

ei/AP

Decision No. 86559

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of Richard G. Shehadi and Robert M.
Bellemore, dba Tahoe-Sierra
Limousine Service for certificate
of public convenience and necessity
to operate a passenger stage service
(express) between the Tahoe Valley
Airport and points within El Dorado
County and the City of South Lake
Tahoe.

Application No. 55951
(Filed September 23, 1975)

Gray Line Scenic Tours, dba
California-Nevada Golden Tours, Inc.,

Complainant,

vs.

Case No. 10041
(Filed February 6, 1976)

Richard G. Shehadi and Robert M.
Bellemore, dba Tahoe-Sierra
Limousine Service,

Defendants.

Jeff Rahbeck and David Marchant, Attorneys at Law,
for Richard G. Shehadi and Robert M. Bellemore,
dba Tahoe-Sierra Limousine Service, applicants
in A.55951 and defendants in C.10041.

Silver, Rosen, Fischer & Stecher, by Michael J.
Stecher, Attorney at Law, for Gray Line Scenic
Tours, protestant in A.55951 and complainant
in C.10041.

Kenneth H. Lounsbury, Attorney at Law, for City
of South Lake Tahoe, interested party in A.55951
and intervenor in C.10041.

Mary Carlos, Attorney at Law, Masaru Matsumura,
and Frederick W. Foley, for the Commission
staff.

O P I N I O N

Richard G. Shehadi and Robert M. Bellemore, dba Tahoe-Sierra Limousine Service, (applicants in Application No. 55951 and defendants in Case No. 10041) filed Application No. 55951 seeking a certificate of public convenience and necessity authorizing them to operate as a passenger stage corporation between:

1. Tahoe Valley Airport and certain points within the city of South Lake Tahoe over U.S. Highway 50 and as an alternate route over U.S. 50 and Pioneer Trail, and
2. City of South Lake Tahoe and Heavenly Valley Ski Area.

The application is protested by Gray Line Scenic Tours, dba California-Nevada Golden Tours, Inc. (Gray Line).

Public hearing on the application was held before Examiner O'Leary at South Lake Tahoe on November 18 and 19, 1975. The matter was submitted subject to the filing of concurrent briefs which have been filed. Subsequently, the matter was reopened and further hearings were held March 11 and 12, 1976 and the matter was resubmitted.

On February 6, 1976 Gray Line filed a complaint alleging that passenger stage corporation operations were being conducted by Tahoe-Sierra Limousine Service without authority from this Commission. On March 2, 1976 the Commission issued Decision No. 85525 ordering applicants to cease and desist from conducting operations as a passenger stage corporation pending further order of this Commission. Public hearing in Case No. 10041 was held before Examiner O'Leary at South Lake Tahoe on March 11 and 12, 1976. The matter was submitted subject to the filing of concurrent briefs which have been filed.

On April 7, 1976 a motion for contempt, together with an affidavit of Larry E. Wood, was filed by Gray Line alleging that defendants were again conducting operations as a passenger stage corporation. On April 12, 1976 an Order to Show Cause was issued by Examiner O'Leary ordering defendants to appear before the Commission on April 29, 1976 to show cause why they should not be held in contempt of this Commission and punished accordingly for willfully disobeying the order of this Commission found in Decision No. 85525. At the hearing held April 29, 1976, Application No. 55951 was reopened on the examiner's own motion for the purpose of consolidating the contempt phase of Case No. 10041 with Application No. 55951.

Summary of Evidence in Application No. 55951

Applicants operate as a charter-party carrier of passengers pursuant to a permit effective April 8, 1975. Applicants utilize a 1974 six-passenger Cadillac limousine and a 1971 eleven-passenger Pontiac in their service. Applicants intend to acquire a new fourteen-passenger Chevrolet Suburban Carryall in the event the authority requested in the application is granted. Applicants propose to utilize only vehicles with a maximum capacity of fifteen (15) passengers and request that should a certificate issue it be so limited.

