

Decision No. 85255**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 AIRLINE LIMOUSINE SERVICE, INC. to  
 acquire ownership and control of the  
 Certificate of Convenience and  
 Necessity and Passenger Stage Certi-  
 ficate No. 896, issued to JOHN R.  
 ZAVALETA, dba TRI-TERMINAL LIMOUSINE  
 SERVICE, to transfer ownership and  
 control pursuant to Section 854,  
 California Public Utilities Code.

Application No. 55458  
 (Filed January 28, 1975;  
 amended February 3, 1975)

Carl Windell, Attorney at Law, for Airline Limousine  
 Service, Inc., and John R. Zavaleta, dba Tri-  
 Terminal Limousine Service, for himself, applicants.  
Bernard B. Siner, Attorney at Law, for Airport  
 Limousine Service of Sunnyvale, Inc., protestant.  
Masaru Matsumura, for the Commission staff.

O P I N I O N

John R. Zavaleta, doing business variously as Tri-Terminal Limousine Service, Airline Limousine Service, and Airline Limousine Service, Inc. (seller-transferor), requests authority to sell and transfer, and Airline Limousine Service, Inc., a California corporation (purchaser-transferee), requests authority to purchase and acquire a certificate of public convenience and necessity and passenger stage certificate No. 896.

In the alternative, by amended application dated February 3, 1975, applicants submit that transfer of control may be severed from transfer of ownership and request expeditious transfer of control pending resolution of transfer of ownership. However, by our resolution of the original application, the amended application becomes moot.

The certificate of public convenience and necessity held by seller-transferor was granted by Decision No. 81684 dated July 31, 1973 in Application No. 52849. It authorizes transportation of passengers and their baggage between points in the counties of Alameda, San Mateo, and Santa Clara, on the one hand, and the San Francisco International Airport, Oakland International Airport, and San Jose Municipal Airport, on the other hand.

The application was protested by Airport Limousine Service of Sunnyvale, Inc., which holds certificated authority granted by Decision No. 81684 dated July 31, 1973 in Application No. 52862 authorizing similar passenger and baggage transportation in the same geographical area as applicants, plus Contra Costa County.

A duly noticed public hearing was held before Examiner Porter on March 14, 1975, and the matter was submitted.

Purchaser-transferee was incorporated as a California corporation February 1, 1975 by eight driver-investors and claims a paid-up capital of \$16,000. Pursuant to a purchase agreement entered into January 28, 1975, the purchase price for the certificate upon Commission's approval of the sale and transfer will be \$10,000. Seller-transferor testified he has no financial or managerial interest in purchaser-transferee.

Pending Commission's approval of the sale and transfer, the eight driver-investors who comprise purchaser-transferee are directed and employed on a commission only basis by seller-transferor. The purchaser-transferee corporation has paid for some solicitation and advertising materials using the name "Airline Limousine Service, Inc." These materials are being distributed by the eight drivers to travel agents and potential customers with full approval of the seller-transferor.

The protest is based upon four contentions, although at the hearing protestant made no affirmative showing in support of his contentions except for cross-examination of applicants' witnesses:

1. Seller-transferor failed to establish service, or file tariff and timetables until August 1974 - beyond the 120-day period provided for such purpose by Decision No. 81684 dated July 31, 1973.
2. The similarity of names between purchaser-transferee and that of protestant is calculated to deceive, defraud, and mislead the public.
3. Existing carriers can adequately meet the public need for service, and there is no need for applicants' service.
4. Purchaser-transferee has been operating before authorization by the Commission.

Discussion of Protestant's Contentions

1. Seller-transferor filed the tariffs required under Commission Decision No. 81684 dated July 31, 1973 on December 6, 1973. (Incidentally, seller-transferor filed his tariff in 1973, 14 days before protestant - both being authorized under the same Commission decision which consolidated a number of similar applications.) Whether the date he commenced service was before August 1974 is unclear, but since August 1974 he has provided service, and it is clear that there has been no abandonment or intent to abandon. Therefore, the Commission at this late date finds there has been substantial compliance with the service regulations required in Commission Decision No. 81684.

