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Decision 91-06-025 June 5, 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)

INTERIM OPINION

1. Decision Summary

This Interim Opinion adopts without substantial change the proposed rule that we announced in Decision (D.) 91-02-016 dealing with transportation provided by nonprofit youth camps. Specifically, General Order (GO) 157 is amended to add the following:

> "PART 9 - TRANSPORTATION BY YOUTH CAMPS
>
> "9. 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)."

However, this decision defers a final determination on the proposed rule dealing with the applicability of the Passenger Charter-party Carriers' Act to transportation performed by

proprietary youth camps. Our proposed rule would make the Act applicable to for-profit camps.[1] Based on the comments we have received, we are instructing the assigned administrative law judge to hear oral argument on August 27, 1991, on the form and scope of a final rule dealing with transportation provided by proprietary youth camps.

2. Introduction

By Order Instituting Rulemaking (OIR) on July 18, 1990, the Commission invited comments to consider whether nonprofit youth camps are required to obtain a certificate or permit as charter-party carriers of passengers in order to operate camp buses and other camp vehicles.

Among the requirements for obtaining charter-party authority are filing an application with a $500 filing fee, filing evidence of liability insurance protection of $750,000, $1.5 million or $5 million (depending on vehicle seating capacity), passing a California Highway Patrol (CHP) safety inspection, and participating in the Department of Motor Vehicles (DMV) pull notice program.

The Passenger Charter-party Carriers' Act, Public Utilities (PU) Code §§ 5351, et seq., defines a charter-party carrier as follows:

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1 The proposed rule applicable to proprietary camps would amend GO 157 to add the following:

> "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."

> "5360. Subject to the exclusions of Section 5353, 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 excludes from the provisions of the Act 12 categories of transportation. Subsection (f) of 5353 excludes "Passenger vehicles carrying passengers on a noncommercial enterprise basis."

Our OIR was mailed to approximately 500 camp operators in the state. It asked under what circumstances, if any, nonprofit organizations providing transportation incidental to the operation of youth camps qualify for the "noncommercial enterprise basis" exclusion of Section 5353(f).

Approximately 50 camp operators and others responded. Based on these comments, and on our analysis of the Passenger Charter-party Carriers' Act, we formulated and circulated for comment a proposed rule concluding that:

1. Incidental transportation performed by nonprofit youth camps is excluded from the Passenger Charter-party Carriers' Act by Section 5353(f) because it is done on a noncommercial enterprise basis.

2. Incidental transportation performed by for-profit youth camps is subject to the Passenger Charter-party Carriers' Act because it is done on a commercial enterprise basis and it is not excluded by any other provision of Section 5353.

Because we agreed that the requirements of the Act would impose a hardship on some proprietary camps, the proposed rule provides that the Commission for good cause shown may waive its $500 filing fee for camp operators. However, we concluded that we have not been granted authority under the Act to waive insurance

requirements or to change the DMV requirement that a driver of charter-party buses must obtain a tour bus driver certificate.

The interim opinion proposing these rules was issued on February 6, 1991. Respondents were asked to comment on the proposed rule within 60 days. A total of 17 parties have responded.

3. Nonprofit Camps

In our interim opinion, we concluded that youth camps that operate camp buses fall within the definition of "charter-party carrier[s] of passengers." No one seriously disputes that, to the extent camps charge a fee for the camp experience and transport campers by vehicle, they are "engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state..."

If there were a question about the broad reach of the Act, it is resolved by considering other examples of transport to which the Act applies. Charter-party carriers of passengers include those whose transportation is incidental to commercial river rafting or skiing (Section 5383), those who transport children to and from private schools (Section 5384), and those who conduct transportation services "which are incidental to another business" (Section 5384). Prior Commission decisions have found charter-party carrier status for bars and restaurants that provide free transportation to sports events (D.64960) and to a condominium developer operating free shuttle buses to ski areas (D.82171). If these entities are charter-party carriers, then youth camps that provide similar transportation are charter-party carriers as well.

