

Decision No. 87122

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)	
own motion into the safety rules)	
and other regulations governing)	
the operations of Passenger Stage)	Case No. 5098
Corporations and Street Railroad)	
Corporations and prescribing)	
General Order No. 98.)	

Investigation on the Commission's)	
own motion into the construction,)	
application and procedure in)	
administering Passenger Charter-)	Case No. 7192
Party Carriers' Act and prescribing)	
General Orders Nos. 115 and 116.)	

SUPPLEMENTAL OPINION AND ORDER

By Decision 69331 in these proceedings, dated June 29, 1965, the Commission adopted General Order 98-A. General Order 98-A, as subsequently modified by Decision 75919 dated July 15, 1969, sets forth various requirements for Passenger Stage Corporations and Charter-party Carriers regulated by this Commission. Among these requirements is Part 12, which at present reads as follows:

"PART 12-LEASED EQUIPMENT

"12.00. Drivers of Leased Equipment.

"12.01. DRIVER TO BE UNDER CONTROL OF LESSEE.

Passenger stage corporations and passenger charter-party carriers shall not operate any passenger stage the possession and use of which has been acquired by virtue of a lease arrangement unless the driver thereof is under the complete supervision, direction and control of such lessee passenger stage corporation or passenger charter-party carrier."

On May 23, 1975, the Commission staff notified all passenger stage corporations and charter-party carriers of certain proposed changes in Part 12. The purpose of the proposed changes

was to clarify the relationship that must exist between authorized carriers and actual operators of equipment used in passenger service to the public. Basically, this proposal would have required drivers to be employees of the operating carrier.

Carriers were placed on notice of the staff's intention to recommend ex parte Commission adoption of its proposal in the absence of protest. Several responses were submitted concerning the need for carriers to utilize equipment and drivers from other carriers to properly service peak demand periods in the charter bus industry.

On October 17, 1975, the Commission staff mailed to all passenger stage corporations and charter-party carriers a modified proposal concerning this matter. This second proposal expanded the types of relationship which would be allowed to exist between carriers and operators in response to suggestions submitted by the industry upon its review of the original staff proposal. Included in this version was a provision that a carrier may operate a passenger stage owned or leased by another Commission-authorized carrier, subject to certain conditions. Also included was a provision allowing a carrier to utilize equipment owned by drivers themselves where such owner-drivers obtained the appropriate permits from this Commission.

This letter concluded with the following paragraph:

"We believe that the above language properly incorporates the suggestions received in response to our May 23, 1975 letter and, in the absence of protest, the staff will recommend its adoption by the Commission."

In response, the Commission received a letter indicating continuing concern that even the modified proposal might deny carriers the opportunity of leasing equipment from other carriers and requesting hearing dates on the matter. On July 9, 1976, the proposal was rephrased to avoid the possibility

of such misinterpretation. Specifically, the proposal, phrased as the Commission will now adopt, will not prohibit an authorized carrier from utilizing equipment from another carrier. This third proposal was communicated to the concerned party by letter dated July 9, 1976. Also included was a further broadening of the requirements to allow authorized carriers to utilize equipment with drivers from public transit agencies.

To be certain that all affected parties were in agreement, this third proposal was mailed to all passenger stage corporations and charter-party carriers on December 10, 1976. Included in this letter was the following language:

"We believe that the attached pertinent portion of the general order properly incorporates the suggestions received in response to our previous correspondence, and we thank those carriers who wrote to us concerning this matter. In the absence of any new substantive protest received prior to January 6, 1977, the staff anticipates that the Commission will adopt the attached by ex parte order."

No protests were received in response to this letter.

Upon consideration, we find that the proposed language as set forth below is necessary and proper for the effective regulation of passenger transportation in the public interest and should now be adopted.

IT IS ORDERED that Part 12 of General Order 98-A is hereby cancelled and is replaced by the following revised Part 12:

PART 12 - DRIVERS OF EQUIPMENT

12.00 - Drivers of Equipment

12.01 - Driver Status

Passenger stage corporations and passenger charter-party carriers shall not operate any passenger stage unless the driver thereof is under the complete supervision, direction and control of the operating carrier, and is:

- (a) An employee of the operating carrier, or
- (b) An employee of a public transit agency or of another Commission-authorized carrier that owns or possesses the vehicle by virtue of a bona fide full-time lease arrangement of 30 days or longer. This agreement for the utilization of the second carrier's vehicle and driver by the operating carrier shall be evidenced by written contract between the two carriers, or
- (c) An owner-driver who, himself, holds Commission authority as a specialized charter-party permit carrier, pursuant to Public Utilities Code Section 5384(a). Such owner-driver permit shall be limited to one vehicle.

The effective date of this order shall be May 1, 1977.

Dated at San Francisco, California,
this 22nd day of MARCH, 1977.

Paul Buttrick
President
William J. ...
Vernon L. ...
Horst
Richard D. ...
Commissioners