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Decision 91-02-016 February 6, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking regarding)
passenger transportation performed by)
nonprofit organizations which is)
incidental to the operation of day)
camps and residence camps for children.)

ORIGINAL

R.90-07-036

(Filed July 18, 1990)

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INTERIM OPINIONI. Introduction

By Order Instituting Rulemaking (OIR) on July 18, 1990, the Commission invited comments to consider under what circumstances, if any, nonprofit organizations providing transportation incidental to the operation of youth camps are required to obtain a permit or certificate from the Commission as charter-party carriers of passengers.

Section 5360 of the Public Utilities (PU) Code defines "charter-party carrier of passengers" as "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 [subject to the exclusions of Section 5353]." Section 5353(f) excludes: "Passenger vehicles carrying passengers on a noncommercial enterprise basis."

These provisions raise questions that commentators were asked to address. Among the questions:

1. How should "noncommercial" be defined in this context?
2. For the noncommercial enterprise exclusion to apply to youth camps, is it sufficient for the organization to be nonprofit, or should there be additional qualifications, such as a requirement that the enterprise be a charitable organization?
3. Should "noncommercial enterprise" refer only to the youth camp providing transportation, or should the term refer to all activities of the organization operating the camp?
4. What practical effects, positive and negative, would result from requiring youth camps to obtain a charter-party permit or certificate? (Among the requirements for

obtaining charter-party authority are a \$500 filing fee for the application; evidence of insurance of \$75,000, \$1.5 million, or \$5 million, depending on the seating capacity of the vehicle; passing a California Highway Patrol (CHP) safety inspection; and participating in Department of Motor Vehicles' (DMV) Pull Notice Program.)

We have received comments from approximately 50 camp operators and other respondents, including the Commission's Division of Ratepayer Advocates (DRA). Based on these comments, we have formulated a proposed rule which is set forth below. This proposed rule is being served on all parties who submitted comments. They are asked to comment further before we make a final decision on whether to adopt the rule.

II. Proposed Rule

General Order (GO) 157 is amended to add the following:

PART 9 - TRANSPORTATION BY YOUTH CAMPS

- 9.01 Transportation performed by nonprofit organizations which is incidental to the operation of youth camps is not subject to the Passenger Charter-Party Carriers' Act, Public Utilities (PU) Code § 5351, et seq., under the exclusion set forth in PU Code § 5353(f).
- 9.02 Transportation performed by for-profit organizations which is incidental to the operation of youth camps is subject to the Passenger Charter-Party Carriers' Act, Public Utilities Code § 5351, et seq. Upon written request stating financial hardship by a for-profit youth camp operator, the Commission may waive the \$500 filing fee normally required of applicants for charter-party carrier authority.

III. Background

In general, youth camps responding to our OIR welcomed the opportunity to clarify their status with respect to charter-party carrier regulations. All agree with our underlying concern that vehicles used in transporting campers must be subject to appropriate safety and insurance requirements. However, virtually all camp respondents state that these concerns are adequately met by existing regulations imposed by the DMV and the CHP. There is a real concern that another layer of regulations and additional costs, like the \$500 charter-party carrier application fee, will discourage camp operators.

The Passenger Charter-Party Carriers' Act is contained in Division 2, Chapter 8 of the PU Code. Section 5360 of the PU Code defines a charter-party carrier as one who transports persons "for compensation". Section 5353 provides legislative exclusions to certain groups that otherwise would be subject to the Act. These groups include public transit systems, carriers under contract to school districts, carriers of farm workers, city or county licensed taxis, vanpools, medical transportation vehicles, hotel vans, and rental car agency vans. Because camp buses are not specifically excluded, Commission staff has interpreted the code to consider their operators' charter-party carriers. Even though passengers are not charged on a per-ride basis, the cost of transportation is included in the camp fee. Therefore, staff generally has concluded that the service is provided "for compensation" and is considered commercial.

Charter-party carriers are required to pay a \$500 fee when filing with the Commission, as well as a CHP annual terminal inspection fee of \$15 per vehicle, not to exceed \$6,500 (PU Code § 5373.1). For CHP purposes, vehicles seating 10 or more passengers that are operated by charter-party carriers are tour buses, and

must comply with regulations governing tour buses in the Vehicle Code.

GO 115-E requires that all charter-party carriers have public liability insurance of \$750,000, \$1.5 million, or \$5 million, depending on the capacity of vehicles. Pursuant to PU Code § 5373.1 and Vehicle Code § 1808.1, they also must prove compliance with the Vehicle Code and participate in the DMV Pull Notice Program. The Pull Notice Program provides employers with information on an employee's driving record.

Motor carriers that provide transportation on a not-for-hire basis are considered private carriers under PU Code §§ 4000-4021. Starting January 1, 1991, private carriers of passengers must register with the Commission and carry public liability insurance of \$30,000. Pursuant to the Vehicle Code, they must comply with the inspection and records maintenance requirements listed in Title 13 of the California Code of Regulations, as well as participate in the DMV Pull Notice Program.

A. Safety and Insurance Requirements

1. Commission Requirements

a. Charter-Party Carriers

Charter-party carriers are divided into three classes under § 5383. Class A carriers may operate throughout the state. Class B carriers have a limited service area. Class C carriers provide transportation incidental to river rafting or skiing. Certain types of specialized operations may be conducted pursuant to permits issued under § 5384. All of these authorities require a \$500 filing fee and are renewable every three years.