We next considered whether youth camps were excluded from requirements of the Act by the Section 5353(f) provision excluding passenger vehicles carrying passengers "on a noncommercial enterprise basis." In the absence of legislative history to the contrary, we concluded that the plain meaning of those words

provides an exclusion for the passenger vehicle operations of nonprofit youth camps. The term "commercial" denotes an enterprise "having financial profit as a primary aim." (Siegel v. City of Oakland (1978) 79 Cal. App. 3d 351, 358.) It follows that the phrase "noncommercial enterprise basis" denotes an activity that operates on a not-for-profit or other noncommercial basis.

4. For-Profit Camps

It appears that about 80% of California's youth camps are operated by nonprofit organizations. The remaining 20% are operated as proprietary camps. Based on the analysis above, those proprietary camps that operate camp buses are charter-party carriers under the Act. However, since their passenger vehicles are not operated on a "noncommercial enterprise basis," the exclusion of Section 5353(f) does not apply to camps operated for profit.

The American Camping Association (ACA) and others urged that we interpret Section 5353(f) to focus on the transportation itself. Thus, if camp buses were offered on a no-cost or no-profit basis, the transportation itself would be operated on a noncommercial enterprise basis. The flaw in this interpretation is that it would make meaningless many of the other exclusions set forth in Section 5353. The Legislature has excluded from requirements of the Act the free airport vans operated by hotels (Section 5353(l)) and the shuttle buses operated without charge by rental car companies (Section 5353(k)). There would be no need for these exclusions if these "no-charge" transportation activities were already excluded under an expansive definition of Section 5353(f).

By the same token, we were unable to find, as ACA urged, that camp buses operated by proprietary camps are excluded by the Section 5353(l) provision applicable to hotels, motels or "other

place(s) of temporary lodging."[2] The plain meaning of Section 5353(l) is that hotels, motels, and similar places of lodging may transport guests to and from the airport and places of entertainment and commercial attraction without becoming subject to charter-party carrier regulations. Transportation provided by youth camps fits awkwardly, if at all, within that description. We reasoned that had the Legislature intended to include youth camps in the Section 5353(l) exclusion, it would have done so with more precision.

We concluded, therefore, that passenger transportation provided by proprietary camps, like that provided by nonprofit camps, is subject to the Act, but that an exclusion applicable to the nonprofits is not applicable to camps that operate for profit.

5. Comments on the Proposed Rule

The California YMCAs, operating 52 nonprofit youth camps in the state, commented in favor of the proposed rules, as did the Commission's Division of Ratepayer Advocates. However, proprietary camps and their associations vigorously criticized the proposed

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2 Section 5353(l) states:

> "Subject to Section 34507.6 of the Vehicle Code [requiring exempt carriers to obtain a vehicle identification number], 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."

rule affecting for-profit camps. One camp owner commented that "never in our thirty-seven years of operation have we encountered a proposed regulation which is as blatantly discriminatory, duplicitous, unnecessary, and unfair as this one."

The proprietary camps maintain that their transportation activities are incidental and noncommercial in nature and ought not be covered by the Passenger Charter-party Carriers' Act. In any event, the camps believe that their transportation should be excluded by the "temporary lodging" exclusion of the Act. These are arguments that we considered and rejected in the interim opinion. Most of those criticizing the proposed rule raise three other principal objections:

1. The proposed rules violate equal protection, in that there is no apparent reason to apply the requirements of the Act to propriety camps and not to nonprofit camps.

