

ORIGINALDecision' 82 05 035 MAY - 4 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of Ron Ratti, dba Airport Transfer,)
 for permanent authority to operate)
 as a passenger stage corporation)
 between the financial district of)
 San Francisco and San Francisco)
 International Airport.)

Application 60388
 (Order to Show Cause issued
 February 8, 1982)

Ronald J. Ratti, for himself, respondent.
Handler, Baker, Greene & Taylor, by Raymond A. Greene, Jr., Attorney at Law, for SFO Airporter, Inc.; and Clapp & Custer, by James S. Clapp and Daniel J. Custer, Attorneys at Law, for Lorrie's Travel & Tours, Inc.; and William C. Taylor, Deputy City Attorney, for San Francisco International Airport, City and County of San Francisco; interested parties.
Lynn T. Carew, Attorney at Law, for the Commission staff.

O P I N I O N

This proceeding involves an order to show cause (OSC) to determine whether Ron Ratti (Ratti) is in contempt of the Commission and should be punished.

A duly noticed public hearing was held in this matter before Administrative Law Judge Donald B. Jarvis in San Francisco on March 2, 1982. It was submitted on March 3, 1982.

The contempt charged relates to the following: (1) Ratti is alleged to have operated as a passenger stage corporation without authority from the Commission and in violation of orders issued by the Commission. (2) Ratti is alleged to have conducted passenger stage operations without the insurance required by General Order (GO) 101-C. (3) Ratti is alleged to have conducted

charter party carrier operations after his authority had been suspended for failure to file a certificate of insurance with the Commission.

Material Issues

The material issues in this proceeding are: (1) Is Ratti in contempt of the Commission for violating any of its orders or decisions? (2) If so, what penalty should be assessed?

Applicable Law

The Commission has the same power of contempt as courts of record. (Cal. Const., Art. XII, § 6; Public Utilities (PU) Code § 312; Van Hoosear v Railroad Commission (1922) 189 Cal 228.) Failure to obey a Commission general order or decision is punishable by contempt. (PU Code § 2113; Code of Civil Proc. § 1209.) Each act of contempt is punishable by a fine of not more than \$500 or imprisonment not exceeding five days, or both. (Code of Civil Proc. § 1218.) Contempt must be proved beyond a reasonable doubt. (United Transportation Union v Southern Pacific Co. (1981) Decision (D.) 93206 in Case (C.) 7466 and C.7465.)

Findings of Fact

The Commission finds the existence of the following facts beyond a reasonable doubt.

1. On August 12, 1975, Ratti filed Application (A.) 55877 seeking a certificate of public convenience and necessity to operate as a passenger stage corporation. Finding of Fact 12 and the Conclusion of Law in D.89729 in A.55877 were as follows:

"12. Notwithstanding, Tours/Ratti have failed to demonstrate that degree of fitness, responsibility, good faith, and willingness to abide by the law and Commission rules requisite for an applicant to merit certification to serve the general public."

* * *

"Application No. 55877--Conclusion

"The application should be denied."

2. On February 2, 1977, Ratti filed A.57047 seeking authority to provide passenger stage service between the financial district of San Francisco and San Francisco International Airport (SFO). D.90797 in A.57047 contained the following:

"...there is nothing on this record to indicate that currently applicant lacks the requisite fitness. Because we still have reservations regarding applicant's fitness and willingness to operate in compliance with applicable laws, rules and regulations, we will grant the certificate requested for a limited period of eighteen months and with certain conditions."

* * *

"Findings of Fact"

* * *

"5. The evidence establishes some doubts as to the applicant's fitness for permanent authority."

* * *

"Conclusions of Law"

* * *

"2. Applicant's fitness and willingness to abide by applicable laws, rules and regulations governing the provision of passenger stage service must be demonstrated further to warrant the issuance of a permanent certificate.

"3. Applicant shall be granted a temporary certificate, which shall expire within 18 months of the date of issuance. Applicant may reapply to the Commission at that time for a permanent certificate.

- "4. If applicant has complied with all applicable statutes, rules and regulations of the Commission during this period, the Commission may issue applicant permanent authority.
- "5. Applicant's temporary certificate shall be subject to certain conditions.

