

Decision No. 85837

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
A. B. ALLEN, an individual, doing  
business as ALLEN TRANSPORTATION CO.,  
for a passenger stage certificate  
authorizing the transportation of  
passengers and their baggage between  
certain designated points within the  
State of California.

Application No. 55763  
(Filed June 20, 1975)

Handler, Baker & Greene, by William D. Taylor  
and Raymond A. Greene, Attorneys at Law, for  
Allen Transportation Co., applicant.  
W. L. McCracken, Attorney at Law, for Greyhound  
Lines, Inc., and Russell & Schureman, by  
R. Y. Schureman, Attorney at Law, for American  
Buslines, Inc. and Continental Trailways, Inc.,  
protestants.  
Elmer Sjostrom, Attorney at Law, for the Commission  
staff.

O P I N I O N

Applicant A. B. Allen (Allen), an individual doing business as Allen Transportation Co., by amended application, requests a certificate to operate as a passenger stage corporation in the transportation of passengers and their baggage, in round trip, special operations tours, beginning and ending in the six counties of Amador, El Dorado, Placer, Yolo, Sacramento, and San Joaquin, and destined to points and places within California, subject to the following restrictions:

- (a) All such transportation shall be conducted on a sightseeing or pleasure tour basis.
- (b) All tours and passengers on tours shall originate and terminate in one or more points in the above-named counties.

- (c) All tours shall be conducted on a round-trip basis.
- (d) All tours shall be conducted on a continuous basis excepting stops for sightseeing, attending special events, eating, and sleeping.
- (e) All tours shall include more than bare expeditious point-to-point transportation and shall provide accessorial services including, but not limited to, tour guides, restaurant meals, and accommodations.
- (f) In no case shall any tour be conducted without the applicant having previously filed applicable tariffs and schedules as are required by the rules of this Commission.

The authority requested does not list any specific tours. The application was protested by American Buslines, Inc. (American), Continental Trailways, Inc. (Continental), and Greyhound Lines, Inc. (Greyhound). A hearing was held on the application at Sacramento before Examiner Pilling on November 3, 4, 5, and 6, 1975.

Allen, who presently operates tours and other trips by bus under his charter-party carrier authority, testified that once he secures a certificate he will continually attempt to develop tours. He intends to solicit suggestions from his passengers, from groups, from travel agents, and from others with respect to potential tours. He will charge individual fares. Once a tour is set up - he gave examples of seven specific tours which he initially plans to set up - he will file a tariff covering the tour and brochures outlining the tour will be made available to travel agents who will assist in selling the tour to individual passengers. Allen also intends to solicit organizations and to hold himself out to the general public as providing tours by bus on a scheduled as well as a one-time basis. A tour will not operate unless a minimum of 20 passengers have bought tickets two weeks prior to the scheduled departure. Allen testified that his affiliated company, Amador Stage Lines, possesses a

certificate from the Interstate Commerce Commission which authorizes it to perform "irregular route" operations as a bus operator and authorizes interstate operations similar to those he intends to perform under the requested authority.

Of the seven tours which Allen plans to initially conduct (Exhibit 9) only Tours 1 and 2 are objected to by one of the protestors. Tour 1 consists of a trip from Sacramento to the Oakland Coliseum complex for the purpose of watching a sports event there in the afternoon with a stop after the sports event for dinner and return to Sacramento. Tour 2 departs Sacramento at 3:30 p.m. and proceeds via State Route 16 to Sutter Creek, Drytown, and Amador City and arrives at Jackson at 4:30 p.m., thence via State Route 88-89 to U.S. Highway 50 to South Lake Tahoe arriving at 7:00 p.m. in time to board the M. S. Dixie for a dinner cruise, arriving back in Sacramento at 12:30 a.m. Tour 3 is a sightseeing trip around Sacramento stopping at points of interest. Tour 4 is an overnight trip to the Gold Country and Yosemite National Park with stops at points of interest along the way. Tour 5 explores the Mother Lode Country. Tour 6 is a three-day trip to the Monterey Bay area, Big Sur State Park, the Hearst Castle, and Morro Bay. Tour 7 is a tour of the wine country. All trips originate at Sacramento.