Gray Line presently provides service between the Tahoe Valley Airport and South Lake Tahoe pursuant to a certificate of public convenience and necessity as a passenger stage corporation and is authorized to traverse the routes requested by applicants.

Applicants commenced operating from and to the Tahoe Valley Airport charging individual fares when they acquired the Pontiac approximately August 1, 1975. Exhibit 4 is a copy of a letter dated August 4, 1975 applicants sent to the Commission advising they had acquired the Pontiac and were charging \$2.00 per person for transportation between the South Lake Tahoe Airport (Tahoe Valley Airport) and the "Motel Complex". The motel complex was described as being located within the city limits of South Lake Tahoe. Richard G. Shehadi testified they continued to operate on a per capita basis until they received a letter from the Commission dated October 23, 1975 (Exhibit 5) which stated in part:

"The issuance of a charter-party carrier authority allows the authority holder to transport groups of persons to places within the State of California designated by the chartering groups; the charges for such transportation are to be made only on a mileage or time of use basis, or combination thereof.

"No passenger service may be operated on individual fare basis, over regular routes or between fixed points without the operator having first secured a certificate of public convenience and necessity from the Public Utilities Commission. Under no circumstances is a charter-party carrier authority to be construed as authorization for exemption from this requirement."

Upon receipt of the letter applicants immediately ceased per capita operations.

Application No. 55951 was filed one month before applicants received the letter dated October 23, 1975. When asked the reason for filing the application prior to October 23, 1975, Mr. Shehadi replied, "We had been told we were possibly illegal on a per capita basis. We hadn't been officially told, but we had been told by numerous people in the City that it wasn't right but nothing official. So we thought we'd better get all the permits needed to operate completely legitimate."^{1/}

Applicants' proposed one-way fares are as follows:

1. Between Tahoe Valley Airport and South Lake Tahoe - \$2.00.
2. Between South Lake Tahoe and Heavenly Valley Ski Area - \$1.00.

Exhibit 9 is a financial statement of the partnership as of October 31, 1975. The balance sheet portion of the statement discloses assets totaling \$22,121.63 offset by current liabilities of \$15,951.35 resulting in a net worth of \$6,170.28. The financial statement also discloses that from May 1975 through October 1975 the partnership sustained a loss during five months and realized a profit in one month (August). For the six-month period the statement discloses a total loss of \$3,829.72. The balance sheets of each individual partner were also received in evidence (Exhibit E attached to the application). The balance sheet of Richard G. Shehadi as of January 31, 1975 discloses assets totaling \$317,000 offset by liabilities of \$100,000 resulting in a net worth of \$217,000. The balance sheet of Robert M. Bellemore as of December 31, 1974 discloses assets totaling \$301,272 offset by liabilities of \$113,450 resulting in a net worth of \$187,822. The balance sheets of the individuals do not include each individual's interest in the partnership.

^{1/} Application No. 55951, Transcript lines 8 through 14, page 53.

The mayor of the city of South Lake Tahoe presented a resolution passed and adopted by the City Council on October 28, 1975 (Exhibit 2) wherein the City Council indicates that there is a need for increased ground transportation to and from the Tahoe Valley Airport. The mayor testified the resolution was not based on any study or documentation but was based upon the experience of the Council. The resolution did not address itself to the proposed service to and from the Heavenly Valley ski facility. Regarding that service the mayor testified that the city provides a service to and from Heavenly Valley which as far as he knew was a satisfactory service.

Representatives of the two airlines providing service to and from the Tahoe Valley Airport, Pacific Southwest Airlines (PSA) and Air California (Air Cal), presented evidence concerning the service provided by the two airlines to and from the Tahoe Valley Airport. The evidence discloses that Monday through Thursday and Saturday Air Cal has two arriving flights and two departing flights; Friday and Sunday Air Cal has three arriving and three departing flights. PSA has three arriving flights and three departing flights seven days per week. Between 600 and 700 passengers arrive and depart the Tahoe Valley Airport via the two carriers daily. During the peak period which is between July 4 and Labor Day the number of daily arriving and departing passengers increases to 1,000 per day. The representative of Air Cal testified that additional ground transportation service is needed. The representative of PSA testified that additional service is necessary during the peak period. The representatives of both airlines stated that the protestant was rendering a good service. The representative of Air Cal was concerned with protestant's schedule to the airport for certain departing flights; however, subsequent evidence disclosed the representative had analyzed an outdated schedule rather than the current schedule.

