

Decision No. 79084

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mammoth Stage Lines, Inc., a Cali- )  
 fornia corporation, )  
 Complainant, )  
 vs. )  
 William Bouch, doing business as )  
 Mammoth Taxi, )  
 Defendant. )

Case No. 9180  
(Filed January 11, 1971)

W. Garfield McDaniel, Attorney at Law, and  
Richard L. Cain, for Mammoth Stage Lines,  
 Inc., complainant.  
Phyllis G. Knight, Attorney at Law, for William  
 Bouch and Joan Bouch, doing business as  
 Mammoth Taxi, defendant.

O P I N I O N

This complaint was filed on January 11, 1971. Complainant operates as a passenger stage corporation in Inyo and Mono Counties, California, with 11-passenger Ford vans in scheduled daily service, transporting 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. The original authority was granted by Decision No. 76672, dated January 13, 1970, in Application No. 51539. Complainant also holds a Class "B" charter-party carrier certificate under Decision No. 78650, dated May 4, 1971, in Application No. 52471, which authorizes operation from a service (pickup) area encompassing a radius of 40 miles from complainant's terminal at Bishop, California.

Defendant, William Bouch, and his wife, Joan, operate a taxi service under an annual franchise granted by the Mono County Board of Supervisors. Bouch and his wife hold no operating authority from this Commission.

The complaint alleges that on or about December 21, 1970, defendant operated taxis between Mammoth Village and the Mammoth Mountain Ski Lift, over the route of the complainant at a fare of 75 cents or 50 cents per passenger. It is further alleged that on or about the same date defendant's vehicles picked up passengers at several of complainant's designated bus stops just before the arrival of one of complainant's scheduled buses. It is further alleged that defendant's vehicles have transported patrons of the complainant between various stops served by complainant. The complaint prays for a cease and desist order against the defendant to require the latter to stop interfering with complainant's customers and routes. Defendant filed an Answer on June 1, 1971, which admits operating as a taxicab and denies all other allegations of the complaint.

A hearing was scheduled on March 19, 1971, in Mammoth Lakes. Defendant suffered a heart attack, and the hearing was continued to a date to be set after defendant recovered enough to attend. Complainant subsequently alleged that the claimed violations were continuing and that Mammoth Stage Lines, Inc., was suffering irreparable loss therefrom due to the continuing loss of needed business. A second hearing was scheduled and held on June 4, 1971, in Mammoth Lakes before Examiner Fraser. Neither William Bouch nor Joan Bouch was present, although they were represented by counsel and presented testimony from several cab company employees. On April 26, 1971, complainant filed a motion to include Joan Bouch, also known as Joan Hawthorne, as a defendant herein. There was no objection to the motion, and it was agreed on June 4, 1971, that Mrs. Joan Bouch could be brought in as a party defendant.

The president and general manager of the complainant corporation also drives a bus. He testified as follows: The period from about December 20 through about January 12 is the busiest each year at Mammoth Lakes; at least 10,000 skiers and tourists come by bus, aircraft and private vehicle. Many prefer public transportation because they do not like to drive in snow. This period is critical

to complainant because it is the only time of the year when business is very good. During this period he frequently observed defendants' vehicles stopping at motels, which were designated bus stops of complainant, just prior to the scheduled arrival of the latter's bus, which he was driving. On several occasions passengers offered a fare of 75 cents after he transported them from Mammoth Village to the ski lift. When he advised the fare was 50 cents he was asked why 75 cents had been charged the day before - by defendants' cab company. Defendants' cabs had a sign in the window to advertise the 75 cent fare and an additional sign reading "Ride the Shuttle Bus". The witness stated that in his opinion the sign was advertising the service provided by the defendants between Mammoth Village and the Mammoth Mountain Ski Lifts. He observed defendants' taxis meeting the incoming flights of Trans-Sierra Airlines at Mammoth Airport and has overheard taxi drivers quoting a fare of \$1.00 per person for transportation between Mammoth Airport and the ski area. The witness produced photographs (Exhibits 1-5) showing taxicabs at the Bishop Airport on March 23, 1971. He testified one of defendants' 11-passenger Ford vans was at the airport at 9:45 A.M. on March 21 and 23, 1971, to pick up passengers from a Trans-Sierra flight and apparently transport them to the Mammoth Lakes area, since the aircraft could not land at Mammoth Airport due to bad weather. The witness noted that Bishop Airport is in Inyo County where defendants have no authority to operate. Unless otherwise noted, all transportation referred to occurred in the last ten days of December, 1970, and the first two weeks of 1971.

