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DEC. 5 1991

Decision 91-12-018 December 4, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Order Instituting Rulemaking regarding passenger transportation performed by nonprofit organizations which is incidental to the operation of day camps and residence camps for children.	R.90-07-036 (Filed July 18, 1990)

O P I N I O N

1. Decision Summary

This opinion adopts with little change the rules that we discussed in Decision (D.) 91-02-016 and D.91-06-025, dealing with transportation provided by nonprofit and proprietary youth camps. Specifically, General Order (GO) 157 is amended to state as follows:

"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."

This decision also directs the Commission's Transportation Division to conduct a meeting with proprietary camp operators to review requirements of the Passenger Charter-party Carriers' Act.

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 vans.

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 safety inspection, and meeting tour bus driver license requirements of the Department of Motor Vehicles (DMV).

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

> "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 "(p)assenger vehicles carrying passengers on a noncommercial enterprise basis."

Our OIR was mailed to approximately 500 camp operators in the state. 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 could be a burden for some proprietary camps, the proposed rule provided that the Commission on a showing of financial hardship could waive its $500 filing fee. However, we concluded that the Commission has 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 (D.91-02-016) proposing this rule was issued on February 6, 1991, with a request for comments. A total of 17 parties responded. On June 5, 1991, we issued D.91-06-025 discussing these comments and confirming our earlier conclusions.

In D.91-06-025, we amended GO 157 to state the exclusion for transportation performed by nonprofit youth camps. However, we deferred action on that part of the rule dealing with for-profit camps and directed the administrative law judge to hear oral argument on the form and scope that the rule should take. Oral argument was conducted on August 27, 1991, in the Commission's courtroom in San Francisco. Six persons appeared and were heard. The six comprise a task force established by the Western

Association of Independent Camps and the American Camping Association.[1]

3. Position of Proprietary Camps

The task force for proprietary camps addressed three principal issues.

3.1 DMV Driver Test

The camps urge the Commission to support their efforts to develop workable procedures with the DMV for obtaining the special driver endorsements required for their camp counselors to operate vehicles designed to carry 10 or more passengers. At least until this year, that endorsement took the form of a "tour bus certificate," requiring a special driver test offered at 15 DMV offices in the state. Effective this year, drivers are required to have a Class B license with passenger transport endorsement, plus a new special condition 99 "may drive tour bus" endorsement. The requirement applies to "any person who drives a bus for hire under authorization from the Public Utilities Commission." (Vehicle Code § 12519.5.) Again, the DMV requires a special driver test offered at certain DMV offices.

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1 Task force representatives are Saul Rowen, owner of Cali-Camp Summer Day Camp in Topanga, which operates 31 vehicles in the summer (12 15-passenger vans, 17 41-passenger buses and 2 24-passenger vans); Rick Benfield of Tumbleweed/Cottonwood Day Camps, Los Angeles, which operates 28 vehicles during the summer (23 20-passenger vehicles and 5 42-passenger vehicles); Harold A. Gordon, owner of Camp Kinneret Day Camp, Agoura, which operates 20 vehicles during the summer (16 15-passenger vans and 4 36-passenger vehicles); John T. Howe, owner of Skylake Yosemite residence camp, Mountain View, which uses 5 15-passenger vans during the summer; John S. Lindskog, owner of Coppercreek Camps, Greenville, which operates 4 15-passenger vans and 1 12-passenger van; and Steve Siegel, owner of Sunny Skies Day Camp, Agoura, which operates 17 vehicles during the summer (13 15-passenger vans and 4 vehicles seating from 41 to 60 persons).

In oral argument, proprietary camps stated that they had met with DMV representatives, and that steps to relieve the practical problems of obtaining the tour bus driver licenses have been taken. The camps seek procedures to speed the DMV qualification process or to permit camps to train all drivers themselves under DMV-employer agreements.[2]

3.2 Charter-party Fee

Our proposed rule for proprietary camps provided that "(u)pon written request stating financial hardship," the Commission could waive the $500 filing fee for camps applying for charter-party carrier authority. In oral argument, camp spokesmen noted that the rule lacks guidelines for showing financial hardship. Instead of that test, they urge that the Commission exercise the discretion accorded it by the Act (PU Code § 5375) to prorate the fee to reflect the seasonal nature of youth camps. They state that a majority of the camps operate vehicles for only 3 months a year, and that many camps put their vehicles on blocks for the other 9 months in order to reduce insurance premiums.

3.3 Transportation Division Meeting

Camp operators at oral argument stated that they have no quarrel with the insurance requirements of the Charter-party Carriers' Act, and they support the Act's emphasis on driver training and vehicle inspections. Indeed, apart from the practical problems of the DMV driver test and the Act's $500 filing fee, the

2 In order to facilitate training of drivers of commercial vehicles, the state established a program through which qualifying employers may certify their own drivers. Vehicle Code § 12804(e) states that "the department (DMV) may accept a Certificate of Driving Experience (Form DL170) in lieu of a driving test on Class 1 or 2 applications when such certificate is issued by an employer of the applicant..." Camps state that a recent revision of this program requires a DMV-administered drive-test for those who will drive vehicles designed to carry 16 or more passengers.