If carriers operate on a seasonal basis, they need not carry the public liability insurance for the entire year. In this instance, carriers must file with the Commission for a voluntary suspension of their operating permits.

b. NonCharter-Party Carriers

"Motor carriers" that provide transportation on a not-for-hire basis are required to register with the Commission effective January 1, 1991, under the Private Carriers' Registration Act, Chapter 2.5 of Division 2 of the Public Utilities Code. For passenger carriers, the key in determining whether they are "motor carriers" is the type of vehicle operated. The Private Carriers Act applies to buses, school buses, and youth buses, among others. (See Vehicle Code §§ 408, 34500.)

2. California Highway Patrol

Any vehicle that is considered a bus (more than 10 persons, including the driver) must comply with Division 14.8 of the Vehicle Code (Sections 34500-34515). This applies to both charter-party carriers and noncharter-party carriers. Both groups must have their bus terminals inspected at least every 13 months by the CHP. Charter-party carriers must have their vehicles, which are tour buses under the Vehicle Code, inspected at least every 45 days. Noncharter-party carriers must comply with less rigorous vehicle inspection and maintenance records requirements in Title 13, Code of Regulations.

3. Insurance Requirements

Charter-party carriers must file evidence of insurance in compliance with GO 115-E. For all but Class C carriers, this means they must carry public liability insurance of \$750,000 if their vehicle(s) hold not more than 7 passengers; \$1.5 million if vehicle(s) hold between 8 and 15 passengers; and \$5 million for vehicle(s) holding 16 or more passengers. Class C carriers--carriers that provide transportation incidental to commercial river rafting or skiing--must carry insurance of at least \$750,000 regardless of vehicle seating capacity. Private carriers of passengers, effective January 1, 1991, must file proof of insurance with the Commission in the amount of \$30,000. For-hire carriers that are exempt from the Charter-Party Carriers' Act also must

carry liability insurance in the amount required by Vehicle Code §§ 16500 and 16500.5.

4. Department of Motor Vehicles

DMV requirements for charter-party carriers and noncharter-party carriers are almost identical. Both groups must participate in the DMV Pull Notice Program. This program requires employers whose employees will be driving buses to obtain from DMV a printout of the employee's current driving record. The only difference in the licensing requirements is that drivers of tour buses, which includes charter-party carriers, must obtain a tour bus certificate in addition to Class 1, 2, A, or B license.

IV. Camp Association Comments

American Camping Association

In comments supported by numerous camp operators¹, the California Camping Advisory Council (CCAC) and the American Camping Association (ACA) urge that all organized camps be exempt from charter-party carrier regulations on the basis that the Legislature has conferred preemptive authority for camp regulation on the Department of Public Health. In support of this argument, these organizations direct our attention to Health and Safety Code § 18897.6, which states:

¹ Among camps endorsing the comments of the CCAC and the ACA are Sierra Canyon Day Camp, Chatsworth; Tumbleweed Day Camp and Cottonwood Creative Arts Camp, Los Angeles; Tom Sawyer Camps, Inc., Altadena; Cali-Camp, Topanga; Camp Pacific, Carlsbad; Plantation Farm Camp, Inc., Cazadero; Bar 717 Ranch, Hayfork; Snow Mountain Camp, Nevada City; Mountain Meadow Ranch, Susanville; Kennolyn Camps, Soquel; Emandal, Willits; Westminster Woods, Occidental; Sunny Skies, Agoura; Skylake Ranch Camp, Ahwahnee; Ojai Valley School, Ojai; Thunderbird Ranch Summer Camp, Healdsburg; Meadow Oaks Summer Day Camp, Calabasas.

"Organized camps shall not be subject to regulation by any state agency other than the State Department of Health Services, California regional water quality control boards, the State Water Resources Control Board, and the State Fire Marshal; provided, that this section shall not affect the authority of the Department of Industrial Relations to regulate the wages or hours of employees of organized camps and this section shall not be construed to limit the application of building standards published in the State Building Standards Code to structures in organized camps." (West's Ann.Cal.Health and Safety Code § 18897.6.)

As an alternative argument, CCAC and ACA contend that transportation is incidental to organized camp operation and thus is excluded from charter-party carrier regulations by the "temporary lodging" exclusion of § 5353(1) of the PU Code. That section states:

"Subject to Section 34507.6 of the Vehicle Code, transportation service provided by the operator of a hotel, motel, or other place of temporary lodging, in vehicles owned or leased by that operator, without charge other than as may be included in the charges for lodging, between the lodging facility and an air, rail, water, or bus passenger terminal or between the lodging facility and any place of entertainment or commercial attraction, including but not limited to, facilities providing snow skiing. Nothing in this subdivision authorizes the operator of a hotel, motel, or other place of temporary lodging to provide any round-trip sightseeing service without a permit as required by subdivision (c) of Section 5384." (Emphasis added by ACA.)

CCAC and ACA make two other points. First, they argue that application of the charter-party carrier regulations to organized camps would be unnecessarily duplicative. They state that all organized camps using vehicles designed to carry more than

10 passengers (including driver) are required by DMV and CHP regulations to:

1. Utilize drivers who have a Class B license with passenger endorsement and current medical certificate.
2. Participate in DMV's "Pull Notice" program.
3. Participate in CHP's "M.I.S.T.E.R." program.
4. Carry liability insurance with minimum limits of \$1.5 million for 15 passengers or fewer, and \$5 million for 16 passengers or more.