"O R D E R

"IT IS ORDERED that:

- "1. A certificate of Public Convenience and Necessity is granted to Ronald Ratti, dba Bankers Limousine Service, authorizing him to operate as a passenger stage corporation as defined in Section 226 of the Public Utilities Code, between points in San Francisco and the San Francisco International Airport subject to the conditions in Ordering Paragraph two below and also subject to the conditions set forth in Appendix A of this decision.
- "2. Application No. 57047 is granted a temporary certificate which shall expire on March 12, 1981, unless extended by further order of the Commission, and subject to the following conditions:
 - "a) Applicant shall abide by all the laws, rules, and regulations of this Commission applicable to passenger stage utilities;
 - "b) Applicant shall withhold taxes from employee wages pursuant to State and Federal Law;
 - "c) Applicant shall pay his employees properly and regularly;
 - "d) Applicant shall keep this utility's operations and accounting separate from any other business;
 - "e) Applicant shall further abide with all the laws, ordinances, rules and regulations of the City and County of San Francisco, San Francisco Airport Commission, State of California and the Federal government.

"3. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure to do so may result in a cancellation of this authority:

"a. Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if he accepts the certificate he will be required, among other things, to comply with the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's General Order 98-Series and the insurance requirements of the Commission's General Order 101-Series."

3. Ratti accepted the certificate granted in D.90797. The certificate was designated number PSC 1084.

4. The certificate granted by D.90797 expired under the terms of that decision on March 12, 1981.

5. On March 24, 1981, Ratti filed A.60388, which sought to have made permanent the temporary authority granted in D.90797, which had expired on March 12, 1981.

6. On January 19, 1982, the Commission entered D.82-01-102 in A.60388 which contained the following:

"Findings of Fact

"1. On September 12, 1979, Ratti dba Bankers Limousine Service, was granted a temporary certificate to operate as a passenger stage corporation serving between downtown San Francisco and SFO.

"2. On September 25, 1979, Ratti filed a written acceptance of the certificate stating: "I accept the temporary certificate subject to all of the terms and conditions contained therein. [¶] It is my intention to comply fully with all such terms and conditions contained throughout the decision and temporary certificate..."

* * *

- "5. Ratti allowed his temporary operating authority to expire before applying for permanent authority.
- "6. Ratti has operated without authority since March 12, 1981."

* * *

- "18. Public convenience and necessity do not require Ratti's service irrespective of his fitness.

"Conclusions of Law

- "1. Ratti has violated PU Code § 1031 by operating without authority."

* * *

- "3. Ratti has violated Ordering Paragraph 2(a) of D.90797 by failing to abide by all laws, rules, and regulations of this Commission."

* * *

- "9. Ratti has failed to show that he is willing to abide by the laws, rules, and regulations governing the provision of passenger stage service and is, accordingly, not a fit person to receive permanent operating authority.
- "10. The application should be denied.
- "11. Because Ratti is now operating without authority, this order should be effective today.

"O R D E R

"IT IS ORDERED that:

- "1. The application of Ron Ratti, dba Airport Transfer, for permanent authority to provide passenger stage service between downtown San Francisco and the San Francisco International Airport (SFO) is denied.
- "2. Ron Ratti shall cease and desist from providing passenger stage service between downtown San Francisco and SFO. A copy of this order shall be personally served on Ron Ratti.

"This order is effective today."

7. A copy of D.82-01-102 was personally served on Ratti on January 26, 1982.

8. Ratti has held no passenger stage operating authority issued by the Commission since March 12, 1981.

9. At some time prior to February 5, 1982, Ratti distributed a timetable for passenger stage operations between the financial district of San Francisco and SFO (Timetable). The Timetable showed a pickup at Sansome and Clay Streets at 2:03 p.m., Monday through Friday. On February 5, 1982, shortly after 2:00 p.m., Frank A. Marx boarded an Airport Transfer Dodge van (California License No. 1T44380), at the intersection of Sansome and Clay Streets in downtown San Francisco. Ratti was the driver of the van. After picking up two additional passengers in downtown San Francisco, Ratti proceeded to SFO. Marx disembarked at the South Terminal at approximately 2:25 p.m., after paying a fare of \$6.00 in cash. One of the other passengers disembarked at the same time and also paid Ratti. The Dodge van was registered to Boronda, Inc. (96 Oliver Street, San Francisco, California), a corporation of which Ratti is sole shareholder.

10. The Timetable showed 50 Beale Street as a pickup point in San Francisco.

11. On February 12, 1982, Dodge van, license number 1T44380 with the name of Airport Transfer thereon driven by a young woman passed the Beale Street pickup point at one of the scheduled pickup times.

12. On February 19, 1982, Dodge van, license number 1T44380, with the name Airport Transfer thereon, driven by Ratti passed the Beale Street pickup point at one of the scheduled pickup times. Ratti stopped the vehicle and offered Frank A. Marx one of the Timetables.

