

Decision No. 80041

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of HARRY HERBERT, an  
individual doing business as  
HERBERT'S BUS SERVICE, of Oxnard,  
for a permit to operate as a  
Class "B" charter-party carrier  
of passengers, (File No. TCP-23-B). )

Application No. 52915  
(Filed September 30, 1971)

Harry Herbert, for Herbert's Bus Service,  
applicant.

W. L. McCracken, Attorney at Law, for  
Greyhound Lines-West; Carl Benz, for  
Channel Islands Bus System; Robert A.  
Burrowes, for Consolidated Street  
Railways; and Peter S. Dworkis, for  
California Coast Charter Bus, Inc.,  
protestants.

Don Harold Lee, for American Charter Lines,  
interested party.

O P I N I O N

The applicant, Harry Herbert, an individual, requests a Class B certificate to operate as a charter-party carrier of passengers.

Public hearing was held in Los Angeles before Examiner DeWolf on February 9, 1972 and submitted on the same date. The protestants are: Greyhound Lines-West, Channel Islands Bus System, Consolidated Street Railways, and California Coast Charter Bus, Inc.

The applicant testified that he has assets of \$3,420.00 consisting of one 1946 37-passenger bus valued at \$1,500.00 and other assets of \$600.00 in materials and supplies and \$1,300.00 in cash. Applicant seeks to operate the bus service within a 40-mile radius of Oxnard to serve members of a religious organization to take its members to meetings and on trips within the area. Applicant

testified that the bus would be operated for the riders for out-of-pocket costs and not for profit. No schedules for cost of operations or fares were offered and no public witnesses appeared in support of the application.

The applicant testified that he was advised that he should file the application by a member of the Commission staff who recently retired and that he believes that the filing fee of \$200.00 should be refunded in the event the application is denied. Applicant did not submit any authority to support the requested refund.

Of the several protestants who opposed the application, Greyhound Lines introduced into evidence Exhibit 1, its certificate; Exhibit 2, a map of its service territory; Exhibit 3, equipment list; Exhibit 4, a brochure advertising its service; and Exhibit 5, pages 1 through 8, analysis of its revenues.

The numerous protestant witnesses testified that they are operating in the territory requested by applicant and seek the benefits of Section 5375.1<sup>1/</sup> of the Public Utilities Code for existing charter party carrier of passengers.

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1/ Section 5375.1 of the Public Utilities Code provides:

"Notwithstanding the provisions of Section 5375, if the applicant desires to operate in a territory already served by the holder of a certificate, the commission shall hold a hearing before granting the certificate. The commission shall not grant a certificate to such an applicant unless it can be shown that the existing charter-party carrier of passengers serving the territory is not providing services which are satisfactory to the commission and adequate for the public. In no event shall the commission issue more certificates than public convenience and necessity require and the commission shall place any restrictions upon such certificates as may reasonably be necessary to protect any existing charter-party carrier of passengers."

The witnesses for protestants testified that issuance of a certificate to the applicant, if used by him, would reduce their operations, take away some of their customers, and impair their efficiency. All protestants witnesses testified that they have equipment available to handle more business which if available would increase their ability to serve the public.

Findings of Fact

Upon consideration of the evidence, the Commission finds that:

1. The applicant has not established that he has the financial ability to institute and maintain the proposed service or that there is in fact any public need for such service.
2. The applicant has not submitted any studies of operations, and has only one old bus with no proposals for other equipment or for maintenance and repairs and such proposals are totally inadequate for satisfying public convenience and necessity.
3. Applicant did not present any evidence to show that any public use would be made of his proposed service or that any public need exists for the proposed service.
4. The protestants, who are existing charter-party carriers of passengers serving this territory, are providing services in this territory which are satisfactory to the Commission and adequate for the public.
5. The applicant was misinformed as to the qualifications and requirements of charter-party carriers of passengers and the application was filed in error. The filing fees paid by applicant in error should be refunded.

6. The applicant may be otherwise qualified for a permit under Section 5384 of the Public Utilities Code and should have an opportunity to make such filing if he so desires.

Based upon the evidence and findings, the Commission concludes that no further certificate for charter-party carrier of passengers is required at the present time in the territory requested by applicant and that the application should be dismissed.

O R D E R

IT IS ORDERED that the application of Harry Herbert, an individual, doing business as Herbert's Bus Service, for a permit to operate as a Class B charter-party carrier of passengers in the Oxnard territory is hereby dismissed.

IT IS FURTHER ORDERED that the fees paid by applicant, Harry Herbert, an individual, in error in filing this application shall be refunded to him if so requested by applicant.

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

Dated at San Francisco California, this 9th  
day of MAY, 1972.

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