The controller of Heavenly Valley testified that additional service is needed to and from the Heavenly Valley complex during the ski season, as the only other bus service is provided by the municipal bus system which serves Heavenly Valley approximately every half hour.

The owner of a motel in South Lake Tahoe testified that on occasion protestant has picked up guests of her motel up to 2½ hours before their scheduled departure from the airport and would prefer the smaller vehicle proposed to be operated by the applicants. She also testified on cross-examination that she has never conveyed to the protestant or this Commission her dissatisfaction with the existing service. She further testified she has never asked protestant whether or not a smaller vehicle could be utilized in its service.

The manager and executive vice president of the South Lake Tahoe Chamber of Commerce testified that the Chamber of Commerce recommended additional service but that the recommendation was not based upon any studies but rather a feeling that additional service was required.

The director of airports for El Dorado County (County) testified that pursuant to an ordinance of the County (Exhibit 19) persons, firms, or corporations providing transportation of personnel from within the boundaries of the airport by bus, taxicab, limousine, rental cars, motel or hotel vehicles whether for hire or without compensation must obtain a written contract, lease, or permit from the County Board of Supervisors to conduct such operations. Resolution No. 9-75 passed by the County Board of Supervisors on January 14, 1975 (Exhibit 10) sets forth specific fees which are to be paid to the County by persons and corporations engaging in ground transportation of passengers from the airport. The resolution also provides that all business entities, public or private, desirous of participating in the pickup of passengers at the airport will execute an Airport Business Agreement to be

provided by the County Director of Airports. The witness further testified that the protestant commenced service for inbound and outbound passengers on or about March 20, 1975. As of November 19, 1975 the protestant had not executed an Airport Business Agreement nor had it paid any fees as required by Resolution No. 9-75. The witness also testified that the protestant requested it be granted an exclusive contract and that he would not honor that request as it was not his policy to award exclusive contracts. As a result of protestant's failure to execute an Airport Business Agreement and its failure to pay the prescribed fees, a letter was sent to the protestant terminating its service of picking up passengers at the airport effective on the date of receipt of the letter, namely November 18, 1975. On November 18, 1975, pursuant to a complaint filed by protestant against the County, the Superior Court of the County issued an Order to Show Cause and Temporary Restraining Order (Exhibit 18) restraining and enjoining the County from prohibiting or interfering in any manner whatsoever with protestant's activities in transporting air traffic passengers to and from the Tahoe Valley Airport. Hearing on the Order to Show Cause and Temporary Restraining Order was scheduled for November 28, 1975. The Commission takes official notice that pursuant to stipulations of counsel the matter was continued to December 12, 1975 at which time it was continued to December 19, 1975, when the matter was ordered off calendar and the Temporary Restraining Order was declared to be null and void. On December 16, 1975 protestant executed an Airport Business Agreement with the County for a period of five years. The witness also testified that he was of the opinion that the type of vehicle proposed to be operated by applicants would be more desirable than the buses operated by the protestant.

The Tahoe division manager of protestant testified that Air Cal commenced service to and from Tahoe Valley Airport on March 20, 1975 and PSA commenced service to and from Tahoe Valley Airport on April 4, 1975. Since the inception of the service by Air Cal and PSA protestant has been providing surface transportation between the airport and South Lake Tahoe utilizing, for the most part, one or more 39-passenger buses. The schedule of protestant is altered as the schedules of the airlines are revised. Exhibit 31 sets forth the arrival and departure times of the flights together with the arrival times of protestant's service. The exhibit discloses that protestant's service is scheduled to arrive at the airport to serve enplaning and deplaning passengers with one vehicle. For arriving flights protestant's schedule provides for arrivals at the airport shortly before or at the arrival time of each flight, except in one instance when arrival is five minutes after flight arrival. For departing flights protestant's schedule provides for arrival at the airport between 25 minutes and 1 hour and 15 minutes prior to flight departure. Exhibits 33 and 34 are summaries of passengers carried by protestant during the months of September and October 1975, respectively. The exhibits disclose that for each trip operated during the two months protestant utilized a 39-passenger bus. During September the average number of passengers carried per trip was 13.7, the highest daily average number of passengers carried was 23, and the low daily average number was 7.4. During October the average number of passengers carried per day was 10.7, the high per trip daily average number of passengers was 16.6, and the low per trip daily average number of passengers was 5.5.