Twenty-two public witnesses appeared at the hearing and gave testimony in support of the application. Most of the witnesses supported the statewide aspect of the requested authority but few witnesses testified about specific tours other than the seven tours initially planned by Allen.

Protestants operate both as passenger stage corporations and charter-party carriers and perform sightseeing and pleasure tours. Greyhound is the parent company of two sightseeing companies offering intrastate service in California. Greyhound has a terminal at Sacramento and stations numerous pieces of bus equipment there.

It operates over a variety of routes throughout California and from Sacramento dispatches schedules to the north, south, east, and west. It conducts special operations from its Sacramento terminal over its regular routes. It provides special service to Golden Gate Fields, a race track at Albany, from Sacramento during the racing season. Continental and its subsidiary American also have a bus terminal used jointly at Sacramento from which they conduct regular route and special operations in an operation much less extensive than Greyhound's. Continental, American, and Greyhound all oppose the broad spectrum aspect of the application fearing a loss of traffic principally in their regular route operations if the application is granted. They contend that Allen will use the authority to conduct bare expeditious bus service rather than true sightseeing or pleasure tours. In support of this contention Greyhound argues that Tours 1 and 2 as listed in Exhibit 9 constitute bare expeditious bus service. However, Greyhound has no objection to the issuance of a certificate to Allen to conduct Tours 3 through 7 while Continental and American do not object to the granting of a certificate to Allen to conduct Tours 1 through 7.

Protestants object to the granting of a certificate to Allen which will give him the carte blanche right to initiate any tour he desires which originates in the six-county area simply by filing a tariff covering such tour. They argue that any certificate to operate as a passenger stage corporation - the type of certificate which Allen is requesting - must specify the fixed termini between which or the regular routes over which operations are to be performed

in order to restrict the operation to the statutory description<sup>1/</sup> of the operations of a passenger stage corporation and since the certificate as requested would allow other than fixed termini or regular route operations the Commission is without authority to issue such a passenger stage certificate. In support of their argument that only fixed termini or regular route operations may be authorized by a passenger stage certificate they point to Section 5360 of the Public Utilities Code dealing with charter-party carriers which reads:

"5360. Subject to the exclusions of Section 5353 of this chapter, 'charter-party carrier of passengers' means every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this State."

Section 5353 referred to in the above-quoted Section 5360 reads, as pertinent herein as follows:

"5353. The provisions of this chapter do not apply to:

\* \* \*

"(c) Common carrier transportation services between fixed termini or over a regular route which are subject to authorization pursuant to the provisions of Article 2 (commencing with Section 1031), Chapter 5, Part 1, Division 1, of this code."

Protestants conclude from Sections 5360 and 5353 that the open-ended style of authority requested by Allen can only be granted under the charter-party provisions of the Public Utilities Code. Allen already has a Class A charter-party certificate. Protestants also contend

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<sup>1/</sup> Section 226 of the Public Utilities Code reads in part as follows:

"226. 'Passenger stage corporation' includes every...person engaged as a common carrier, for compensation, in the...operation...of any passenger stage...between fixed termini or over a regular route..."

that the Commission, in deciding this case, should give consideration to the implications of Section 1032 which provides that the Commission may issue a certificate to operate as a passenger stage corporation "in a territory already served by a certificate holder" only when the existing passenger stage corporation or corporations serving such territory will not provide such service to the satisfaction of the Commission. They cite the following from The Gray Line Tours Company (1973) 74 CPJC 669 at page 700 as giving an insight into what those implications would be were the Commission to grant a certificate to serve a large area but with minimal commitment to render service.

