

ORIGINAL

Decision No. 80097

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion to determine its )  
jurisdiction over security issues )  
of passenger air carriers. )

Case No. 9267

Graham & James, by Boris H. Lakusta, Attorney at Law, for Air California; Mark T. Gates, Jr., Attorney at Law, and Paul C. Barkley, for Pacific Southwest Airlines; Cohen, Oster & Millard, by Robert M. Oster, Attorney at Law, for Golden West Airlines, Inc.; Loughran, Berol & Hegarty, by Marshall G. Berol, Attorney at Law, for Borrego Springs Airline; Caditz, Howard & Garcia, by Glenn A. Howard, Attorney at Law, for Golden Pacific Airlines, Inc.; respondents. Scott K. Carter, Attorney at Law, for the Commission staff.

ORDER GRANTING EXEMPTION DURING HEARING

On August 31, 1971, the Commission by Case No. 9267 instituted an investigation into the public utility status of passenger air carriers. In its order instituting this investigation the Commission named as respondents Air California (Air Cal), Borrego Springs Airline, Catalina Seaplanes, Inc., Golden Pacific Airlines, Inc. (Golden Pacific), Golden West Airlines, Inc. (Golden West), Holiday Airlines, Inc. (Holiday), Imperial Commuter Airlines, Inc., Mercer Enterprises, Pacific Southwest Airlines (PSA), Swift Aire Lines, Inc., Trans Sierra Airlines, and Valley Airlines, Inc.

On January 12, 1972, a prehearing conference was held in San Francisco before Examiner Foley. The following respondents made appearances at this conference: Air Cal, PSA, Golden West, Borrego Springs Airline, and Golden Pacific. During the conference,

the respondents indicated that they wished to request an exemption, pending the issuance of a final decision in this proceeding, from Article 5, Chapter 4, Part 1, Division 1, of the California Public Utilities Code, entitled "Stocks and Security Transactions",<sup>1/</sup> and from Article 6, Chapter 4, Part 1, Division 1, of the California Public Utilities Code, entitled "Transfer or Encumbrance of Utility

---

<sup>1/</sup> Sections 816-830, Public Utilities Code. Sections 816 and 818 read as follows:

"816. The power of public utilities to issue stocks and stock certificates or other evidence of interest or ownership and bonds, notes, and other evidences of indebtedness and to create liens on their property situated within this State is a special privilege, the right of supervision, regulation, restriction, and control of which is vested in the State, and such power shall be exercised as provided by law under such rules as the commission prescribes."

"818. No public utility may issue stocks and stock certificates, or other evidence of interest or ownership, or bonds, notes, or other evidences of indebtedness payable at periods of more than 12 months after the date thereof unless, in addition to the other requirements of law it shall first have secured from the commission an order authorizing the issue, stating the amount thereof and the purposes to which the issue or the proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property, or labor to be procured or paid for by the issue is reasonably required for the purposes specified in the order, and that, except as otherwise permitted in the order in the case of bonds, notes, or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income."

Property".<sup>2/</sup> Letters or written memoranda in support of this request were filed on January 26, 1972 by Air Cal, PSA, Holiday Airlines, Borrego Springs Airline, and Golden West Airlines. On February 9, 1972, the Commission staff responded in writing that it did not object to such an exemption.

---

2/ Sections 851-853, Public Utilities Code:

"851. No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5 of this part, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture.

"Nothing in this section shall prevent the sale, lease, encumbrance or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee or encumbrancer dealing with such property in good faith for value; provided, however, that nothing in this section shall apply to the interchange of equipment in the regular course of transportation between connecting common carriers."

In general, the carriers claim that an exemption for the course of this proceeding is necessary in order to assure certainty with respect to stock and property transactions. In particular, the carriers fear that a cloud may be placed over any such transactions they may consummate before a final decision is issued. If the Commission does not grant an exemption they are concerned that such transactions which would be beneficial to them might be delayed or might not be consummated if the Commission fails to process promptly an exemption request for the particular transaction.

In its memorandum requesting an exemption, PSA stresses the importance of stock transactions to the carriers; and it states that the carriers may be prohibited from validly issuing stocks and securities without obtaining approval from the Commission. PSA claims that if the Commission does not grant the requested exemption it will be impossible for a carrier to obtain an opinion from counsel regarding the validity of a stock or security issue without receiving an order from the Commission. It also urges that there has been no evidence that any of the carriers have abused their freedom to issue stocks and securities. PSA also points to the fact that the issuance of stocks and securities is subject to the jurisdiction of the California Corporations Commissioner and the U. S. Securities and Exchange Commission.

With regard to transactions involving the property of an air carrier, PSA argues that failure to grant an exemption would place the validity of past transactions which fall within the scope of Sections 851-853 of the Public Utilities Code into question. Again PSA comments that there is no evidence of any violation of these sections by the carriers.

At the present time, some carriers hold exemptions for security transactions and others do not. For instance, Air Cal was granted an exemption for these transactions in Decision No. 74111, dated May 14, 1968, in Application No. 50231; and Golden Pacific

received an exemption in Decision No. 75396, dated March 11, 1969, in Application No. 50892. Borrego Springs Airline was granted an exemption in Decision No. 75558, dated April 15, 1969, in Application No. 49781. PSA was granted an exemption in Decision No. 64865, dated January 29, 1963, in Application No. 45122; but this exemption was rescinded in Decision No. 79170, dated September 21, 1971, in Application No. 52856. Apparently none of the other carriers have requested or received similar exemptions. Furthermore, no carrier has requested or received an exemption from Sections 851-853, relating to property transactions.

Upon review of this matter the Commission concludes that the request by respondents for exemption from both Articles 5 and 6 of the Code should be granted until this proceeding be brought to a final conclusion.

Therefore, IT IS ORDERED that the petition for an order granting the respondents an exemption from the provisions of Articles 5 and 6, Chapter 4, Part 1, Division 1, of the California Public Utilities Code until the issuance of a final decision in this proceeding is granted.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 31<sup>st</sup> day of MAY, 1972.

I dissent & will  
attach same.

*[Signature]*

*[Signature]*  
Chairman

*[Signature]*

Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

D. W. HOLMES, COMMISSIONER, Dissenting:

In the order herein, in granting blanket exemptions to the named passenger air carriers from the provisions of Article 5, Chapter 4, Part 1, Division 1 and Article 6, Chapter 4, Part 1, Division 1, of the Public Utilities Code, the Commission is unnecessarily abdicating a major part of its responsibilities. This can have far-reaching consequences which could have been avoided.

The purpose of this investigation is the determination of the public utilities status of passenger air carriers and thus of the Commission's jurisdiction over issuance of securities by such carriers. Interim granting (or denial or revocation of) of blanket exemptions appears to me to prejudge the outcome of the investigation.

The Commission has, in prior decisions, granted exemptions to those air carriers requesting them. There is no indication at all that these have been inordinately delayed. In fact, it appears that such applications can and have been approved within eight days. Thus, any carrier who plans to issue stock or securities before the conclusion of the proceeding can

request a specific exemption.

Finally, it is expected that this investigation will be concluded promptly. No lengthy hearing is anticipated, and there should be minimal delay in the handing down of a final determination. I fear that the granting of blanket exemptions will inhibit in some degree the expeditious conclusion of the investigation.

The outcome of the investigation is much too significant for this Commission to risk delay in any way.

  
Commissioner

Dated at San Francisco, California,  
May 31, 1972.