

Decision 82 07 023 JUL 7 - 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation )  
on the Commission's own Motion )  
into the Operations of O.K. Tours )  
dba WESTERN SIGHTSEEING )  
SPECIALISTS, INC. [sic] under charter )  
Party Carrier of Passengers )  
Permit No. TCP 678-P and Order )  
to Show Cause re Contempt. )

OII 99  
(Filed October 20, 1981)

THE GRAY LINE, INC., a California  
corporation,

Complainant,

vs.

O. K. TOURS,

Defendant.

Case 10387  
(Filed August 2, 1977)

CALIFORNIA PARLOR CAR TOURS  
COMPANY, a California corporation,

Complainant,

vs.

O. K. TOURS,

Defendant.

Case 10391  
(Filed August 10, 1977)

Malcolm Gissen, Attorney at Law, for The Gray Line,  
Inc., complainant in C-10387.  
Edward Flynn, for O. K. Tours, defendant.  
Lynn T. Carew, Attorney at Law, for the Commission  
staff.

O P I N I O N

History of Operating Authority

Under blanket Resolution PE-303 (adopted July 29, 1975) the Commission, on June 1, 1976, issued a charter-party carrier of passengers permit (TCP-678P) to Martin Franklin (Franklin), dba O.K. Limousine Service, effective June 1, 1976 to June 1, 1977.

On May 25, 1977 Franklin applied for renewal of TCP-678P, and on July 15, 1977 the Commission issued a renewed permit effective June 1, 1977 to June 1, 1978 to Martin Franklin, dba O.K. Limousine Service. A permit dated January 13, 1978 made certain technical corrections to the permit issued on July 15, 1977, but retained the June 1, 1978 to June 1, 1979 effective dates.

In May 1978 Franklin and Edward Flynn (Flynn) applied for renewal of TCP-678P on behalf of Western Sightseeing Specialists, Inc. (Western), a California corporation. On July 21, 1978 the Commission issued a renewed permit effective June 1, 1978 to June 1, 1979 to Martin Franklin, dba O.K. Limousine Service.

In May 1979 Franklin and Flynn applied for renewal of TCP-678P on behalf of Western, and on August 6, 1979 the Commission issued a renewed permit to Martin Franklin and Edward Flynn, dba Western Sightseeing Specialists, Inc.

On May 8, 1980 Franklin and Flynn again applied for renewal of TCP-678P on behalf of Western, and on October 15, 1980 the Commission issued a renewed TCP-678P to Western Sightseeing Specialists, Inc., with effective dates June 1, 1980 to June 1, 1981. This authority was suspended on January 27, 1981 for nonrenewal of public liability and property damage insurance. TCP-678P expired by its terms on June 1, 1981 and has not been renewed.

In filing the above applications for renewal on behalf of Western, Flynn and Franklin listed themselves as Western's president

and vice president, respectively. According to Flynn, "O.K. Tours" was a "nickname" for O.K. Limousine Service; these names were customarily used interchangeably and O.K. Tours and O.K. Limousine Service were not separate business entities (RT 45). Flynn has never had authority to operate as a charter-party carrier of passengers under the dba O.K. Tours. Flynn also stated that "L.F. Travel Tours, Inc." and "San Francisco Your Way" were merely business names used by him for advertising purposes, rather than individual business entities (RT 45-46).

In addition to TCP-678P, Flynn presently has a permit to operate as a charter-party carrier of passengers (TCP-1179P), as Quality Limousine Service (Quality). This authority has been suspended and subsequently reinstated four times since it was issued May 11, 1979 for nonrenewal of public liability and property damage insurance.

#### Procedural Background

By Decision (D.) 89598 dated October 31, 1978 in Cases (C.) 10387 (The Gray Line, Inc. v O. K. Tours) and 10391 (California Parlor Car Tours Company v O. K. Tours), we determined that O. K. Tours was operating as a passenger stage corporation within the definition of Public Utilities (PU) Code Section 226 and ordered it to cease and desist operating without the requisite certificate of public convenience and necessity. On September 30, 1981, The Gray Line, Inc. (Gray Line) filed a verified Petition for Order to Show Cause in C.10387 and 10391. The petition alleged that O. K. Tours violated the cease and desist order in D.89598 by continuing to operate as a passenger stage corporation without benefit of a certificate of public convenience and necessity.

On October 20, 1981, by D.93666, we instituted this investigation (Order Instituting Investigation (OII) 99) and ordered that:

1. Western appear and show cause why it should not be adjudged in contempt for operating as a charter-party carrier after it had been suspended;

2. To appear and show cause why it should not be punished for such contempt by a fine or imprisonment of the corporate officers or pursue additional remedies as might be deemed appropriate;
3. Edward Flynn, dba O. K. Tours, O. K. Limousine Service, L. F. Travel Tours, Inc., and San Francisco Your Way, appear and show cause why he should not be adjudged in contempt of D.89598;
4. Edward Flynn, dba O. K. Tours, O. K. Limousine Service, L. F. Travel Tours, Inc., and San Francisco Your Way, appear and show cause why he should not be punished for contempt by fine and/or imprisonment until such time as he ceases operating in any of the above fictitious names; and
5. The contempt proceedings be consolidated with C.10387 and 10391.

