

ORIGINAL

Decision No. 85028

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CARL RODGERS and JOHN MOONEY, a copartnership, dba "SPORT OF KINGS" LINES, for authority to operate as a passenger stage service between points in Los Angeles and Orange Counties and Del Mar Race Track.

Application No. 55273  
(Filed October 25, 1974)

James H. Lyons, Attorney at Law,  
for applicant.  
Richard M. Hannon, Attorney at  
Law, for Greyhound Lines, Inc.,  
Western Division, protestant.  
John deBrauwere, for the Commis-  
sion staff.

### O P I N I O N

Applicants Carl Rodgers and John Mooney, a copartnership doing business as "Sport of Kings" Lines, operate as a passenger stage corporation between Hollywood Park, Los Alamitos, Pomona State Fair, and Santa Anita racetracks in the Los Angeles area. Their certificate is set forth in Appendix A to Decision No. 83527 dated October 1, 1974 in Application No. 54853 and authorizes the transportation of persons employed at those racetracks only and their baggage. By this application applicants seek authority to perform similar transportation also limited to racetrack employees between the Santa Anita, Hollywood Park, and Los Alamitos racetracks, on the one hand, and Del Mar race-track in San Diego County, on the other hand, during the race season at the Del Mar track.

The application was protested by Greyhound Lines, Inc., Western Division (Greyhound). A duly noticed public hearing was held in Los Angeles on May 5, 1975, on which day the matter was submitted.

Applicant John Mooney testified as follows: He has had substantial experience in driving buses. He and his partner have worked for a number of years at various southern California racetracks as pari-mutuel clerks. The meet times at the tracks are seasonal and vary from track to track with little or no overlap. Generally, the same personnel are employed by each of the southern California tracks, including Del Mar, during its season. The majority of the track employees live in the Arcadia area near the Santa Anita track, and most of the others live in the Inglewood area near the Hollywood Park track or in the Los Alamitos area near the Los Alamitos track. During the gas shortage and rationing last year, he and his partner obtained their current certificate to transport track employees between closed tracks near their residences and the Los Angeles area track that is open, and they are continuing to provide this service.

The witness further testified as follows: When the Del Mar track is open, many of the employees from the Los Angeles area drive to it in car pools. In past seasons, some have rented living quarters near the track, but most of them have found it too expensive to maintain a home in the Los Angeles area and rent the temporary quarters. Last year he arranged for a bus from Antelope Valley Bus, Inc. (Antelope) and operated it to the track for approximately 22 employees from the Los Angeles area and was paid a ten percent agent's fee by Antelope and received free transportation for himself. This was a cooperative venture of all riders and not a business. Applicants now have a maxi-van and 38-passenger bus for their present certificated service. They request authority to serve the Del Mar track so they

can earn additional income from the equipment to help pay for it. They would operate the bus from the Santa Anita track via the Los Alamitos track to the Del Mar track, a distance of approximately 110 miles. The van would be operated from the Hollywood Park track direct to the Del Mar track, a distance of approximately 100 miles, or if the bus were not full, the van would be driven to the Los Alamitos track where the passengers would be transferred to the bus for the transportation to the Del Mar track. They have arrangements with the three Los Angeles area tracks for their passengers to park their automobiles in the parking lots at the tracks at no charge. The Del Mar track is closed on Tuesdays only. The schedule would be arranged to get the employees to the track an hour and a half before the first race at 2 p.m., and the return trip would leave when the last rider boarded the bus which would generally be approximately 45 minutes after the track closed. Other than business cards and time schedules, applicants do no advertising. They anticipate transporting an average of 32 passengers per day to the Del Mar track this year. The total capacity of their equipment is 52 passengers. They have arrangements with other bus companies for garaging and maintenance of their equipment and for backup and additional equipment if needed.

The proposed fares are \$7 for a single round trip and \$36 for a weekly, six-day ticket. As of April 30, 1975, applicant copartnership had assets of \$22,910, their only liability was the amount owing on their equipment which was \$15,000, and their equity in the business was \$7,910. Each applicant has additional personal assets. For the 12 months ending April 30, 1975, applicants had revenue of \$15,997, expenses of \$22,041, and a loss of \$6,044. This covered only a partial year operation, and applicant Mooney testified

that their current expenses are substantially less than their start-up expenses. Their projected income and expenses, which do not include taxes or salaries or withdrawals of the partners, for the test year commencing May 1, 1975 for their present Los Angeles area service, Del Mar alone, and both are as follows:

	<u>Present Service</u>	<u>Del Mar</u>	<u>Both</u>
Revenue	\$14,532	\$8,944	\$23,476
Expenses	<u>11,647</u>	<u>2,420</u>	<u>14,067</u>
Profit	\$ 2,885	\$6,524	\$ 9,409
Operating Ratio	80%		60%

Following is a summary of the testimony of seven witnesses who appeared on behalf of applicants: All are track employees and work at the various southern California tracks, including Del Mar which employs approximately 200 pari-mutuel ticket sellers and cashiers during its season. They and most of the other employees live in the Los Angeles area. Those who had rented temporary living quarters in Del Mar in the past stated that it was quite expensive. Most have driven to Del Mar in their own cars or car pools in the past. Some used the service applicant Mooney had arranged for last year. One stated he may and the others stated they will use applicants' service if the authority is granted. Several pointed out that Greyhound's service to the Del Mar track is designed for the public spectators attending the races and not for the employees who must arrive well in advance of the first race and do not leave until after the track is closed. Twenty-three additional members of the public who attended the hearing advised that they would use applicants' Del Mar service if the sought authority were granted.