Summary of Evidence in Case No. 10041
(March 11 and 12, 1976)

On January 20, 1976 the South Lake Tahoe City Council issued defendants a certificate of public convenience and necessity to operate a vehicle for hire within the city of South Lake Tahoe in accordance with the provisions of Chapter 28 of the City Code, city of South Lake Tahoe. The route as set forth in Exhibits 12 and 15 is 52 miles long with 1 mile being outside the city limits, or 98.08 percent within the city limits. The Public Works director of the city of South Lake Tahoe testified that the mileage computation of the route did not include the airport loop road, a distance of .4 mile, since it was his understanding that the airport loop road was not a public road.

Complainant presented testimony and exhibits that on five separate occasions Tahoe-Sierra Limousine Service performed operations as a passenger stage corporation. The dates of operation were October 4 and 7, 1975, and January 20, March 2, and March 4, 1976. On the three occasions in 1976 the route authorized by the city of South Lake Tahoe was not followed.

Mr. Shehadi testified that the operations on October 4 and 7, 1975 were prior to receiving the letter from the Commission dated October 23, 1975. He also testified that one driver was terminated for not following the route authorized by the city. The driver who drove the vehicle on March 2, 1976 testified that one of the passengers was a sick child accompanied by her mother and because of the child's illness he did not follow the city route in order to transport them to their destination as quickly as possible.

Summary of Evidence in Case No. 10041
(April 29, 1976)

On March 16, 1976 the South Lake Tahoe City Council issued a revised certificate of public convenience and necessity to Tahoe-Sierra Limousine Service to operate a vehicle for-hire service on a temporary basis authorizing transportation of passengers from the airport to points in the city of South Lake Tahoe over a one-way route originating at the junction of Highway 50 and the exit road from the airport, traversing Highway 50 and various city streets to the California-Nevada state line, returning via Highway 50 to the Y, thence along Emerald Bay Road to the city limits, and return via Emerald Bay Road to the Y. The total route is 17 miles of which 16.7 miles or 98.24 percent of the total route was located within the city limits. The route did not include the distance traversed over the airport loop road.

At the beginning of the hearing City Attorney Kenneth Lounsbery made an opening statement reversing the city's position that the airport loop was a private road and declared that he had received a memorandum dated April 28, 1976 from the Public Works director of the city stating that the airport loop was a part of the county road system. Lounsbery estimated that the loop road had been taken into the county road system within the last two years. With the inclusion of the mileage represented by the airport loop in the total route mileage, the percentage of miles within the city limits dropped below 98 percent and service was halted in the evening of April 28, 1976.

The parties stipulated that the affidavit of Larry E. Wood and the investigation reports of the Lake Tahoe Investigation Patrol, attached to Gray Line's Motion for Contempt, represented the direct testimony which those parties would have presented had they been called as witnesses. The investigation reports were received in evidence as Exhibit 25. Mr Shehadi admitted that operations were conducted over the 17-mile route between March 16, 1976 and April 28, 1976.

Discussion - Application No. 55951

Section 1032 of the Public Utilities Code provides: "Every applicant for a certificate shall file in the office of the commission an application therefor in the form required by the commission. The commission may, with or without hearing, issue the certificate as prayed for, or refuse to issue it, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity require. 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." (Emphasis supplied.)