The vice-president of the complainant corporation also drives a bus. He testified as follows: While driving one of complainant's buses on December 21, 1970, he observed a Mammoth Taxicab departing from a motel, which was one of his regular stops, just as he drove his vehicle in. Later he saw the same cab leaving another motel which was a regular stop on his route. He saw one passenger, who normally rides with him, in the taxicab. A motel operator advised

him the cabs had been by just prior to his schedule on two days in succession. Most of the time the bus was not full at the end of his route, because some of his passengers were carried by defendants' cabs. He observed the defendants' cabs in complainant's bus stops frequently during the period from December 20, 1970, through about January 10, 1971. He has since observed them occasionally during busy weekends. He has observed defendants' cabs meeting Trans-Sierra flights and taking all the passengers. He was informed the taxi fare was \$1.00 for transportation from Mammoth Airport to either Mammoth Lakes or the ski lifts. The normal population of Mammoth Lakes is 670 although it increases to 7,000 or 8,000 during the Christmas holidays.

Defendants' first witness was a construction man who drove a cab during the 1970-1971 Christmas holidays. He testified that cabs were dispatched after someone telephoned to request transportation. Cabs would also stop if someone flagged them down and occasionally would park in various areas to wait for a call, but no cabs followed a route or deliberately picked up complainant's customers. He explained the clipboard carried by all of defendants' drivers, which (Exhibits 6,7,8,9) included a mileage chart with rates to be charged, a map of the area, a Greyhound bus schedule and a business card from Mammoth Taxi. He testified all rates are on a mileage basis, and the rate chart given each driver is to insure that the charge to each area will be uniform. He further testified that when a driver picks up a passenger he notes on the clipboard the pickup point, the destination, the time and the fare. On a call, the driver notes when he received the call and where he is going. The drivers pick up a maximum of 3 passengers, although some former employees picked up more. People are usually willing to share a cab and will divide the fare, but if the first passenger does not want to share the cab, he will be transported by himself. He testified that occasionally people would call a cab and then get on a Mammoth Stage Lines bus before the cab arrived, because visitors frequently confused

the two types of service. He testified that during the Christmas holidays calls from motels come in all day, and a single cab may visit several motels to pick up those who called. He testified cabs frequently wait at the Greyhound Depot because patrons will call from Bishop and request that a cab meet them when the bus arrives. He testified he has transported passengers from the Mammoth Airport to Mammoth Lakes, or the ski lift, for \$1.00 per passenger; that William and Joan Bouch are the sole owners of Mammoth Taxi; and that he worked for them as a favor, without pay.

A member of the Mono County Board of Supervisors testified that the taxi franchise was granted to furnish Mono County with its first taxi franchise; the Supervisors did not stipulate the rates to be charged, and no complaints have been received. The franchise was granted in June of 1968 to provide needed public transportation, especially to meet the Greyhound buses, when called.

Mrs. Bouch's brother is the office manager of the taxi company. He testified as to how the mileage rates were compiled and corroborated the testimony of the cab driver witness on how the cabs operated. He testified that they transport passengers from Bishop Airport to Mammoth Lakes at \$5.00 a person, under an agreement with Trans-Sierra Airlines, when bad weather closes down the Mammoth Airport. He noted they have been asked to perform this service only three times since Trans-Sierra started operating. He testified that the Airline has painted three of the taxis for defendants, and the latter advertise in the cabs the air service provided. The advertisement "Ride the Shuttle Bus" displayed on the cabs was an advertisement the cab company was paid to display by the operator of the shuttle bus, who went out of business in December of 1970. He denied that defendants have taken over the shuttle bus and then advised that during the busy season in Mammoth Lakes, all the transportation available is utilized in carrying people to or from the ski area on Mammoth Mountain. The witness stated that during the busy season in Mammoth, drivers may charge a minimum flat rate, if required to get riders for the cabs. The witness admitted using

leased buses during the Christmas rush to boost their carrying capacity and said he receives no pay for his services. The owners of a motel which complainant used as a regular stop testified defendants' cabs have never come by his motel unless called.