"The staff does not object to the change in emphasis of the tour. It does, however, object to the language of proposed Item 739. The basis for the objection is that the language is so broad that it preempts the Pacific Coast Highway, even though Gray Line does not propose to operate through La Jolla, Del Mar, and other beach cities on that route. We believe the staff's objection has merit. In Decision No. 81036, the Examiner's proposed report, adopted by the Commission, stated: 'The grant of such authority would establish Gray Line as the existing carrier, within the meaning of Section 1032, in a vast area of Southern California, with a minimal commitment to render service. It would tend to stifle competition and the development of tourism in these areas. It is, of course, in Gray Line's interest to develop additional tours which are profitable. However, others may visualize tours not apparent to Gray Line or be able, because of their proximity or connections in an area, to develop tours which Gray Line cannot operate economically. The innovative will be met with the contention that under Section 1032 the existing carrier must first be afforded an opportunity to place the idea in effect to the satisfaction of the Commission, and only upon a failure to do so, will the originator be afforded an opportunity to establish the tour.'"

Allen argues that the Commission may issue a passenger stage certificate to cover operations other than fixed termini or regular route operations since the statutory definition of a passenger stage corporation (see Footnote 1) is not exclusive being that the definition merely "includes" fixed termini or regular route operations. As the definition is by its own terms nonexclusive, operations other than those between fixed termini or over a regular route may be certificated as a passenger stage corporation and Allen's proposed operation is just such an operation. In support of this contention Allen points to Section 1035 of the Public Utilities Code wherein the mere act of a bus company charging or collecting an individual fare "shall be presumed to be an act of operating as a passenger stage corporation..." Allen states that the procedural context in which the merits of the application must be considered as a matter of law are set forth in Section 1032 which reads:

"Every applicant for a certificate shall file in the office of the commission an application therefor in the form required by the commission. The commission may, with or without hearing, issue the certificate as prayed for, or refuse to issue it, for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity require. 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." (Emphasis supplied.)

Allen contends that there cannot be any argument or issue concerning the adequacy of "existing service" within the purview and meaning of Section 1032 since there is no existing service of the type proposed by applicant according to the unanimous testimony of the members of the public appearing in support of the application. Allen states that restrictions (a) through (f) in its proposed authority are consistent with the concept of public convenience and necessity within the context of this particular proceeding. Allen further contends that the "grandfather" provisions of Section 1031 specifically refer to two types of passenger stage operations, one involving operations between fixed termini and the other involving "seasonal service of not less than three consecutive months duration, sight-seeing buses on a continuous sight-seeing trip with one terminus only." Allen cites the Commission's Decision No. 84763, Application of Bacchants' Pilgrimages and Decision No. 84186, Application of Stuart A. Messnick dba The Co-Ordinators as precedents where the Commission issued authority as requested herein.

#### Discussion

We affirm our position in the Gray Line case, supra, of denying an application for a passenger stage certificate on an extensive area-wide basis where there would be a minimal commitment to render service, as there would be in this case, for the reasons stated in the Gray Line case.

Allen cites the Bacchants and the Messnick cases, supra, as precedents for the Commission to issue the type of carte blanche sightseeing and pleasure tour authority requested. In the Bacchants case we authorized operations between fixed points which started at named hotels and "other hotels in the Union Square vicinity" in San Francisco, to "the Monterey Bay Area, Point Lobos and Big Sur",



thence to certain named cities, "wineries in Sonoma and Napa counties", and terminated at named points. Hence, each of the designations referred to a fixed point. While we may have taken some latitude with the fixed point concept in granting Bacchants "the Monterey Bay area", since that area abounds in so many pleasurable sights for practical purposes the authority was stated in this shortened description. In the Messnick case the certificate issued provides for service only between named hotels and named cities. Neither of the two cited cases stand as precedent for the issuance of the statewide authority requested by Allen.