The only evidence of possible unsatisfactory service is the testimony of one motel owner concerning occasional pickups at the motel 2½ hours prior to flight departure and her preference of a smaller vehicle than the one operated by Gray Line; and the testimony of the Director of Airports concerning Gray Line's failure to execute an Airport Business Agreement and pay the prescribed fees and his opinion that the type of vehicle proposed to be operated by applicants would be more desirable. Gray Line's schedules provide for arrival at the airport between 25 minutes and 1 hour and 15 minutes prior to flight departure. We do not believe the 1 hour and 15-minute arrival prior to flight departure to be unreasonable in view of the fact that the airlines require check-in 30 minutes prior to flight departure. The representative of Air Cal testified that additional ground service is needed and the representative of PSA

testified that additional service is needed during the peak period between July 4 weekend and Labor Day weekend. The evidence is not convincing that Gray Line is not providing a satisfactory service. We are also not convinced that public convenience and necessity require an additional carrier between the Tahoe Valley Airport and the city of South Lake Tahoe since Gray Line is not operating its schedules at full capacity.

Mr. Shehadi testified that the first time applicants were officially told they could not operate on a per capita basis was when they received the letter from the Commission dated October 23, 1975 (Exhibit 5). The Commission takes official notice a letter identical to Exhibit 5 was sent to applicants dated April 11, 1975 (over six months before the October 23, 1975 letter). The April 11, 1975 letter was signed by Mr. Shehadi and returned to the Commission on April 16, 1975.

Discussion - Case No. 10041

On two occasions the South Lake Tahoe City Council awarded a certificate of public convenience and necessity to operate a vehicle for hire within the city limits to defendants over routes which were believed to be 98 percent or more within the city limits of South Lake Tahoe. In each instance the mileage over the airport loop route was excluded as it was believed to be a private road. On three occasions subsequent to the issuance of the first certificate by the city council defendants performed operations without following the prescribed route January 20, March 2, and March 4, 1976. Operations were conducted by

defendants over the route authorized on March 16, 1976 by the city between March 16, 1976 and April 28, 1976, which operations are subsequent to the cease and desist order contained in Decision No. 85525 dated March 2, 1976.

Section 226 of the Public Utilities Code defines a passenger stage corporation as follows:

"'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 except those, 98 percent or more of whose operations as measured by total route mileage operated, are exclusively within the limits of a single city or city and county, or whose operations consist solely in the transportation of bona fide pupils attending an institution of learning between their homes and such institution.

"For the purposes of this section, the percentage of the route mileage within the limits of any city shall be determined by the Public Utilities Commission on the first day of January of each year, and such percentage so determined shall be presumed to continue for said year.

"'Passenger stage corporation' does not include that part of the operations of any corporation or person engaged in the ownership, control, operation or management of any passenger stage over any public highway in this state, whether between fixed termini or over a regular route or otherwise, engaged in the transportation of any pupils or students to and from a public or private school, college or university, or to and from activities of a public or private school, college or university, where the rate, charge, or fare for such transportation is not computed, collected, or demanded on an individual fare basis.

"'Passenger stage corporation' does not include the transportation of persons in a passenger vehicle having a seating capacity of 15 passengers or less from place of residence to place of employment, if the driver himself is on the way to or from his place of employment."

This Commission is the responsible agency to determine the percentage of route mileage within the limits of any city.

Findings - Application No. 55951

1. Applicants are authorized to operate as a charter-party carrier of passengers pursuant to a permit originally issued April 8, 1975.
2. Applicants seek a certificate of public convenience and necessity to operate as a passenger stage corporation between:
 - a. Tahoe Valley Airport and the city of South Lake Tahoe over U.S. Highway 50 and as an alternate route over U.S. Highway 50 and Pioneer Trail, and
 - b. City of South Lake Tahoe and Heavenly Valley Ski Area.
3. Gray Line is authorized to perform service as a passenger stage corporation between Tahoe Valley Airport and the city of South Lake Tahoe over the routes proposed by applicants.
4. Gray Line is performing service between Tahoe Valley Airport and the city of South Lake Tahoe pursuant to schedules that provide for arrivals at the Tahoe Valley Airport between 25 minutes and 1 hour and 15 minutes prior to airline flight departures and before or at the scheduled time of arriving airline flights, except in one instance when arrival is scheduled five minutes after flight arrival.
5. Gray Line utilizes 39-passenger buses to provide service.
6. The buses utilized by Gray Line are not operating at full capacity.