13. On February 26, 1982, Dodge van license number 1T44380, with the name Airport Transfer thereon, driven by Ratti passed the Beale Street pickup point at one of the scheduled times on the Timetable.

14. SFO designates areas in which carriers having authority granted by the Commission may pick up passengers. The Timetable shows various pickups at SFO. In the week commencing February 8, 1982, these Timetables were taped to columns in the designated pickup area for authorized carriers at SFO. The Timetable shows pickup times for the North Terminal of 2:35 p.m. and 3:35 p.m., Monday through Friday. At 2:36 p.m. on March 1, 1982, a Dodge van license number 1T44380 having a sign saying SF-SFO Shuttle on its top with Ratti as its driver approached the area designated for authorized carriers at the North Terminal and slowed down looking for passengers. There were no persons in the area and the vehicle left. At 3:31 p.m. on March 1, 1982, a Dodge van, license number 1T44380 having a sign saying SF-SFO Shuttle on its top with Ratti as its driver approached the area designated for authorized carriers at the North Terminal. The vehicle stopped. It left the area when an airport police officer approached.

15. On February 23, 1982, James Seet was at SFO standing in the area designated for authorized carriers at the South Terminal. A van with the name Airport Transfer thereon driven by Ratti stopped and asked his destination. Seet said he was going to San Francisco. Ratti asked him to get in. Seet had made no reservation with Airport Transfer. Seet was transported to San Francisco by Ratti. He paid \$6.00 for the transportation and was given a receipt for that amount.

16. The Timetable shows a pickup time for California and Davis Streets of 10:07 a.m.

17. On February 10, 1982, Jeffery Wantz, who was aware of the Timetable, was at the corner of California and Davis Streets at approximately 10:00 a.m. Wantz had made no prior reservation for transportation service. At approximately 10:07 a.m. a van driven by Ratti and having the name of Airport Transfer thereon stopped and picked up Wantz and another person. While the vehicle was stopped Ratti posted Timetables on a nearby pole. The vehicle then proceeded to 50 Beale Street where it stopped but picked up no passengers. The vehicle then went to SFO. The vehicle stopped in the area near the PSA Terminal designated "Courtesy and Transit Vehicles Only." Wantz paid Ratti \$6.00 and got out of the vehicle. Ratti told Wantz he could be picked up at that point on his return.

18. On February 24, 1982, Jeffery Wantz, who was aware of the Timetable, was at the corner of California and Davis Streets at approximately 10:07 a.m. He had made no prior reservation for transportation service. A van driven by Ratti and having the name Airport Transfer thereon stopped and picked up Wantz. The van proceeded to 50 Beale Street, where it stopped and picked up another passenger. The van then went to SFO where it discharged Wantz and the other passenger. Each paid \$6.00 for the transportation. Wantz was given a receipt for his payment.

19. GO 101-C provides that:

- "(1) Each passenger stage corporation, as defined in the Public Utilities Code, shall provide and thereafter continue in effect, so long as it may be engaged in conducting such operations, adequate protection against liability imposed by law upon such carriers for the payment of damages for personal bodily injuries (including death resulting therefrom) and for damage to or destruction of property, other than property being

transported by such carrier for any shipper or consignee, whether the property of one or more than one claimant, in amounts not less than the amounts set forth in the following schedule:"

* * *

"(9) . . . No operation shall be conducted on any highway of the State of California unless a certificate of insurance, certificate of self-insurance coverage, bond, or the other securities or agreements of indemnity hereinabove specified, shall be in effect and on file with the Commission."

20. GO 115-B provides that:

"(1) Each charter-party carrier of passengers, as defined in the Public Utilities Code, shall provide and thereafter continue in effect, so long as it may be engaged in conducting such operations, adequate protection against liability imposed by law upon such carriers for the payment of damages for personal bodily injuries (including death resulting therefrom) and for damage to or destruction of property, other than property being transported by such carrier for any shipper or consignee, whether the property of one or more than one claimant, in amounts not less than the amounts set forth in the following schedule:"

* * *

"(9) . . . No operation shall be conducted on any highway of the State of California unless a certificate of insurance, certificate of self-insurance coverage, bond, or the other securities or agreements of indemnity hereinabove specified, shall be in effect and on file with the Commission."

