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Decision No. \_\_\_\_\_

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LOIS J. KOHLER, an individual dba  
WEST VALLEY CHARTER LINES,

Complainant,

vs.

FRED WAGENER III, an individual dba  
BUS REPAIR AND RENTAL,

Defendant.

Case No. 9997  
(Filed October 29, 1975)

Application of FRED W. WAGENER III,  
dba BUS REPAIR AND RENTAL, for a  
charter-party carrier of passengers  
permit, Campbell. (TCP-646)

Application No. 56105  
(Filed December 3, 1975)

Ronald. H. Whitcanack, Attorney at Law, for Fred W.  
Wagener III, applicant and defendant.

Robert M. Kaiser, Attorney at Law, and Lois J. Kohler,  
for West Valley Charter Lines, protestant and  
complainant.

Russell Baker, for Santa Cruz Transit, and  
C. L. Parker, Jr., for Patchett Bus & Transportation  
Company, protestants.

James T. Quinn, Attorney at Law, for the Commission  
staff.

O P I N I O N

In Case No. 9997 Lois J. Kohler, an individual doing business as West Valley Charter Lines, complainant, alleges that Fred Wagener III, an individual doing business as Bus Repair and Rental, defendant, has been operating as a charter-party carrier of passengers principally transporting school pupils without a permit or certificate to do so and requests that the Commission issue an order to defendant requiring him to cease and desist such operations.

Defendant contends that his operations in transporting school pupils is exempt from the Commission's jurisdiction under Section 5353(b)<sup>1/</sup> of the Public Utilities Code. In Application No. 56105 defendant requests the issuance to him of a permit authorizing him to perform service as a charter-party carrier of passengers. Case No. 9997 and Application No. 56105 were consolidated for hearing and the matters were heard on February 23 and 24, 1976 at San Jose before Examiner Pilling. At the hearing defendant requested that Application No. 56105 be dismissed. Defendant presented no evidence in support of the application.

Defendant has been furnishing 42- to 79-passenger buses with drivers since 1967 to transport groups of school and college pupils<sup>2/</sup> from the Santa Clara Valley on field trips and to attend or participate in athletic and other school activities. Defendant possesses no operating authority from the Commission. Defendant operates five buses, four nonschool buses and one which is a certified school bus. Each of the five buses is used from time to time to transport the pupils. Defendant usually receives requests for bus service from schools and school districts by oral engagement over the telephone at which time defendant requests a written confirmation of the engagement. The written confirmation, usually in the form of a purchase order and sometimes a letter, may or may not be received by the defendant prior to picking up the pupils. Sometimes the written confirmation will be attached to the check in payment for the trip after the trip has been made and the school has been billed for the service. Copies of some of the purchase order confirmations, which were signed by the ostensible "Purchasing Agent" for the school district, covering a few trips undertaken by defendant were introduced into evidence by the Commission staff witness.

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<sup>1/</sup> Section 5353. "The provisions of this chapter do not apply to:

\* \* \*

"(b) Transportation of school pupils conducted by or under contract with the governing board of any school district entered into pursuant to authority vested by the provisions of the Education Code."

<sup>2/</sup> A pupil is "A person of any age under the care of a teacher."  
(Funk and Wagnall's Standard College Dictionary, circa 1973.)

Defendant is paid by the trip. Defendant has operated trips for schools and school districts in transporting pupils to Dodge Ridge, San Francisco, and Disneyland, among other places. Defendant testified that he has transported busloads of senior citizens to numerous locations but that he directed the proceeds from those transportation services to charity.

At the hearing the parties stipulated that the following two findings could be made in the case:

I

"Defendant, with the advice and consent of his attorney, in satisfaction of the complaint and based upon evidence adduced at the hearing agreed at the hearing on the record

- "1. To cease and desist conducting any charter party operations or any unauthorized operations under the jurisdiction of the Public Utilities Commission without first obtaining a certificate or permit from the Commission and
- "2. To the issuance of an order ordering defendant to cease and desist from conducting any charter party or other unauthorized passenger operations which operations are under the jurisdiction of the Public Utilities Commission without first obtaining a permit or certificate from the Commission."

