

Decision 83 04 023

APR 6 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of United Shuttle Systems, Inc.,)
for authority to operate as a)
passenger and baggage stage)
between points in Stanislaus)
County and the San Francisco)
International Airport - Turlock,)
Modesto, SFO.)
_____)

Application 82-05-36
(Filed May 12, 1982)

O P I N I O N

A petition was filed on November 4, 1982, by Matthew J. Kehoe (Kehoe), dba Federal Shuttle Systems, to request that the decision issued in Application (A.) 82-05-36 be modified. It is alleged that Decision (D.) 82-09-072 granted a passenger stage certificate to United Shuttle Systems, Inc., (United) authorizing operation in the same area granted to Kehoe months earlier, in violation of the provisions of Public Utilities (PU) Code § 1032, which provides as follows:

"The Commission may, after hearing, issue a certificate to operate in a territory already served by a certificate holder under this part only when the existing passenger stage corporation or corporations serving such territory will not provide such service to the satisfaction of the Commission."

Petitioner requests that further hearing be held on A.82-05-36 and that United be enjoined from conducting any operations under the certificate issued by D.82-09-072.

Kehoe and Donald L. Rees, dba Federal Shuttle Systems, filed A.82-02-21 on February 11, 1982, to request authority to transport passengers and baggage between Turlock and Modesto, on the one hand, and San Francisco International Airport, on the other hand. The authority was granted by D.82-04-105, dated April 21, 1982.

On May 21, 1982, Kehoe filed a petition to reopen A.82-02-21 requesting that Rees' name be removed from the authority granted by D.82-04-105. Kehoe alleged that Rees prepared the application and inserted his own name as a co-owner of Federal Shuttle Systems without authority from Kehoe, who is the actual owner.

Kehoe's petition to modify the authority granted in A.82-02-21 was consolidated for hearing with A.82-05-36, filed by Rees on behalf of United and with six other applications filed by the same parties. A hearing was held on July 19, 1982 on the consolidated applications and both applicants received the authority requested (D.82-09-072 dated September 22, 1982). That decision canceled the certificate granted by D.82-04-105 and issued a new certificate in Kehoe's name alone. The decision comments on the feud between Kehoe and Rees, noting that both applicants are capable of providing the service and that neither should be favored.

Discussion

In his petition to reopen A.82-02-21 and to modify D.82-04-105 Kehoe requested that the authority issued on April 21, 1982 be modified by the removal of Rees' name. In D.82-09-072, at p. 13, the Commission revoked the authority granted to Kehoe and Rees in D.82-04-105 and issued a new authority to Kehoe as an individual. By the same decision and on the same date the

Commission granted to United the certificate it sought. Both parties received authority on the same date and the record indicates that Kehoe has never provided service in the area, as required in PU Code § 1032. PU Code § 1032 is therefore not applicable to this proceeding.

Findings of Fact

1. On April 21, 1982, Kehoe and Rees were granted a certificate to operate as a passenger stage corporation.
2. On May 21, 1982, Kehoe filed a petition to have the authority amended by removing Rees' name.
3. The petition was consolidated for hearing with A.82-05-36 and other applications filed by Kehoe and Rees for United.
4. After hearing, the authority originally issued to Kehoe and Rees was revoked, and new certificates were issued to both parties, effective September 22, 1982.
5. Kehoe filed a petition on November 4, 1982 to request that A.82-05-36 be reopened and United's authority be stayed until a hearing is held to determine if Kehoe should be favored under PU Code § 1032 as the prior certificate holder.
6. The new authority was granted to both parties on the same date.
7. Kehoe never initiated service in the area as required for the application of PU Code § 1032.
8. To encourage prompt institution of service, this order will be effective today.

Conclusions of Law

1. Kehoe's original authority was canceled. It provides no priority under PU Code § 1032.

2. PU Code § 1032 is not applicable since neither party ever served the area before September 22, 1982.
3. The petition should be denied.

ORDER

IT IS ORDERED that the petition of Matthew J. Kehoe to modify, stay, and hold a hearing on the operating authority granted by D.82-09-072 to United is denied.

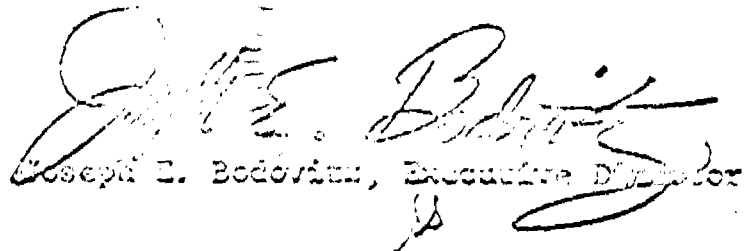
This order is effective today.

Dated APR 6 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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


Joseph E. Bodovian, Executive Director