21. Ratti holds a Charter-Party Carrier of Passengers Permit No. TCP-601-P, issued by this Commission.

22. On January 5, 1981, Ratti caused to be filed with the Commission in files PSC 1084 and TCP-601-P, certificates of insurance in compliance with GO 101-C and GO 115-B indicating that American Universal Insurance Company Policy BA 205971 was in effect from January 5, 1981 until January 5, 1982. The policy terminated at 12:01 a.m. on January 5, 1982.

23. On January 5, 1982 the Commission notified Ratti that his permit TCP-601-P had been suspended for failure to have the insurance required by GO 115-B. The notice stated:

"WARNING

"Any operations conducted by you without having authority to operate as a Charter-party Carrier of Passengers are unlawful. Unlawful operations subject the carrier to fines and penalties set forth in the Public Utilities Code."

24. On January 12, 1982, the Commission's Passenger Operations Branch, without recognition that Ratti's passenger stage operating authority, PSC 1084, had expired by operation of law on March 12, 1981, notified Ratti that the authority had been suspended for failure to have the insurance required by GO 101-C. The notice stated:

"During suspension of your operating authority, you must not conduct passenger operations. Operations without evidence of adequate liability insurance being on file with the Commission may subject you to fines and penalties."

25. On February 16, 1982, Ratti caused to be filed with the Commission in file TCP 601-P a certificate of insurance in compliance with GO 115-B indicating that American Universal Insurance Company policy BBA 1294 was in effect from February 12, 1982 to February 12, 1983.

26. On February 16, 1982 the Commission reinstated Ratti's Charter-party Carrier of Passengers Permit TCP-601-P.

27. There was no insurance of any kind whatsoever on the vehicles Ratti was using for the purpose of transporting passengers from January 5, 1982 to February 12, 1982.

Discussion

There is broad, general testimony which would lead to the inference that Ratti committed more acts of contempt than found in the findings. As indicated, each act of contempt is punishable by fine or imprisonment. Each act must be established beyond a reasonable doubt. Findings have only been made in those instances where the facts establish the contempt beyond a reasonable doubt.

The staff contends that each time Ratti transported passengers without operating authority and without insurance two separate acts of contempt were committed. Consideration of this contention involves matters of substantive law and jurisdiction.

All the acts of contempt set forth in the findings relate to illegal passenger stage operations. The evidence does not establish any charter-party carrier operations between January 5, 1982 and February 16, 1982. Therefore, we do not consider questions dealing with contempt under the Passenger Charter-party Carriers' Act. (PU Code § 5351 et seq.)

Clearly the Commission has jurisdiction to punish for contempt the violation of an order to cease and desist from operating as a passenger stage corporation without the requisite authority.

"When a complaint has been filed with the commission alleging that any passenger stage is being operated with a certificate of public convenience and necessity, contrary to or in violation of the provisions of this part, the commission may, with or without notice, make its order requiring the corporation or person operating or managing such passenger stage, to cease and desist from such operation, until the commission makes and files its decision on the complaint, or until further order of the commission."
(PU Code § 1034.)

Public utilities are defined by activities and not operating authority. The PU Code defines passenger stages and passenger stage corporations as follows:

"225. 'Passenger stage' includes every stage, auto stage, or other motor vehicle used in the transportation of persons, or persons and their baggage or express, or persons or baggage or express, when such baggage or express is transported incidental to the transportation of passengers.

"226. 'Passenger stage corporation' includes every corporation or person engaged as a common carrier, for compensation, in the ownership, control, operation, or management of any passenger stage over any public highway in this state between fixed termini or over a regular route..."

Section 1031 makes it illegal for a passenger stage corporation to operate without having the requisite authority from the Commission. It does not change the definition of status. The question of whether an entity is a passenger stage corporation (or other public utility) is one of fact. (Van Hoosear v Railroad Comm. (1920) 184 C 553; investigation of La Puente Co-operative Water Co. (1966) 66 CPUC 614.)

Sections 701, 702, and 768 of the PU Code provide that:

"701. The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

"702. Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees."

* * *

"768. The commission may, after a hearing, by general or special orders, rules, or otherwise, require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers, and the public, and may prescribe, among other things, the installation, use, maintenance, and operation of appropriate safety or other devices or appliances,...and require the performance of any other act which the health or safety of its employees, passengers, customers, or the public may demand. . . ."

GO 101-C was duly adopted under these provisions.

The rule is that "The test as to whether more than one offense results from a single act or transaction is the identity of the offenses as distinguished from the identity of the transactions from which they arise." (17 Cal. Jur. 3d 164.)