II

"Defendant, with the advice and consent of his attorney, in satisfaction of the complaint and based upon evidence adduced at the hearing on the record agreed

- "1. Not to transport school pupils outside the limits of any single city without first obtaining a permit or certificate from the Commission unless such transportation is conducted by or under \_\_\_\_\_ contract with the governing board of any school district entered into pursuant to authority vested by the provisions of the Education Code and
- "2. To the issuance of a cease and desist order ordering defendant to cease and desist from transporting school pupils outside of the limits of any single city without first obtaining a permit or certificate from the Commission unless such transportation is conducted by or under \_\_\_\_\_ contract with the governing board of any school district entered into pursuant to authority vested by the provisions of the Education Code."

It was explained that the wording of stipulation II was designed so as not to preclude defendant from engaging in exempt operations described in Section 5353(a)<sup>2/</sup> and (b) if he qualifies for those exemptions. The parties, however, disagreed on the interpretation of the wording of those two exemptions as to the conditions which had to be met before the exemptions apply. Specifically, the staff contends the exemption set out in Section 5353(a) applies only to an operator whose entire charter service is continually rendered within the limits of one particular city. The staff further contends that the contract required by Section 5353(b) must be in writing. The staff also contends that the contract required in Section 5353(b) must be with the governing board of a school district for the exemption to apply and that a contract with the purchasing agent of a school district or other school or school district official will not qualify the operation as exempt. Defendant contends that any operations within a city are exempt even if a carrier has operations elsewhere. Defendant contends the contract required by Section 5353(b) may be oral and may be made with any school or school district official to come with the exemption.

Pertinent portions of the Education Code are as follows:

"39. 'Governing Board' means board of school trustees, and city and county board of education.

\* \* \*

"16801. The governing board of any school district may provide for the transportation of pupils to and from school whenever in the judgement of the board such transportation is advisable and good reason exists therefor....

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3/ Section 5353. "The provisions of this chapter do not apply to:  
(a) Transportation service rendered wholly within the corporate limits of a single city or city and county."

"Article 2. Use of School Buses

"16851. 'Schoolbus' [sic] Defined; Qualification of Operator. A schoolbus [sic] is defined as any motor vehicle while being used for the transportation of any school pupil at or below the 12th grade level to and from a public or private school or to and from public or private school activities, except the following:

"(a) A passenger vehicle designed for and when actually carrying not more than eight persons, including the driver.

\* \* \*

"(e) A motor vehicle operated by a common carrier, ... or by a passenger charter-party carrier and used under a contractual agreement to transport pupils to and from school activities but not used regularly to transport pupils to and from a public or private school.

"16852. Regulation Governing Construction and Operation of School Buses. The State Board of Education may adopt reasonable regulations relating to the construction, design, operation, equipment, and color of school buses..."

\* \* \*

"Article 3. Contracts for Special Transportation.

"16901. The governing board of any school district may contract for the transportation of pupils attending schools within the district to and from any exposition or fair, school activities, or other activities which the governing board determines to be for the benefit of the pupils...."

Under authority of Sections 16852, supra, and 152 of the Education Code - the latter section gives the Board of Education the power to adopt regulations for the government of schools - the Board of Education promulgated the following regulation:

"California Administrative Code, Title 5, Education  
Part 1. Department of Education  
Division 13. Chapter 4.  
School Buses

"Article 1. General Provisions

"14200. Scope of Chapter. This chapter applies to the transportation of pupils enrolled in the public schools at or below the 12th grade and to pupils enrolled in schools under the administration of the State Department of Education.

