

ORIGINAL

Decision No. 89470 OCT 3 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of NOB HILL LIMOUSINE AND TOURS,)
LTD., a California corporation,)
for authority to acquire a)
passenger stage certificate of)
public convenience and necessity)
of JOHN P. JENKINS, and for an)
interim order authorizing NOB)
HILL LIMOUSINE AND TOURS, LTD.,)
to lease the certificate.)

Application No. 57537
(Filed August 24, 1977)

Handler, Baker & Greene, by William D. Taylor,
Attorney at Law, for applicant.
Maury Swidler, for Hi-Way Tours Inc., and
Richard M. Hannon, Attorney at Law, for Gray
Line Inc., protestants.
Manfred Lazarus, for himself, interested party.
Masaru Matsumura, for the Commission staff.

O P I N I O N

By this application Nob Hill Limousine and Tours, Ltd. (Nob Hill) seeks authority to purchase the certificate of public convenience and necessity presently issued to John P. Jenkins (Jenkins) and pending final disposition, an order authorizing the lease of the subject certificate of public convenience and necessity.

The application was protested by Gray Line Inc. (Gray Line), Golden Gate Tours, and Hi-Way Tours Inc. Public hearing was held March 10, 1978 at San Francisco before Administrative Law Judge Banks at which time the matter was submitted with concurrent briefs due 30 days after receipt of the transcript.

The protestants did not present direct evidence, but urge that the Commission deny the application and revoke Jenkins'

certificate. They allege that the certificate has been dormant since it was issued and that present service in the area is more than adequate and that any additional direct competition would only dilute existing traffic.

Nob Hill is a California corporation providing service under its Charter-Party Certificate No. TCP 582. Nob Hill employs some 17 persons.

Jenkins is the holder of a passenger stage certificate of public convenience and necessity granted by Decision No. 72814 dated July 25, 1967 in Application No. 49204. Jenkins' certificate authorizes the transportation of passengers for sightseeing purposes between points in a service area including San Mateo County, on the one hand, and, on the other, points of interest in the city and county of San Francisco and Marin County. The tours authorized are:

Tours

- No. 1 - San Francisco City Tour
- No. 2 - Muir Woods - Sausalito
- No. 3 - San Francisco Evening Dinner Tour
- No. 4 - Nightclub Party Tour

On or about June 1, 1977, Nob Hill entered into a written agreement with Jenkins whereby Nob Hill agreed to purchase the certificate of public convenience and necessity issued to Jenkins. The sale agreement provides for the purchase by Nob Hill of the certificate and good will of Jenkins for the total sum of \$25,000, which amount is to be paid to Jenkins on the consummation date provided for in the contract. The purchase price has been placed in escrow in the trustee account of the attorneys for Nob Hill. No security agreements or promissory notes are contemplated by the transaction except as otherwise provided for in the contract with respect to Jenkins' warranting that the certificate is free and clear of all liens, encumbrances, and claims.

Nob Hill alleges that the transfer will be in the public interest, in that Jenkins conducts an active and viable operation, and for business reasons has determined to discontinue his passenger stage sightseeing business to concentrate on the foreign language sightseeing certificate of A.C. Cal Spanish Tour Service.^{1/}

It is also alleged that Nob Hill has been providing service under its charter-party authority for seven years; that its personnel have extensive experience in the transportation of passengers, and consequently, Nob Hill has the expertise; and that it has the financial resources to operate as proposed.

Nob Hill's present equipment includes three Checker buses which accommodate 12 passengers, and two vans which will accommodate handicapped passengers. It also operates 12 newer model Cadillac limousines. All of the equipment will be committed to service the subject certificate.

To additionally serve the public, Nob Hill asserts it has made arrangements through the Handicapped Travelers Association, Inc., 1291 East Hillside Boulevard, Foster City, California 94404, to transport handicapped persons who desire to participate in the tours set forth. To accomplish this purpose, Nob Hill initially proposed to operate two modified vans which can accommodate handicapped persons and their necessary equipment. It is alleged that Nob Hill's drivers are specially trained for this purpose and have received instructions from the personnel of the Handicapped Travelers Association, Inc. on the speciality travel needs of its members.

^{1/} By Application No. 57371 A.C. Cal Spanish Tour Service, a partnership, and Agentours, Inc., a corporation, seek authority to transfer Passenger Stage Certificate No. PSC-906 for the sum of \$35,000. Hearing on the proposed transfer was held October 20, 1977 at San Francisco before ALJ Donald C. Meaney.

Nob Hill also states that the grant of authority sought will not constitute a major action having a significant effect upon the quality of the human environment.

First, with respect to the protestants' argument that the transfer should not be authorized because there was no need for the service, we have previously held that:

"The primary question to be determined in a transfer proceeding is whether the proposed transfer would be adverse to the public interest. Questions relating to public convenience and necessity usually are not relevant to the transfer proceeding because they were determined in the proceeding in which the certificate was granted. (Frank Nolan Drayage Co., 61 Cal PUC 160, C. J. Morrissey, 61 Cal PUC 567.)"

We believe that this determination is correct, in that an argument is nothing more than a collateral attack on the Commission decision which authorized the rights.