By letter dated November 13, 1981, counsel for California Parlor Car Tours Company, complainant in C.10391, advised that California Parlor Car Tours Company did not file a petition for an order to show cause and did not intend to participate in the proceeding.

Public hearing was held November 20, 1981 at San Francisco before Administrative Law Judge Banks at which time the matter was submitted.

Edward Flynn testified that Western, aka O.K. Limousine Service and O.K. Tours, had been closed, that there are no employees, that one of his vehicles had been repossessed by the Bank of America, and that his intention now was to operate only Quality (TCP-1179P).

On cross-examination Flynn stated he was presently operating two limousines with no intention of again entering the tour business because of the competitiveness and the increased cost of operations. He stated he was aware that up until October 1981, he was performing per capita tour operations without benefit of a certificate of public convenience and necessity, but that he was no longer operating and had no intention of reentering the per capita tour or sightseeing business. He stated that he would only perform charter service authorized under his charter permit TCP-1179 as Quality. He stated that should he get another limousine in operation, he would obtain the necessary insurance and so advise the staff. Finally, he admitted that he had been wrong in his operations but had learned his lesson and had no intention of repeating the same mistakes.

Testifying on behalf of complainant Gray Line was Richard W. Kline, president of Express Tours. He stated Express Tours conducts sightseeing per capita tours to Yosemite and is a charter-party carrier in 48 states and Canada. He stated that he had on occasion during the past two years placed L. F. Travel Tours, Inc.'s and O. K. Tours' passengers on Express Tours' buses to Yosemite. He stated Flynn had sold tours to Yosemite as late as October 18, 1981, but could not state that Flynn was operating the tours. He stated that some time just prior to November 18, 1981, a passenger at the Miyako Hotel asked one of Express Tours' drivers to explain the discrepancy in its Yosemite tour rates and those of L. F. Travel Tours, Inc.

Testifying for the staff were Santos Flores, a transportation analyst, and Moira Simmerson, an associate transportation rate expert.

Flores stated that he is responsible for issuance of all charter-party permits for the Transportation Division on behalf of the Commission. He stated he was familiar with the operations of Western, aka O.K. Tours and O.K. Limousine Service, and File TCP-678P. He explained that TCP-678P contained the operating authority of Western and that its liability insurance coverage was canceled January 27, 1981, at which time a Notice of Suspension of Charter-Party Carrier Authority was forwarded to Flynn. He stated a renewal application was filed on July 14, 1981, but no action has been taken because there is no insurance on file by O. K. Tours and that any charter operation under TCP-678P after January 27, 1981 was without authority.

Flores stated that Flynn has current valid operating authority under TCP-1179P. He stated that a notice of suspension of TCP-1179P for lack of insurance coverage was issued to Flynn on November 10, 1980. Finally, he stated Flynn's insurance for TCP-1179P is now in effect running from July 15, 1981 through July 15, 1982.

Simmerson stated she began investigating Western's operations about July 1, 1981. She called L. F. Travel Tours, Inc. on July 3 and booked a tour to Sausalito/Muir Woods for July 7. The number called to book the tour was from an L. F. Travel Tours, Inc. brochure obtained by a staff member at the Canterbury Hotel in San Francisco. She stated that at the time of the tour (July 7), she noticed a 1977 Chevy van with the marking TCP 678 sitting outside the tour departure point. A reservation coupon receipt

bearing L. F. Travel Tours, Inc. logo and signed by Flynn (Exhibit 4) was given by Flynn to Simmerson. The tour to Sausalito/Muir Woods was in a 1977 Chevy van with P 67 on the front bumper. She stated she checked the license numbers of the van observed at the time she was leaving on her tour and the van in which the Sausalito/Muir Woods tour was taken. Both vans were registered by the California Department of Motor Vehicles to Edward Flynn, dba O. K. Limousine Service.

Simmerson also stated that after reviewing the TCP-678 and TCP-1179 files, she spoke to the insurance agent named in the application concerning past and present coverage. This investigation determined that coverage on the limousine listed in TCP-1179 was canceled in November 1980. She stated there was coverage for Quality (TCP-1179) under O. K. Tours' insurance policy from November 10, 1980 until January 27, 1981. For the period from January 27, 1981 through July 15, 1981, there was no evidence of coverage.