"14201. Definitions. As used in this chapter, each of the following terms has the meaning shown in this section:

"(a) School Bus: 'School bus' means every motor vehicle defined as a school bus by Education Code Section 16851.

\* \* \*

"(d) Governing Board. 'Governing board' or similar phrase, unless the context otherwise requires, includes county superintendents of schools and every other public school authority authorized to provide for the transportation of pupils of the schools referred to in Section 14200 [of this regulation].

\* \* \*

"14203. Agreements. (a) Contractor's Agreement. A written agreement shall be entered into by the governing board of each school district with each party contracting with such board for the transportation of pupils. Each such agreement shall provide, in addition to any other provisions, that the party contracting to transport pupils agrees to comply with and observe all the provisions of the Vehicle Code and all other applicable laws, rules, and regulations prescribed by the State Board of Education, any other other State agency, and the said governing board relating to the transportation of pupils."

The staff also argues that the exemption provided by Section 5353(b) of the Public Utilities Code applies only to transportation in school buses; that the legislature intended the transportation of school pupils by charter-party carriers be either under the jurisdiction of the Commission or the school district; that by the wording of Section 5353(b) the legislature intended that a more structured situation exists than a charter trip entered into after a mere telephone call; and that the term "contract" in Section 5353(b) must be interpreted in light of the type of agreement that school district governing boards may enter into for such transportation, namely, a written agreement as set out in Title 5, Section 14203 of the Administrative Code.

Defendant contends that the word "contract" in Section 5353(b) should be literally construed and that had the legislature intended the contract to be in writing it would have said so. Defendant claims that its operations in the transportation of school pupils comes within the exemption of Section 5353(b).

Discussion

Section 5353(b) describes the conditions which must be present before an operation can be considered exempt under that section. The first condition is that the transportation must be done under contract. If, as the staff contends, the type of contract (written versus oral) is critical in determining whether the operation is exempt or nonexempt, we believe the legislature in framing that section would have inserted the word "written" before the word "contract" in Section 5353(b). But the legislature did not make a written contract a requirement and we have neither the cause nor authority for doing so. Does the regulation of the State Board of Education requiring governing boards to enter into a written contract when contracting for school buses have the effect of amending Section 5353(b) so as to require the contract to be in writing as a condition of the exemption? No. We do not believe the legislature has given the Board of Education the power to amend by Board regulation any part of the Public Utilities Code. We hold, therefore, that the contract under which transportation may be performed on an exempt basis under Section 5353(b) may be either oral or written.

The second condition which must be present before an operation can be considered exempt under Section 5353(b) is that the transportation must be performed "under contract with the governing board of a school district entered into pursuant to authority vested by the provisions of the Education Code". Section 39 of the Education Code, supra, defines "governing board" and the definition does not include the purchasing agent of a school district, a school superintendent, or an official of a school or school district.

Therefore, the contract, for the exemption to obtain, must be with the governing board; that is, the governing board itself must be a party to the contract. Hence, if a contract for bus transportation is entered into with someone beside the governing board, for example, with the purchasing agent of a school district or some other school official, one of the conditions of the exemption is not present so the exemption does not apply, and the bus operator must have a charter-party permit to lawfully transport the school pupils. Notwithstanding the Board of Education's definition by regulation, supra, of a "governing board" to include county superintendents of schools and other school officials, we are bound by the definition of "governing board" as found in Section 39 of the Education Code which includes only boards of school trustees and local boards of education.