7. Gray Line is providing service to the satisfaction of this Commission.

8. By letter dated April 11, 1975 applicants were advised by the Commission that no passenger service may be operated on an individual fare basis over regular routes or between fixed points without first securing a certificate of public convenience and necessity from the Public Utilities Commission.

9. Applicants commenced charging individual fares between the Tahoe Valley Airport and the city of South Lake Tahoe approximately August 1, 1975.

10. Public convenience and necessity do not require the granting of an additional certificate between Tahoe Valley Airport and the city of South Lake Tahoe.

11. The city of South Lake Tahoe provides a satisfactory service between the city of South Lake Tahoe and the Heavenly Valley Ski Area.

12. Public convenience and necessity do not require the granting of a certificate between the city of South Lake Tahoe and the Heavenly Valley Ski Area.

Findings - Case No. 10041

1. On January 20, 1976 the South Lake Tahoe City Council granted defendants authority to operate a vehicle for hire over a route 52 miles long which route was believed to be more than 98 percent within the city limits of South Lake Tahoe.

2. On March 16, 1976 the South Lake Tahoe City Council issued revised authority to defendants to operate a vehicle for-hire service over a one-way route 17 miles long which route was believed to be more than 98 percent within the city limits of South Lake Tahoe.

3. The authorities set forth in Findings 1 and 2 did not include the distance traversed over the airport loop road which road is not within the city limits of South Lake Tahoe.

4. The airport loop road is .4 mile long.
5. The airport loop road is a public road.
6. The addition of the mileage over the airport loop road to the authorities granted by the South Lake Tahoe City Council makes the routes less than 98 percent within the city limits.
7. On October 4 and 7, 1975, and January 20, March 2, and March 4, 1976 defendants operated as a passenger stage corporation as defined in Section 226 of the Public Utilities Code.
8. On March 2, 1976 the Commission issued Decision No. 85525 ordering defendants to cease and desist from operating as a passenger stage corporation pending further order of this Commission.
9. Decision No. 85525 was personally served upon applicants on March 5, 1976.
10. Subsequent to March 5, 1976, between March 16, 1976 and April 28, 1976, defendants operated as a passenger stage corporation as defined in Section 226 of the Public Utilities Code.

Conclusions

1. Application No. 55951 should be denied.
2. Applicants have violated Section 1031 of the Public Utilities Code by operating as a passenger stage corporation without first having obtained a certificate of public convenience and necessity authorizing such operations.
3. Applicants did not comply with the cease and desist order contained in Decision No. 85525 and, therefore, are in contempt of the Commission.
4. Richard G. Shehadi should be ordered to pay a fine of \$500.
5. Robert M. Bellemore should be ordered to pay a fine of \$500.
6. The cease and desist order contained in Decision No. 85525 should be made permanent.

A.55951, C.10041 ei

ORDER

IT IS ORDERED that:

- 1. Application No. 55951 is denied.
- 2. Within thirty days after the effective date of this order Richard G. Shehadi shall pay a fine of \$500 to this Commission.
- 3. Within thirty days after the effective date of this order Robert M. Bellemore shall pay a fine of \$500 to this Commission.
- 4. The order contained in Decision No. 85525 is hereby made permanent.

The Executive Director of the Commission is directed to cause personal service of this order to be made upon Richard G. Shehadi and Robert M. Bellemore. The effective date of this order as to each applicant/defendant shall be twenty days after completion of service on that applicant/defendant.

Dated at San Francisco, California, this 26th day of OCTOBER, 1976.

I dissent
Lernard Ross
Commissioner

I dissent
Robert Barkun
Commissioner

[Signature]

President

William Lyons

Vernon R. Sturgeon

Commissioners