

ORIGINAL

Decision No. 82171

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of EAST SIERRA
DEVELOPMENT CORPORATION, a
California corporation,
dba SIERRA RESERVATIONS, for a
charter party carrier of
passengers permit, Los Angeles

Application No. 53761
(Filed December 18, 1972)

Thomas W. Kemp, Attorney at Law,
for applicant.
W. Garfield McDaniel, Attorney
at Law, for Mammoth Stage Lines,
Inc., protestant.
Marc Gottlieb, for the Commission
staff.

SECOND INTERIM OPINION

Applicant, East Sierra Development Corporation, a California corporation, dba Sierra Reservations, seeks authority as a permitted charter-party carrier of passengers (Chapter 8 of Division 2 of the California Public Utilities Code) for the transportation of passengers between the Mammoth Chair Lift and condominiums in the Mammoth area. It has one 24-passenger school bus which it will use for transportation. There will be no (direct) charge for the service.

Mammoth Stage Lines, Inc., (Mammoth) which has authority to provide both passenger stage and a charter-party service in the area, appeared in opposition to the application.

Applicant's evidence was presented before Examiner Rogers in Los Angeles on September 14, 1973. At the conclusion of this presentation, the parties were given permission to file briefs.

Briefs were filed by the applicant and the staff,^{1/} and the matter was submitted for the determination of the question whether or not, on the facts developed, the applicant is required to secure Commission authority for its proposed operation. We find that applicant's proposed service requires authority from this Commission, and a further hearing will be held to permit the existing carrier to present evidence.

Applicant's Evidence

Applicant is a California corporation engaged in the development of recreational real property in Mammoth Lakes, California. Mammoth Lakes is in the county of Mono, adjacent to the Inyo-Mono National Forest, and serves as a primary winter sports area for Southern California residents, with a growing summer recreational use. Applicant's principal development activity is the construction and marketing of apartment-like residential units, commonly known as "condominiums", and planned unit developments. It has built 605 condominiums and has a 110-unit project under construction.

The development process of a condominium project by applicant includes preparation of a tentative map, approval of the same by the local planning commission, arranging for construction and permanent financing, construction of the project, and sale of the product to the general public. Upon the sale of 50 percent of the condominiums in any given project, applicant turns the management and control of the development over to an association of owners of the condominiums, which usually takes the form of a nonprofit corporation. While applicant retains an interest in the project to the extent of all unsold units, upon the sale of the last condominium, applicant is divested of any further ownership in the development.

^{1/} Applicant's brief was filed on September 24, 1973. The staff filed a brief on October 1, 1973. No brief was filed by Mammoth.

Applicant also has a rental-management operation doing business under the name of "Sierra Reservations" which is its fictitious business style. Sierra Reservations provides two types of services--management and rental. Its management service involves entering into a direct contract with the governing body of the condominium project's association to provide such management services as hiring and supervising an on-site resident manager, arranging for snow removal and general maintenance of the project, and consulting with the board of directors of the association on various problems. Basically, this management service is done simply on a reimbursement basis with a slight override to cover such overhead costs as bookkeeping, payment of salaries, and the like.

Applicant also offers a rental service in which it contracts directly with the owners of the condominiums to rent their units primarily during the winter season. While this rental arrangement is between the owner and Sierra Reservations, the board of directors of an association often recommends to the owners of the condominiums that they use Sierra Reservations' rental services. Though an owner is free to rent or not rent his condominium, and may use any other rental company, over 80 percent of the owners in five projects containing 394 condominiums use the applicant's rental service.

The condominium projects which Sierra Reservations manages and in which it provides rental services are: Sierra Park Villas, with 100 units; Chamonix, with 100 units; Tamarack, with 40 units; St. Anton, with 84 units; and Sherwin Villas, with 70 units.^{2/}

^{2/} See Exhibit 1 for locations.

In November of 1972 Sierra Reservations commenced providing weekend shuttle bus service to and from the ski lifts to owners and renters in Sherwin Villas, Sierra Park Villas, and Tamarack. Applicant's witness said that the bus used was a 24-passenger school bus purchased by East Sierra; that the route that the bus took from the three condominium projects to ski lifts #1 and #2 at Mammoth Mountain (approximately five miles) was identical or similar to the route taken by the protestant (see Exhibit 1); that applicant's bus did not stop at any of the pickup points at which the protestant stopped; that the persons transported on applicant's bus were restricted to owners or renters in the three condominium projects listed; that each owner or renter of a condominium unit in the three projects who wished to avail himself of the bus service was issued a plastic identification badge which was worn on the wrist by means of an elastic band and which bore the name of the project and the number of the condominium which he owned or was renting; that to obtain such a badge a \$1.00 refundable deposit was required; and that every person who boarded applicant's bus was required to display the identification badge to the driver of the bus as a condition to riding on the bus.

The witness further testified that no fare was charged to the owners or renters for the bus service; that, in fact, the full cost of the operation and maintenance of the bus was borne by Sierra Reservations which has operated at a loss and whose bank account, which is maintained separate from East Sierra's, is funded quite frequently with monies from applicant's other sources; that the cost to operate and maintain the bus is not passed on through rental charges that Sierra Reservations collects from owners for renting their units; that the standard charge made by Sierra Reservations for rental services is 35 percent of the gross rental; that this has been the prevailing rate even prior to

commencement of the bus service and after it was begun during those periods when it did not operate; and that this is also the rate charged to owners in Chamonix and St. Anton who were not provided with the bus service.