In its brief filed June 19, 1978 Gray Line argues that the transfer should not be approved for the following reasons. First, Section 820 of the Public Utilities Code precludes the Commission from authorizing the capitalization of any franchise or permit in excess of the amount actually paid^{2/} and the purchase price of \$25,000 will weaken the ability of Nob Hill to render adequate service to the public. Second, the sale does not include any tangible property but is exclusively for the certificate. Third, the financial information submitted by the purchaser is practically worthless because it omits any officer salaries and other costs such as dispatch, and office salaries are suspiciously low. Finally, Jenkins appears to be in the business of trading certificates since his corporation is the applicant to purchase the certificate held

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2/ ~~Jenkins testified that he paid an application fee of \$500 for the passenger stage certificate.~~

by Victor Meneses, dba A.C. Spanish Cal., which is a passenger stage certificate to provide foreign language sightseeing tours in San Francisco.

Gray Line correctly points out that the Commission does not usually concern itself with the price paid for operating rights since the price cannot be capitalized in excess of the amount actually paid the State. Notwithstanding the amount of the purchase price, in this instance we reject the argument of Gray Line that the "high price" will so weaken the applicant that it will be unable to render adequate service. We believe the record and testimony establishes the financial ability of Nob Hill to consummate the transfer and conduct the tours set forth in the certificate.

We conclude the application should be granted.

Findings

1. Jenkins is the holder of a passenger stage certificate of public convenience and necessity granted by Commission Decision No. 72814 dated July 25, 1967 in Application No. 49204.

2. Jenkins has operated under his certificate continuously since its issuance with emphasis and concentration on foreign language tours.

3. Nob Hill is a California corporation providing charter-party service under Charter-Party Certificate No. TCP 582 effective June 15, 1976.

4. Nob Hill operates three Checker cabs, two vans for handicapped persons, and 12 Cadillac limousines committed to service the passenger stage certificate.

5. Nob Hill presently employs some 17 persons with some employees specially trained to handle handicapped persons.

6. By Application No. 57371 A.C. Cal Spanish Tour Service seeks to transfer Passenger Stage Certificate No. PSC-906 to Agentours, Inc. Agentours, Inc. is owned by Jenkins.

7. By this application Jenkins seeks to transfer to Nob Hill, for the payment of \$25,000, the passenger stage certificate of public convenience and necessity issued July 25, 1967 by Decision No. 72814 in Application No. 49204. The sale does not include the transfer of any tangible property.

8. Nob Hill has the ability, including financial ability, to conduct operations under the operating rights here involved.

9. The transfer of Jenkins' certificate of public convenience and necessity to operate as a passenger stage corporation to Nob Hill would not be adverse to the public interest.

10. It can be seen with certainty that there is no possibility that the transfer of the certificate in question may have a significant effect on the environment.

Based upon the foregoing, the Commission concludes that the application should be granted to the extent provided in the following order. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Jenkins and the issuance of a certificate in appendix form to Nob Hill.

Nob Hill Limousine and Tours, Ltd. is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. On or before October 31, 1978, John P. Jenkins may sell and transfer the operative rights (and property) referred to in the application to Nob Hill Limousine and Tours, Ltd.

2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

3. Purchaser shall amend or reissue the tariffs and timetables on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the rates and rules. The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the transfer. The tariff and timetable filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 79-Series and 98-Series. Failure to comply with the provisions of General Orders Nos. 79-Series and 98-Series may result in a cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the transfer, the purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted Nob Hill Limousine and Tours, Ltd., authorizing it to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the points and over the routes set forth in Appendix A of this decision.

6. The certificate of public convenience and necessity granted by Decision No. 72814 dated July 25, 1967 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. Purchaser shall comply with the safety rules administered by the California Highway Patrol, the rules and regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 101-Series.

8. Purchaser shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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

Dated at San Francisco, California, this 3rd day of OCTOBER, 1978.

Robert Bateman
President
William J. ...
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Commissioners

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Appendix A

NOB HILL LIMOUSINE AND TOURS, LTD.
(a corporation)

Original Title Page

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
TO OPERATE
AS A PASSENGER STAGE CORPORATION

PSC - 808

Showing passenger stage operative rights, restrictions, limitations, exceptions and privileges applicable thereto.

All changes and amendments as authorized by the Public Utilities Commission of the State of California will be made as revised pages or added original pages.

Issued under authority of Decision No. 89470, dated OCT 3 1978,
of the Public Utilities Commission of the State of California, in Application
No. 57537.

SECTION 2. SERVICE AREA

Passengers may be picked up and discharged at any point within the following described area in San Mateo County subject to local traffic regulations:

Commencing at the intersection of the easterly prolongation of Grand Avenue (South San Francisco) with the San Francisco Bay; thence along said prolongation, Grand Avenue, Chestnut Avenue, El Camino Real, Ralston Avenue (Belmont) and the easterly prolongation of Ralston Avenue to the San Francisco Bay, including points westerly of and within one mile of El Camino Real.

SECTION 3. TOUR DESCRIPTIONS

No. 1 SAN FRANCISCO CITY TOUR

Visit all or any points of general or historical interest in the City of San Francisco.

No. 2 MUIR WOODS - SAUSALITO

Through the City of San Francisco across the Golden Gate Bridge with stopovers at Sausalito and Muir Woods.

No. 3 SAN FRANCISCO EVENING DINNER TOUR

Visit Chinatown, Fisherman's Wharf, Telegraph Hill, North Beach and crossing of Bay Bridge to Treasure Island.

No. 4 NIGHT CLUB PARTY TOUR

Visit various San Francisco Night Clubs and Hotels for the purpose of attending floor shows.