

Decision No. 87172

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of DAVID KYLE STAMBAUGH)
dba HOME AIRPORT SERVICE, for a
permit to operate as a charter
party carrier of passengers. (TCP-
710-P)

Application No. 56653
(Filed July 30, 1976)

- David Kyle Stambaugh, for Home Airport Service, applicant.
- James H. Lyons, Attorney at Law, for Airport Service, Inc.; Larry Slagle, for Yellow Cab Company of North Orange County; and Edward Wilson, for Los Angeles Airport Taxicab Security; protestants.
- K. K. Wolpert, for R. W. Russell, Chief Engineer and General Manager, Dept. of Public Utilities and Transportation, City of Los Angeles, interested party.
- John deBrauwere, for the Commission staff.

O P I N I O N

Applicant seeks a permit to operate as a charter-party carrier of passengers pursuant to Section 5384(b) of the Public Utilities Code.^{1/} Applicant proposes to operate tours of southern California

1/ "5384. The commission shall 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, but only provide service under contract with industrial and business firms, governmental agencies and private schools or who only transport agricultural workers to and from farms for compensation or who only conduct transportation services, which are incidental to another business. Such permits shall be limited to a 50-mile radius of operation from the home terminal.
- (b) Carriers using only vehicles under 15-passenger seating capacity and under 7,000 pounds gross weight."

at the rate of \$12 per hour, or \$.20 per mile, and transportation to the Los Angeles International Airport, Los Angeles AMTRAK terminal, and the steamship piers in San Pedro or Wilmington at the following charges: \$12 for 1-2 persons, \$3 for each additional person, \$3 for each additional pick-up point, and a \$5 additional charge for service after 9:00 p.m. and before 6:00 a.m. Applicant proposes to conduct the operation out of his home located at 1136 N. Richman, Fullerton.

Protests to the application were filed by Gray Line Tours, Orange County Sightseeing Company, Airport Service, Inc., Anaheim Yellow Cab Company of Northern Orange County, Inc., and The Town Tour (Fun Bus) Co., Inc.

A public hearing was held on September 28, 1976 in Los Angeles before Examiner Bernard A. Peeters. The matter was submitted after closing statements by the parties on said date.

At the outset applicant amended his application by changing his dba from Home Airport Service to Home Airport Transportation and Tour Company. During the course of the hearing he further amended his application with respect to the proposed charges. Applicant's case rests primarily upon the information contained in his application, two code sections^{2/}, and his belief that he does not have to prove public convenience and necessity to obtain a permit. He also relies upon his experience with Anaheim Yellow Cab Company, C&S Tours, and Ron's Limousine and Tour Company over the past six years, and the financial statement in his application.

2/ "5371. No charter-party carrier of passengers excepting transit districts, transit authorities or cities owning and operating local transit systems themselves or through wholly owned non-profit corporations shall engage in transportation services made subject to this chapter without first having obtained from the commission a certificate that public convenience and necessity require such operation, except that certain specific transportation services as defined in Section 5384 may be conducted under authority of an annual permit issued by the commission." and Section 5384 (see Footnote 1 above); also see Exhibit 1.

Protestant Airport Service, Inc. (Airport Service) presented a witness who testified to the operations of the company and presented a timetable of its airport service.^{3/} Protestant Anaheim Yellow Cab Company of Northern Orange County, Inc. (Yellow) presented a former cab driver and dispatcher who testified to certain past practices of applicant which he believed were inimical to Yellow. Protestant Gray Line Tours notified the examiner of its withdrawal prior to the hearing. Protestant The Town Tour (Fun Bus) Company did not appear at the hearing.

Applicant made no sincere attempt to comply with Section 5374^{4/} nor Section 5375^{5/} even after having been advised of these requirements at a prehearing conference.

3/ Exhibit 2.

4/ "5374. Before an annual permit or certificate is issued, the commission shall require the applicant to establish reasonable fitness and financial responsibility to initiate and conduct the proposed transportation services."

5/ "5375. The commission may, with or without hearing, issue or refuse to issue a permit or certificate. If the commission finds that public convenience and necessity require the proposed transportation service and the applicant possesses satisfactory fitness and financial responsibility to initiate and conduct the proposed transportation services, and will faithfully comply with the rules and regulations adopted by the commission with respect thereto, it shall issue the permit or certificate to conduct the requested operations, or may issue it for the partial exercise of the privilege sought, and may attach to the permit or certificate such terms and conditions as, in its judgment, are required in the public interest; provided also that the permit or certificate shall not require the filing or publication of time schedules or tariffs. The fact that the applicant for the certificate is, or may later become a holder of a certificate of public convenience and necessity issued pursuant to the provisions of Article 2 (commencing with Section 1031), Chapter 5, Part 1, Division 1, of this code shall not be deemed inconsistent with the provisions of this section, and such dual authority may be authorized."

The evidence shows that applicant has been transporting passengers for various travel agencies located in Seal Beach, Huntington Beach, and Long Beach to the Los Angeles International Airport (LAX), picked up passengers at LAX by pre-arrangement, and transported them to their homes. Applicant stated that payment for these services is received from the various travel agencies whose clients are the passengers transported; that he presently charges \$15 per trip for 1-5 people plus \$8 if more; that his average monthly billing to the agencies for transportation services is approximately \$2,000; that he has been conducting this service since January or February of 1976, and that he does not have any operating authority from this Commission, or any other governmental agency, although he knew he should have such. He testified that he has applied for a business license from the city of Fullerton just prior to this hearing. Applicant amended his proposed charges twice during the hearing so that now his proposal is as follows: tours - \$12 per hour or 50¢ per mile whichever is greater; LAX trips - 50¢ per mile for 1-2 people, plus a \$3 surcharge for each additional person.

Findings of Fact

1. David K. Stambaugh has been providing for-hire transportation service to and from Los Angeles International Airport since January or February of 1976 without authority from this Commission.

2. David K. Stambaugh made no adequate showing of reasonable fitness nor the financial responsibility required for the issuance of a permit to operate as a charter-party carrier of passengers.

Conclusions of Law

1. David K. Stambaugh has been conducting illegal transportation of passengers since January or February of 1976.

2. David K. Stambaugh should be ordered to cease and desist his unlawful operations.

3. The application should be denied.

ORDER

IT IS ORDERED that:

- 1. The application is denied.
- 2. David K. Stambaugh shall cease and desist all unlawful transportation of passengers forthwith.

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

Dated at Sacramento, California, this 5th day of APRIL, 1977.

Robert Bateman
President

William Lyons, Jr.

Thomas J. Stambaugh

Richard W. Howell
Commissioners