Regulation of passenger stage corporations is designed to provide the public with service at reasonable rates in safe equipment. Considerations involved in determining whether a certificate of public convenience and necessity should issue include the impact on other carriers and whether oversaturation of a route would cause predatory activities to the disadvantage of the traveling public. Insurance requirements are designed to protect the carriers' passengers and others using the highways.

Operating without insurance is not an essential element in operating without a requisite certificate of public convenience and necessity.

Some GOs are ancillary to the exercise of the Commission's supervision of regulated public utilities. Violation of such GOs would not be a separate contempt from operating without the requisite authority. GO 101-C was adopted to protect the public. It reflects a strong public policy to require transportation companies to have insurance while they are operating on the highways of this State. (Boulter v Commercial Standard Ins. Co. (9th Cir. 1949) 175 F 2d 763, 767; Ohran v National Automobile Ins. Co. (1947) 82 CA 2d 636, 644.)

"The policy of the Legislature is clear that vehicles should not be on the highway without insurance. The paramount right of the public to protection must, at all times, be considered by the Commission."
(GO 100-B (1961) 58 CPUC 706, 707.)

The Commission holds that acts which violated the cease and desist order and GO 101-C constitute two contempts.

In considering the violations of GO 101-C we have applied the following analysis in our conclusions: Violations occurred on February 5, 10, 12, 19, 23, 24, and 26, and March 1, 1982. No insurance whatsoever was in effect from January 5, 1982 until February 12, 1982. While the insurance issued on February 12 related to the charter-party carrier permit, it covered Ratti's vehicles. The policy was not placed in evidence. Giving Ratti all intendments, we will assume the policy covered the vehicles in the unauthorized passenger stage operations.

(California Packing Corp. v Transport Indem. Co. (1969) 275 CA 2d 363, 371.) Thus, the only violations of GO 101-C supported by the evidence occurred on February 5 and 10, 1982.

The findings indicate a willful disregard and contempt for the Commission and its orders. Operations were conducted without regard for the protection of the public. This conduct must cease. In the circumstances the Commission is of the opinion that the appropriate penalties should include imprisonment as well as fines.

No other points require discussion.

Conclusions of Law

1. Ratti is in contempt of the Commission for the facts in Finding 9 which constitute a violation of D.82-01-102. Ratti should be imprisoned for five days and be ordered to pay a fine of \$500 for this violation.
2. Ratti is in contempt of the Commission for the facts in Findings 10 and 11 which constitute a violation of D.82-01-102. Ratti should be ordered to pay a fine of \$500 for this violation.
3. Ratti is in contempt of the Commission for the facts in Findings 10 and 12 which constitute a violation of D.82-01-102. Ratti should be ordered to pay a fine of \$500 for this violation.

4. Ratti is in contempt of the Commission for the facts in Findings 10 and 13 which constitute a violation of D.82-01-102. Ratti should be ordered to pay a fine of \$500 for this violation.

5. Ratti is in contempt of the Commission for the facts in Finding 14 which constitute a violation of D.82-01-102. Ratti should be ordered to pay a fine of \$500 for this violation.

6. Ratti is in contempt of the Commission for the facts in Finding 15 which constitute a violation of D.82-01-102. Ratti should be imprisoned for five days and be ordered to pay a fine of \$500 for this violation.

7. Ratti is in contempt of the Commission for the facts in Findings 16 and 17 which constitute a violation of D.82-01-102. Ratti should be imprisoned for five days and be ordered to pay a fine of \$500 for this violation.

8. Ratti is in contempt of the Commission for the facts in Finding 18 which constitute a violation of D.82-01-102. Ratti should be imprisoned for five days and be ordered to pay a fine of \$500 for this violation.

9. Ratti is in contempt of the Commission for the facts in Findings 9, 22, 25, and 27 which constitute a violation of GO 101-C. Ratti should be imprisoned for five days and be ordered to pay a fine of \$500 for this violation.

10. Ratti is in contempt of the Commission for the facts in Findings 17, 22, 25, and 27 which constitute a violation of GO 101-C. Ratti should be imprisoned for five days and ordered to pay a fine of \$500 for this violation.

11. The imprisonment provided in Conclusions 1, 6, 7, 8, 9, and 10 should be consecutive.

12. The fines provided in Conclusions 1 through 10 should be cumulative.

13. The imprisonment set forth in Conclusion 11 should be suspended pending payment of the fines set forth in Ordering Paragraph 3. If these fines are paid within 30 days Ratti may bring evidence of this payment to the Commission and request that on the basis of total compliance with this order, Ordering Paragraphs 2 and 4, and that portion of Ordering Paragraph 1 pertaining to imprisonment, be revoked.