Finally, CCAC and ACA object to the suggestion that charter licensing may be required for commercial enterprises but not for noncommercial enterprises (which they interpret to mean "for-profit" and "not-for-profit"). These organizations contend that the underlying purpose of the licensing requirement is one of health and safety of the public. They argue that there is no rational relationship between that purpose and a licensing distinction between for-profit and not-for-profit youth camps.

Discussion

As a practical matter, our proposed rule reaches much the same result as that urged by CCAC and ACA. Therefore, the preemption and exclusion arguments may be moot, at least as to nonprofit camps. However, these are matters that must be addressed, since they go to the authority of the Commission to act in this area.

2 In fact, we find no such insurance requirement for camp vehicles, except as may be implied in Vehicle Code § 16500.5. We believe the camp organizations may have inadvertently stated the higher liability requirements imposed by the Charter-Party Carriers' Act. But, compare Vehicle Code §§ 16500 and 16500.5.

We are not persuaded that the Health and Safety Code preempts the Commission's authority to apply charter-party carrier regulations to the transportation of campers. While Health and Safety Code § 18897.6 confers sole jurisdiction on the state director of public health for regulating organized camp operations, the definition of "organized camp" appears to limit such jurisdiction to the camp "site". Thus, regulations adopted by the Department of Health Services concern such matters as utilities, housing, food, vector control, swimming, and supervision on the camp site. (See, 17 Cal. Adm. Code §§ 30710 to 30751.) Transportation on public roads to and from the camp site is not a subject reserved to the Department of Health Services. Otherwise, the preemption arguably would preclude regulation of camp vehicles and drivers by the DMV and CHP, which we know is not the case.

In any event, we are guided by Article 3, Section 3.5, of the California Constitution in determining whether a statute is preempted or unenforceable. At least as to federal preemption, that provision directs that an administrative agency will not refuse to enforce a statute in the absence of an appellate court decision supporting preemption. We have been shown no court authority, and have discovered none ourselves, that suggests that Department of Health Services camp regulations preempt the Passenger Charter-Party Carriers' Act.

Similarly, although the logic of CCAC and ACA is appealing, we cannot read the "temporary lodging" exclusion of PU Code § 5353(1) as broadly as urged. The plain meaning of that exclusion is that hotels, motels and similar places of lodging may transport guests to and from the airport and to and from sightseeing and commercial areas without becoming subject to charter-party carrier regulations. Even if we were to find that a camp was a place of "temporary lodging" within the meaning of § 5353(1), the reference to transportation "between the lodging facility and any place of entertainment or commercial attraction"

does not address the bulk of camp transportation. Most camps providing transportation do so to and from the camp site and a meeting point near campers' homes. If the Legislature had intended to include youth camps in the § 5353(1) exclusion, it would have done so with more precise language.

We are more impressed with the arguments that existing regulations adequately cover the transportation of youth camps, and that additional charter-party carrier requirements would be duplicative. As the camp organizations note, existing regulations require that drivers of camp vehicles that carry 10 or more passengers must have a Class B license with passenger endorsement and current medical certificate. Charter-party carrier regulations would add a tour bus requirement to that. Similarly, as noted in Appendix A, noncharter-party carriers are subject to Vehicle Code safety requirements and inspections and to the DMV Pull Notice Program.

We are concerned that existing regulations may require only \$30,000 in liability insurance for buses that are not regulated by the PUC, in contrast to the higher limits imposed by GO 115-E. On the other hand, as noted below, many nonprofit camp organizations routinely carry liability insurance of \$1 million or more as a matter of course. We note also, based on insurance statistics supplied by some of the parties, that the safety record of camp vehicles in recent years appears to be an exemplary one, with few if any losses above a \$30,000 level.

The fact that DMV and CHP regulations may duplicate some requirements of charter-party carriers is, standing alone, not determinative. We are bound to enforce the Passenger Charter-Party Carriers' Act regardless of what some may view as redundancy. Duplicative requirements are relevant, however, in analyzing the intent of the Legislature in creating the § 5353(f) exclusion. As discussed more fully below, the § 5353(f) exclusion for passenger vehicles operating on a "noncommercial enterprise basis" may have

targeted nonprofit camp buses because, at least in part, such vehicles already are adequately regulated.

The CCAC and ACA state that there is no rational relationship between safety and an organization's tax status. We take this to mean that the organizations see no rational basis for treating nonprofits differently than for-profits in applying the exclusion of § 5353(f). That argument is more properly addressed to the Legislature, which created the exclusion. Our task is to interpret and apply it. We note, however, that under the rational basis test (also called "minimal scrutiny" or "conceivable basis"), a classification is constitutionally valid if there is any conceivable basis upon which the classification might relate to a legitimate governmental interest. The record here supports the minimal burden necessary to find that an exclusion for nonprofit camp operators is a justified one.

V. Comments by Other Organizations

Division of Ratepayer Advocates

DRA states its belief that the focus of this proceeding is to promote safety on California's highways. DRA also believes that regulatory policy should be designed to provide the lightest administrative burden for the regulated community. DRA has prepared a useful comparison of requirements for charter-party carriers and noncharter-party carriers that we have modified and appended to this decision as Appendix A. Based on this analysis, DRA states that if camps are not considered charter-party carriers, the following consequences will occur:

1. Camps would be required to carry only a minimum of \$30,000 liability insurance, instead of the \$750,000, \$1.5 million or \$5 million required under GO 115-E.