The following evidence was presented by Greyhound's area general manager: Greyhound now provides excursion service between the Los Angeles and other areas and the Del Mar racetrack. The schedules are for the convenience of the public and not the employees, and the round-trip excursion fare from the Los Angeles area is \$7.50. There is no free parking provided in connection with this service. Greyhound now has 1,497 intercity buses licensed in California. The Del Mar operation is important to Greyhound. Between July 1 and September 30, 1974, it carried 30,514 passengers to the Del Mar track from Los Angeles, San Diego, and surrounding areas, and its total revenue for this service was \$183,909.65. Its system's passenger miles and revenue for the first quarter of 1975 is down from the same quarter in 1974. Greyhound has sufficient available equipment to perform any additional service to the Del Mar track, including that proposed by applicants and is ready, willing, and able to do so.

In his closing statement, applicants' attorney pointed out that the proposed service is a specialized service for racetrack employees only and includes arrangements for free parking at the Los Angeles area tracks for the riders. He asserted that it is an entirely different type of service than that provided by Greyhound for the public and would in no way compete with or hurt Greyhound.

Greyhound's counsel argued that his client is capable of providing the proposed service and that it has a right to do so pursuant to the provision in Section 1032 of the Public Utilities Code which provides as follows:

"The commission may, after hearing, issue a certificate to operate in a territory already served by a certificate holder under this part only when the existing passenger stage corporation or corporations serving such territory will not provide such service to the satisfaction of the commission."

The representative of the Commission staff agreed with applicants' attorney that the proposed service is specialized and differs from that now provided by Greyhound for the general public. He recommended that the application be granted.

We are of the opinion that the application should be granted. The evidence clearly demonstrates that the service applicants propose differs from and does not compete with the service presently provided by Greyhound to the Del Mar track. Although the pickup points are not at the precise location of the riders' homes, the service applicants are proposing is essentially a home-to-work type of service for fellow employees. Only one round trip will be operated per day, and it is scheduled for the convenience of the track employees. In addition to the transportation, applicants' riders can park their automobiles at the three Los Angeles area tracks at no charge. Greyhound has no arrangements for free parking for its customers. Furthermore, the total capacity of the equipment applicants now have is only 52 passengers, and they do not anticipate filling this equipment. Additionally, because of the restriction in the proposal to transport track employees only and the obvious fact that all track employees would not use the service, it is apparent that this capacity would never be increased substantially, if at all. We recognize that Greyhound has authority to perform passenger stage service between all points involved herein. However, because of the restricted nature of the proposed transportation and the special circumstances surrounding it, we are not persuaded by Greyhound's argument that the above-quoted provision in Section 1032 of the Public Utilities Code precludes a grant of the sought authority.

Findings

1. Applicants provide passenger stage service for racetrack employees only between the Hollywood Park, Los Alamitos, Pomona State Fair, and Santa Anita racetracks during the race season at each of the tracks.

2. Applicants propose to provide a similar service restricted to employees of the Del Mar racetrack in San Diego County between the parking lots of the Hollywood Park, Los Alamitos, and Santa Anita racetracks on the one hand, and the Del Mar racetrack, on the other hand, during the race season at the Del Mar track.

3. Applicants have a 38-passenger bus and a 14-passenger maxi-van, and the total carrying capacity of their equipment is 52 passengers.

4. Greyhound has authority to provide passenger stage service between all points applicants propose to serve.

5. The schedule for the proposed service is designed to accommodate the work schedules of the track employees, the proposed fares are \$7 for a single round trip and \$36 for a weekly, six-day ticket, and arrangements have been made for the riders to park their automobiles at the three Los Angeles area racetrack parking lots at no charge.

6. Greyhound's present service from the Los Angeles areas in question to the Del Mar track is designed for the public spectators attending the races, the fare for this service is \$7.50 for a round trip, and Greyhound has no multiple ride tickets or arrangements for free parking for its customers.

7. As pointed out in Findings 5 and 6, the service proposed by applicants and that presently provided by Greyhound to the Del Mar track are significantly different.

8. It has not been established that the racetrack employees would have the same free parking privileges if Greyhound were to provide the same transportation proposed herein or whether, because of the limited number of racetrack employees that would be transported and the delay and waiting time for the return trip, it would be economically feasible for Greyhound to provide the service.

9. The present and future competitive threat of applicants' proposed service to Greyhound is, if any, minimal.

10. Considering the conditions and special circumstances surrounding the proposed service, we find that Greyhound will not provide the service offered by applicants.