Of the seven tours listed in Exhibit 9 one of the protestants objects to certificating Allen to perform Tours 1 and 2, contending that the so-called tours are in reality merely expeditious point-to-point bus transportation and not sightseeing or pleasure tours. We agree. As to Tour 1, Allen proposes to conduct no tour but simply to take a busload of persons to an athletic event and to dinner. This is expeditious point-to-point transportation. (See Clarence Cray (1966) 65 CPUC 545 at p. 554.) Tour 2 likewise is expeditious point-to-point transportation. The tour leaves Sacramento at 3:30 p.m. and arrives at South Lake Tahoe at 7:00 p.m., an interval of 3 hours and 30 minutes. The approximate 125-mile drive at 55 miles per hour would take 2 hours and 12 minutes leaving 1 hour and 18 minutes to sightsee along the route on the way to South Lake Tahoe. The return trip is made at night. It is doubtful that a person would make a seven-hour trip - 3-1/2 hours out and 3-1/2 hours back - to engage in but 1 hour and 18 minutes of sightseeing. However the case, the only stop during the whole trip is at South Lake Tahoe to afford passengers the opportunity to have dinner aboard the M. S. Dixie on Lake Tahoe, which is no doubt a delightful experience, but it is the predominant and practically the only feature of the bus trip. Since one or both protestants have authority to transport passengers from Sacramento to the points involved the application will be denied as to Tours 1 and 2 and a certificate issued to engage in Tours 3 through 7.

Findings

1. Allen has applied for a certificate to operate as a passenger stage corporation for the purpose of conducting sightseeing and pleasure tours throughout the State beginning and ending within a six-county area.
2. The only fixed point or regular route operations which Allen proposes to conduct under the certificate at this time are seven tours enumerated in Exhibit 9.
3. Tours 1 and 2 have as their sole purpose the transportation of persons to a distant point to afford them an opportunity to watch a sports event or to have dinner in enjoyable surroundings.
4. Tours 1 and 2 are merely expeditious point-to-point transportation and not sightseeing or pleasure tours.
5. Tours 3 through 7 are sightseeing or pleasure tours.
6. If the areawide certificate is granted Allen proposes to add additional tours by tariff filing.
7. Under an areawide certificate Allen would have but a minimal commitment to render service.
8. Granting an areawide certificate to Allen would stifle passenger stage competition in the field of sightseeing and pleasure tours in the territory covered by the certificate and be against the public interest.
9. The public witnesses who appeared and testified in support of the application referred to few specific tours other than those set out in Exhibit 9.
10. Public convenience and necessity have not been shown to require the granting of the requested areawide authority.
11. Persons desiring to travel to the activities to which Tours 1 and 2 were designed to transport them have existing passenger stage service available to them for such transportation and this existing service has not been shown to be inadequate or unsatisfactory.

12. Public convenience and necessity have not been shown to require the issuance of a certificate to perform the transportation involved in Tours 1 and 2.

13. Public convenience and necessity have been shown to require the issuance of a certificate to perform Tours 3 through 7.

14. Applicant is ready, willing, and able to perform Tours 3 through 7.

Conclusions

1. Public convenience and necessity have not been shown to require the granting of the requested areawide authority, and the application in this respect should be denied.

2. Public convenience and necessity have been shown to require the granting of a certificate as prayed restricted to the performance of Tours 3 through 7 listed in Exhibit 9.

Applicant 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. A certificate of public convenience and necessity is granted to A. B. Allen, an individual, doing business as Allen Transportation Co., authorizing him 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.

2. In providing service pursuant to the authority granted by this order, applicant 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, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if he accepts the certificate he 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, applicant 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 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 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) Applicant shall maintain his 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 his 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 17th day of MAY, 1976.

William J. Quinn President  
Robert B. Quinn Commissioner

GK

Appendix A

A. B. Allen  
dba  
ALLEN TRANSPORTATION CO.

Original Title Page

CERTIFICATE  
OF  
PUBLIC CONVENIENCE AND NECESSITY  
TO OPERATE  
A PASSENGER STAGE CORPORATION

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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. 85837, dated MAY 18 1976,  
of the Public Utilities Commission of the State of California, in  
Application No. 55763.