2. Drivers would not be required to obtain a tour bus certificate and the additional training required for that certificate. Drivers would continue to need a Class 1, 2, A, or B license, and camps would continue to participate in the Pull Notice Program.
3. Camps would not be required to pay the \$500 filing fee for charter-party carriers.

DRA recommends that camps be regulated under the Passenger Charter-Party Carriers' Act unless evidence is presented that indicates that this level of regulation is unnecessary. The DRA comments:

"DRA is concerned about the administrative burden this level of regulation places upon the camp community, but cannot allow this concern to override our concern with safety on California's highways. DRA suggests that the Commission look for ways to decrease the administrative burden the Charter-Party Carriers Act places on the camps, while maintaining appropriate liability coverage and safety safeguards. This might include waiving the \$500 filing fee and voluntary suspension of operating authority, or seeking legislation to amend the Public Utilities Code to reflect an administrative process better suited to the needs of this regulated community."

California YMCAs

The California YMCAs, comprising 52 separate YMCAs chartered by the YMCA of the USA, urge that the Commission adopt regulations stating that transportation provided by nonprofit organizations that is incidental to their operation of youth camps be excluded, pursuant to § 5353(f), from the charter-party carrier requirements of the code.

The California YMCAs believe that the Commission's regulatory jurisdiction should be limited to entities that engage in transportation for compensation, and not on nonprofit

organizations with activities wholly unrelated to transportation for compensation.

In addition, the YMCAs state that existing statutes and other government entities, such as CHP and DMV, already regulate the transportation activities of nonprofits and provide "more than adequate protection" of the health and safety of those participating in youth camp activities.

The California YMCAs are all nonprofit organizations under the nonprofit corporation laws of the State of California. They are exempt from federal and state income taxes. They qualify as charitable organizations exempt from state property taxes. The YMCAs operate day camps and residence camps, principally in the summertime. Day camps are operated on a single-day basis and include excursions for children to local parks or attractions. Resident camps usually include overnight stays for a period of several days. Most of the YMCAs that operate these youth camps comply with the voluntary accreditation regulations of the ACA.

The YMCAs transport children in either owned or leased vehicles. Vehicles range from station wagons and mini-vans, to vans, youth buses, and school buses. Typically, children are picked up at and returned to YMCA offices. Compensation for such transportation is not charged by the YMCAs. In addition, each of the YMCAs maintains insurance on owned vehicles in accordance with legal requirements contained in the Vehicle Code.

The YMCAs state their concern that the costs of further regulation by the Commission would severely affect their ability to operate youth camps. The impact would be greater on "inner city" YMCA programs and could prohibit availability of these programs to disadvantaged children.

The YMCAs responded to the three questions posed by the OIR:

As to the nonprofit status of an organization, the YMCAs believe that it is sufficient for the noncommercial enterprise

exclusion to apply to nonprofit organizations without further requirements regarding the organizations' activities. Focusing on an organization's activities that have nothing to do with transportation for compensation should not be within the purview of the Commission, the YMCAs assert.

As to the nature of the entity involved in "noncommercial enterprises," the YMCAs state that neither the youth camp nor other activities of a nonprofit organization should be the enterprise considered in determining whether the noncommercial enterprise exclusion applies. The enterprise that must be noncommercial is the transportation service, and nothing more.

In support of that contention, the YMCAs note that it is the "incidental" transportation activities of commercial enterprises that are excluded from compliance with the Act. For example, § 5353(k) excludes transportation provided by rental car agencies that transport customers to and from rental cars. Section 5353(l) excludes transportation provided by hotels and motels. It is not the "other" business activities of these enterprises that are the subject of the exclusion statute; it is only their transportation activities--incidental to their main business activities--that are excluded from the Act.

The YMCAs assert that it would be an unjust result if the Act were to be construed to regulate (and perhaps jeopardize) the activities of nonprofit organizations such as the California YMCAs, while excluding from regulation the activities of commercial enterprises such as rental car agencies and hotels.

As to the meaning of "noncommercial" in the exclusion, the YMCAs believe that "noncommercial" means not for compensation. The YMCAs assert that if the transportation services are not charged for and are only incidental to the primary business or charitable activity of an organization, they should be deemed to be noncommercial.

Finally, the YMCAs cite CHP and DMV regulations as being applicable to their operations and drivers. The YMCAs assert that these regulations provide a regulatory scheme that adequately safeguards the safety of children transported in connection with youth camps, and that further regulation by the Commission under the Act would be redundant.

Camp Kinneret

In a thoughtful analysis, Camp Kinneret (Kinneret), an ACA accredited camp in Agoura, urges that all camps, nonprofit and for-profit, be deemed excluded from the charter-party carrier requirements. It argues that, regardless of tax status, camps operate transportation as an incidental activity, not for compensation. Kinneret notes that the American Heritage Dictionary defines "commercial" as: "1. Of, pertaining to, or engaged in commerce. 2. Having profit as a major aim." Since the transportation offered by camps does not have profit as a major aim, Kinneret argues that incidental camp transportation, by definition, is "noncommercial" in nature and, therefore, excluded from the charter-party carrier regulations.