O R D E R

IT IS ORDERED that:

1. Ron Ratti is in contempt of the Commission for violating the cease and desist order in D.82-01-102 on 8 occasions and GO 101-C on 2 occasions. He shall be punished for these contempts by imprisonment and the payment of fines as follows:

	<u>Imprisonment</u>	<u>Fine</u>
a. Contempt shown in Finding 9 for violating D.82-01-102.	5 days	\$ 500
b. Contempt shown in Findings 10 and 11 for violating D.82-01-102.	0 days	500
c. Contempt shown in Findings 10 and 12 for violating D.82-01-102.	0 days	500
d. Contempt shown in Findings 10 and 13 for violating D.82-01-102	0 days	500
e. Contempt shown in Finding 14 for violating D.82-01-102.	0 days	500
f. Contempt shown in Finding 15 for violating D.82-01-102.	5 days	500
g. Contempt shown in Findings 16 and 17 for violating D.82-01-102.	5 days	500
h. Contempt shown in Finding 18 for violating D.82-01-102	5 days	500
i. Contempt shown in Findings 9, 22, 25, 27, for violating GO 101-C.	5 days	500
j. Contempt shown in Findings 17, 22, 25, 27 for violating GO 101-C.	<u>5 days</u>	<u>500</u>
Total	30 days	\$5,000

2. Ratti shall be imprisoned for each count of contempt consecutively, for a total imprisonment of 30 days.

3. The fines for each count of contempt shall be cumulative for a total of \$5,000. The \$5,000 shall be paid to this Commission within 30 days after the effective date of this order.

4. The Executive Director shall cause personal service of this order to be made on Ratti and transmit an appropriate Order of Body Attachment to the sheriff of the City and County of San Francisco or whatever county in which Ratti may be found.

5. Ordering Paragraphs 2, 4, and that portion of Ordering Paragraph 1 pertaining to imprisonment are hereby suspended, subject to the terms and conditions of Conclusion 13.

This order is effective today.

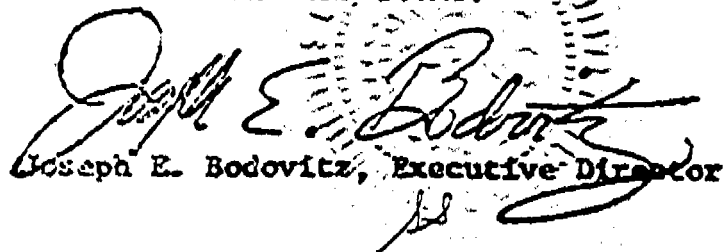
Dated May 4, 1982, in San Francisco, California.

I dissent.

/s/ LEONARD M. GRIMES, JR.
Commissioner

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

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


Joseph E. Bodovitz, Executive Director

"When a complaint has been filed with the commission alleging that any passenger stage is being operated with a certificate of public convenience and necessity, contrary to or in violation of the provisions of this part, the commission may, with or without notice, make its order requiring the corporation or person operating or managing such passenger stage, to cease and desist from such operation, until the commission makes and files its decision on the complaint, or until further order of the commission." (PU Code § 1034.)

SS Public utilities are defined by activities and not operating authority. The PU Code defines passenger stages and passenger stage corporations as follows:

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"226. 'Passenger stage corporation' includes every corporation or person engaged as a common carrier, for compensation, in the ownership, control, operation, or management of any passenger stage over any public highway in this state between fixed termini or over a regular route..."

Section 1031 makes it illegal for a passenger stage corporation to operate without having the requisite authority from the Commission. It does not change the definition of status. The question of whether an entity is a passenger stage corporation (or other public utility) is one of fact. (Van Hoosear v Railroad Comm. (1920) 184 C 553; investigation of La Puente Co-operative Water Co. (1966) 66 CPUC 614.)

In considering the violations of GO 101-C we have applied the following analysis in our conclusions: Violations occurred on February 5, 10, 12, 19, 23, 24, and 26, and March 1, 1982. No insurance whatsoever was in effect from January 5, 1982 until February 12, 1982. While the insurance issued on February 12 related to the charter-party carrier permit, it covered Ratti's vehicles. The policy was not placed in evidence. Giving Ratti all intendments, we will assume the policy covered the vehicles in the unauthorized passenger stage operations. (California Packing Corp. v Transport Indem. Co. (1969) 275 CA 2d 363, 371.) Thus, the only violations of GO 101-C supported by the evidence occurred on February 5 and 10, 1982.

