

ORIGINAL

Decision 83 09 079 SEP 30 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ALBERTO RICO for a certificate to extend passenger bus service between Niland and Imperial Valley College.

Application 82-08-01 (Filed August 2, 1982)

Alberto Rico and Raul Velazquez, for applicant.  
Joseph Zimmerman, Attorney at Law, for Campesinos Unidos, Inc., protestant.  
Vahak Petrossian, for the Commission staff.

FINAL OPINION

By Interim Decision (D.) 82-12-041 dated December 1, 1982, Alberto Rico (applicant or Rico), doing business as Kennedy Transit, was authorized to immediately expand his passenger stage service for students attending Imperial Valley College (IVC). Applicant received funding for providing the service through State transit assistance (SB 620) funds under a contract with the County of Imperial (County).

After notice, further hearings were held to consider the protest of Compesinos Unidos, Inc. (CUI) and to determine whether to grant applicant's motion to dismiss his application based on D.82-09-040<sup>1/</sup> dated September 8, 1982 in Cal Coast Charter, Inc.,'s Application (A.) 82-05-67 and A.82-06-01, where the Commission concluded that it had no jurisdiction over public systems.

<sup>1/</sup> An application for rehearing of D.82-09-040 was denied in D.82-12-102. Since the time for judicial review of those decisions has expired, they are final.

Prior to the hearing in this proceeding, Rico had been cited for not meeting California Highway Patrol (CHP) safety requirements. When he failed to correct the safety violations after the hearing, the Commission issued Resolution PE-456, suspending Rico's passenger stage authority (PSC-1107) until the CHP notified the Commission that Rico was in compliance with all applicable safety rules, and ordered him not to conduct operations during the period of suspension. On August 5, 1983, in County Municipal Court Case M 61449-E, Rico pled guilty to violations of Public Utilities Code Sections 1034 and 1037 for operating as a passenger stage corporation in violation of the Commission's order. He was fined \$300 for these violations.

Due to Rico's operation in violation of Commission orders, County terminated its contract with Rico on June 7, 1983.

#### Discussion

At the hearing applicant requested dismissal of his application based on the holding in the Cal Coast decision. He stated that had he not been subpoenaed by protestant, CUI, he would not have come to the hearing.

We will not address the issue of whether the doctrine laid out in Cal Coast, which is applicable to a municipal corporation, should apply to County. The application should be denied because applicant has not demonstrated his fitness. He has violated a Commission order by operating unsafe equipment during a period of suspension. Furthermore, the contract providing for a subsidy of applicant's operations by County has been canceled. Applicant has demonstrated no need for the proposed certificate. Therefore, the application should be denied. Applicant's authority to operate under the authorization granted by D.91755 remains suspended under Resolution PE-456.

Findings of Fact

1. In D.91755 we issued a certificate of public convenience and necessity authorizing applicant to operate as a passenger stage corporation (PSC-1107).

2. In this proceeding we issued D.82-12-041 granting applicant interim authority to expand his passenger stage service under contract with County.

3. In Resolution PE-456, the Commission suspended Rico's authority to operate as a passenger stage corporation and directed him to conduct no operations as a passenger stage corporation until the CHP notified the Commission that he was in compliance with CHP safety requirements.

4. Rico violated the Commission's order in Resolution PE-456 by continuing to operate as a passenger stage corporation during the period of suspension. On August 5, 1983 he pled guilty to violating the Commission's order in County Municipal Court Case M 61449-E. He was fined \$300 for these violations.

5. County has canceled its contract with applicant.

Conclusions of Law

1. Applicant has not demonstrated public convenience and necessity for the proposed service. He has operated in violation of the Commission's order. He has not demonstrated his fitness to perform the proposed service. The application should be denied. The interim authority granted by D.82-12-041 should be revoked.

2. Since the application will be denied we need not address the issue of whether our holding in Cal Coast applies to Rico's operations under contract with County.

FINAL ORDER

IT IS ORDERED that:

1. A.82-08-01 is denied. The interim authority granted by D.82-12-041 is revoked.

2. Alberto Rico's motion to dismiss A.82-08-01 based on D.82-09-040 is not relevant to this proceeding.

This order is effective today.

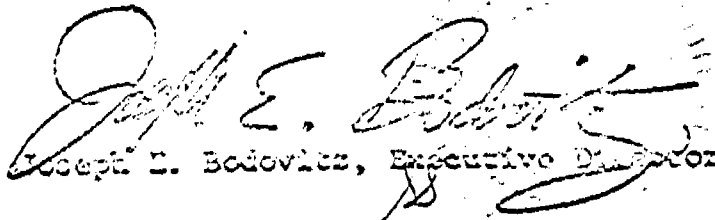
Dated SEP 30 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President

VICTOR CALVO  
DONALD VIAL  
WILLIAM T. BAGLEY  
Commissioners

Commissioner Priscilla C. Grow,  
being necessarily absent, did  
not participate

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

  
Joseph E. Bodovitz, Executive Director