A school bus is a distinctive vehicle and is a well-known sight to all of us. It is yellow with black markings, has unusually large tail lights, has "School Bus" printed on its front, sides, and back, and has the words "Stop When Red Lights Flash" in large bold letters on its rear. It has easily recognizable features which set it apart from buses employed in public for-hire service. These and other features are required by regulations issued by the Board of Education under Section 16852 of the Education Code, supra, and by various sections of the Vehicle Code. A school bus may be driven only by a person possessing a special school bus driver's certificate (see Section 12517 of the Vehicle Code) and the bus may be operated only if there is outstanding a current certificate of inspection applicable only to school buses covering the bus. While the exemption allowed by Section 5353(b) is not specifically restricted to transporting school pupils in school buses, Section 16851 of the Education Code, supra, in our view has this effect. As pertinent here, the only alternative allowed by the latter section in the transportation of school pupils in school buses is their transportation by a passenger charter-party carrier. This reference to passenger



charter-party carrier indeed deals with the legislatively recognized passenger charter-party carrier which is defined in Section 5360 of the Public Utilities Code as follows:

"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."

Therefore, the passenger charter-party carrier referred to in Section 16851 of the Education Code referred to a carrier which has a charter-party permit issued by this Commission. In view of the present wording of Section 16851 of the Education Code we conclude that the exemption provided by Section 5353(b) applies only to the transportation of school pupils in school buses, except when such transportation is performed in a passenger vehicle designed for and actually carrying no more than eight persons including the driver.

Section 5353(a) exempts from the provisions of the passenger charter-party carriers' act "Transportation service rendered wholly within the corporate limits of a single city or city and county." The staff sees the phrase "wholly within the corporate limits of a single city" as only exempting the operator whose entire charter service is continually rendered within the limits of one particular city. We agree. The conditions of the exemption are finely spelled out, the key words being "wholly" and "single". All charter transportation performed by an operator must be performed within one particular city.

We take official notice of our decision entered today in Application No. 56350 in which defendant herein was authorized to purchase and acquire a Class A Charter-party Certificate. With the exercise of the authority granted in Application No. 56350 there would be compliance with the cease and desist order issued herein. However, until such authority is exercised and if such authority is not exercised, the issues in this proceeding will not have become moot.

Findings

1. Defendant furnishes 42- to 79-passenger buses which are not school buses with drivers for compensation to transport school and college pupils from the Santa Clara valley on field trips and to participate in athletic and other school activities.

2. Defendant has transported such pupils to Dodge Ridge, San Francisco, and Disneyland, among other points.

3. Such transportation is performed under an oral arrangement with a school or school teacher or a school secretary. Purchase orders are issued and signed by the purchasing agent of a school district.

4. Defendant receives a lump sum payment from the school district for each trip.

5. Defendant has transported for compensation groups of senior citizens.

6. Defendant does not possess a charter-party certificate or permit nor a passenger stage certificate.

7. The exemption provided by Section 5353(b) applies only to the transportation of school pupils in school buses as defined in Section 16851 of the Education Code and Section 545 of the Vehicle Code when such transportation is performed pursuant to the regulations adopted by the State Board of Education for the operation of school buses, except when such transportation is performed in a passenger vehicle designed for and actually carrying no more than eight persons, including the driver.

8. Defendant requests that his Application No. 56105 be dismissed

Conclusions

1. Application No. 56105 should be dismissed.

2. Defendant has been operating in violation of Section 5371 of the Public Utilities Code.

3. Defendant should be ordered to cease and desist its unlawful operations unless and until it obtains appropriate charter-party authority from the Commission.

O R D E R

IT IS ORDERED that:

1. Application No. 56105 is dismissed.
2. Fred Wagener III shall cease and desist and abstain from conducting any charter-party or other unauthorized passenger operations which operations are under the jurisdiction of the Public Utilities Commission without first obtaining a permit or certificate authorizing such operations from the Public Utilities Commission.
3. Because this day defendant has been authorized to purchase and acquire a Class A certificate authorizing passenger charter-party operations, and in order to permit him opportunity to exercise that authority within a reasonable time prior to the effective date of the cease and desist order herein, the order herein will be made effective thirty days after service upon defendant.

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

Dated at San Francisco, California, this 21<sup>st</sup>  
day of SEPTEMBER, 1976.

William J. Quinn President  
Vernon L. Sturgeon  
Leonard M. ...  
Robert Bateman Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.