

ORIGINAL

Decision No. 88273 DEC 20 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of Buena Park Development
Corporation, dba Holiday Inn of
Buena Park, for authority to
operate as a passenger stage
corporation between Holiday Inn
in Buena Park and the Disneyland
Amusement Park in Anaheim,
California.

Application No. 57129
(Filed March 4, 1977;
amended May 2, 1977)

Hart, Neiter & Leonard, by Gerald I. Neiter and
James W. Leonard, Attorneys at Law, and
Virant & deBrauwere, by John E. deBrauwere,
Attorney at Law, for applicant.

Dennis V. Menke, Attorney at Law, for Town Tour
Funbus Company, Inc., protestant.

Elmer Siostrom, Attorney at Law, for the Commission
staff.

O P I N I O N

Applicant is currently engaged in the operation of a hotel in Buena Park named Holiday Inn of Buena Park (Holiday). Pursuant to D.86913 dated February 1, 1977 in A.56768 Holiday was granted a limited Charter-party Carrier of Passengers Permit No. TCP-736. By this application, Holiday seeks authority under Section 1031 of the Public Utilities Code to transport its registered guests between its hotel located at 7000 Beach Boulevard in Buena Park, on the one hand, and Disneyland Park located in Anaheim, on the other hand. By its amendment, as an alternative, if the certificate is not granted, Holiday seeks to remove the restriction placed on its charter-party permit which limits transportation of its guests to an on-call service for the purpose of connecting with the airport buses only at the Grand Hotel and Disneyland Hotel in Anaheim.

During the pendency of this application and A.56768 a Superior Court injunction was in force against Holiday enjoining it from operating without Commission authority.

Town Tour Funbus Company, Inc. (Funbus) filed a response, protest, and motion to dismiss A.57129 on March 29, 1977. Holiday filed its Answer to the Protest and Motion to Dismiss on April 20, 1977. After duly published notice, a hearing on the matter was held in Anaheim on August 22 and 23, 1977. The matter was submitted on the latter date subject to the filing of concurrent briefs due September 8, 1977.

Discussion

The record shows that we granted Holiday a charter-party carrier of passengers permit (No. TCP-736) by D.86913 dated February 1, 1977 in A.56768. This permit was limited to the transportation of Holiday's registered guests traveling to and from the Disneyland Hotel Travelport and the Grand Hotel Travelport for the purpose of making connections with the Airport Service buses. The record also shows that prior to the filing of A.56768 Funbus brought an action in the Superior Court to enjoin Holiday from transporting its registered guests to the travelports and Disneyland Amusement Park. The court found that Holiday was acting as a common carrier without proper authority and issued an injunction. The injunction has been on appeal during the pendency of this action. On September 13, 1977 the Court of Appeal, Fourth Division, Second District, filed its opinion, which it stated is not to be published in the official record. A copy of this opinion was provided by Holiday subsequent to the briefing of this matter to complete the record^{1/}.

It is noted that the court's opinion recites that the Superior Court recognized the Commission's jurisdiction when it was apprised of the fact that the Commission had issued a charter-party permit to Holiday and modified its injunction, but continued it in force with respect to the transportation involved here, viz., Disneyland.

^{1/} We may refer to this nonpublished decision under the provisions of Rule 877 of the California Rules of Court.

The Court of Appeal indicated that Holiday "may, quite simply, resolve the issues in this case, invoking the jurisdiction of the Commission, by applying for authority to operate its bus service; and if authority is granted, Holiday Inn may lawfully compete with Town Tours". This Holiday accomplished by filing this application. Having assumed jurisdiction over the specific act enjoined, our decision in this matter will supersede the prior judgment of the court. (Hickey v Roby (1969) 273 CA 2d 752.)

Although the application initially sought a certificate of public convenience and necessity to operate as a passenger stage corporation pursuant to Section 1031, as a response to the court's injunction, Holiday amended its application to seek the removal of the restriction from its charter-party permit as an alternative request. Much evidence and argument were devoted to the question of whether Holiday's operations were those of a common carrier^{2/} and thus required a certificate as a passenger stage corporation.^{3/} We have already

2/ "211. Common carrier includes:"

* * *

"(c) Every passenger stage corporation operating within the State."

3/ "226. '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. . . ."

determined in the prior application that Holiday's transportation operations do not constitute a holding out of such service to the general public and that such services are incidental to another business. Little or no probative evidence was developed that would support a finding that a certificate of public convenience and necessity as a passenger stage corporation should be issued to Holiday or that Holiday had dedicated its property to a public use. The proposed operation is essentially the same as that for which a charter-party permit was issued, i.e., an on-call service to Holiday's registered guests for transportation to and from Disneyland Amusement Park.

Sections 5384 and 5384(a) state:

"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."

Under the foregoing section applicant is entitled to an unrestricted permit. Applicant is conducting transportation services which are incidental to another business. No good reason has been shown for us to restrict applicant's permit.

Findings

1. Holiday was granted a charter-party carrier of passengers permit (No. TCP-736) in D.86913 limited to the transportation of its registered guests to and from Holiday and from the Grand and Disneyland Hotels in Anaheim for the purpose of connecting with airport buses only.

2. It has not been shown that a certificate of public convenience and necessity as a passenger stage corporation should be issued, or that there has been a dedication of private property to a public use.

3. Applicant's guests request service to Disneyland Amusement Park on an on-call basis.

4. The restriction on Holiday's permit should be removed. Applicant conducts transportation services which are incidental to another business.

Conclusions

1. Transportation services by a hotel for its registered guests is not a holding out or dedication of such service to the general public within the meaning of Sections 211, 226, and 1031.

2. Transportation services by a hotel for its registered guests is incidental to another business within the meaning of Section 5384(a) and constitutes a specialized carrier.

O R D E R

IT IS ORDERED that:

1. Holiday Inn of Buena Park's Charter-party Carrier of Passengers Permit No. TCP-736 shall be modified to remove all restrictions.

2. Applicant's permit No. TCP-736 shall be limited to a 50-mile radius of operation from its home terminal, the Holiday Inn of Buena Park.

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

Dated at San Francisco, California, this 20th day of DECEMBER, 1977.

Ralston Bateman
President
William J. Gurnea, Jr.
Verizon L. Stetson
Charles P. Howell
Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.