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## SECTION 2. TOURS AUTHORIZED FROM SACRAMENTO

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1	Sacramento City Tour . . . . .	3
2	Sacramento-Gold Country-Yosemite . . . . .	3
3	Sacramento-Mother Lode . . . . .	4
4	Sacramento-San Simeon (Hearst Castle) . . . . .	5
5	Sacramento-Wine Country . . . . .	5

Issued by California Public Utilities Commission.

Decision No. 85837, Application No. 55763.

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

A. B. Allen, an individual doing business as Allen Transportation Company, 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 for sightseeing or pleasure tour purposes, between points within the City limits of Sacramento and various points of interest on the tours hereinafter described, subject, however, to the authority of this Commission to change or modify said tour routes at any time and subject to the following provisions:

- (a) All such transportation shall be conducted on a sightseeing or pleasure tour basis.
- (b) All tours and passengers on tours shall originate and terminate within the City limits of Sacramento.
- (c) All service herein authorized shall be limited to the transportation of round-trip passengers only.
- (d) All tours shall be conducted on a continuous basis excepting for stops for sightseeing, meals and lodging.
- (e) All tours shall include more than bare expeditious point-to-point transportation and shall provide accessorial services including, but not limited to, tour guides, restaurant meals and accommodations.

Issued by California Public Utilities Commission.

Decision No. 85837, Application No. 55763.



## SECTION 2. TOURS AUTHORIZED FROM SACRAMENTO.

Tour No. 1 - Sacramento City Tour

Commencing from any appropriate point or points within the City limits of Sacramento, thence over the most appropriate route for a day of touring in Sacramento with stops at various points of interest, thence return by the most appropriate route within the City of Sacramento to the original point or points of embarkation.

Tour No. 2 - Sacramento-Gold Country-Yosemite

1st Day: Commencing from any appropriate point or points within the City limits of Sacramento, thence via Highway 16, to Drytown, Amador City, and Jackson. Thence, via Highway 49, to Angels Camp, Columbia State Park and Sonora.

2nd Day: Commencing from Sonora via Highway 120 to Yosemite National Park, thence via Highway 140 to Merced, thence via Highway 99 to Sacramento and to the original point or points of embarkation.

Issued by California Public Utilities Commission.

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Appendix A

A. B. Allen  
dba  
ALLEN TRANSPORTATION CO.

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SECTION 2. TOURS AUTHORIZED FROM SACRAMENTO. (Continued)

Tour No. 3 - Sacramento-Mother Lode

- 1st Day: Commencing from any appropriate point or points within the City limits of Sacramento, thence via Interstate 80 to Auburn, thence via Highway 49 to Coloma, Sutter Creek, Columbia State Park, and Sonora.
- 2nd Day: Commencing from Sonora over the most appropriate route to Jamestown and Yosemite National Park.
- 3rd Day: Sightseeing in Yosemite National Park.
- 4th Day: Commencing from Yosemite National Park over the most appropriate route to Merced, thence via Highway 99 to Sacramento and to the original point or points of embarkation.

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## SECTION 2. TOURS AUTHORIZED FROM SACRAMENTO. (Continued)

Tour No. 4 - Sacramento-San Simeon (Hearst Castle)

1st Day: Commencing from any appropriate point or points within the City limits of Sacramento, thence via the most appropriate route to Clarksburg, Isleton, Rio Vista, San Jose, Santa Cruz, Carmel, 17-Mile Drive, and Monterey.

2nd Day: Commencing from Monterey via Highway 1 to Big Sur State Park, San Simeon (Hearst Castle), and Morro Bay.

3rd Day: Commencing from Morro Bay over the most appropriate route through the Salinas Valley to Mission San Juan Bautista and return to Sacramento to the original point or points of embarkation.

Tour No. 5 - Sacramento-Wine Country

Commencing from any appropriate point or points within the City limits of Sacramento, thence over the most appropriate route to various wineries and points of interest in Napa County, thence return to Sacramento over the most appropriate route to the original point or points of embarkation.

Issued by California Public Utilities Commission.

Decision No. 85837, Application No. 55763.