2. The additional regulation required by the Act duplicates requirements already imposed by CHP and DMV.

3. Tour bus certification of drivers is an impractical requirement for youth camp staff.

We consider each of these contentions in the discussion that follows:

5.1 Do the Proposed Rules Violate Equal Protection?

Camp Kinneret, an ACA accredited camp in Agoura, states the discrimination and equal protection issue succinctly:

> "As an industry, all organized camps are regulated by the California Health and Safety Code. They must also, as noted in the interim order, operate within the confines of any other applicable legislation or regulation (such as DMV). These apply to <u>all</u> camps. No other legislation or regulation distinguishes between organized camps based on organizational

> structure. All camps are considered on an equal footing. By proposing different rules, camps will not be treated equally. Proprietary camps and not-for-profit camps will compete head to head as they do now, but proprietary camps will be subject to additional regulation. This seems to deny them equal protection under the law. Further, if it is believed that regulation is necessary because it provides a higher degree of safety, then if not-for-profit camps are exempted, the parent[s] of a camper who attends a not-for-profit camp could rightly claim that their child was being denied equal protection afforded to those children who attend proprietary camps."

The Western Association of Independent Camps and the Northern California Section of the ACA (collectively, the Associations) argue that an exclusion for nonprofit camps but not for proprietary camps appears to violate principles of equal protection. They state that Article 1, Section 11, and Article 4, Section 16 (formerly Article 1, Sections 11 and 21) of the Constitution of the State of California guarantee that all laws of a general nature shall have a uniform operation and that no class of citizens shall be granted immunities which are not granted to all citizens. Any distinction must have a rational basis. The Associations' equal protection argument is supported by virtually all proprietary camps that submitted comments.

The Associations refer us to John Tennant Memorial Homes, Inc. v. City of Pacific Grove (1972) 27 Cal. App. 3d 372, for the proposition that classification based upon nonprofit status can violate the equal protection provisions of the State Constitution. In Tennant, the appellate court affirmed that a city ordinance imposing a tax on nonprofit nursing homes, while exempting for-profit nursing homes, was unreasonable and violated equal protection guarantees. The court found that the classification was purely arbitrary and capricious and was based upon no reasonable or substantial difference between the classes of nursing homes.

As the Tennant court noted, however, a legislative classification is presumed to be valid "if facts can reasonably be conceived that would sustain it." (27 Cal. App. 3d at 380.) The California YMCAs, in comments supporting the proposed rules, contend that a distinction between for-profit and nonprofit camps is proper as a matter of public policy. The YMCAs state:

> "[The distinction] is specifically provided for in the Act. Section 5360 provides for the regulation of 'transportation of persons by motor vehicle for compensation' (emphasis added), but §5353(f) exempts from regulation '[p]assenger vehicles carrying passengers on a noncommercial enterprise basis' (emphasis added). The Legislature has explicitly drawn these classifications and, as the Interim Opinion notes, under the rational basis test, a classification is constitutionally valid if there is any conceivable basis upon which the classification might relate to a legitimate governmental interest."

While the legislative history of the Act does not reflect the basis upon which the Legislature drew these classifications, the YMCAs suggest that the legitimate governmental interest is the same as that upon which the government grants tax exemption to nonprofit corporations.

The Internal Revenue Code provides an income tax exemption for corporations "organized and operated exclusively for religious, charitable...or educational purposes...no part of the net earnings of which inures to the benefit of any private shareholder or individual..." (26 U.S.C. Section 501(c)(3).) The United States Supreme Court has consistently upheld the constitutionality of this exemption for nonprofit organizations. In Bob Jones University v. United States (1983) 461 U.S. 574, the Supreme Court explained the justification as follows:

> "Congress sought to provide tax benefits to charitable organizations, to encourage the development of private institutions that serve a useful public purpose...

> "[These tax exemptions] are justified on the basis that the exempt entity confers a public benefit -- a benefit which the society or the community may not itself choose or be able to provide or which supplements and advances the work of public institutions already supported by tax revenues." (461 U.S. at 588, 591.)

