

SMC

Decision No. 85286

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PEERLESS STAGES (TCP 18A) v.
DALTON POWELL AND DAMON POWELL
doing business as AIRPORT LIMOUSINE
SERVICE (TCP 482) for an immediate
cease and desist order and temporary
restraining order for permit violations.

Case No. 10024

ORDER DENYING INTERIM RELIEF

Complainant is the holder of a Class A charter-party carrier certificate issued by this Commission. The certificate grants complainant the right to conduct operations as a charter-party carrier of passengers anywhere within the state of California.

Complainant alleges that defendant has a charter-party carrier permit, pursuant to Section 5384 of the Public Utilities Code, permitting him to operate as a specialized carrier in accordance with the dictates of Section 5384. It is complainant's allegation that defendant is operating in excess of defendant's authority by entering into contracts with the Oakland Unified School District of Alameda County and by offering its services to restaurants in Oakland for the purpose of taking the restaurant patrons to the Oakland Coliseum for football games.

Complainant asserts that it is presently serving the area in which defendant is operating and that no additional service is or will be required.

Complainant prays for an immediate order restraining defendant from all operations under their present permit. Complainant asserts that both the general public and complainant "... will suffer irreparable damage in that said operation will be illegal, uncontrolled by this Commission, and will endanger public safety."

While complainant may well have pleaded facts sufficient

to state a cause of action, we do not agree that there has been a sufficient showing of immediate irreparable harm, either to complainant or the general public, to warrant issuance of an ex parte cease and desist order. Based on the four corners of this complaint, there is no basis on which the Commission could determine any specific injury to complainant. The complaint does not even allege that it has attempted to obtain the charters assertedly operated by defendant. We cannot find that complainant has shown immediate and irreparable injury to itself so as to warrant issuance of an ex parte order. However, in an effort to resolve this matter as quickly as possible we shall order defendant to answer the complaint.


IT IS ORDERED that:

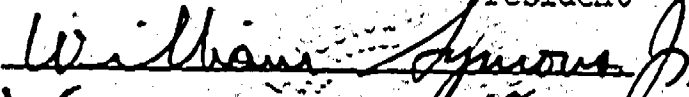
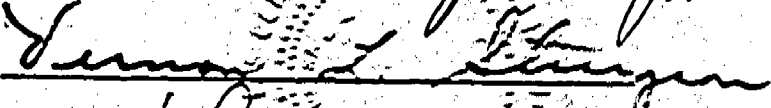
1. Complainant's request for interim relief is denied.
2. Within ten days of service of this order denying interim relief, defendant shall file its answer to the complaint.

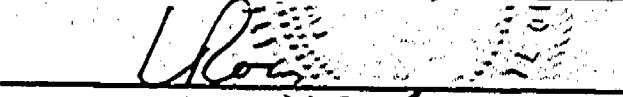
The Secretary is directed to cause personal service of this order on defendant.

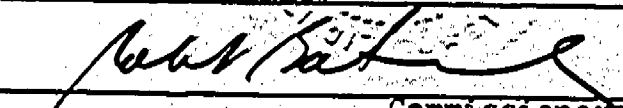
The effective date of this order is the date hereof.

Dated at San Francisco, California, this 30th day of December, 1975.



President






Commissioners