

ORIGINAL

Decision No. 86913

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Buena Park Development)
Corporation, a California)
corporation, doing business as)
Holiday Inn of Buena Park, for)
authority to operate as a)
Charter-Party Carrier of Passen-)
gers TCP-736.)

Application No. 56768
(Filed September 21, 1976;
amended October 14, 1976)

Hart, Neiter and Leonard, by Gerald I. Neiter and John E. deBrauwere,
Attorneys at Law, for applicant.
Dennis V. Menke, Attorney at Law,
and Michael L. Valen, for
protestant.
Thomas P. Hunt, for the Commission
staff.

O P I N I O N

On August 16, 1976 Buena Park Development Corporation, a California corporation, dba Holiday Inn of Buena Park (applicant), filed an application^{1/} for a charter-party carrier permit pursuant to Public Utilities Code (Code) Section 5384. This application complied with the requirements for the permit and alleged reasonable fitness and financial responsibility to initiate and conduct the proposed transportation services, as required by Code Section 5374. Earlier, on July 9, 1976, counsel for applicant wrote the Commission concerning the status of applicant's bus operation.

^{1/} This application was assigned Permit No. TCP-736.

The Commission responded on July 20, 1976 with a letter which said in part:

"Section 5384(a) of the Public Utilities Code requires the Commission to:

'...issue permits to persons, who are otherwise qualified, whose passenger carrier operations fall into the following categories:

'(a) specialized carriers who do not hold themselves out to serve the general public, ...who only conduct transportation services, which are incidental to another business.'

"The quoted portion of Section 5384 appears tailor-made for your client's bus operation. Accordingly, you should advise your client to obtain an annual charter-party permit. If your client is 'otherwise qualified', that is, it can 'establish reasonable fitness and financial responsibility to initiate and conduct the proposed transportation services' (Section 5374) then the Commission is required to issue the permit."

The application was filed pursuant to this recommendation.

Town Tours Fun Bus Co., Inc. (Town Tours) was granted a passenger stage corporation certificate of public convenience and necessity by D.85561 dated March 16, 1976 in A.54427. This certificate authorized bus service from Disneyland to various points in Buena Park, including applicant's hotel. On August 13, 1976 Town Tours filed a complaint in Orange County Superior Court, No. 251619, seeking, among other things, an injunction against the applicant's providing transportation from its hotel to Disneyland and other tourist attractions in the Anaheim-Buena Park area as applicant has no authority to so operate. On October 4, 1976 the above court entered a preliminary injunction restraining applicant essentially from operating as a passenger stage corporation along Town Tours' route.

On September 15, 1976 Town Tours protested this application for a charter-party permit on the ground that applicant is not a specialized carrier within the meaning of Code Section 5384(a). Town Tours also requested a hearing under Code Section 5375.1, which states in relevant part:

"Notwithstanding the provisions of Section 5375,^{2/} if the applicant desires to operate in a territory already served by the holder of a certificate, the commission shall hold a hearing before granting the certificate...."

On October 14, 1976 applicant filed a Petition for Immediate Interim Authority and Motion to Advance Complaint Matter on Calendar. This petition seeks permission under Section 5384(a) to operate free transportation service for hotel guests only between applicant's hotel and the Grand Hotel and Disneyland Hotel, both in Anaheim, for connections with airport service buses to Orange County and Los Angeles International Airports only.^{3/}

2/ Section 5375 states in relevant part:

"The commission may, with or without hearing, issue or refuse to issue a permit or certificate...."

3/ The original application proposed the following in No. 4:

"Applicant operates a hotel and proposes to utilize the vehicles to transport hotel guests to destinations of the guest's choosing. These destinations usually include airports, local tourist attractions and corporation offices (business guests). The service is provided as a service to registered hotel guests only and is free of charge."

Town Tours also filed an opposition to the above petition of applicant restating its earlier protest and also contending that the Commission does not have authority to issue a permit without hearing and without notice to existing certificate holders under Section 5375.1.

This matter was assigned to Examiner Phillip E. Blecher. A prehearing conference was held on November 10, 1976 and the matter was then submitted.

Discussion

During the prehearing conference, applicant indicated its Petition for Immediate Interim Authority and Motion to Advance Complaint Matter on Calendar amended its original application by limiting its requested permit to transportation service rendered free to its registered hotel guests only to and from the Grand and Disneyland Hotels for the purpose of connecting with the Airport Service buses only. This amended request for an annual permit is the only matter under consideration.

