

Decision No. 89140 JUL 25 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
CREATIVE SIGHTSEEING TOURS, INC., a )  
corporation, for a Certificate of )  
Public Convenience and Necessity, )  
to operate passenger-carrying vehicles, )  
as a Common Carrier for San Francisco )  
theatre patrons from the County of )  
Santa Clara to the County of San )  
Francisco, as well as a Common Carrier )  
for Santa Clara County theatre patrons )  
from the County of San Francisco to )  
the County of Santa Clara. )

Application No. 57535  
(Filed August 24, 1977)

David A. Smith, for applicant.  
Richard M. Hannon, Attorney at Law, for Greyhound Lines,  
Inc., protestant.  
Marc E. Gottlieb, for the Commission staff.

ORDER ON MOTION TO DISMISS

This is an application by Creative Sightseeing Tours, Inc., a California corporation, for authority to transport theatre patrons between San Francisco and Santa Clara Counties. Duly noticed public hearing was held at San Francisco before Administrative Law Judge Thompson on June 14, 1978.

At the hearing applicant's entire case in chief consisted of the testimony of its president. Following the direct testimony of the witness protestant moved for dismissal. The ALJ took the motion under advisement and adjourned the proceeding to a time and place to be set.

Applicant's president is affiliated with the theatrical business. He observed what he considers a good business opportunity in the transportation of residents of Santa Clara County to the various theatres in San Francisco. He proposes to advertise and hold applicant out to subscribers and ticket holders of theatrical performances to transport them on an individual fare basis from the office of Tip Top Tickets in Saratoga to the theatre in San Francisco in time for the opening of the performance and then pick them up at the theatre, or some other convenient place, about one-half hour to one hour after the performance and return them to the point of origin at Saratoga. It is his belief that there is a potential demand for this type of service which will free the theatre patron from the long drive and parking problems and which will permit him time for a drink, something to eat, or a chat with other theatre patrons after the show. It is his intention to provide service only when there are at least 15 passengers and the transportation will be performed in buses that he will charter from charter-party carriers. He anticipates that most of his patronage will be directed from theatrical ticket agents in Santa Clara County who sell theatre tickets on commission and who package theatre and night club tours.

Applicant may have a good idea; however, its showing consisted of just that, an idea. It is apparent from the testimony that applicant has not carefully and fully investigated the potential demand for the service, how patrons will be attracted to the service, the operating problems of providing the service, the cost of providing the service, and the problems that ensue from regulations prescribed for passenger stage carrier operations. We do not recite all of the deficiencies in applicant's showing. One example will suffice. Applicant estimated that as a going concern the number of trips involved in this service would not exceed 200 to 220 per year. In

order to recover its costs, exclusive of any remuneration to employees or officers of applicant, it would have to average at least 22 to 23 passengers per trip. In the case of the charter of a 49-passenger bus that would be a 47 percent load factor and in the case of a 39-passenger bus a 59 percent load factor. That considers a going concern under the more favorable conditions. The witness stated that applicant is willing to assume the losses that would go with the developing of the service; however, its financial statement shows only \$1,014 available for that purpose. Unless it could generate a high volume of traffic quickly, which it has not demonstrated, or unless additional risk capital were to be obtained by the corporation, applicant would soon find itself financially unable to continue operations.

In an application for a certificate of public convenience and necessity to conduct operations as a passenger stage corporation, an applicant has the burden of presenting competent evidence that the service to be offered is one which will meet a need or convenience to the public and will be patronized by the public; that it is a service which is not being provided satisfactorily by other carriers; that it is one which will result in an economically viable operation; and that applicant has sufficient financial ability to initiate and maintain the operation in its early stages until it does become a viable operation. Applicant has not met that burden here. The motion to dismiss should be granted.

We emphasize here that we are not finding that public convenience and necessity do not require the service contemplated by applicant, only that applicant has not presented evidence as required by law which will permit us to make the findings required for the issuance of a certificate of public convenience and necessity. We suggest to applicant's president that he communicate with the staff of the Commission's Passenger Operations Branch to be informed of the regulations applicable to passenger stage carriers, the problems and cost considerations in the operation of a passenger stage service,

and the nature of the evidence and showing required by the Commission for the issuance of a certificate of public convenience and necessity. The dismissal herein will be without prejudice so that if after further investigation and consideration applicant is confident that it can make the required showing it may file a new application.

IT IS ORDERED that the above-entitled application is dismissed without prejudice.

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

Dated at San Francisco, California, this 25<sup>th</sup> day of JULY, 1978.

Robert Bakwin  
President  
William F. Brown, Jr.  
Yuan L. Stagg  
Charles W. Smith  
Paul L. Deibel  
Commissioners