Kinneret also points out one of the practical problems that PUC regulation would entail:

"Most camps staff their programs by hiring college students during summer vacation. Many of these staff members are called on to drive camp passenger vehicles. Therefore, they are required to obtain Class B licenses with the passenger endorsement. Most staff members have less than one week between the time that they finish school and the first day that they are required to drive for the camp. This week is our staff training week. While many staff members are able to take care of the required medical examination and Class B written tests prior to arriving at camp, most are unable to complete the driving tests because they do not have access to a Class B vehicle. They must wait until they arrive at camp. Once they arrive, our biggest challenge is to provide

them with an adequate amount of time to be trained and tested. By using every available minute, we have been able to successfully meet this challenge. However, if we are now required to have the drivers obtain a tour bus certificate as well, this will be nearly impossible.

"There are two major reasons for this. First, it is not possible to obtain a tour bus certificate until one already possesses a Class B license, and we already use all of the limited time that we have just to train for and obtain the Class B licenses. Second, there are only 15 DMV offices that administer the tour bus certificate driver test. In our immediate area alone there are at least 10 accredited camps (and dozens of others) that have drivers who need to be tested. Those 10 camps have at least 200 staff members who must currently possess Class B licenses and would need tour bus certificates. Two of the 15 DMV offices are within one hour of these camps. This would mean that each office would need to provide at least an additional 100 tests during this week. The Class B and tour bus testers are the same people. I do not believe that the DMV can provide the number of tests required in this short amount of time, and therefore some drivers would not be certified in time to start camp. This would have a severe impact on the camp programs, the campers, and their families. It is possible that some campers would not be able to be picked up for camp and others would have their camp program curtailed until additional staff members were able to be scheduled for testing. Furthermore, I know that there are resident camps in northern California who are as far as 200 miles from one of the 15 offices. They operate under the same time constraints, but would have to spend a day and half just to get their drivers to a DMV, tested and back to camp."

Vehicle Loss Experience

Both ACA and DRA have submitted with their comments a report on California camp and youth recreation club vehicles.

experience for the period March 1988 to March 1990. The report was prepared by the Rhulen Agency, with offices in Monticello, New York, which is represented to be the largest single insurer of organized camp vehicles in California.

The Rhulen report states that during the two-year period analyzed, there has been no catastrophic vehicle loss by any insured camp operator in California. The report shows approximately 240 claims during the period; the great majority of them noninjury incidents with damage of less than \$1,000. Only three of the accidents appear to involve claims in the \$10,000 to \$20,000 range.

ACA's Legislative Chairman Darrow Milgrim offers the Rhulen report as evidence that existing laws and regulations of CHP and DMV, combined with the voluntary vehicle and driver safety programs of the camps, have produced a satisfactory safety record without additional charter-party carrier requirements.

Similarly, the Jewish Community Centers Association of Greater Los Angeles (JCCA) states that drivers of small buses have historically have operated with a high degree of safety. Based on data from the Urban Mass Transportation Administration, JCCA states that small bus operators have driven more than 162 million miles during the last two years without a single fatality. This is in contrast, JCCA states, to the large bus public transit operators' 8.7 fatal accidents per 100 million miles and the average of 2.2 fatalities per 100 million miles for all vehicles.

Additional Comments

Skylake Yosemite Camp in Mountain View and Roughing It, a camp operation in Orinda, join Kinneret in pointing out the practical problem of additional charter-party licensing requirements for camp staff who generally work only about 10 weeks during the summer. Roughing It states that, typically, a staff member who drives must obtain a Class B license with passenger endorsement and current medical notice, at a cost of \$50 and 20

hours of time, plus a physical examination at a cost of \$65 and 2 hours of time. The camp has its own requirement of CPR and first aid training, at a cost of \$35 and 8 hours of time. Hence, Roughing It asserts that the cost of training each staff driver is \$150 and takes a minimum of 48 hours. Adding a tour bus certificate test to that schedule imposes a significant burden.

The Diabetic Youth Foundation (DYF) in San Francisco, which operates Bearskin Meadow Camp for youngsters with diabetes, states that it either charters a bus from a commercial operator or uses its own 12-passenger mini-van. The DYF vehicles are covered by a \$1 million liability policy, with a \$1 million excess. Drivers are Class B licensed, and their driving records are checked by the camp's insurance carrier before the camping season.

Camp Stevens, an Episcopal Diocese camp in Julian, uses a 14-passenger van and has a \$1 million liability policy, with an additional \$1 million in umbrella liability. Both DYF and Camp Stevens charge a prorata amount for this transportation (about \$15 per passenger). Camp Stevens argues that requiring charter-party permits would force it to consider having more parents transport their children in private autos, thus increasing traffic on the highways.

The Speech and Language Development Center in Buena Park uses 16-passenger vans to transport students to and from a summer camp in Pine Cove. The vans are inspected annually by CHP. The center, a nonprofit corporation, states that it carries liability insurance of \$10 million.

The Girl Scouts, San Diego-Imperial Council, states that it takes no issue with applying charter-party carrier regulations to camp operators since the requirements are directly related to the safety and welfare of the children. On the other hand, it urges the Commission to consider a special rate structure for camps, since a \$500 filing fee and \$5 million liability insurance "is out of reach for most agencies." Like several other

organizations, the Girl Scouts submitted provisions of its "camping guidelines," including detailed safety requirements for camp vehicles.

Mount Hermon Association notes that outings involving its vehicles typically includes a 15-mile roundtrip to the beach in Santa Cruz, and that campers are likely to spend no more than 40 minutes per week in camp vehicles. The camp has in place a program requiring annual vehicle inspection by the CHP, a structured routine maintenance program, participation in the Pull Notice Program and automotive liability insurance with limits of \$2 million.