Act appears to impose few requirements that are not already met by most of the for-profit camps.

However, since it has not been clear in the past that the Act applied to proprietary youth camps, most camps have a need for practical guidance in meeting the charter-party carrier requirements. For example, camp owners are not clear on the distinction between a charter-party certificate and a charter-party permit. (The difference relates to the radius within which vehicles may be operated.) Similarly, many camps are not familiar with the practice of the Commission's Transportation Division that permits a voluntary suspension of charter-party authority by seasonal operators who seek to discontinue insurance coverage when vehicles are not in use.

Camps urge that the final order in this proceeding direct that the Transportation Division arrange a meeting with camp representatives so that the representatives can review and disseminate compliance information to other camp operators.

4. Discussion

As we have noted in our prior decisions in this proceeding, the Commission has no authority with respect to driver tests administered by the DMV. Since camp drivers generally are college students who take the tests in the period between the end of school and the beginning of camp, the test requirements obviously strain the resources of the DMV. At the same time, as was made clear at oral argument, both the camps and the DMV recognize the problem and are taking steps to alleviate it. We note also that camps intend to invite DMV representatives to the meeting with the Commission's Transportation Division that has been established as a result of this proceeding.

We agree with camps that a "financial hardship" exemption for the $500 charter-party carrier filing fee is likely to create more problems than it solves. Moreover, we have reconsidered sua sponte whether the Commission has authority under the Act to modify

the mandatory fee requirements of Section 5373.1. Although Sections 5375 and 5381 give us broad authority to administer this Act in the public interest, we are reluctant without legislative guidance to modify fee requirements stated so explicitly in Section 5373.1. We note that the Legislature has recently reduced these fees substantially by extending the life of a certificate from 1 year to 3, thus effectively reducing the annual fee to $167.[3] In view of this, we have decided not to make a change in the fee requirement. However, based on this record, the Commission will support the proprietary camps if they decide to seek legislative change in the Act's fee requirement.

Finally, our order directs the Commission's Transportation Division to arrange for an informal workshop with representatives of the charter-party task force of the Western Association of Independent Camps and the American Camping Association. It is our intention that the task force will disseminate information from this meeting to other proprietary camps so that their filing for charter-party authority can take place expeditiously. The Transportation Division already has been meeting with camp associations, and it was at work shortly after the date of oral argument to arrange a further meeting with the task force. If that meeting takes place prior to the effective date of this order, that will fulfill the requirement of this order.

Findings of Fact

1. Oral argument in this proceeding took place on August 27, 1991, in the Commission's courtroom in San Francisco.

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3 See Section 5376, as amended by Stats. 1988, Ch. 324, Sec. 6: "A permit or certificate, or renewal thereof, is effective for three years, unless supended or revoked by the commission."

2. Proprietary youth camps were represented at oral argument by a task force of six camp operators appointed by the Western Association of Independent Camps and the American Camping Association.

3. The task force believes that the most serious problem for camp operators in complying with the Passenger Charter-party Carriers' Act is the practical difficulty camp counselors have in scheduling driver tests for their charter vehicle licenses.

4. The task force believes that the filing fee for charter-party authority should be reduced to reflect the predominantly seasonal operation of camp vehicles.

5. The task force believes that an informal meeting with the Commission's Transportation Division will resolve questions that proprietary camps have about compliance with the Passenger Charter-party Carriers' Act.

Conclusions of Law

1. GO 157 should be amended to provide that transportation performed by for-profit organizations that is incidental to the operation of youth camps is subject to the Passenger Charter-party Carriers' Act.

2. The Commission does not have explicit authority to reduce the filing fee for applicants for charter-party certificates and permits.

3. The Commission should direct the Transportation Division to conduct an informal workshop with the proprietary camp task force to familiarize camps with requirements of the Passenger Charter-party Carriers' Act.

O R D E R

IT IS ORDERED that:

1. General Order 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."

2. The Transportation Division is directed to arrange and conduct an informational meeting with representatives of proprietary (for-profit) youth camps to explain requirements of the Passenger Charter-party Carriers' Act.

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

4. This Order Instituting Rulemaking is closed.

This order becomes effective 30 days from today.