The findings indicate a willful disregard and contempt for the Commission and its orders. Operations were conducted without regard for the protection of the public. This conduct must cease. In the circumstances the Commission of the the opinion that the appropriate penalties should include imprisonment as well as fines.

From the evidence adduced at the hearing it is clear that the only authority held by Ron Ratti after March 12, 1981 was a charter party carrier of passengers certificate. From March 24, 1981 to January 19, 1982, Ratti's application A. 60388 for a passenger stage certificate was pending before the Commission. This application was denied on January 19, 1982 by D. 82-01-102.

This record is replete with evidence of transportation activities by Ratti subsequent to January 19, 1982 that were beyond the scope of his charter party authority. For example, this decision related instances of pickup of individual passengers in San Francisco on various dates and transportation of these passengers to SFO, and vice versa. It also shows operations with a sign on the vehicle saying "SF-SFO Shuttle". Schedules were posted at various places and the Airport Transfer vehicle was observed at the points designated by these schedules at the

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4. Ratti is in contempt of the Commission for the facts in Findings 10 and 13 which constitute a violation of D.82-01-102. Ratti should be ordered to pay a fine of \$500 for this violation.

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9. Ratti is in contempt of the Commission for the facts in Findings 9, 22, 25, and 27 which constitute a violation of GO 101-C. Ratti should be imprisoned for five days and be ordered to pay a fine of \$500 for this violation.

10. Ratti is in contempt of the Commission for the facts in Findings 17, 22, 25, and 27 which constitute a violation of GO 101-C. Ratti should be imprisoned for five days and ordered to pay a fine of \$500 for this violation.

11. The imprisonment provided in Conclusions 1, 6, 7, 8, 9, and 10 should be consecutive.

12. The fines provided in Conclusions 1 through 10 should be cumulative.

13. The imprisonment set forth in Conclusion 11 should be suspended pending payment of the fines set forth in ordering paragraph 3. If these fines are paid within 30 days Ratti may bring evidence of this payment to the Commission and request that on the basis of total compliance with this order, ordering paragraphs 2 and 4, and that portion of ordering paragraph 1 pertaining to imprisonment, be revoked.

times listed. Passengers were accepted without prearranged reservations and were charged individual fares.

Ratti was present throughout the hearing of March 2, 1982. As the transcript shows, the matter was specifically delayed waiting the arrival of Ratti. (Tr. 412-413). At the conclusion of the hearing Ratti stated that from January 19, 1982 he was operating under his charter-party permit. (Tr. 472).

Based upon the evidence in this record and the statement of Ratti it would appear that operations since January 19, 1981 were conducted under color of Ratti's charter-party carrier of passengers certificate, but as such were in violation of the legal authority of a charter-party carrier of passengers to conduct. We shall set a hearing for _____, 1982 wherein we shall offer Ratti the opportunity to present such evidence and argument as he may wish to the Commission in contravention to the matters in this record. Ratti is directed by this order to show cause why his charter-party carrier of passengers authority should not be revoked. The record in this proceeding is hereby incorporated into this extended proceeding pertaining to the potential revocation of authority. In addition, Ratti is placed on notice that official notice will be taken of D. 89729, Ratti, et al., 1 CPUC 2d 2 (1978).

Conclusions of Law

1. Ratti is in contempt of the Commission for the facts in Finding 9 which constitute a violation of D.82-01-102. Ratti should be imprisoned for five days and be ordered to pay a fine of \$500 for this violation.

2. Ratti is in contempt of the Commission for the facts in Findings 10 and 11 which constitute a violation of D.82-01-102. Ratti should be ordered to pay a fine of \$500 for this violation.

3. Ratti is in contempt of the Commission for the facts in Findings 10 and 12 which constitute a violation of D.82-01-102. Ratti should be ordered to pay a fine of \$500 for this violation.

4. Ratti is in contempt of the Commission for the facts in Findings 10 and 13 which constitute a violation of D.82-01-102. Ratti should be ordered to pay a fine of \$500 for this violation.

5. Ratti is in contempt of the Commission for the facts in Finding 14 which constitute a violation of D.82-01-102. Ratti should be ordered to pay a fine of \$500 for this violation.

6. Ratti is in contempt of the Commission for the facts in Finding 15 which constitute a violation of D.82-01-102. Ratti should be imprisoned for five days and be ordered to pay a fine of \$500 for this violation.

