

Decision No. 79032

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion to determine what should)
be the proper smoking regulations)
on Passenger Stages in California.)

Case No. 9138
(Filed October 27, 1970)

W. L. McCracken, Attorney at Law, for Greyhound Lines-West, Division of Greyhound Lines, Inc., The Gray Lines, Inc., and California Parlor Car Tours, Inc.; Elfriede Fasal, M.D., for California Interagency Council on Cigarette Smoking and Health; C. J. Kearney, for Continental Trailways; Jack Leibman, M.D., for San Francisco Interagency Council on Smoking and Health; Lawrence Z. Feigenbaum, M.D., for San Francisco Interagency Council on Smoking and Health; John L. Hughes, for The Gray Line Tours Company; Russell & Schureman, by R. Y. Schureman, Attorney at Law, for American Buslines, Inc., Continental Pacific Lines, Continental Trailways, Inc.; R. W. Russell, by K. D. Walpert, for City of Los Angeles; John F. Findly, for American Cancer Society of Los Angeles County; and Richard T. Walden, M.D., for Loma Linda University; interested parties.
William D. Figg-Hoblyn, Attorney at Law, for the Commission staff.

O P I N I O N

This investigation was instituted on October 27, 1970, to determine whether smoking should be eliminated on passenger stages operating in California.

Public hearings were held on January 20, 1971, in San Francisco and January 27, 1971, in Los Angeles before Examiner Fraser. Only the Commission staff presented evidence, although counsel for both Greyhound Lines and Continental Trailways cross-examined witnesses and made closing statements. The matter was submitted in Los Angeles on the last day of hearing.

A transportation engineer from the Commission staff placed his report in evidence as Exhibit 1 and testified that the following regulations are now in effect.

Public Utilities Commission General Order No. 98-A, Part 8 - Passengers, adopted June 29, 1965, states:

"8.00 Smoking by Passengers on Passenger Stages and Trolley Coaches.

"8.01 Smoking by Passengers Prohibited in Urban Service. A passenger shall not smoke or carry a lighted cigarette, pipe or cigar on any passenger stage or trolley coach operating in urban service.

"8.02 Smoking of Cigarettes Permitted in Other Than Urban Service. A passenger shall not smoke on or carry a lighted cigarette, pipe or cigar on any passenger stage operating in other than urban service, with the exception that a passenger may smoke a cigarette only, in the last four rows of seats, provided that:

- (a) Passenger stage is equipped with ventilating blowers capable of delivering at least 1200 cubic feet per minute of air into the passenger stage of which 20 percent is fresh air.
- (b) Ventilating blowers are operating.
- (c) Cigarette ash trays are provided."

He testified that the manual issued to the drivers of Greyhound Lines, Inc., has the following entry under "Smoking by passengers":

"Smoking is permitted in certain seats only, and Driver shall politely call this to the attention of any passengers violating this rule and request them to sit in the proper section. Whenever smoking by passengers annoys the others, it should be called to the offending passengers' attention and an endeavor should be made to persuade them to discontinue same. Drivers should notify passengers before leaving terminals that smoking is permitted only in places provided for that purpose. In states where laws governing smoking are in effect, such laws must be observed."

This instruction is probably typical of what steps drivers are expected to take to promote the enforcement of the smoking regulations.

The witness testified that informal complaints have been received by telephone and letter to advise that the regulations are not being enforced, or to complain about being subjected to the smoking of others while riding in a bus. The witness testified that 623 letters dated April 21, 1970, with the staff proposal to prohibit smoking on inter-urban buses attached as Appendix A, were mailed to stimulate public reaction to the proposal; 138 of the letters went to passenger stage corporations; 23 to public transit systems; 58 to counties and 404 to cities; only 17 replies were received; 4 were opposed to eliminating smoking; 12 favored its elimination and one was undecided. The witness testified that the results of the distribution of letters showed little public interest, although the great majority of replies received favored the elimination of smoking on buses.