Discussion

Complainant alleges that defendants' cabs are picking up passengers at bus stops just prior to the arrival of the bus.

This allegation is not supported by the evidence. The bus stops mentioned are all large motels, and the period referred to is the three-week Christmas vacation when all cabs are busy. It is reasonable to assume that cabs go to the motels because they have been called there or because a prospective patron has flagged the cab from the front of the motel.

One Ziebarth operated one or more scheduled shuttle buses on several schedules from Mammoth Lakes to the ski lifts until his bus broke down on December 20 or 21, 1970, when he ceased operating. Complainant alleged that the defendants continued operating the Ziebarth shuttle bus without any authority from this Commission by using two buses leased for the purpose.

This allegation is not supported by the evidence. Defendants denied the charge, and no testimony was provided from anyone who rode the leased buses or saw them operated as a substitute for the Ziebarth bus. The transportation of passengers between Mammoth Lakes and the ski lift is the most profitable operation in the county and essential to the financial stability of both parties. The evidence indicates that the leased buses may have been used by the defendants for other purposes.

Complainant alleged that defendants have published fares based on mileage, with extra increments authorized for each additional passenger, and that these fares are disregarded during the Christmas rush, when defendants charge an individual fare of 50 cents or 75 cents to transport people from Mammoth Lakes to the ski lifts.

Defendants' service differs from the normal taxicab function in the following particulars: (a) The fares cabs charge are usually carefully regulated and computed by a meter which must be in the cabs at all times; Mono County does not regulate the defendants' rates, and any charge can be imposed as long as no complaint is filed; (b) cabs in more populated areas go wherever requested by the passenger, in any direction and to varying distances; during the busy season, all of the passengers in the Mammoth area go to the same place whether they ride the cab or the bus - up to ski in the morning and back in the late afternoon; (c) most taxicabs operate under identical conditions the year round; in Mammoth most business is compressed into a three-week period, with occasional busy weekends; (d) also, defendants are providing a needed service to satisfy a public need.

There is no basis in the record to justify the issuance of a cease and desist order against the defendants because of the rates charged.

Complainant alleges that defendants' cabs are providing a scheduled service to the Mammoth Airport to meet all Trans-Sierra flights and are charging individual fares for the service, thereby operating as a passenger stage corporation without the required authority from this Commission.

Section 1031 of the Public Utilities Code provides in part as follows:

"1031. No passenger stage corporation shall operate or cause to be operated any passenger stage over any public highway in this State without first having obtained from the Commission a certificate declaring that public convenience and necessity require such operation,..."

Section 1035 of the Public Utilities Code reads as follows:

"1035. Whether or not any stage, auto stage, or other motor vehicle is being, or is proposed to be operated as a passenger stage corporation 'between fixed termini or over a regular route' within the meaning of this part is a question of fact, and the finding of

the Commission thereon is final and is not subject to review. Any act of transporting or attempting to transport any person or persons by stage, auto stage, or other motor vehicle upon a public highway of this State between two or more points not both within the limits of a single city or city and county, where the rate, charge, or fare for such transportation is computed, collected, or demanded on an individual fare basis, shall be presumed to be an act of operating as a passenger stage corporation within the meaning of this part."

Defendants are operating without authority as a passenger stage corporation by providing a scheduled service to Mammoth Airport at a fare of \$1.00 per passenger. The service was arranged with the airline and not the individual passenger. The fare was suggested by the airline and is collected from each passenger. This transportation does not qualify as a taxi operation. A cease and desist order will therefore be issued.

Complainant alleges that defendants' service from Bishop Airport to Mammoth Lakes, which transports passengers from Trans-Sierra flights for \$5.00, is also an unlawful and unauthorized passenger stage operation.