The only factual issue involved is the schedule of bus service provided to the two airports involved by Airport Service, the authorized carrier in this area. Exhibit 1 indicates that Airport Service provides four buses daily from applicant's hotel to each of the airports while providing 29 trips daily from both the Grand and Disneyland Hotels in Anaheim. Applicant's financial responsibility and reasonable fitness to initiate and conduct the proposed service is established by its application and is uncontradicted, notwithstanding the temporary injunction regarding passenger stage operations. This is not an application for a passenger stage certificate, nor is applicant's compliance with the injunction controverted.

The staff supports the requested permit and takes the position that applicant is a specialized carrier under Section 5384(a) and no hearing is required for a permit under Section 5375.1.

The legal issues raised are as follows:

- (1) Does this Commission have authority to issue a permit without a hearing and without notice to existing certificate holders in the proposed territory?

If a hearing is required, notice to certificate holders in the territory in question is required. Thus, the issue narrows to whether a permit may be issued without a hearing where the territory is already served by a certificate holder.

Section 5375 allows the issuance of a permit or certificate with or without hearing. However, the pertinent portion of Section 5375.1 (page 3, supra) is alleged to require a hearing. But the clear meaning of the language does not support this contention because of the last phrase of the quoted portion of Section 5375.1, to wit: "...the commission shall hold a hearing before granting the certificate." (Emphasis added.) No mention of a hearing for a permit is made. This contrasts directly with Section 5375. If the legislature had intended a mandatory hearing for a permit under the circumstance described in Section 5375.1, the words "or permit" need only to have been added. Since these words were omitted, the intention to limit this clause to applicants for a certificate is clear. We thus hold that Code Section 5375.1 applies only to applications for certificates and does not apply to permits. Thus, no hearing is required for permit applications. Because no hearing is required, no notice is required.

- (2) Is applicant a specialized carrier within the meaning of Code Section 5384(a) (page 1 supra)?

Town Tours contends that applicant is holding itself out to serve the general public because it could advertise free bus service to and from the connecting airport service. This is fallacious because the fare of Airport Service is identical for passengers picked up directly at applicant's hotel and at the Grand and Disneyland Hotels. This contention is also belied by the fact that applicant's requested service is limited to registered hotel guests. While registered hotel guests are members of the general public, service thus limited is not a holding out to the general public because no one except a member of this special class can be carried.

Applicant's primary business is the operation of a Holiday Inn in Buena Park. The proposed transportation for which no fare shall be charged is incidental to the operation of applicant's hotel business and falls directly within Section 5384(a)..

We conclude that applicant is a specialized carrier within Section 5384(a). Because applicant is otherwise qualified, we are required under Section 5384 to issue the permit requested.

Findings

1. Applicant has the financial responsibility and reasonable fitness to initiate and conduct the proposed transportation service.
2. Applicant should be authorized to transport its registered hotel guests to and from its Holiday Inn in Buena Park, to and from the Grand Hotel and Disneyland Hotel, both in Anaheim, on an on-call basis for the purpose of connecting with airport buses only.
3. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions

1. The proposed authority should be issued as provided in the following order.
2. Code Section 5375.1 does not apply to applications for charter-party carrier permits.
3. Transportation services by a hotel for its registered guests is not a holding out of such service to the general public within the meaning of Code Section 5384(a).
4. Transportation services by a hotel for its registered guests is incidental to another business within the meaning of Code Section 5384(a).

5. A hotel providing transportation service for its registered guests is a specialized carrier within the meaning of Code Section 5384(a).

O R D E R

IT IS ORDERED that:

1. An annual permit (renewable each year) is granted to Buena Park Development Corporation, a California corporation, doing business as Holiday Inn of Buena Park, authorizing it to operate as a specialized charter-party carrier of passengers as defined in Section 5384 of the Public Utilities Code in a service area to and from its Holiday Inn in Buena Park to and from the Grand and Disneyland Hotels in Anaheim, for the purpose of transporting registered hotel guests for the purpose of connecting with airport buses only.

2. In providing service pursuant to the permit herein granted, applicant shall comply with and observe the following service regulation. Failure so to do may result in cancellation of the operating authority granted by this decision.

Applicant will be required, among other things, to comply with and observe the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's

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General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 115-Series.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 15th day of FEBRUARY, 1977.

Robert B. ...
President
William ...
Vernon ...
...
Michael ...
Commissioners