Even if we agreed that an exclusion for noncommercial enterprises presented equal protection problems, the constitutionality of state law provisions is more properly a question for the state and federal courts. (See, e.g., Government Code § 11350.) Moreover, the record in this proceeding demonstrates a logical basis -- and certainly a "conceivable" one -- upon which the Legislature could create a Section 5353(f) exclusion for nonprofit and noncommercial organizations. The great majority of youth camps in California are operated by religious institutions and other nonprofit organizations. The YMCA alone operates 52 such camps. Clearly, the Legislature could have intended, among other things, to encourage the public benefit provided by this predominant segment of youth camp activity by excluding the sponsoring organizations from requirements of the Passenger Charter-party Carriers' Act.

5.2 Is the Additional Regulation Duplicative?

Several proprietary camps take issue with the proposed rules on the basis that regulation by the Commission duplicates requirements already imposed by CHP and the DMV. As we noted in the interim opinion, the Commission is bound to enforce the Act regardless of what some may view as redundancy.

Moreover, there are significant differences in requirements for charter-party carriers and non-charter-party carriers. As noted in Appendix A of our interim opinion, a major difference is that the CHP may refer safety violations of charter-party carriers to the Commission, which in turn can suspend or

revoke the carrier's operating authority. CHP must seek court action to halt unsafe operations of non-regulated carriers.

Another significant difference is in the amount of public liability insurance that carriers are required to maintain. Class B charter-party carriers are required to maintain $5 million in coverage for a vehicle with a seating capacity of 16 passengers or more, $1.5 million for a vehicle with a seating capacity of 8-15 passengers, and $750,000 for a vehicle with a seating capacity of 7 passengers or less. (General Order (GO) 115-E.) By contrast, a not-for-hire motor vehicle subject to the Private Carriers' Registration Act (PU Code §§ 4000-4021) must carry a minimum of only $30,000 in liability insurance (GO 160). For-hire carriers not subject to Commission regulation also must carry a $30,000 minimum in liability insurance (Vehicle Code § 16500). To the extent a camp vehicle is deemed to be a commercial vehicle used to carry passengers for hire, it may be subject to the higher insurance requirements set forth in Vehicle Code § 16500.5, which are the same as those required by the Commission. (See also GO 160.)

Another major difference for those covered by the Act -- and the one complained of most frequently by those commenting on the proposed rules -- is the requirement that a driver of tour buses (any vehicle carrying more than 10 persons and operated by a charter-party carrier) must have a tour bus certificate. This requirement, and its effects upon camp operators, is discussed below.

As these examples make clear, the requirements of the Passenger Charter-party Carriers' Act augment the CHP and DMV regulations imposed on non-charter-party carriers. To the extent that there is duplication (for example, participation in the DMV's driver pull notice program), no additional burden is placed on those subject to the Act. Indeed, what the proprietary camps are really saying is that the regulations required by the Act are

unnecessary for the transportation that these camps provide. As we stated in the interim opinion, that is an objection more properly addressed to the Legislature. The Commission may only interpret and apply the law as stated.

6. **Are Tour Bus Certificates Impractical for Youth Camps?**

The Vehicle Code requires, generally, that anyone operating a bus (generally, a vehicle designed to carry more than 10 persons, including the driver) must have a Class B license, with passenger transportation vehicle endorsement. (Vehicle Code Sections 12804 and 12804.9.) However, bus drivers for charter-party carriers also must have a tour bus certificate, which requires an additional DMV examination. (Vehicle Code Section 12519.5.)

Most camps employ college students as counselors and drivers, and the camps have only a limited time between the end of school and the beginning of camp to qualify these students for their driver licenses. The practical problem of imposing an additional DMV examination on these drivers is described by Cali-Camp Summer Day Camp in its comments:

> "Our counseling staff members are also our drivers. They complete a 32-hour behind-the-wheel and classroom instructional course prior to being tested through DMV and receiving their Class B Operator's License. Since 1981, I have employed a driver training instructor who has been certified by the State to be a third-party tester. Thus, I have been able to minimize the testing workload of our local DMV.
>
> "This has been highly appreciated by DMV since my camp usually tests 20-30 drivers each summer during a two-week period just prior to the opening of camp (June 10-24). Please realize that I am one of perhaps 20 day and resident camps in the area that are also licensing their staff members for the same reason and at the same time. Most of us have third-party testers in order to make sure that all drivers are

