

Decision No.

79874**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of AIRPORT TRANSPORTATION CO., a
corporation, for a Certificate of
Public Convenience and Necessity
to operate as a passenger stage
corporation and to issue stock.

Application No. 52866
(Filed September 17, 1971;
Amended November 23, 1971)

Frank Loughran and Ann Pougiales, Attorneys at Law,
for Airport Transportation Co., applicant.
John C. Rosendale, Attorney at Law, for Airport
Cab & Limousine Co., protestant.
Sean A. Mahon and William Bricca, Attorney at Law,
for the Commission staff.

O P I N I O N

Applicant, by its original application, seeks a certificate of public convenience and necessity to operate as a passenger stage. The operations will be conducted pursuant to a contract with the Monterey Peninsula Airport District to provide service to and from Monterey Airport (Monterey Peninsula Municipal Airport) within Monterey, New Monterey, Pacific Grove, Carmel, Seaside, Del Rey Oaks, Fort Ord, and also Salinas, via the most appropriate and convenient routes.

The original application further sought authority under Sections 816-819 of the Public Utilities Code to issue and sell for cash 100 shares of capital stock, 50 to be issued to Curtis D. Sanders and the remaining 50 to Randall L. Ward. Applicant is a newly formed California corporation. It was alleged that both shareholders have extensive experience in the management of Bay Rapid Transit, a passenger stage corporation operating in the Monterey Area.

The application described Airport Cab & Limousine Co. of Monterey as being the only common carrier with whom applicant would compete. Service was made on this enterprise.^{1/}

^{1/} Airport Cab & Limousine Co. is the name under which the partnership of Hafner and Lauderbaugh conducts business.

Applicant alleges that the public convenience is demonstrated by the District's intention to enter into a contract with applicant for which it was the successful bidder. The proposed fares are set forth below:

Between Monterey Peninsula Airport	
And	Fares
Carmel	\$2.00
Del Rey Oaks	1.75
Monterey	1.25
New Monterey	1.75
Pacific Grove	2.00
Presidio of Monterey	1.75
Seaside	1.75
Fort Ord	(1) \$ 3.75 (2) \$2.00 (3) \$1.75 (4) \$1.25
Salinas	(1) \$15.00 (2) \$7.50 (5) \$5.00

- (1) Fare per passenger if transportation is performed exclusively for a single passenger.
- (2) Fare per passenger if two passengers are transported on one bus at one time from and to the points shown.
- (3) Fare per passenger if three passengers are transported on one bus at one time from and to the points shown.
- (4) Fare per passenger if four or more passengers are transported on one bus at one time from and to the points shown.
- (5) Fare per passenger if three or more passengers are transported on one bus at one time from and to the points shown.

Applicant's service will be offered without schedules but rather will be on-call to accommodate the needs of passengers to meet both scheduled and unscheduled flights at the airport.

Dalton Hafner and Burt Lauderbaugh, a partnership doing business as Airport Cab & Limousine Company, filed a letter of protest on September 28, 1971 alleging that it also has a contract with the Airport District.

Because of the protest, prehearing conference was held on October 21, 1971 before Examiner Gilman. Hearings were set and held in Monterey before Examiner Gilman on November 15, 16 and 17 primarily

for the purpose of resolving the questions raised by the last sentence of Section 1032 of the Public Utilities Code^{2/} and the doctrine of City of Oakland v. Burns, 46 Cal. 2d 401.

Extensive testimony was taken from an official of the Airport District and from Mr. Hafner, one of the partners in the existing carrier, concerning the history of the relationships between the District, the existing carrier and the applicant.

At the close of the hearing it was suggested that there was a possibility of a settlement and submission was deferred to allow time for the detailed settlement to be negotiated. On November 23, 1971 an amended application was filed setting forth the terms of the agreement which in essence would admit Dalton Hafner as an equal shareholder in the new corporation, thus effectively removing the existing carrier's standing to protest under Section 1032.

On January 5, 1972 counsel for the partnership which comprises the existing carrier filed by letter an assent to the issuance of the certificate proposed by the amended application, indicating that upon issuance the partnership would seek rescission of the outstanding certificate.

Petition To Reopen

On January 24, 1972, Rudolph Dockter filed a petition to set aside submission herein and further to deny the certificate.

^{2/} "The commission may, after hearing, issue a certificate to operate in a territory already served by a certificate holder under this part only when the existing passenger stage corporation or corporations serving such territory will not provide such service to the satisfaction of the commission."

Petitioner Dockter was one of the original partners in the Airport Cab and Limousine Company operation. In Decision No. 75632 in Application No. 50970 the Commission approved the sale and transfer of Dockter's interest to Burt Lauderbaugh and the reissuance of the certificate to Hafner and Lauderbaugh, ex parte.

The Commission relied in part on a statement by Lauderbaugh indicating a net worth of \$389,000. Petitioner alleges that this statement was fraudulent.

The petition asserts that Dockter has a Superior Court judgment against Lauderbaugh for \$35,925.54 of the purchase price, assertedly unpaid and due and owing to Dockter.

