

Decision No. 82542

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SAN MATEO COUNTY
TRANSPORTATION COMPANY, INC., a
corporation dba AAA-OK LIMOUSINE
SERVICE, for a permit as a charter
party carrier of passengers.

Application No. 54239
(Filed August 13, 1973)

Application of MILTON W. HENKE, SR.,
an individual dba MILT HENKE
LIMO-SERVICE, of South San Francisco,
for renewal of charter party carrier
of passengers permit.

Application No. 54245
(Filed August 15, 1973;
amended October 2, 1973)

Leon Vilinskas, for San Mateo County
Transportation Company, Inc., and
Milton W. Henke, Sr., for himself,
applicants.

James B. Brasil, Deputy City Attorney,
for City and County of San Francisco
and San Francisco International
Airport, interested party.

Timothy E. Treacy, Attorney at Law, for
the Commission staff.

O P I N I O N

San Mateo County Transportation Company, Inc. dba AAA-OK Limousine Service (SMCTC) applied for a charter-party carrier of passengers permit on August 13, 1973. The application alleges that SMCTC was incorporated on March 18, 1971, has never held any type of Commission operating authority to date, and proposes to provide limousine service for the general public and airport service for the city and county of San Francisco under contract. The list of operating equipment includes two large vans, five eight-passenger limousines, and a five-passenger station wagon. A San Bruno bank is designated as a financial reference.

Milton Henke, Sr. (Henke), applied for a renewal of his charter-party permit on August 15, 1973. He alleges that he was formerly known as the AAA-OK Limousine Service; that he considers himself to be the owner of five of the vehicles that SMCTC claims in its application; and that he is the lessee of an additional vehicle that SMCTC claims as lessee. Henke also lists the San Bruno bank as a reference and has the same insurance agent as SMCTC. Henke alleges that his proposed service will include on-call charters for weddings, funerals, sightseeing, and airport service. After a preliminary investigation the staff recommended that the applications be consolidated and scheduled for hearing. A public hearing was held on November 19 and 20, 1973 in San Francisco before Examiner Fraser. Both applicants made a written and oral request for a continuance a few days before the hearing. Both applicants also made a motion for a continuance at the hearing, which was denied. Both applicants claimed more time was needed to obtain counsel and to study the issues involved. The city of San Francisco vigorously opposed any continuance. Counsel argued if hearing and deciding the matter were delayed, both applicants would continue operating and soliciting business at the San Francisco Airport under the inferred sanctuary of having their applications pending before the Commission.

SMCTC provided testimony from its secretary-treasurer. He testified that Milton Henke's daughter and her husband are two of three corporate directors. The other applicant, Henke, Sr., was described as operating manager of SMCTC with the function of supervising all vehicles and charters. The witness admitted the corporate bank account was closed at the bank identified in the application. He stated it has been moved to the Bank of America Branch at the San Francisco International Airport. A letter from the bank was placed in evidence to confirm the existence of the account. The witness confirmed the notation in the staff report that SMCTC has never operated under a contract with the San Francisco International

Airport as stated in its application. He advised that SMCTC submitted a bid in good faith, which was rejected by the San Francisco International Airport. He further advised that SMCTC held no authority from this Commission, but was operating as a charter carrier under the authority of the Henke permit, which expired in August of 1973. SMCTC filed for its own permit prior to expiration of the Henke permit and expected to be authorized to operate within a few weeks of filing its application. No one anticipated the long delay, or need for the present hearing. The witness testified that from four to ten drivers are employed on a call-when-needed basis and are paid either hourly or a percentage of the limousine rental. He further testified that SMCTC has a varied clientele and only a portion of its business concerns the San Francisco International Airport. He estimated that 40 percent of SMCTC's business was provided under contract and about 50 percent as on-call business. He testified that SMCTC directs its surplus business to the California Limousine Owners and Operators Association, which always has drivers available. He has four years experience as a driver, one year in cabs and three in limousines. He emphasized that about ten drivers may have to be discharged if the corporate permit is denied.

Henke testified as follows: He has operated for two years without a customer complaint. He has proof of insurance coverage on file and his vehicles have all passed the safety and equipment tests of the California Highway Patrol. He will be operating vehicles carrying less than nine passengers and weighing less than 7,000 pounds gross weight, under the provisions of Section 5384 of the Public Utilities Code. He received his original charter-party permit in 1971 and prior to its issuance was advised by a member of the Commission staff that the permit would be issued if his vehicles were in a safe condition and he had the minimum insurance coverage. He filed an "Amendment To Application" on October 2, 1973, in which he requested that all motor vehicle equipment listed in his original application be deleted, excepting a 1970 eight-passenger Cadillac. Under this amendment he would be operating with a single vehicle.

