Bishop on two occasions to pick up freight. It was emphasized that by transporting passengers to individual destinations off his certificated route, Cain was unlawfully operating as a taxicab. It was further emphasized that the Cain certificate (Decision No. 76672, Section 2.1 of Appendix A) describes a portion of the Cain route as "thence westerly along Mammoth Lakes Road to Mammoth Village area, Mammoth Ski Lifts and Mammoth Mountain Inn", which is misleading, because the Mammoth Lakes Road goes to Mammoth Lakes and not to the ski lifts or the inn. Complainant charged that Cain vehicles therefore follow a route which is not included in his certificated authority.

A witness for the defendant stated that Cain has been operating since June of this year with four 1970 11-passenger vans which will be equipped with external ski racks prior to the winter season. He advised that the Cain operation has steadily lost money since its inception but those who have invested in the business believe it can be profitable if the public becomes aware of its advantages and convenience. He stated that the route between Mammoth Lakes and the ski lifts and inn is the only route where they anticipate a profit in the near future. The rates charged are probably unprofitable, but are low to encourage people to travel by bus. If the route between Mammoth and the ski lifts is removed from the Cain operating authority the chance of building a successful bus operation will be about eliminated since Cain would be operating exclusively over marginal or unprofitable routes.

Cain testified as follows:

His drivers are warned to follow the routes posted in the buses and to stop only at the designated stops; several drivers have transported passengers to off-route destinations in an effort to promote business, but these men have been warned and one was discharged for repeated violations; the routes and stopping points are clearly designated in his certificate even though one highway has been improperly named; his buses ride empty now, but the business can be profitable if sufficient people decide they would rather ride than drive; he is maintaining several schedules to all points served to encourage people to take a bus; the only Cain route likely to produce a profit in the near future is between Mammoth and the ski lifts; if this route is lost defendant has a bleak future; the other routes are maintained to provide the promised countywide service,

but none have sufficient potential to be self-supporting in the foreseeable future; defendant is now a California corporation and has operated as such since June of 1970.

Complainant admitted that he advertised a reduced rate for groups traveling together that was never included in his Commission tariff. He testified that he notified the Commission of the proposed "group rate" to be adopted and was advised of the need to have the rate formally authorized and tariff pages published. He testified the new rate was mentioned and described in some of his brochures, but never was in effect because no one ever asked to be transported at the reduced rate; he stopped the advertising and abandoned the idea when it became obvious no one was interested.

#### Discussion

Ziebarth started his operation prior to Cain, but provided only two months' service during 1970. He was out of business when Cain started later in the year. Ziebarth will operate only four months a year at most, while Cain's service will be year-around over a much larger area. Cain is also a full-time bus operator and is entitled to an opportunity to furnish service in the Mammoth area. If complainant prevails the defendant will lose his best area and be required to operate solely over unprofitable routes.

#### Findings

1. Ziebarth transported passengers between Mammoth and the Mammoth Mountain Ski Lifts from February 3 through April 4, 1970.
2. Ziebarth operates only in the winter, while snow is on the highway to the ski lifts.
3. Ziebarth has adopted a one-way minimum rate of \$1.00 for adults and 50 cents for children, which is reasonable and compensatory.

4. Ziebarth advertised a group rate which was never authorized by this Commission nor included in his tariffs.
5. Complainant requests herein that Cain be ordered to cease transporting passengers between Mammoth and the ski lifts.
6. Cain is providing a needed bus service in two adjacent counties during all twelve months of the year.
7. Cain's operation has been unprofitable since its inception in June of 1970, but all schedules are still maintained.
8. Cain has adopted a 50-cent minimum fare which is probably inadequate and unprofitable.
9. Cain drivers have occasionally transported passengers to off-route destinations and have stopped at nonscheduled stops.
10. Cain incorporated Mammoth Stage Lines prior to June of 1970, but has never transferred his operating authorities to the corporation.
11. Motels and resorts in the Mammoth area favor continued service by both parties herein.
12. If complainant prevails the defendant's entire operation will consist of unprofitable routes.
13. The Mammoth Lakes road leaving Highway 395 goes not only to Mammoth Lakes but also to the ski lift and the inn.

#### Conclusions

1. Complainant should cease and desist from advertising rates until they have been authorized by this Commission.
2. Defendant should cease and desist from picking up or depositing passengers off his routes or at unauthorized stops.
3. Defendant should review his rate structure to determine if it is compensatory.
4. Defendant's Mammoth Lakes route is included in his certificated authority.

5. Defendant should transfer his operating authority to the corporation without delay.

6. The complaint in Case No. 9093 should be denied.

O R D E R

IT IS ORDERED that the complaint is denied. ✓

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

Dated at San Francisco, California, this 19<sup>th</sup> day of JANUARY, 1971.

President

William J. Quinn  
Thomas J. Quinn  
Vernon L. Sturgeon

Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.