7. Ratti is in contempt of the Commission for the facts in Findings 16 and 17 which constitute a violation of D.82-01-102. Ratti should be imprisoned for five days and be ordered to pay a fine of \$500 for this violation.

8. Ratti is in contempt of the Commission for the facts in Finding 18 which constitute a violation of D.82-01-102. Ratti should be imprisoned for five days and be ordered to pay a fine of \$500 for this violation.

9. Ratti is in contempt of the Commission for the facts in Findings 9, 22, 25, and 27 which constitute a violation of GO 101-C. Ratti should be imprisoned for five days and be ordered to pay a fine of \$500 for this violation.

10. Ratti is in contempt of the Commission for the facts in Findings 17, 22, 25, and 27 which constitute a violation of GO 101-C. Ratti should be imprisoned for five days and ordered to pay a fine of \$500 for this violation.

11. The imprisonment provided in Conclusions 1, 6, 7, 8, 9, and 10 should be consecutive.

12. The fines provided in Conclusions 1 through 10 should be cumulative.

13. The imprisonment set forth in Conclusion 11 should be suspended pending payment of the fines set forth in ordering paragraph 3. If these fines are paid within 30 days Ratti may bring evidence of this payment to the Commission and request that on the basis of total compliance with this order, ordering paragraphs 2 and 4, and that portion of ordering paragraph 1 pertaining to imprisonment, be revoked.

2. Ratti shall be imprisoned for each count of contempt consecutively, for a total imprisonment of 30 days.

3. The fines for each count of contempt shall be cumulative for a total of \$5,000. The \$5,000 shall be paid to this Commission within 30 days after the effective date of this order.

4. The Executive Director shall cause personal service of this order to be made on Ratti and transmit an appropriate Order of Body Attachment to the sheriff of the City and County of San Francisco or whatever county in which Ratti may be found.

5. Ordering paragraphs 2, 4, and that portion of ordering paragraph 1 pertaining to imprisonment, are hereby suspended, subject to the terms and conditions of conclusion 13.

This order is effective today.

Dated _____, in San Francisco, California.

I N T E R I M O R D E R

IT IS ORDERED that:

1. Ron Ratti is in contempt of the Commission for violating the cease and desist order in D.82-01-102 on 8 occasions and GO 101-C on 2 occasions. He shall be punished for these contempts by imprisonment and the payment of fines as follows:

	<u>Imprisonment</u>	<u>Fine</u>
a. Contempt shown in Finding 9 for violating D.82-01-102.	5 days	\$ 500
b. Contempt shown in Findings 10 and 11 for violating D.82-01-102.	0 days	500
c. Contempt shown in Findings 10 and 12 for violating D.82-01-102.	0 days	500
d. Contempt shown in Findings 10 and 13 for violating D.82-01-102	0 days	500
e. Contempt shown in Finding 14 for violating D.82-01-102.	0 days	500
f. Contempt shown in Finding 15 for violating D.82-01-102.	5 days	500
g. Contempt shown in Findings 16 and 17 for violating D.82-01-102.	5 days	500
h. Contempt shown in Finding 18 for violating D.82-01-102	5 days	500
i. Contempt shown in Findings 9, 22, 25, 27, for violating GO 101-C.	5 days	500
j. Contempt shown in Findings 17, 22, 25, 27 for violating GO 101-C.	<u>5 days</u>	<u>500</u>
Total	30 days	\$5,000

2. Ratti shall be imprisoned for each count of contempt consecutively, for a total imprisonment of 30 days.

3. The fines for each count of contempt shall be cumulative for a total of \$5,000. The \$5,000 shall be paid to this Commission within 30 days after the effective date of this order.

4. The Executive Director shall cause personal service of this order to be made on Ratti and transmit an appropriate Order of Body Attachment to the sheriff of the City and County of San Francisco or whatever county in which Ratti may be found.

5. Ordering paragraphs 2, 4, and that portion of ordering paragraph 1 pertaining to imprisonment, are hereby suspended, subject to the terms and conditions of conclusion 13.

~~6. Hearings on the order to show cause concerning revocation of Ratti's charter party carrier of passenger certificate will be held on _____ at _____ at the State Building, 350 McAllister Street, San Francisco, California~~

This order is effective today.

Dated MAY 4 1982, in San Francisco, California.

JOHN E. BRYSON

President

RICHARD D. GRAVELLE

~~LEONARD M. GRIMES, JR.~~

VICTOR CALVO

PRISCILLA C. CREW

Commissioners

Primes dissolved.