

Decision No. 86420

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Fred W. Wagener III
(Coast Counties Charter), to purchase
Class A charter-party carrier certificate
from Roland Wilbur, Santa Clara, et al.
(TCP-82-A)

Application No. 56350
(Filed March 23, 1976)

Ronald H. Whitcanack, Attorney at Law, for applicant.
Robert M. Kaiser, Attorney at Law, for himself;
Lois J. Kohler, for herself, dba West Valley Charter
Lines; Russell E. Baker, for Santa Cruz Transit Co.;
and J. Fred Dixon, for Greyhound Lines, Inc.;
protestants.
James T. Quinn, Attorney at Law, for the Commission staff.

O P I N I O N

Public hearing was held in this application on July 13 and 14, 1976 before Examiner Thompson at Santa Clara and the matter was submitted.

This is an application by Fred W. Wagener III for authority to purchase a Class A passenger charter-party carrier certificate from Roland Wilbur. The application is protested by Lois J. Kohler, dba West Valley Charter Lines, and by Santa Cruz Transit Company, a corporation, both of whom are certificated to perform charter-party carrier operations and who conduct those operations mainly from points in Santa Clara and Santa Cruz Counties in the same general territory applicant proposes to serve. Protestants contend that applicant does not possess the satisfactory fitness to initiate and conduct operations in accordance with the rules and regulations adopted by the Commission, and that the existing charter-party carriers of passengers serving the territory are providing services which are satisfactory to the Commission and adequate to the public.

The Commission will authorize the transfer of a certificate of public convenience and necessity to conduct passenger charter-party carrier operations unless the transferee does not possess satisfactory fitness and financial responsibility to initiate and conduct the services authorized under that certificate. The matters of need by the public for the service or whether existing carriers are providing adequate services in the same territory to the satisfaction of the Commission are not material issues in a transfer proceeding.

Protestants do not contend that applicant does not possess the financial responsibility to conduct the operation. Applicant's financial condition reflected in a statement set forth in the application shows a net worth well in excess of \$100,000. The evidence shows applicant possesses reasonable credit and that he has the financial ability to institute and maintain the operation authorized under the certificate proposed to be transferred.

For a period of years after World War II applicant was engaged in the business of transporting property as a highway permit carrier under permits issued by the Commission. The evidence shows that such operations were conducted in compliance with Commission regulations. Applicant is an auto mechanic and he discontinued trucking operations to go into the business of truck repair. At the same time he determined to dedicate as much time as he could to religious and charitable works. In furtherance thereof he instructed students, as a volunteer, in the operation, maintenance, and repair of farm and road equipment owned by Monte Vista High School, a private school. He also undertook to repair the school bus without charge. Subsequently, he purchased that bus and started a business known as Valley Bus Repair, which led to his renting busses with drivers for compensation. The rental business was conducted mainly with schools and church groups.

Applicant testified that about 1961 he went to the field office of the Commission at San Jose and asked the Commission representative about regulations by the Commission governing such

activity and was informed that charter bus operations were not regulated by the Commission.^{1/} He further testified that he first became aware that the bus operations he conducted might be subject to regulation by the Commission in the first part of 1968 when he was shown a form letter from the Commission addressed to all charter-party carriers of passengers notifying them of the procedure for filing applications for grandfather-rights Class A certificates. He visited the offices of the Commission at San Francisco and discussed the matter with a representative of the Transportation Division. He was informed that he was too late for filing such an application.^{2/} After that he associated with another person to acquire a passenger charter-party carrier certificate and conducted operations under the name and style of Omega Omnibus. He disassociated himself from that business and sought potential sellers of passenger charter-party carrier certificates. In 1973 he found a certificate that was available for transfer. He visited the offices of the Commission to inquire if the certificate was active and eligible for transfer and was informed that it was. He paid \$500 to the seller and was then later informed by the Commission that the certificate had in fact been revoked and was not eligible for transfer.^{3/} All during this period, and

^{1/} The Passenger Charter-party Carriers' Act was enacted in 1961. Substantial amendments to that act were enacted in 1967.

^{2/} Applicant would not have been eligible for grandfather rights even if he had filed an application prior to the due date because he did not hold a valid permit on November 8, 1967.