The Japanese Community Youth Council of San Francisco states that imposition of an additional \$500 licensing fee would have little financial impact on its summer day camp program, because the cost would be spread among 175 participants. But some of its programs involve as few as 10 participants, who are transported by van, and the licensing fee here could make these smaller programs prohibitive.

Similarly, Mountain Camp II in Alamo, states that it rents one 15-passenger van for two months each summer to haul campers a few miles to a trailhead for backpack trips. Additional Commission requirements would be "costly, duplicative and provide no additional measure of service," the camp administrator states, adding, "It would just be one additional 'hoop' to jump through." The administrator states, "We would probably decide to drop our backpacking program, rather than go to the additional expense and trouble."

The United Way of California urges the Commission to classify nonprofit organizations as "noncommercial" enterprises. The agency states: "The hardship that will be placed on nonprofits if this is not considered could affect considerably the delivery of their critical services to our communities."

The City of San Mateo is concerned that our proposed rule might affect municipalities. It comments that it owns and operates one 15-passenger van used for field trips for day care/latchkey and other programs for youth and adults in city recreation programs. We do not, in this proceeding, address transportation provided by municipal corporations, but we note that in-city transportation regulated by ordinance is excluded from the Act by PU Code § 5353(a).

VI. Discussion

Noncommercial Enterprise Exception

The purpose of this investigation is to determine under what circumstances, if any, nonprofit organizations providing transportation incidental to the operation of youth camps qualify for the "noncommercial enterprise" exclusion of PU Code § 5353(f). This is a question of first impression for the Commission, although in prior decisions we have examined the meaning of this exclusion in other contexts.

In Decision (D.) 64960, we defined the word "noncommercial" as meaning without compensation. (60 CPUC 581, 586 (1963).) As relevant to this proceeding, that decision also concluded that even transportation furnished without charge to passengers is "for compensation" if the organization sponsoring the trip receives a business benefit therefrom. Specifically, the holding dealt with bars and restaurants that provided "free" round-trip transportation as part of a package trip to football and baseball games.

In D.82171, the question was whether the developer of condominiums in recreational areas was required to have charter-party carrier authority in order to operate free shuttle bus service to ski areas for those who purchased or rented their developer's condominiums. The Commission stated:

"There can be no doubt that the applicant receives a business benefit from the transportation service.... The advertisements demonstrate that the passenger service is a major selling point in inducing the general public to rent condominiums from applicant during the ski season." 76 CPUC 77, 82 (1973).

Thus, the Commission in the past has taken a common-sense approach in determining whether transportation is "for compensation," as required by PU Code § 5360, and whether it is provided on "a noncommercial enterprise basis," as excluded by PU Code § 5353(f). The fact that transportation is provided at little or no charge by an enterprise does not mean that it is without compensation if the enterprise derives a business benefit from it. By the same token, we infer from these decisions that if the sponsoring enterprise is in business to make a profit, then the transportation cannot be that of a noncommercial enterprise. It should be noted that in both of these earlier Commission decisions, the transportation at issue was "incidental" to the business of the sponsoring enterprise.

While our analysis takes a different approach than that of Camp Kinneret, we agree with that respondent that we should apply a common understanding, or a common dictionary definition, to the term "noncommercial enterprise basis." There is nothing in the record, nor in the legislative history, that compels us to depart from the plain meaning of those words. A noncommercial enterprise, in our view, means a not-for-profit organization.

We find support for this interpretation in Siegel v. City of Oakland (1978) 79 Cal.App.3d 351. In Siegel, a motorist sought to invalidate a parking ticket on the basis that parking meters were operated by the city for commercial purposes, to wit, to generate revenues, and that regulations required testing of such devices before they could be placed in use. The same regulations, however, provided that "noncommercial measuring devices" need not

be tested unless requested. In sustaining dismissal, the Court of Appeal stated:

"There is nothing 'commercial' about this municipal function. The term 'commercial' imports 'commerce, trade, business, industry or enterprise having financial profit as a primary aim [citing Dilley v. State Farm Mutual Ins. Co. (1967) 249 Cal.App.2d 385]. ... Contrary to the allegations in appellant's complaint, the maintenance of parking meters does not involve 'commercial purposes' because it 'generates revenues' which are intended to support it." 79 Cal.App.3d at 358.

Similarly here, there is nothing commercial about transportation provided by nonprofit organizations for those attending camps for children. Imposition of a transportation charge, whether direct or indirect, does not involve a "commercial enterprise" when it is provided by a nonprofit operator. In the absence of commerce, trade, business, industry, or enterprise having financial profit as a primary aim, such incidental transportation provided by nonprofit organizations for camp enrollees is done on a noncommercial enterprise basis.

Accordingly, our proposed rule excludes from the application of the Passenger Charter-Party Carriers' Act the transportation performed by nonprofit organizations which is incidental to the operation of youth camps, by virtue of PU Code § 5353(f). Organizations excluded include those recognized by federal or state law as not-for-profit entities.

As DRA points out, many of these organizations may be required, effective January 1, 1991, to register the operation of their camp vehicles with the Commission under the Private Carriers' Registration Act, PU Code §§ 4000-4021. The process of registration includes proof of insurance. (PU Code § 4010.)