A staff engineer testified and introduced an exhibit. He testified that both applicants plan to provide service to and from the San Francisco International Airport without the approval or permission of the latter. He further testified that the city and county of San Francisco is instituting court proceedings to enjoin those who are not licensed by the airport from operating on its premises. The airport is already served by numerous permitted limousine operators and two have counter space in the baggage claim areas. He stated that in his opinion applicants have not shown that additional limousine operators are needed at this time. He testified further if the applications are granted each applicant will be providing a coextensive service, with the same equipment, under the management of Henke, Sr. The surplus business will be handled by the Limousine Owners and Operators Association, also controlled by Henke, Sr., whose members hold at least 10 additional charter permits. If both applicants obtain their permits the staff anticipates it will be difficult to identify who is responsible for a particular charter. Thus one applicant may lease a vehicle to the second applicant, who hires a third charter-party permit holder to drive. He noted also that SMCTC never had a contract with the San Francisco International Airport as alleged in its application; that the bank account referred to in the application was closed out on October 1, 1973; that the motor vehicle equipment listed on the SMCTC application was also listed on the Henke application, and each applicant listed the equipment as an asset; that records from the Department of Motor Vehicles show most of the vehicles are registered to Henke, Sr., Henke, Jr., or the AAA-OK Limousine Service. SMCTC was not listed as an owner, nor were its officers. The exhibit prepared by the witness shows that on October 2, 1973 the secretary-treasurer of SMCTC presented a letter to the staff which requested that nine vehicles, including most of those claimed by Henke and SMCTC, be listed under the permit of another operator, who had just received a 30-day warning notice of insurance cancellation. The purpose was apparently to justify operating under the latter's permit.

The witness further testified and presented documentary evidence to reveal the San Mateo Superior Court issued a judgment against Henke, Sr., in the amount of \$80,607.04, including interest to the date of the report, and that this judgment was not mentioned on the Henke balance sheet, although it has not been paid. The balance sheet includes \$38,450 as the book cost of the six motor vehicles Henke claims as owner on his August 3, 1973 balance sheet. His October 2, 1973 amendment to his original application lists only a 1970 Cadillac as his operating equipment. No change was made in the original balance sheet, which lists total assets of \$97,985.05 and total liabilities of \$58,383.27. The record further shows that Henke, Sr., was enjoined from operating a taxicab service on the private property of the San Francisco International Airport in violation of the latter's contract with Yellow Cab Company. The latter brought suit in the San Mateo County Superior Court and obtained an injunction along with the \$80,000 judgment. The airport allows Henke to bring passengers to the airport and to pick up anyone who has previously arranged to be transported by Henke.

Discussion

It was apparent at the hearing there are intense feelings about who should serve the San Francisco International Airport. If a permit is granted, it does not authorize the holder to enter private property without the permission of the owner thereof. A contrary holding would encourage trespass and violate personal property and contractual rights. It is basic, however, that all requests for Commission authority must provide adequate and correct information.

If an application is defective or misleading, and is not corrected, the authority sought should not be granted. Both applications before us are, under the most liberal interpretation, incomplete and inadequate, and contain misstatements of fact. We still do not know who owns the motor vehicle equipment, who will operate it, or in what capacity. None of the vehicles are owned by San Mateo County Transportation Co., Inc., but Henke, Sr., has removed all but one from his equipment list. At the hearing neither applicant provided an adequate explanation for the inconsistencies, omissions, and incorrect statements in the pleadings. It also seems apparent that the greater portion of both applicants' business will concern service to or from the San Francisco International Airport, although neither applicant was anxious to reveal the extent of the service to be provided.

Findings

1. SMCTC was incorporated on March 18, 1971.
2. On August 2, 1973, it applied for a permit to operate as a charter-party carrier of passengers.
3. It has never held any operating authority from this Commission but has been operating without authority for an indefinite period as a charter-party carrier of passengers under the ostensible authority of Henke's permit, which expired in August of 1973.
4. The incorporators and dominant officers are Henke's daughter and son-in-law. Henke is operations manager and has been responsible for corporate activity.
5. The financial status of SMCTC cannot be determined from its balance sheet which includes vehicles listed on the Henke application that have never been owned by SMCTC, and which lists a bank reference, where it no longer has a bank account.
6. Application No. 54239 alleges that SMCTC will operate under contract with the San Francisco International Airport, which was an incorrect statement when the application was filed.

7. Department of Motor Vehicle records do not list San Mateo County Transportation Co., Inc. as the owner of any of the vehicles claimed.

8. Henke has held a charter-party carrier of passengers permit since September 21, 1971. His last permit expired in August of 1973.

9. Henke applied for renewal of his permit on August 3, 1973.

10. His application lists six vehicles as operating equipment which are also claimed by SMCTC. He amended his application on October 2, 1973 by eliminating all operating equipment, except a single vehicle. He did not amend his balance sheet by deducting the book value of the eliminated vehicles from his asset column.

11. Henke failed to list an \$80,607 Superior Court judgment with his other liabilities.

12. Henke has been enjoined by the San Mateo County Superior Court from operating a taxi service at the San Francisco International Airport, in violation of the latter's contract with Yellow Cab Company.

13. A grant of both applications would provide Henke with two permits owned by two entities in addition to his possible use of the permits owned by members of the California Limousine Owners and Operators Association. It would become difficult to determine legal responsibility for charters where two or three permit holders are involved.

14. Applicants have failed to show they possess satisfactory fitness and financial responsibility to initiate and conduct the proposed transportation services.

15. Applicants should be ordered to cease and desist from operating as charter-party carriers of passengers unless proper authority is first obtained.

The Commission concludes that the applications should be denied and a cease and desist order should be issued.

O R D E R

IT IS ORDERED that:

1. Applications Nos. 54239 and 54245 are denied.
2. San Mateo County Transportation Company, Inc., a corporation doing business as the AAA-OK Limousine Service, and Milton W. Henke, Sr., shall cease and desist from operating as charter-party carriers of passengers.

The Secretary of the Commission is directed to cause personal service of this order to be made upon each applicant. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 12th day of MARCH, 1974.

Vermon L. Steiner
President
William J. Symons
J. H. Morris
Thomas Moran
Commissioners

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