#### Discussion

From the evidence and testimony introduced, there is little doubt that Flynn continued tour operations under TCP-678P in violation of D.89598. By his own admission, he continued to offer individual fare tours. He consistently used his vehicles and business names interchangeably, changing vehicles and business names as circumstances required. Testimony of both the Gray Line witness and the staff enforcement and compliance witness confirms that Flynn was operating his vans and limousines as late as November 1981. While this conflicts with Flynn's testimony (RT 76), the testimony and evidence introduced confirm that the vans were operating as late as November 1981.

We are of the opinion that under Public Utilities (PU) Code § 2113, a fine of \$500 for contempt of the Commission's order should be imposed on Flynn and that he should be directed to cease and desist from offering transportation on an individual fare basis.

Our compliance and enforcement staff will be directed to monitor his activities to assure compliance with this order. Should it come to light that Flynn is conducting illegal operations or if the fine is not paid the staff should request a reopening of this proceeding and issuance of an order to show cause to consider sanctions for contempt.

Findings of Fact

1. Under Resolution PE-303 (adopted July 29, 1975), the Commission, on June 1, 1976, granted a charter-party carrier of passengers permit to Franklin, dba O.K. Limousine Service (TCP-678P).

2. TCP-678P has been renewed four times subsequent to June 1, 1976; the last renewal occurred on October 15, 1980 (effective dates June 1, 1980 to June 1, 1981) in response to an application filed by Flynn and Franklin, president and vice president, respectively, of Western Sightseeing Specialists, Inc., a California corporation.

3. Although TCP-678P authority has been issued only to Franklin and Flynn (dba "O.K. Limousine Service" or dba "Western Sightseeing Specialists, Inc.") and to Western Sightseeing Specialists, Inc., a California corporation, actual TCP-678P operations have been associated with other business names used by Flynn and/or Franklin, including O.K. Tours, L.F. Travel Tours, Inc., and San Francisco Your Way.

4. By D.89598 dated October 31, 1978, O.K. Tours was found to be offering transportation on an individual fare basis and was ordered to cease and desist from such operation.

5. Flynn, president and owner of O.K. Tours, was personally served with a copy of D.89598.

6. On September 30, 1981, Gray Line filed a verified petition for an order to show cause why O.K. Tours should not be held in contempt of the Commission for violating the cease and desist order in D.89598.

7. An investigation into the operation of Western, aka O.K. Tours, under TCP-678P (OII 99), was instituted October 20, 1981. OII 99 was consolidated with C.10387 and 10391.

8. California Parlor Car Tours Company, by letter dated November 13, 1981, advised it was not a party to the petition for order to show cause and would not participate in the proceeding. Its complaint was satisfied by D.89598.

9. Western's operating authority as a charter-party carrier of passengers (TCP-678P) was suspended January 27, 1981 for non-renewal of public liability and property damage insurance. Notice of suspension was forwarded to Flynn.

10. Flynn also has a charter-party carrier of passengers permit (TCP-1179P), as Quality, initially issued May 11, 1979.

11. On November 10, 1980 a notice of suspension of Quality (TCP-1179P) for nonrenewal of public liability and property damage insurance was issued to Flynn.

12. Flynn, dba Quality (TCP-1179P), now has public liability and property damage insurance coverage for the period July 15, 1981 through July 15, 1982, and has current operating authority under TCP-1179P.

13. Flynn, as president of Western, continued operations while its permit authority (TCP-678P) was suspended.

14. Flynn, as president of Western, offered transportation to persons for a fare computed and collected on an individual fare basis in violation of the cease and desist order in D.89598.

#### Conclusions of Law

1. The Commission concludes that Flynn, as president of Western, continued to offer and provide transportation over the public highways of this State on an individual fare basis in contravention of D.89598.

2. Flynn, as president of Western, discontinued individual fare tour operations in November 1981.

3. Flynn violated Public Utilities (PU) Code Sections 1031 and 5401.

4. Flynn is in contempt of the Commission's cease and desist order in D.89598 (Finding 12) and should be ordered to pay a fine of \$500 for this violation.

O R D E R

IT IS ORDERED that:

1. Edward Flynn shall pay a fine of \$500 to this Commission under PU Code § 2113 on or before the 40th day after the effective date of this order.

2. The Commission staff is directed to monitor the operation of Edward Flynn, dba Quality Limousine Service, and initiate contempt proceedings should it discover transportation of persons for a fare computed on an individual fare basis is being offered or provided.

3. The proceedings in OII 99, C.10387, and C.10391 are closed.

The Executive Director is directed to have a certified copy of this order personally served on Edward Flynn.

The effective date of this order shall be the date of personal service of this order on Edward Flynn.

Dated JUL 7 1982, at San Francisco, California.

RICHARD D. GRAVELLE  
LEONARD M. CRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. GREW  
Commissioners

Commissioner John E. Bryson,  
being necessarily absent, did  
not participate.

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

  
Joseph E. Belovitz, Executive Director