For-Profit Camps

As noted, several respondents argue that if nonprofit camps are excluded from the charter-party carrier regulations, for-profit camps also should be excluded. They argue that if the underlying purpose of the regulations is safety, it makes little sense to excluded nonprofit camps while holding for-profit camps to more rigorous regulations.

In order to apply the § 5353(f) exclusion to all camps, these respondents urge that "noncommercial enterprise" be interpreted to refer only to the transportation itself, without regard to the entity conducting the transportation. Thus, they would have us deem "noncommercial enterprise" to be any transportation that is offered without charge or on a no-profit basis.

The argument has merit, in that the word "enterprise" can refer either to an organization or to an activity. The flaw, however, is that such an interpretation would make meaningless the other exclusions set forth in § 5353. There would be no need to exclude "free" airport vans operated by hotels or shuttle buses operated without charge by rental car agencies if those transportation activities were already excluded under an expansive definition of § 5353(f).

Such a reading of the exclusion casts too wide a net, gathering within it the no-fee bus services operated by for-profit enterprises that the Commission already has ruled are subject to the charter-party regulations. From the standpoint of strict legal analysis, free transportation provided by a for-profit camp operator is no different than free transportation provided by any for-profit developer, so long as the transportation provides a business benefit to the sponsor.

Proposed Waiver of Fee

Nevertheless, we agree with CCAC, ACA, and other commentators that the imposition of a \$500 filing fee may work an

unjustified hardship on some for-profit camps. Accordingly, our proposed rule provides that those camps that are subject to the regulations may in writing request a waiver of the filing fee at the time they seek a charter-party carrier of passengers certificate or permit. Because these application fees are used to fund the Commission's operations, we believe that we have authority to waive the payment of such fees when special circumstances and the public interest warrant such a waiver.

However, we are not persuaded that the Commission can or should waive insurance requirements of the Charter-Party Carriers' Act. (See Edson v. PUC (1975) 51 C.A.3d 577, stating that the Commission is required to enforce liability insurance requirements for vehicles regulated under the PU Code.) The record indicates that many for-profit camp operators have in place public liability insurance sufficient to meet the requirements of the Act (\$750,000, \$1.5 million or \$5 million, depending on the capacity of the vehicles). For others, this level of insurance may require additional costs or alternative transportation arrangements.

Similarly, we are aware of no authority that would permit the Commission to waive or change the DMV requirement that drivers operating charter-party buses must obtain a tour bus certificate. We recognize that this requirement presents practical difficulties for some for-profit camp operators.

These and other requirements of the Charter-Party Carriers' Act may be unduly burdensome for some operators of for-profit youth camps. It may be that their only recourse is to the Legislature, seeking an exception from requirements of the Act under § 5353, or other relief that would reduce their burden in operating incidental transportation for campers. Alternatively, during the comment period in this proceeding, we will consider any suggested change in our proposed rule that, within the Commission's authority and responsibility, would reduce the burden on for-profit camp operators.

Further Comments

The rule proposed in this Order is being served on all parties who previously submitted comments. (Appendix B). We invite further comments by those parties and others before we make a final decision on whether to adopt the rule as proposed. We will ask that further comments and recommendations be filed as pleadings within 60 days of this order.

VII. Findings and ConclusionsFindings of Fact

1. Section 5360 of the PU Code defines "charter-party carrier of passengers" as "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" [subject to the exclusions of Section 5353].

2. Section 5353(f) of the PU Code excludes: "Passenger vehicles carrying passengers on a noncommercial enterprise basis."

3. Passenger transportation performed by nonprofit organizations which is incidental to the operation of day camps and residence camps for children is subject to regulations of the DMV and CHP.

4. Camps that operate vehicles that carry more than 10 passengers (including driver) are required by DMV and CHP regulations to meet certain standards, including (i) utilize drivers who have a Class B license with passenger endorsement and current medical certificate; (ii) participate in the Pull Notice Program to obtain a current DMV report of employee driving records, and (iii) carry at least \$30,000 in liability insurance.

5. Records of a major insurer of organized camp vehicles in California show no catastrophic vehicle loss by any insured camp operator during the period March 1988 to March 1990.

6. A report of the Urban Mass Transportation Administration shows no fatality in 162 million miles of small bus operation during the last two years.

7. Numerous nonprofit organizations voluntarily carry liability insurance for their camp bus operations in excess of \$1 million, and many comply with voluntary safety programs of the ACA and other organizations.

8. Imposition of requirements of the Passenger Charter-Party Carriers Act, including a \$500 filing fee, will impose a significant burden on operators of small camp programs for youths.

Conclusions of Law

1. Camp operators are not exempt from charter-party carrier regulations under the Organized Camp regulations of the Department of Public Health, California Health and Safety Code §§ 18897, et seq.

2. Camp operators are not excluded from charter-party carrier regulations by the "temporary lodging" exclusion of PU Code § 5353(1).

3. The term "noncommercial enterprise" in PU Code § 5353(f) means a not-for-profit organization recognized under federal or state law.

4. Transportation performed by nonprofit organizations which is incidental to the operation of youth camps is not subject to the Passenger Charter-Party Carriers' Act because of the exclusion provision of PU Code § 5353(f).

5. Nonprofit organizations operating buses, school buses, and youth buses may be subject, effective January 1, 1991, to the Private Carriers' Registration Act, PU Code §§ 4000-4021.

6. For-profit youth camps should be permitted to apply for waiver of the application fee for Passenger Charter-Party Carrier authority.