Defendants charged individual fares for this service, which was over a regular route and between fixed termini. It was also a scheduled service, meeting all Trans-Sierra Aircraft diverted to Bishop from Mammoth Airport. It is not "on call" since all diverted flights are served by prior agreement with the airline. The service to Bishop Airport provided by the defendants is a passenger stage operation and should be discontinued unless proper operating authority is obtained from this Commission. A cease and desist order will therefore be issued as requested by complainant.

Charter operations were not within the scope of the present complaint, although complainant requested that the Commission investigate the defendants' charter operations.



Defendants are hereby warned that before people can be transported on chartered buses at a charge based on "time in transit" or "distance traveled", it is necessary to obtain authority from this Commission to operate as a charter-party carrier of passengers.

Findings

1. Complainant herein holds a Class "B" charter-party carrier certificate and provides service as a passenger stage corporation along Highway 395 in Mono and Inyo Counties, between June Lake Junction and Bishop.

2. William Bouch and Joan Bouch operate a taxi service under authority granted by the Mono County Board of Supervisors in June, 1968.

3. The evidence is insufficient to prove that defendant's cabs have picked up complainant's passengers at bus stops.

4. Defendants are not operating as a passenger stage corporation with leased buses, between Mammoth Village and the Mammoth Mountain Ski Lifts.

5. The evidence is insufficient to prove defendants authorized their cab drivers to charge individual fares in transporting passengers between the ski lifts and Mammoth Village.

6. Defendants have provided scheduled transportation from Mammoth Airport to Mammoth Lakes and the Mammoth Mountain Ski Lifts, for passengers arriving on all Trans-Sierra Airline flights, at an individual one-way fare of \$1.00 per passenger.

7. Defendants have provided scheduled transportation from Bishop Airport to Mammoth Lakes and the Mammoth Mountain Ski Lifts, for all passengers arriving on the Trans-Sierra flights diverted to Bishop Airport because of bad weather at Mammoth Airport, at an individual one-way fare of \$5.00.

8. Defendants do not hold any operating authority from this Commission.

9. Joan Bouch, also known as Joan Hawthorne, is a co-owner of Mammoth Taxi.

Based on the above findings, the Commission concludes that defendants have operated as a passenger stage corporation in transporting persons on an individual fare basis between Mammoth Airport and Mammoth Lakes, or the Mammoth Mountain Ski Lifts; defendants also operated as a passenger stage corporation in transporting persons on an individual fare basis between Bishop Airport and Mammoth Lakes, or the Mammoth Mountain Ski Lifts. We further conclude that the motion to bring in Joan Bouch, also known as Joan Hawthorne, as a defendant herein, should be granted. All other charges in the complaint should be dismissed for failure of proof.

O R D E R

IT IS ORDERED that:

1. The motion of complainant to join Joan Bouch, also known as Joan Hawthorne, in this proceeding as a party defendant is hereby granted, and Joan Bouch, also known as Joan Hawthorne, and the wife of William Bouch, is made a defendant herein.
2. Defendants William Bouch and Joan Bouch, also known as Joan Hawthorne, as individuals, and as a partnership doing business as Mammoth Taxi, shall cease and desist from operations as a passenger stage corporation in the transportation of persons on an individual fare basis between Mammoth Airport and Mammoth Lakes or Mammoth Mountain Ski Lifts.
3. Defendants William Bouch and Joan Bouch, also known as Joan Hawthorne, as individuals, and as a partnership doing business as Mammoth Taxi, shall cease and desist from operations as a passenger stage corporation in the transportation of persons on an individual fare basis between Bishop Airport and Mammoth Lakes or the Mammoth Mountain Ski Lifts.
4. All other charges in the complaint are dismissed.

C. 9180 jmd

The Secretary of the Commission is hereby directed to cause personal service of this order to be made upon the defendants. The effective date of this order shall be twenty days after the completion of such service on defendants.

Dated at San Francisco, California, this 24<sup>th</sup>  
day of AUGUST, 1971.

[Signature]  
Chairman  
William Lyons, Jr.  
[Signature]  
Vernon L. Sturgeon  
[Signature]  
Commissioners