At the request of the staff representative, copies of brochures distributed by applicant and advertisements placed in metropolitan newspapers by applicant were received in evidence (Exhibits 2 through 10). Each of these items contains the language "Free shuttle-bus service to lifts." or "Free shuttle-bus to lifts."

Applicant's Argument

Applicant's argument in support of the proposition that its operations do not require any authority from this Commission is brief. The complete text thereof is as follows:

"Applicant contends that it is not a 'passenger stage corporation' as defined in Section 226 since it is not operating its shuttle bus 'for compensation'. While applicant is aware that 'free' transportation may, nonetheless, be 'for compensation' because of other benefits derived from such transportation (see C. S. Stahl (Pioneer Skate Arena) 64 Cal. P.U.C. 405 (1965)), nonetheless, applicant maintains that its shuttle bus service is truly 'free' and it derives no direct benefit from the service such as that in the Stahl case where the applicant was providing a 'free' bus service to his ice arena where he was charging a price of admission. Here, applicant is providing free bus service from its condominium projects to ski lifts and back to the projects. This service is offered to both owners and renters of condominiums without discrimination, is limited to users of the condominiums in the projects named, and is entirely without cost to either the owner or renter, since the owner pays nothing to Sierra Reservations, and the owner who is renting his unit pays 35 percent of the gross rental whether or not the bus is operating. If any

benefit exists, it is one of engendering good will, which applicant submits is far short of the direct benefit this Commission found to exist in the Stahl case. Applicant suggests that were it involved in the business of renting and operating ski lifts for compensation, that its shuttle bus service might require a permit, but that under the given circumstances it is exempt from such a requirement."

The record here is clear. Applicant has provided and proposes to provide seasonal shuttle bus service. Applicant urges that the service is not for compensation and, possibly, not for the general public. However, we note that the Commission has previously indicated that the operation does come under its jurisdiction by its issuance to applicant of a temporary charter-party carrier permit pursuant to Section 5384(a) of the California Public Utilities Code.

The advertisements (Exhibits 2-10) invite any person to come to Mammoth and rent. If they rent, they will be furnished free transportation to and from the ski lift. This is as much an offer to serve the general public as the offer of a pure passenger stage corporation which will provide transportation for any person tendering the requisite fare.

We have determined the question of compensation contrary to the construction the applicant would like. The question of availability of service is clarified by the language of the Public Utilities Code (Section 5353, Subdivision (f)) . . . "The provisions of this chapter do not apply to:

'(f) Passenger vehicles carrying passengers on a non-commercial enterprise basis.'"

In Decision No. 64960 dated February 13, 1963 in Case No. 7192 an investigation by the Commission for the specific purpose of determining the construction, application, and procedure in administering Passenger Charter Party Carriers' Act, this Commission, in finding of fact 10, found that:

"Even transportation furnished without charge to the passengers is 'for compensation' if the organization sponsoring

the trip 'receives a business benefit therefrom'" (Decision No. 64960, p. 585).

There can be no doubt that the applicant receives a business benefit from the transportation service. We do not think lengthy argument or recital of cases is necessary (See Decision No. 69055 dated May 11, 1965 in Case No. 7875, 64 P.U.C. 312). The advertisements (Exhibits 2-10) demonstrate that the passenger service is a major selling point in inducing the general public to rent condominiums from applicant during the ski season.

Findings

1. Sierra Reservations is the name under which applicant as a real estate agent or broker conducts the sale and/or rental of residential units in Mammoth, an unincorporated area of California. In the winter many persons travel to Mammoth for the specific purpose of skiing. In Mammoth many own or rent residential units from Sierra Reservations.

2. Sierra Reservations manages or is the rental agent for approximately 300 residential units originally constructed by East Sierra and located approximately five miles from the foot of the ski lift in Mammoth. To facilitate the sale or rental of these units East Sierra has acquired a 24-passenger bus and pays the driver's salary as well as operating expenses and insurance. In the 1972-1973 ski season and in the 1973-1974 ski season applicant proposes to transport passengers on the weekends approximately eight times per day in each direction between the 300 residential units and the foot of the ski lift via a regular route, with no intermediate stops to pick up or discharge passengers.

3. The proposed route is identical to much of the route of Mammoth Stage Lines.

4. The transportation is to be furnished only to persons who are owners of or tenants of owners of residential units originally constructed or sold by East Sierra.

5. Those persons eligible for the service and desiring to use it will be required to pay a deposit of \$1.00 for which they will receive an identification badge. Holders of the identification will receive transportation. On surrender of the badge the \$1.00 will be refunded.

6. Applicant advertises through newspapers of general circulation and brochures that it provides free transportation for owners and renters of the condominiums between the rental units and the ski lift.

7. The rental of the units as well as the sale of the units is to the general public. The free transportation is part of the consideration for the rental of the units and for the sale of the units.

8. The transportation proposed to be performed by applicant without charge is for compensation as the free transportation is one of applicant's selling points or inducements for the sale or rental of the property.

9. Applicant requires charter-party authority from this Commission.

10. Further hearings should be held on the question of whether such authority should be granted.

Conclusion

Applicant requires charter-party authority from this Commission. A hearing on the application shall be held before Examiner Rogers at a time and place to be set.

SECOND INTERIM ORDER

IT IS ORDERED that the application is to be set for hearing before Examiner Rogers at a time and place to be determined.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 27th day of NOVEMBER, 1973.

Thomas L. Sturgeon
President
William J. Gaudin
[Signature]
[Signature]
[Signature]
Commissioners

I dissent

J. M. [Signature], Commissioner.