2. While similar names are not uncommon in business, unhappily they do lead to confusion, mistakes, and irritation. The Commission agrees with protestant that the substantial similarity between "airline limousine service" and "airport limousine service" may well confuse customers and cause patrons of the carrier to telephone the other carrier in the mistaken belief they are dealing with their

selected carrier. The public is entitled to know with whom they are dealing. Distinctive names will aid the public, if complaints arise or injuries occur the public's ability to affix responsibility will not be impaired, irritation and confusion would be lessened, and ill feeling and sharp practices reduced.

3. In an operative rights transfer proceeding, the Commission is concerned with the question of whether such transfer would be consistent with the public interest, but questions raised relative to public convenience and necessity are not usually relevant because they were determined earlier in proceedings in which the certificate was granted (In Re Lee (Radio Paging Co.) (1966) 65 CPUC 635; Bezera (1944) 45 CRC 151).

The words "public interest" relate to a question of good faith, ability to continue the operation, sufficiency of equipment, financial ability, or a willingness to abide by the law and Commission rules. Where, as here, the unrebutted evidence is that the purchaser-transferee organization is comprised of experienced limousine drivers, is financially responsible, and is adequately equipped to continue the service sought, the Commission is justified in a finding that the proposed sale and transfer is in the public interest (Hills Transportation Co. (1951) 50 CPUC 637; City Transfer and Storage Co. (1945) 46 CRC 5).

4. While the driver-investors who comprise buyer-transferee are indeed working as limousine drivers in passenger stage operations, they do so as employees under the direction and control of seller-transferor until the Commission approves the sale and transfer. As seller-transferor holds the requisite operating authority, nothing prevents this mode of operation. The distribution of advertising and solicitation materials by buyer-transferee, with knowledge and perhaps even assistance by the seller-transferor, is premature, but of such small consequence as not to fatally taint the application. Applicants

have kept the Commission staff informed of their various actions, including seller-transferor's abundant use of dba styling, and the Commission finds no significant violation of Section 854, 5411, or 5412 as alleged by petitioner.<sup>1/</sup> Nor is there need for a cease and

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1/ Public Utilities Code Section 854:

"No person or corporation, whether or not organized under the laws of this State, shall, after the effective date of this section, acquire or control either directly or indirectly any public utility organized and doing business in this State without first securing authorization to do so from the commission. Any such acquisition or control without such prior authorization shall be void and of no effect. No public utility organized and doing business under the laws of this State shall aid or abet any violation of this section."

Public Utilities Code Section 5411:

"Every charter-party carrier of passengers and every officer, director, agent, or employee of any charter-party carrier of passengers who violates or who fails to comply with, or who procures, aids, or abets any violation by any charter-party carrier of passengers of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit or certificate issued to any charter-party carrier of passengers, or who procures, aids, or abets any charter-party carrier of passengers in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit or certificate, is guilty of a misdemeanor and is punishable by fine of not more than five hundred dollars (\$500) or by imprisonment in the county jail for not more than three months, or both."

Public Utilities Code Section 5412:

"Every corporation or person other than a charter-party carrier of passengers, who knowingly and willfully, either individually, or acting as an officer, agent, or employee of a corporation, copartnership, or any other person other than a charter-party carrier of passengers, violates any provision of this chapter or fails to observe, obey, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or who procures, aids, or abets any charter-party carrier of passengers in its violation of this chapter, or in its failure to obey, observe, or comply with any such order,

(Continued)

desist order under Section 1034.<sup>2/</sup>

Findings

1. Seller-transferor filed the tariff required by Decision No. 81684 on December 7, 1973. Although the record does not disclose when service was commenced, there has been no abandonment or intent to abandon.

2. The similarity of names could only induce and promote confusion, and lead to mistakes, irritations, and sharp practices not conducive to the public interest. In order to eliminate this possibility, applicant purchaser-transferee has agreed to conduct its business under the name "Peninsula Limousine Service."

3. The proposed transfer would not be contrary to the public interest. Buyer-transferee has the ability to acquire and operate seller-transferor's passenger stage service without interruption in service.

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1/ (Continued)

decision, rule, regulation, direction, demand, or requirement, is guilty of a misdemeanor, and is punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment in the county jail for not more than three months, or both."