The witness inspected buses operated by Greyhound Lines, Continental Trailways and Peerless. All had ventilation systems, and all but one had air-conditioning plants. The air-conditioning units were all rated to deliver well in excess of the 1,200 cubic-feet per minute of air specified in Paragraph 8.02 (a) of the Commission's General Order No. 98-A. He testified that he rode a Greyhound bus from San Francisco to San Jose on January 18, 1971, and observed several people smoking in the center and front of the bus; the driver made no effort to stop the smokers and did not mention the rule that smoking is restricted to the last four rows. He stated there was a printed sign regarding smoking over the driver's head, but it couldn't be read from the rear of the bus. He advised that he inspected 14 buses (8 Greyhound, 3 Continental Trailways, 3 Peerless) and observed a variety of signs referring to smoking. The message was stenciled above the windshield on the inside of the bus; and the signs read "No Smoking", or "Smoking on this

bus prohibited by law while in the State of New Jersey," or "Cigarette smoking only unless prohibited by law," or "In California cigarette smoking only is permitted in last four rows of seats," or "Smoking prohibited by law in..." (giving a list of cities, counties, and states). He stated that he observed some of the signs were faded and illegible a few rows behind the driver. The witness further testified that the complaints about smoking on buses, the difficulty of enforcing the present regulations, and the expense of partitioning buses to provide designated seats for smokers are the basis for his recommendation that smoking be prohibited on the bus equipment used by passenger stage corporations in intercity service. He further recommended that Sections 8.00, 8.01, 8.10 and 8.11 of Commission General Order No. 98-A be amended (Exhibit 1, Pages 5, 6) and that Section 8.02 be deleted so as to prohibit smoking on other than urban service in the State of California and to provide that one "who is smoking or carrying a lighted cigarette, pipe or cigar" (Page 6, Exhibit 1) may be refused admittance to a bus, or ejected therefrom, if he, or she, continues to smoke while a passenger.

The staff provided testimony from two doctors who represented the San Francisco Interagency Council on Smoking and Health, a doctor from the California Interagency Council on Smoking and Health and a doctor appearing for the Committee on Environmental Health of the San Francisco Medical Society. All were in favor of eliminating smoking because of its effect on the health of the smoker. One doctor testified that recent articles in medical journals have described tests and experiments which indicate that cigarette smoke may have some effect on nonsmokers who are continually exposed to it. He testified one article indicated there is evidence that children of smoking parents have more respiratory problems while young than children of nonsmoking parents; that the carbon monoxide in cigarette smoke is absorbed in the blood stream of everyone who inhales it; that many people are hypersensitive to cigarette smoke, especially those with certain allergies; and that those with a heart condition

may suffer harmful effects if exposed to a high concentration of cigarette smoke. The doctor testified that he has not been involved personally in any of the tests or experiments mentioned in the article quoted and that the waste products from industry and internal combustion engines contain most of the harmful ingredients found in cigarette smoke.

A doctor who specializes in internal medicine was a witness in Los Angeles. He testified that he recently completed twelve years of research on the effects of smoking and is convinced that cigarette smoke has an irritating effect on all who breathe it, especially in enclosed rooms or vehicles. He testified on cross-examination that probably 50% of those over 18 years of age are addicted to smoking and that the percentage of smokers in the lower economic brackets is increasing and decreasing among those who are more affluent and supposedly better informed. The witness agreed with the premise that most bus riders - with the exception of commuters - are people from the lower economic brackets.

A surgeon, who is also president of the Los Angeles branch of the American Cancer Society, attended the hearing in Los Angeles. He testified that many heavy smokers come to him with mouths or throats which harbor growths likely to develop into cancer. These patients are immediately advised to stop smoking and have a fair chance of becoming nonsmokers, if they can stay away from others who are smoking. If they are exposed to concentrations of cigarette smoke in public places, or buses and airplanes, their resolve is likely to weaken and they may start smoking again. Many have sensitive throat and mouth surfaces due to years of heavy smoking. These patients may be irritated by the smoke inhaled when others are smoking in their vicinity. He advised that many nonsmokers are irritated by smoke exhaled by others and suffer from watering or burning eyes, cough, and raw throat as a result of being exposed. He recommended that smoking be prohibited on all buses in California.