11. Applicants possess the experience, equipment, and financial resources to institute and maintain the proposed service.

12. Public convenience and necessity require the service proposed by applicants.

13. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

#### Conclusion

The application should be granted as provided in the following order.

Applicants are placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly



of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Carl Rodgers and John Mooney, a copartnership doing business as "Sport of Kings" Lines, authorizing them to extend operations as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, to Del Mar racetrack, as more specifically set forth in Appendix A to Decision No. 83527, as amended in the revised pages and original page attached hereto.

2. Appendix A of Decision No. 83527 is amended by incorporating First Revised Pages 2 and 3, attached hereto, in revision of Original Pages 2 and 3 and by adding Original Page 6.

3. In providing service pursuant to the authority granted by this order, applicants shall comply with the following service regulations. Failure so to do may result in a cancellation of the authority.


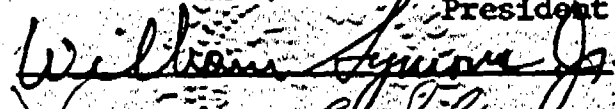


(a) Within thirty days after the effective date of this order, applicants shall file a written acceptance of the certificate granted. Applicants are placed on notice that if they accept the certificate they will be required, among other things, to comply with the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 101-Series.

(b) Within one hundred twenty days after the effective date of this order, applicants shall establish the authorized service and file tariffs and timetables, in triplicate, in the Commission's office.

- (c) The tariff and timetable filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the establishment of the authorized service.
- (d) The tariff and timetable filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 79-Series and 98-Series.
- (e) Applicants shall maintain their accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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

Dated at San Francisco, California, this 21st  
day of OCTOBER, 1975.

  
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President  
  
  
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Commissioners

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.

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Appendix A  
(Dec. 83527)

CARL RODGERS AND JOHN MOONEY  
A COPARTNERSHIP  
DBA "SPORT OF KINGS" LINES

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Cancels  
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Issued by California Public Utilities Commission.

\*Added by Decision No. 85028, Application No. 55273.

DDM/ep

Appendix A  
(Dec. 83527)

CARL RODGERS AND JOHN MOONEY  
A COPARTNERSHIP  
DBA "SPORT OF KINGS" LINES

First Revised Page 3  
Cancels  
Original Page 3

SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS,  
LIMITATIONS, AND SPECIFICATIONS.

Carl Rodgers and John Mooney, a co-partnership, doing business as "Sport of Kings" Lines, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized as a passenger stage corporation to transport passengers and their baggage between Hollywood Race Track, Los Alamitos Race Track, Pomona Fair Race Track, and Santa Anita Race Track; and \*between Del Mar Race Track, on the one hand, and Hollywood Race Track, Los Alamitos Race Track and Santa Anita Race Track, on the other hand; located within the Southern California area, over and along the routes described herein, subject, however, to the authority of this Commission to change or modify this authority at any time and subject to the following provisions:

- (a) Service is limited to employees of race tracks in the Southern California area.
- (b) Passengers shall be transported only between race tracks.
- (c) Service will be operated at times necessary to meet the needs of those employees based upon the opening and closing time of the applicable track.
- (d) When route descriptions are given in one direction, they apply to operation in either direction, unless otherwise indicated.

Issued by California Public Utilities Commission.

\*Added by Decision No. **85028**, Application No. 55273.

DDP./ep

Appendix A  
(Dec. 83527)

CARL RODGERS AND JOHN MOONEY  
A CO-PARTNERSHIP  
DBA "SPORT OF KINGS" LINES

Original Page 6

SECTION 2. ROUTE DESCRIPTIONS. (Continued)

Route 6 - Santa Anita - Del Mar Race Track

Commencing from the parking lot of the Santa Anita Race Track thence over the most appropriate and convenient streets to and along Interstate Highway 210, Interstate Highway 605 (San Gabriel River Freeway), Katella Avenue to Los Alamitos Race Track parking lot, return to and along Katella Avenue, Valley View Street, Interstate Highway 405 (San Diego Freeway), Interstate Highway 5 and over the most appropriate and convenient streets and roads to the Del Mar Race Track.

Route 7 - Hollywood Park - Del Mar Race Track

Commencing from the parking lot of the Hollywood Park Race Track thence over the most appropriate and convenient streets to and along Interstate Highway 405 (San Diego Freeway), Interstate Highway 5 and over the most appropriate and convenient streets and roads to the Del Mar Race Track.

Alternate Route

Commencing from Interstate Highway 405 (San Diego Freeway), thence along Interstate Highway 605 (San Gabriel Freeway), Katella Avenue to Los Alamitos Race Track parking lot, return to and along Katella Avenue, Valley View Street, Interstate Highway 405 (San Diego Freeway), Interstate Highway 5 and over the most appropriate and convenient streets and roads to the Del Mar Race Track.

Issued by California Public Utilities Commission.

Decision No. 85028, Application No. 55273.