

Decision No. 80372

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GOLDEN SEDAN SERVICE, INC.,
a California corporation,
Complainant,

vs.

AIRPORT LIMOUSINE SERVICE OF
SUNNYVALE, INC., a California
corporation,
Defendant.

Case No. 9357
(Filed March 24, 1972)

Handler, Baker and Greene, by Raymond A. Greene, Jr.,
Attorney at Law, for Golden Sedan Service, Inc.,
complainant.

Becklund, Siner, Takita and Salle, by Richard N.
Salle, Attorney at Law, for Airport Limousine
Service of Sunnyvale, Inc., defendant.

INTERIM OPINION

Complainant, Golden Sedan Service, Inc., holds authority to conduct operations as a passenger stage corporation as defined in Section 226 of the Public Utilities Code. It alleges that defendant is presently conducting passenger stage corporation operations without the appropriate Commission authority.

Complainant requests that the Commission order that the defendant cease and desist such operations, and pay a fine pursuant to Section 1037 of the Public Utilities Code. Finally complainant requests that the Commission revoke defendant's charter-party permit.

A public hearing was held before Examiner Foley on June 8, 1972 in San Francisco.

Complainant called two witnesses: its president and the chief executive officer of defendant. Complainant operates in the San Jose, Los Gatos and Mountain View area, carrying passengers on an individual-fare basis to and from San Francisco International Airport. Complainant's president also stated that he acquired ownership of the carrier in November, 1971.

The testimony of defendant's chief executive officer under subpoena conceded that it is operating in the same general area carrying passengers on an individual fare basis. He indicated that such operations commenced in 1969, and that defendant has an application for a passenger stage certificate pending before the Commission at the present time. (Application No. 52862, filed September 14, 1971.)

Defendant did not present any witnesses. However, it urges that the Commission not issue a cease and desist order because the entire airport limousine transportation business is currently under review by the Commission in Case No. 9162, in which a proposed report was issued on October 22, 1971 by Examiner John C. Gilman.^{1/} It requests that the Commission maintain the status quo until a final decision is issued in that proceeding and in its own certificate proceeding.

Secondly, defendant argues that complainant and the Commission have known about its operations for some time and that it has not been warned or admonished to stop such operations at any time. It claims that issuance of a cease and desist order would cause a hardship in that defendant would have to cease operations and dismiss employees while it has its application proceeding under submission. It maintains that it is providing a needed public service as shown by the fact that it carried 2300 passengers during May, 1972. It criticizes complainant for seeking formal relief at this late date, after hearings have been completed in the above mentioned prior proceedings, and when complainant has been aware of defendant's operations for a considerable period of time.

^{1/} This investigation was undertaken because the breadth and degree of regulatory control over the airport limousine industry is apparently uncertain and confused, since there are two major groups in the industry: "legitimate carriers" who submit to regulation, either statewide or local, and "pirate carriers" who evade any regulation. (See Proposed Report of Examiner John C. Gilman, dated October 22, 1971 in Case No. 9162, pp. 2-6.) The investigation is a fact-finding proceeding to ascertain possible regulatory solutions to these problems.

Defendant virtually admits that it has been operating as a passenger stage carrier since 1969. However, at the present time the confused nature of the regulation of this business activity is under review by the Commission in Case No. 9162, and the defendant has a certificate application under submission. Even though complainant appeared as a protestant in defendant's certificate application, it has waited until now to seek relief from the Commission. In light of the fact that both prior proceedings are under submission, and that defendant has been engaged in de facto passenger stage operations since 1969, there does not appear to be any irreparable harm inflicted upon the complainant, or any urgent need for immediate relief.

Under Section 1034 of the Public Utilities Code, the issuance of a cease and desist order is discretionary. The Commission concludes that the facts set forth by the complainant in this proceeding do not justify such an order at this time. We agree with the defendant that since two proceedings which are likely to resolve the subject matter of this dispute are presently under submission and will be resolved shortly, maintenance of the status quo is justified until a final decision is issued in Application No. 52862. Furthermore, complainant has not convincingly demonstrated that it has sustained any serious economic loss because defendant carried 2300 passengers on an individual-fare basis during May, 1972. Therefore, we will issue an interim order denying a cease and desist order. Upon issuance of a final decision in the above matter, the Commission will issue its final order in this proceeding. ✓

Findings of Fact

1. Defendant has been carrying passengers on an individual-fare basis between the San Jose, Los Gatos and Mountain View areas of Santa Clara County to San Francisco International Airport since 1969. During May, 1972 it carried 2300 such passengers.

2. Defendant presently has an application for a certificate of public convenience and necessity to operate as a passenger stage carrier under submission with the Commission. This application was filed in September, 1971. Complainant participated as a protestant in this proceeding, but did not seek the issuance of a cease and desist order.

3. The Commission presently has under submission Case No. 9162, which is a general fact finding proceeding to acquaint the Commission with both the legal and factual problems arising out of the operations of carriers transporting passengers on an on-call individual-fare basis to and from airports, and for ascertaining appropriate regulatory responses to those problems. (See Proposed Report of Examiner John C. Gilman, dated October 22, 1971.)

4. Despite knowledge of defendant's operations, complainant has failed to seek a cease and desist order until initiating the proceeding involved herein. Complainant has not provided any evidence showing that the loss of traffic to defendant which it is suffering will result in either irreparable or serious financial harm.

Complainant did not present any evidence or reasons why a cease and desist order issued at this late date when the above described two proceedings are under submission would be in the public interest.

Conclusion of Law

Based upon the above findings of fact and pursuant to Section 1034 of the Public Utilities Code, the Commission concludes that defendant should not be ordered to cease and desist any of its operations at this time.

INTERIM ORDER

IT IS ORDERED that the complainant's request for a cease and desist order is temporarily denied.

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

Dated at San Francisco, California, this 15th day
of AUGUST, 1972.

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.

Vernon L. Sturgeon
President
William J. Brown
J. W. Williams
[Signature]
Commissioners