> tested and ready to drive at the start of camp. I feel that, mechanically, it would be impossible for a DMV to handle such a load in a short period of time.
>
> "[Your OIR proposal would require] that all 10-passenger vehicles or larger must be driven by an individual that has a Tour Operator's License and not a Class B Operator's License....There is little or no difference between the two types of licenses, other than testing by DMV areas. There are very few of these testing areas near my camp location. This will create a tremendous hardship and burden on the few testing areas."

A number of commentators state that the problems and costs of the tour operator's license may compel them to curtail or cease the transportation services they offer. For example, Olympic Boys' & Girls' Club of Tarzana, a private day camp that has been in operation in Los Angeles since 1967, transports about half its day campers by 16-passenger leased vans. Olympic states:

> "Our camp does not make any money on transportation. In fact, we lose money compared [to the] campers who provide their own transportation. Our transportation is definitely for convenience to parents and is not commercially designed.
>
> "The problems associated with licensing, added costs, training requirements, etc., will probably cause us to end our transportation option for parents, which will in turn provide more congestion, more wear and tear on roads and highways, greater problems for working parents meeting pickup and drop-off schedules, and generally impact negatively on many of our...parents."

We recognize the practical difficulty that the requirement of a tour bus license presents for some proprietary camps that employ students to drive camp buses. Accordingly, we invite the parties and the Commission's Transportation Division to comment at the oral argument we have scheduled for August 27, 1991,

on what steps the Commission can recommend, or what form the final rule on proprietary camps can take, to reduce this burden. For example, since much of the demand for tour bus testing peaks in a relatively brief period each June, can any special arrangements be made through the DMV to conveniently serve camp operators during this time?

7. Other Issues

The Associations and a number of camps urge that we adopt, or encourage the Legislature to adopt, regulations similar to the Federal Motor Carrier Safety Regulations, 49 CFR Parts 350-399. These Federal Highway Administration regulations exempt "[t]he private transportation of passengers." (49 CFR §390.3(7)). They define a "private motor carrier of passengers" as

> "...a person who is engaged in an enterprise and provides transportation of passengers, by motor vehicle, that is within the scope of, and in the furtherance of that enterprise." (49 CFR § 390.5.)

The Associations state that the federal government has historically exempted such private motor carriers of passengers from its regulations. In proposed rulemaking announced on February 17, 1989 (54 Federal Register 7362), the FHWA announced its intent to regulate private motor carriers, but to do so in such a way as to minimize unnecessary regulatory and paperwork burdens.

Snow Mountain Camp, Ltd., of Nevada City, reads the exemption and the definition in the federal law to mean that all youth camps (and by inference all persons who transport passengers but are not for-hire carriers) are exempt from the federal safety regulations. On that basis, Snow Mountain urges that we simply adopt the federal definition and apply it to the Passenger Charter-party Carriers' Act, thus excluding from the Act's requirements all persons for whom transportation is incidental to their principal business.

The short answer to that, of course, is that federal law is not applicable here. More to the point, however, is that while the federal government may have elected to exempt private motor carriers of passengers from its motor carrier regulations, the State of California has elected to include them. The Passenger Charter-party Carriers' Act specifically includes "specialized carriers...who only conduct transportation services, which are incidental to another business." (Section 5384(a).) Based on the Highway Administration's recent rulemaking, the federal government, like California, now is considering ways to include private motor carriers under its highway regulations.