^{3/} The holder of that certificate has filed application for reinstatement of the certificate. Proceedings have been held and the matter is under submission for decision. Whether applicant has any present rights or interest in that certificate is uncertain.

continuously thereafter, applicant continued to provide bus transportation. On October 29, 1975 Lois J. Kohler filed a complaint with the Commission (Case No. 9997) alleging that applicant was conducting passenger charter-party carrier operations without first having obtained a permit or certificate to do so, in violation of Section 5371 of the Public Utilities Code, and requesting the Commission to issue an order requiring applicant to cease and desist such unlawful operations. On the basis of the allegations in the complaint and the fact that the Commission files showed no authorization to applicant to conduct passenger charter-party carrier operations, the Commission on November 12, 1975 ordered applicant to cease and desist from conducting operations as a passenger charter-party carrier pending further order. Public hearings were held in that complaint in March 1976 and today we have entered our decision in Case No. 9997 of which decision we take official notice.

Since the effective date of the cease and desist order issued November 12, 1975, applicant's transportation of passengers for compensation has been confined to school pupils under arrangements and agreements with school officials. A number of school officials testified that they had engaged applicant's bus service, that it has been satisfactory in all respects, and that they prefer his service over other services available to them. Several witnesses testified that applicant has a good reputation. Over the years applicant has requested inspections of his busses by the California Highway Patrol at intervals of less than one year. Two of his busses have been certified as school busses and the other three have been regularly approved for passenger bus service.

Protestants' only contention of unfitness of applicant is that he has engaged in passenger charter-party carrier operations without authority from the Commission. We have found in our decision in Case No. 9997 that applicant has in fact been engaged in unlawful passenger charter-party carrier operations. We also concluded that

applicant's transportation of school pupils has not in all respects been within the exemptions from the Passenger Charter-party Carriers' Act set forth in Section 5353 of the Public Utilities Code.

Applicant's actions in the transportation of school pupils subsequent to the cease and desist order were upon the advice and guidance of counsel. Counsels' argument regarding the interpretation of the exemptions in Section 5353 was plausible although not in accord with our conclusions. We could not find that applicant's actions were contemptuous of the Commission's cease and desist order, nor can we find that applicant's actions were indicative of a propensity towards willful disregard of the laws of this state or of a disregard of the welfare of his passengers. We take note of the inspections by the Highway Patrol of the condition of applicant's equipment with respect to safety as well as the fact that applicant maintains insurance protection against liability for damages for personal bodily injury and for damage to property well in excess of the minimum requirements for passenger charter-party carriers prescribed in the Commission's General Order No. 115-B.

We find that applicant possesses reasonable fitness and financial responsibility to initiate and conduct the passenger charter-party carrier operations authorized under the Class A certificate presently held by Roland Wilbur and that the transfer of said certificate to applicant would not be adverse to the public interest.

We conclude that the proposed transfer should be authorized.

O R D E R

IT IS ORDERED that:

1. On or before November 18, 1976, Roland Wilbur may sell and transfer the operative rights referred to in the application to Fred W. Wagener III.
2. Within thirty days after the transfer, Fred W. Wagener III shall file with the Commission written acceptance of the certificate

and a true copy of the bill of sale or other instrument of transfer. Upon such filings the Executive Director shall cause the certificate (No. TCP-213-A) transferred to be reissued to Fred W. Wagener III.

3. In conducting operations as a passenger charter-party carrier under the authority of the certificate to be acquired, Fred W. Wagener III shall:

- (a) Not operate any vehicle or vehicles unless the vehicle or vehicles are adequately covered by a public liability and property damage insurance policy or corporate surety bond as required by Section 5391 of the Public Utilities Code.
- (b) Comply with the requirements of General Orders Nos. 98-Series and 115-Series and all other Commission orders, decisions, rules, directions, and requirements governing the operations of passenger charter-party carriers.
- (c) Comply with the requirements of the Motor Carrier Safety Section of the California Highway Patrol in the operation of vehicles.

4. Failure to comply with any of the aforementioned requirements may result in a cancellation of the operating authority authorized to be transferred.

The effective date of this order is the date hereof. ✓

Dated at San Francisco, California, this 21st
day of SEPTEMBER, 1976.

President
William Aquino Jr.
James L. Sturgeon
Ronald Ross
Robert Bateman

Commissioners

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