Three members of the public testified at the San Francisco hearing. A lady advised that she would be satisfied if smokers rode only in the last four rows while traveling by bus. She testified she has commuted for several months and has noticed that passengers smoke while the bus is enroute, regardless of their position on the bus. She further testified that the signs referring to smoking regulations are too small and are not legible beyond the third row of seats. The second witness testified as follows: He rode more than 3,000 miles on various passenger stages during the six months prior to January, 1971; he has frequently used Greyhound service between San Francisco and Los Angeles, San Francisco and Santa Barbara and San Francisco and Lafayette, although he is not a commuter; he is a nonsmoker and has been exposed to clouds of cigarette smoke produced by other passengers, especially when the bus is waiting at a station with the air conditioning and ventilation turned off; he complained frequently to drivers and station agents without result; he was usually advised that there are no laws prohibiting smoking on a bus; one driver quoted the regulation about smoking on buses and then stated it could only be enforced by a peace officer riding on the bus; the signs relating to smoking on the buses he rode were probably illegible or ambiguous, since he does not recall much about them; people smoke in all parts of the bus and the ventilation seems inadequate; drivers will not enforce the regulations, and the only way to eliminate the problem is to prohibit smoking on all passenger stages. The last public witness to testify was an area director for Smoke Watchers International, a nationwide organization which assists those who would like to stop smoking. He stated he was not authorized to speak as a representative of the national organization but personally favors the abolition of smoking in all public places.

Respondents presented no evidence. During cross-examination several of the medical experts agreed that smoking is not unlawful; that about half of those over 13 years of age smoke; that the percent

of smokers is much higher among those who are low on the economic scale, and that the majority of bus riders are from the lower income brackets, with the exception of commuters. Witnesses who were former smokers agreed that it is uncomfortable for a smoker to sit for an hour without lighting a cigarette, especially on a bus where the passenger can only read, talk or admire the view.

The counsel for the Trailways Bus System argued that more than half the adults in California smoke and are entitled to some consideration when they are passengers on a bus. If smoking is eliminated from all inter-urban passenger service, some smokers will stop using the buses and passenger revenues will decline. Bus operators must compete with airlines, trains, and the private automobile. If no one is allowed to smoke on a bus, while smoking is permitted on trains and airlines, the advantage granted is obvious.

The closing statement of the counsel for Greyhound Lines, West, emphasized that the competition provided by airlines is increasing annually, with more frequent service and economy fares on special flights. Counsel noted that a nearby smoker will inconvenience a nonsmoking passenger, also a crying baby, loud talk or laughter, a man who has not had a recent bath, or one who is drunk, or drinking, on the bus. He argued that prohibiting smoking on buses will not seriously inconvenience the nonsmoking passengers but will prompt many smokers to stop riding buses; also that enforcement of the prohibition rule would create an additional problem. Respondents, Greyhound and Trailways, favored retention of the present rule as the best compromise under the existing circumstances.

Discussion

The record does not justify the prohibition of smoking on passenger stages and trolley coaches. The complaints received are not persuasive when one considers that thousands of passengers are transported monthly without complaint or comment. The medical evidence concerning the effects of smoking on the smoker is

impressive, but the testimony regarding the effects of smoking on nearby nonsmokers is difficult to evaluate. It is based on articles in medical journals authored by doctors who are engaged in conducting varied experiments concerning the toxicity of cigarette smoke. The articles and testimony of the witnesses emphasize that the effects of the smoke on a nearby nonsmoker will depend on the concentration of smoke, the ventilation and air currents, the age and physical condition of the nonsmokers, length of time exposed and various other factors such as individual tolerance of the ingredients in the smoke. There was no testimony that the average nonsmoker's health is impaired by exposure to the smoke produced by a nearby smoker. This Commission insures public health and safety by directing the removal or cessation of unsafe conditions and practices. It is traditional that an individual's freedom of choice should be preserved, where no serious problem is created for others. The smoke is usually less of a bother than the alcoholic, one who chews tobacco or garlic, or the compulsive talker. If smoking were prohibited, a further decline in bus patronage would undoubtedly result. The testimony reveals that a smoker will normally consume several cigarettes during a bus ride. If he can't indulge the habit on a bus, it is logical to assume that he will favor another means of transportation.