7.1 Assembly Bill 1506

Finally, the Associations note the requirements of Assembly Bill 1506 (Stats 1990, Ch. 518). Assembly Bill 1506 adds Section 5391.5 to the PU Code, requiring the Commission to commence a rulemaking proceeding "to develop uniform operating standards applicable to charter-party carriers of passengers." The rulemaking is to include consideration of insurance requirements, maintenance records and other procedures in issuing charter-party carrier operating authority. The Associations urge that the Commission defer final rules on youth camps pending this broader rulemaking proceeding.

The Commission's Transportation Division is at work on the proposed rulemaking directed by Assembly Bill 1506. However, the legislative mandate for that proceeding is more general in nature than this proceeding. We see no advantage in further postponing the specific and limited findings of this rulemaking proceeding in deference to the general rulemaking contemplated by Assembly Bill 1506.

8. Oral Argument on the Proprietary Camp Rule

This decision makes final our proposed Rule 9 amending GO 157. The rule concludes that 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 "noncommercial enterprise basis" exclusion set forth in Section 5353(f) of the Act.

However, we have decided to keep open our proposed Rule 9.02 to GO 157 (stating that transportation performed by for-profit camps is subject to the Act) pending oral argument on how this rule can be revised to reduce the burden it may impose on some proprietary youth camps.

We defer the final determination on proprietary camps for three reasons. First, the seasonal and incidental nature of the transportation provided by these camps suggests that the final rule should be drawn to minimize regulatory requirements, and we solicit comments at the hearing on how this can be accomplished. Second, a number of camp operators have stated that they intend to seek a specific exclusion or other relief through the Legislature, and deferral of a final rule on proprietary camps will give the camps and the Commission an opportunity to confer with legislators. Third, the 1991 summer camp season is now well under way, and adoption of a final rule now, before hearing further comments, is not an orderly way in which to proceed.

Therefore, we direct the assigned administrative law judge to take oral argument from representatives of the proprietary camps, from the DRA, and from any other interested party on how proposed Rule 9.02 to GO 157 can be revised to reduce the burden that the rule may impose on some proprietary camps. The hearing at which oral argument will be heard will take place beginning at 10 a.m. Tuesday, August 27, 1991, in the Commission Courtroom in San Francisco.

We caution the parties that this hearing is not intended to hear reargument on the conclusions reached in this rulemaking proceeding. Instead, the Commission seeks practical suggestions on how proposed Rule 9.02 can be implemented fairly. For example, can insurance and inspection compliance be tailored (and costs reduced)

by reflecting the seasonal nature of camp transportation? Should camps be encouraged to seek permits, rather than certificates, under the "specialized carrier" provisions of Section 5384? What relief, if any, can our rule provide or encourage in meeting the tour bus license requirement?

After hearing these comments, the Commission will be in a position to act upon a final rule amending GO 157 to deal with requirements of the Passenger Charter-party Carriers' Act as they apply to transportation performed by proprietary organizations which is incidental to the operation of youth camps.

Findings of Fact

1. Section 5360 of the PU Code defines "charter-party carriers 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 and proprietary organizations that 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 persons (including driver) are required by DMV and CHP regulations to meet certain standards, including: (a) utilizing drivers who have a Class B license with passenger endorsement and current medical certificate; (b) participating in the Pull Notice Program to obtain a current DMV report of employee driving records, and (c) carrying at least $30,000 in liability insurance.

5. CHP may refer safety violations of charter-party carriers to the Commission, which in turn can suspend or revoke the carrier's operating authority.

6. Most charter-party carriers are required to maintain $5 million in coverage for a vehicle with a seating capacity of 16 persons or more, $1.5 million for a vehicle with a seating capacity of 8-15 persons, and $750,000 for a vehicle with a seating capacity of 7 persons or less.

7. Drivers of tour buses (vehicles carrying more than 10 persons and operated by a charter-party carrier) must have a tour bus certificate.

8. The record in this proceeding demonstrates that youth camp vehicles generally have an exemplary safety record.

9. 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 excluded from charter-party carrier regulations by the "temporary lodging" exclusion of PU Code Section 5353(l).