Dated December 4, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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

Neal J. Shulman

NEAL J. SHULMAN, Executive Director

APPENDIX A
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PARTIES COMMENTING ON OIR 90-07-036

Darrow Milgrim, Legislative Chairman
American Camping Association
c/o Speare & Company
2600 Colorado Avenue, Suite 100
Santa Monica, CA 90404

Milton Drucker
Cottontail Ranch
P.O. Box 108
Woodland Hills, CA 91365

Terri J. Echelbarger
Director, Youth & Family Programs
YMCA: Stonestown
333 Eucalyptus Dr.
San Francisco, CA 94132

William G. Pollock
Associated Students Administrator
California State University, Fullerton
University Center 2-18
Fullerton, CA 92634

Joan Schutz
Operations Supervisor
Speech and Language Development Center
8699 Holder
Buena Park, CA 90620

Eileen Irving
Transportation Director
HCAR
P.O. Box 3154
Eureka, CA 95502

William T. Bagley, Esq.
c/o California YMCAs
Nossaman, Guthner, Knox & Elliott
50 California St., 34th Floor
San Francisco, CA 94111-4712

Michael D. McNamara
Program Manager
Energy Rate Design and Economics Branch
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

APPENDIX A
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PARTIES COMMENTING ON OIR 90-07-036

Barbara J. Dickey
Executive Director
Girl Scouts, San Diego-Imperial Council, Inc.
1231 Upas Street
San Diego, CA 92103-5199

Steve Siegel, President
California Camping Advisory Council
3190 Triunfo Cyn. Rd.
Agoura, CA 91301

John Lindskog, President
American Camping Association
Northern California Section
P.O. Box 151493
San Rafael, CA 94915

Sally Horner
American Camping Association
Southern California Section
Dept. of Rec. & Leisure
CSULB, Room 216
1250 Belflower Blvd.
Long Beach, CA 90840

Steve Schachter
Executive Camp Director
Sierra Canyon Day Camp
11052 Independence Ave.
Chatsworth, CA 91311

Patty Tucker
Owner/Director
Tumbleweed/Cottonwood Camps
P.O. Box 49291
Los Angeles, CA 90049

Sally L. Horner
Tom Sawyer Camps, Inc.
707 West Woodbury Road #F
Altadena, CA 91001

Saul Rowen
Executive Director
Cali-Camp Summer Day Camp
1717 Old Topanga Canyon Rd.
Topanga, CA 90290

APPENDIX A

PARTIES COMMENTING ON OIR 90-07-036

John A. Maffucci, CCD
Director
Camp Pacific
P.O. Box 3000
Carlsbad, CA 92008

Suzanne and David Brown
Owners/Directors
Plantation Farm Camp, Inc.
34285 Kruse Ranch Rd.
Cazadero, CA 95421

Ginny Crittenden
The Bar 717 Ranch
Hayfork, Trinity County, CA 96041

Ray Kalman
Director
Snow Mountain Camp
P.O. Box 476
Nevada City, CA 95959

Mountain Meadow Ranch
P.O. Box 610
Susanville, CA 96130

Max Caldwell
Kennolyn Camps
8205 Glen Haven Rd.
Soquel, CA 95073

Tamara Adams
Owner/Director
Emandal, a Farm on a River
16500 Hearst Post Office Rd.
Willits, CA 95490

Richard and Noreen Nazarian
Westminster Woods
6510 Bohemian Hwy.
Occidental, CA 95465-9106

Steven H. Siegel, President
Sunny Skies Day Camp, Inc.
3190 Triunfo Canyon Rd.
Agoura, CA 91301-3432

PARTIES COMMENTING ON OIR 90-07-036

Marian H. Andersen, CCD
Director
Skylake Ranch Camp
P.O. Box 298
Ahwahnee, CA 93601

Gary Gartrell
Director of Summer Programs
Ojai Valley School
723 El Paseo Rd.
Ojai, CA 93023

Bruce Johnson
Owner/Director
Thunderbird Ranch Summer Camp
9455 Highway 128
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

Jean Kaplow, MSW
Assistant Executive Director
Jewish Community Centers Association
of Greater Los Angeles
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
Executive Director
Japanese Community Youth Council
2012 Pine Street
San Francisco, CA 94115

Ronald Brown
Executive Director
Diabetic Youth Foundation
Bearskin Meadow Camp
1128 Irving Street
San Francisco, CA 94122

Harold A. Gordon
Director
Camp Kinneret
P.O. Box 329
Agoura, CA 91376-0329

John T. Howe, C.C.D.
Skylake Yosemite Camp
P.O. Box 4094
Mountain View, CA 94040

Ann and Hobie Woods
Owners/Directors
Roughing It
P.O. Box 1266
Orinda, CA 94563

Anthony R. Folcarelli
President
United Way of California
1401 21st Street
Sacramento, CA 95814

Carole Douglas Ehrhardt
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
2100 N. Sepulveda Blvd., Ste. 22
Manhattan Beach, CA 90266

Stanley Johnson
Associate Director
Pine Summit
P.O. Box 2871
Big Bear Lake, CA 92315

Jan Mellinger, MFCC
Camp Reach for the Sky
American Cancer Society, San Diego County Unit
2251 San Diego Ave., Suite B-150
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
330 W. 20th Avenue
San Mateo, CA 94403

Tom and Merri Anderson
Owners/Directors
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
P. O. Box 491460
Los Angeles, CA 90049

Western Association of Independent Camps
Northern California Section of the American
Camping Association
(by) Richard M. Ross, Esq.
McDonough, Holland & Allen
555 Capitol Mall, Suite 950
Sacramento, CA 95814

(END OF APPENDIX A)