Most passenger stages in California have one or more interior signs to inform passengers of applicable smoking regulations. The signs are not uniform and frequently not informative.

All buses registered in California should have a minimum of two interior signs to advise passengers of the current smoking regulations, one notice to be over the windshield and the other over the rear window or over a side window at the back of the bus. The signs should advise that smoking is only permitted in the last four rows and that only cigarettes may be smoked. The signs can be designed to be removed or covered if the bus operates in other jurisdictions.

Most smokers will cooperate as soon as the signs are posted. Drivers should request that violators move to a seat in the area designated for smoking. If all seats on the bus are occupied, someone in a rear row may be willing to exchange seats with the smoker.

Section 8.01 of General Order No. 98-A prohibits smoking on buses operating in urban service. This regulation will not be changed, "Urban Service" is service performed within metropolitan or built-up areas, or between such areas in close proximity, where the one-way route mileage is not more than 50 miles (Sec. 2.04, G.O. 98-A).

Findings

1. The nonsmoker will suffer some discomfort when exposed to concentrated cigarette smoke in an enclosed area, but there is no proof that his health is impaired thereby.
2. It is estimated that 50 percent of the population of this State over 18 years of age are smokers.
3. It is further estimated that about 65 percent of those in the lower economic brackets smoke and that most passenger stage riders, with the exception of commuters, are from this segment of the population.
4. Bus riders as a group were not represented at the hearings, and no surveys were made at buses or bus stations to determine the average bus rider's opinion regarding smoking on buses.
5. It is difficult for most smokers to sit in a bus for an hour or more without lighting a cigarette.
6. If smoking is prohibited on passenger stages, fewer smokers will travel by bus, especially since certain air fares have been substantially reduced.
7. The elimination of cigarette smoke as an inconvenience to nonsmokers is not an adequate reason to adopt a smoking regulation which may cause a substantial reduction in passenger stage revenue.

8. The posting of smoking regulations in the passenger compartment of each passenger stage and trolley coach in inter-urban service will insure the cooperation of almost all passengers, as long as an adequate number of seats are reserved for the use of smokers.

Based upon the record and the findings herein, the Commission concludes that:

1. Section 8.02 of General Order No. 98-A should be amended by the addition of subparagraph (d) thereto, to provide for interior signs at the entrance and rear of each passenger bus to notify all riders that smoking of cigarettes only is permitted in the last four rows of seats.

2. The investigation in Case No. 9138 should be discontinued.

O R D E R

IT IS ORDERED that:

1. Section 8.02 of General Order No. 98-A is amended in the manner set forth in Appendix A attached hereto and made a part hereof.

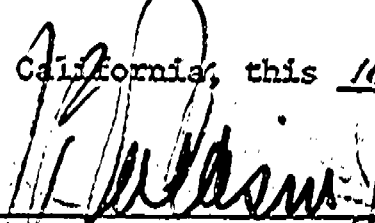
2. Decision No. 69331, dated June 29, 1965, in Case No. 5098, as amended, is further amended by the addition of the amendment to Section 8.02 of General Order No. 98-A adopted by paragraph 1 hereof.


3. A copy of this decision shall be mailed to each passenger stage corporation under the jurisdiction of this Commission.


4. All passenger stage corporations shall comply with the terms of Section 8.02 as herein amended on or before October 1, 1971.


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

Dated at San Francisco, California, this 10th day of AUGUST, 1971.



Chairman






Commissioners

C. 9138 jmd

APPENDIX A

General Order No. 98-A

Part 8
8.02

- * (d) Passenger Stage has an interior sign at the entrance and over or near the rear wall of the passenger compartment, to advise all passengers that cigarette smoking only is permitted in last four rows of seats.