2/ Public Utilities Code Section 1034:

"When a complaint has been filed with the commission alleging that any passenger stage is being operated without a certificate of public convenience and necessity, contrary to or in violation of the provisions of this part, the commission may, with or without notice, make its order requiring the corporation or person operating or managing such passenger stage, to cease and desist from such operation, until the commission makes and files its decision on the complaint, or until further order of the commission."

4. As asserted by protestant, the possible violations of Sections 854, 5411, or 5412 by applicants are not significant and cannot bar the transfer.

5. Applicants' amended application requesting bifurcated treatment of the transfer and the sale should be denied as moot.

6. Protestant's request for a cease and desist order under Section 1034 is without merit on the evidence and should be denied.

Conclusions

1. Applicants' amended application to bifurcate the transfer and the sale is denied.

2. Protestant's request for a cease and desist order is denied.

3. The proposed sale and transfer would not be adverse to the public interest and should be authorized.

4. The authorization granted shall not be construed as a finding of the value of the rights and properties authorized to be transferred.

5. The order which follows will provide for, in the event the sale and transfer are completed, the revocation of the certificate presently held by John R. Zavaleta, doing business as Tri-Terminal Limousine Service, and the issuance of a certificate in appendix form to Airline Limousine Service, Inc., doing business as Peninsula Limousine Service.

Purchaser-transferee is 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. Conditioned upon Airline Limousine Service, Inc. using the name "Peninsula Limousine Service" in operation of this passenger and baggage transportation business, including advertising and solicitation, on or before ninety days following the effective date of this order, John R. Zavaleta, doing business as Tri-Terminal Limousine Service, may sell and transfer the operative rights referred to in the application to Airline Limousine Service, Inc., doing business as Peninsula Limousine Service.

2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

3. Purchaser shall amend or reissue the tariffs and timetables on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the rates and rules. The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the transfer. The tariff and timetable filings made pursuant to this order shall comply in all respects 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. Failure to comply with the provisions of General Orders Nos. 79-Series and 98-Series may result in a cancellation of the operating authority granted by this decision.



4. On or before the end of the third month after the transfer, the purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Airline Limousine Service, Inc., a corporation doing business as Peninsula Limousine Service, authorizing it to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the points and over the routes set forth in Appendix A of this decision.

6. The certificate of public convenience and necessity granted by Decision No. 81684 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. Purchaser shall comply with the safety rules administered by the California Highway Patrol, the rules and regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 101-Series.

8. Purchaser shall maintain its 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 its 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 16th  
day of DECEMBER, 1975.

I abstain!

David, Commissioner

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President  
William Sproule  
Henry L. Stangen  
E. Ross  
Paul F. [unclear]  
Commissioners

Appendix A

AIRLINE LIMOUSINE SERVICE, INC.  
dba  
Peninsula Limousine Service

Original Title Page

CERTIFICATE  
OF  
PUBLIC CONVENIENCE AND NECESSITY

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Showing passenger stage operative rights, restrictions, limitations,  
exceptions and privileges applicable thereto.

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All changes and amendments as authorized by  
the Public Utilities Commission of the State of California  
will be made as revised pages or added original pages.

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Issued under authority of Decision No. 85255  
dated DEC 16 1975, of the Public Utilities  
Commission of the State of California, in Application  
No. 55458.

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

The certificate hereinafter noted supersedes all operative authority heretofore granted to Airline Limousine Service, Inc., a corporation or its predecessors.

Airline Limousine Service, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers and their baggage between points in the Counties of Alameda, San Mateo, and Santa Clara, on the one hand, and the San Francisco International Airport, Oakland International Airport, and San Jose Municipal Airport, on the other hand, over the most appropriate routes subject to the following provisions:

- (a) No passengers shall be transported except those having point of origin or destination at one of the following places:
  - 1. San Francisco International Airport.
  - 2. Oakland International Airport.
  - 3. San Jose Municipal Airport.
- (b) When service is rendered it shall be on an "on-call" basis. Tariffs and timetables shall show the conditions under which such "on-call" service shall be operated.
- (c) Service shall be provided with vehicles seating no more than 9 passengers.

Issued by California Public Utilities Commission.

Decision No. 85255, Application No. 55458.