While the theory of the petition is not entirely clear, petitioner apparently hopes that alleged fraud in the application would justify rescission of the Hafner-Lauderbaugh, and revival of the Hafner-Dockter, certificate. Inferably, petitioner would then seek to use whatever economic benefit he would derive as the successor in interest to Lauderbaugh in satisfaction of his judgment; petitioner makes no allegation of intent or ability to perform the public obligations required of the holder of a certificate of public convenience and necessity.

On February 14, 1972, an attorney for Rudolph Dockter informed us of the death of Burt Lauderbaugh, and of Dockter's intent to move to set aside Lauderbaugh's assent to the settlement in Superior Court as a preference to creditors.

We conclude that whatever rights are conferred by Section 1032 can be exercised only by one who has both de facto and de jure status as an existing carrier. Even if we should rescind our authorization of the Dockter-Lauderbaugh transfer, thus arguably reinstating Dockter as a de jure certificate holder, there would still, under the allegations of the petition be no apparent way that the Commission could be assured of continued adequate service to the public. Without such assurance, granting the relief sought by petitioner would frustrate rather than support the legislative objective underlying the last sentence of Section 1032 of the Public Utilities Code.

The petition should therefore be denied. Nor does it appear that the death of Burt Lauderbaugh lends any additional weight to Docktor's standing.

Other Matters

The issue of whether the public convenience and necessity would support at least one operation of the type proposed was not seriously contested. The previous existence of such an operation is in itself strong evidence of a public need.

Further, the type of flexible operations permitted under both old and new certificates permit the carrier substantial freedom to tailor his operational commitments and his financial commitments to the actual public needs demonstrated on a day-to-day basis.

Anti-competitive issues (Northern California Power Ass'n v. Public Utilities Comm.) need not be discussed in this proceeding since the grant of this certificate is not in itself anti-competitive. While anti-competitive pressures may in part have motivated the quasi-merger reflected in the amended application, whatever pressures there are, were proximately generated by the District's determination in its proprietary capacity that the necessary license for on-property operation should be exclusive.

Findings

We find that:

1. Public convenience and necessity require the continuation of service of the same type and at least the level heretofore provided by Airport Cab & Limousine Co.
2. The only practical method of providing such service lawfully is to grant a certificate to applicant.
3. The terms of the settlement contemplate a taking and holding of the stock of one public utility by another. The public convenience and necessity referred to in Finding 1 will not be served lawfully unless we authorize the transaction.
4. The issuance of stock referred to in Paragraph V of the amended application will not be adverse to the public interest,

is reasonably required for working capital and to obtain lawful service to meet the public convenience and necessity found to exist, and such purpose is not in whole or in part reasonably chargeable to operating expenses or to income.

Conclusions

We conclude that:

1. Applicant should be granted the certificate of public convenience set forth in Appendix A.
2. Applicant should be authorized to issue and sell for cash 99 shares of its \$10 par value stock in equal proportions to Dalton Hafner, Curtis D. Sanders and Randall L. Ward.
3. Dalton Hafner should be authorized to take and hold stock in applicant. ✓
4. Petitioner Dockter has stated a purely private cause of action which should be prosecuted in the civil courts rather than through this Commission.

Airport Transportation Co. is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, these rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS HEREBY ORDERED that:

1. A certificate of public convenience and necessity is granted to Airport Transportation Co., 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.

2. 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.

3. Applicant is authorized to issue and sell for cash 99 shares of its \$10 par value stock in equal proportions to Dalton Hafner, Curtis D. Sanders and Randall L. Ward for the purposes specified herein.

4. Dalton Hafner is authorized to take and hold stock in applicant. ✓

5. The petition of Rudolph Dockter is denied.

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

Dated at San Francisco, California, this 4th day
of APRIL, 1972.

[Signature]
Chairman
[Signature]
[Signature]
[Signature]
Commissioners

JM

APPENDIX A

AIRPORT TRANSPORTATION CO.
(a corporation)

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CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY

Showing passenger stage operative rights, restrictions, limitations, exceptions, and privileges applicable thereto.

All changes and amendments as authorized by the Public Utilities Commission of the State of California will be made as revised pages or added original pages.

Issued under authority of Decision No. 79874, dated
APR 4, 1972, of the Public Utilities Commission
of the State of California, on Application No. 52866.

SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS, AND SPECIFICATIONS.

Airport Transportation Co., a corporation, is authorized to transport passengers and their baggage arriving or departing on airplanes which are operated to or from the Monterey Peninsula Airport over and along the routes hereinafter described, subject, however, to the authority of this Commission to change or modify said routes at any time and subject to the following provisions:

- (a) Motor vehicles may be turned at termini and intermediate points, in either direction, at intersections of streets or by operating around a block contiguous to such intersections, in accordance with local traffic regulations.
- (b) When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.
- (c) Applicant shall transport only passengers destined to or originating at the Monterey Peninsula Airport.

SECTION 2. ROUTE DESCRIPTION.

Route

Between Monterey Peninsula Airport on the one hand, and Carmel, Monterey, New Monterey, Pacific Grove, Presidio of Monterey, Seaside, Ford Ord, Salinas and points intermediate thereto, on the other hand.