2. The term "noncommercial enterprise basis" in PU Code Section 5353(f) includes operations conducted on a not-for-profit, tax-exempt basis, as authorized by federal or state law.

3. Transportation performed by nonprofit organizations that is incidental to the operation of youth camps is not subject to the Passenger Charter-party Carriers' Act because of the exclusion of Section 5353(f).

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

5. Proprietary (for-profit) youth camps should be permitted to apply for waiver of the application fee for Passenger Charter-party Carrier authority.

6. A final rule dealing with application of the Passenger Charter-party Carriers' Act to transportation performed by

proprietary youth camps should be deferred pending oral argument on the form and scope of the rule.

7. The order in this proceeding should be made effective immediately.

INTERIM ORDER

IT IS ORDERED that:

1. General Order 157 is amended to add the following:

"PART 9 - TRANSPORTATION BY YOUTH CAMPS

"9. 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)."

2. A hearing shall be conducted beginning at 10 a.m. Tuesday, August 27, 1991, in the Commission Courtroom, 505 Van Ness Avenue, San Francisco, California, at which oral argument will be heard on the form and scope of a final rule dealing with the applicability of the Passenger Charter-party Carriers' Act to transportation performed by proprietary (for-profit) organizations which is incidental to the operation of youth camps.

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

This order is effective today.

Dated June 5, 1991, at San Francisco, California.

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

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

NEAL J. SHULMAN, Executive Director

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Healdsburg, CA 95448

Robert Frank
Margaret Rumer
Meadow Oaks Summer Day Camp
23456 Mulholland Hwy.
Calabasas, CA 91302

Dr. Robert F. Hanson
Administrator
Mountain Camp II
P.O. Box 273
Alamo, CA 94507

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5870 West Olympic Blvd.
Los Angeles, CA 90036

Peter Bergstrom, Director
Camp Stevens
Episcopal Dioceses of Los Angeles and San Diego
P.O. Box 2320
Julian, CA 92036

John W. Stewart
Controller
Mount Hermon Association, Inc.
P.O. Box 413
Mount Hermon, CA 95041

PARTIES COMMENTING ON OIR 90-07-036

Jeffrey K. Mori
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Japanese Community Youth Council
2012 Pine Street
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Ronald Brown
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Diabetic Youth Foundation
Bearskin Meadow Camp
1128 Irving Street
San Francisco, CA 94122

Harold A. Gordon
Director
Camp Kinneret
P.O. Box 329
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Skylake Yosemite Camp
P.O. Box 4094
Mountain View, CA 94040

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Roughing It
P.O. Box 1266
Orinda, CA 94563

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President
United Way of California
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Director
Douglas Ranch Camps, Inc.
Carmel Valley, CA 94611

David Kempton
Owner/Executive Director
Camp Murrieta
6091 Charae Street
San Diego, CA 92122

PARTIES COMMENTING ON OIR 90-07-036

Gold Arrow Camp
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Pine Summit
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Big Bear Lake, CA 92315

Jan Mellinger, MFCC
Camp Reach for the Sky
American Cancer Society, San Diego County Unit
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San Diego, CA 92110

Ken Kramarz
Executive Director, Camp Tawonga
3272 California Street
San Francisco, CA 94118

Piedmont Choirs
401-A Highland Avenue
Piedmont, CA 94611

Paul Corey
Community Services Manager
City of San Mateo
Parks & Recreation Department
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San Mateo, CA 94403

Tom and Merri Anderson
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Olympic Boys' & Girls' Club
3966 Ellenita Avenue
Tarzana, CA 91356

John S. Lindskog
President/Director
Coppercreek Camps, Inc.
P. O. Box 749
Greenville, CA 95947

PARTIES COMMENTING ON OIR 90-07-036

Kent D. Newell, Director
Sierra Ski & Pack Club
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Western Association of Independent Camps
Northern California Section of the American
Camping Association
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(END OF APPENDIX A)