INTERIM ORDER

IT IS ORDERED that:

1. This Order proposes for comment changes in General Order 157. The changes would add provisions stating that: (i) transportation performed by nonprofit organizations which is incidental to the operation of youth camps is not subject to the Passenger Charter-Party Carriers' Act because of the exclusion in Public Utilities (PU) Code Section 5353(f) and (ii) for-profit camps may apply for a waiver of fee requirements of the Passenger Charter-Party Carriers' Act.

2. All respondents to this Order Instituting Rulemaking and other interested parties are invited to provide comments on the proposed rule set forth in this Order.

3. An original and 12 copies of all comments and recommendations shall be filed as pleadings with the Commission's Docket Office within 60 days of the issuance of this Order. Parties needing assistance in understanding the procedure for filing comments may contact the Commission's Public Advisor's Los Angeles Office at (213) 620-3725 or San Francisco Office at (415) 557-0890.

4. The Executive Director is directed to mail a copy of this Order to all respondents listed in Appendix B.

5. This order is effective today.

Dated February 6, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SHULMAN, Executive Director

APPENDIX A
Page 1 of 3

COMPARISON OF REQUIREMENTS FOR CHARTER PARTY
CARRIERS AND NON-CHARTER PARTY CARRIERS

REGULATED	NON-REGULATED
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STATUTORY AUTHORIZATION

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| • Charter Party Carrier under Division 2, Chapter 8 of Public Utilities Code. <ul style="list-style-type: none">- Class A: statewide authority.- Class B: limited service area.- Class C: transportation incidental to river rafting or skiing (Sect. 5383, Public Utilities Code). | • Bus if vehicle holds 10 or more passengers (Sect. 233, Vehicle Code). |
| • Any charter party vehicle that holds 10 or more passengers is a Tour Bus (Sect. 612, Vehicle Code). | • Tour bus does not apply. |

SAFETY REQUIREMENTS

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| • If considered a bus, then safety requirements in Div. 14.1 of Vehicle Code (Sect. 34500-34515). | • If considered a bus, then safety requirements in Div. 14.8 of Vehicle Code (Sect. 34500-34515). |
| • PUC requires annual terminal inspection by CHP (Sect. 5373.1(c), Public Utilities Code). | • CHP requires terminal inspection at least every 13 months (Sect. 34501(c), Vehicle Code). |
| • Each tour bus vehicle must be inspected at least every 45 days (Sect. 34505, Vehicle Code). | • Vehicle inspection and records maintenance requirements of Sections 1232 and 1234 of Title 13, California Code of Regulations. |
| • DMV Pull Notice Program (Sect. 1808.1, Vehicle Code). <ul style="list-style-type: none">- Employers who require drivers to have a Class 1, Class 2, Class A, or Class B license must obtain current DMV report of employee's driving record. | • DMV Pull Notice Program (Sect. 1808.1, Vehicle Code). <ul style="list-style-type: none">- Employers who require drivers to have a Class 1, Class 2, Class A, or Class B license must obtain current DMV report of employee's driving record. |

APPENDIX A
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COMPARISON OF REQUIREMENTS FOR CHARTER PARTY
CARRIERS AND NON-CHARTER PARTY CARRIERS

REGULATED	:	NON-REGULATED
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ENFORCEMENT OF SAFETY REQUIREMENTS

- | | |
|------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|
| • CHP refers violators to PUC | • No referral to PUC; |
| - Failure to maintain vehicle in safe operating condition. | violators must be taken to court to stop operation. |
| - Failure to comply with Pull Notice Program (Sect. 34505.1, Vehicle Code). | |
| - Failure to comply with Title 13 of California Code of Regulations. | |
| • PUC can suspend, revoke or deny operating authority (Sect. 34505.1, Vehicle Code, Sect. 5378 and 5378.5, Public Utilities Code). | • PUC cannot affect operating authority. |
-

PUBLIC LIABILITY INSURANCE

- | | |
|--------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| • Class A, B Charter Party Carrier: | • Not for-hire passenger carriers subject to Private Carriers' Registration Act (Division 2, Chapter 2.5 of Public Utilities Code) must carry \$30,000 insurance (Sect. 4010, Public Utilities Code and General Order 160). |
| <8 passengers: \$750,000 | |
| 8-15 passengers: \$1.5 mil. | |
| 16 + passengers: \$5 mil. | |
| (PUC General Order 115-E). | |
| • Class C Charter-Party Carrier: \$750,000 across the board. | • For-hire carriers not subject to PUC regulation must carry insurance as specified in Sect. 16500 or 16500.5, Vehicle Code. |
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COMPARISON OF REQUIREMENTS FOR CHARTER PARTY
CARRIERS AND NON-CHARTER PARTY CARRIERS

: <u>REGULATED</u>	:	<u>NON-REGULATED</u>	:
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DRIVER LICENSING

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| • Anybody operating a bus must have a Class 1, 2, A, or B license. Need passenger transportation vehicle endorsement for Class A or B licenses (Sect. 12804 and 12804.9, Vehicle Code). | • Anybody operating a bus must have a Class 1, 2, A, or B license. Need passenger vehicle endorsement for Class A or B licenses (Sect. 12804 and 12804.9, Vehicle Code). |
| • Tour Bus certificate (Sect. 12519.5, Vehicle Code). | • Tour Bus does not apply. |
-

(END OF APPENDIX A)

APPENDIX B
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APPENDIX B
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