

Decision No. 89530 OCT 17 1978**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of }
 SANDERS BUS LINE, INC. for a permit }
 to operate a Class "B" charter-party }
 carrier of passengers, Oakland. }
 (File No. TCP-53-B) }

Application No. 57842
 (Filed January 31, 1978)

Theodore T. Sanders, Attorney at Law, for
 Sanders Bus Line, Inc., applicant.
Irwin J. Borof, Attorney at Law, for Peerless
 Stages, Inc., and Andre Guiton dba Guiton
 Charter Service; Alan T. Smith, for Falcon
 Charter Service; and Anthony P. Carr, Attorney
 at Law, for Greyhound Lines, Inc.; protestants.
Thomas J. Clausen, for the Commission staff.

O P I N I O N

By its application Sanders Bus Line, Inc. (Sanders) seeks a Class "B" certificate to operate as a charter-party carrier of passengers. One day of hearing was held June 1, 1978 in San Francisco before Administrative Law Judge Baer and the matter was submitted subject to the receipt of a late-filed exhibit.

The application was protested by Falcon Charter Service (Falcon), Peerless Stages, Inc. (Peerless), Andre Guiton (Guiton), dba Guiton Charter Service, and Greyhound Lines, Inc. (Greyhound). Falcon, however, withdrew its protest during the hearing when it was stipulated that, if the Commission were to grant any authority to Sanders, such authority would be limited to charters originating within the city limits of Oakland, Alameda, Berkeley, Piedmont, San Leandro, Hayward, and Castro Valley.^{1/}

Attempts by other protestants to reach agreement with Sanders as to further certificate restrictions failed, however. Although Sanders was willing to limit its charter operations to the

^{1/} As to Hayward and Castro Valley, it was further stipulated that charters originating in these cities must involve handicapped persons.

use of school bus equipment, it was not willing to restrict its customers to groups including some handicapped persons, nor was it willing to limit its operations to the use of 16-passenger vehicles only.

Applicant's Evidence

Sanders is a California corporation engaged in the provision of bus services for handicapped school children pursuant to a contract with the Oakland Unified School District. Sanders also provides other transportation services for the District. Such operations are exempt from the provisions of the Passenger Charter-party Carriers' Act (Public Utilities Code, Section 5353(b)).

In providing transportation services for school children, Sanders operates 14 school buses of between 32- and 44-passenger capacity and 27 vans of up to 16-passenger capacity. Some vans are specially equipped to carry children in wheelchairs.

On May 31, 1978, the Commission, pursuant to Public Utilities Code Section 5384(a),^{2/} issued to Sanders charter-party permit No. TCP-992-P. This permit authorizes charter operations within a 50-mile radius of Sanders' home terminal at 850 5th Avenue, Oakland. However, such authority would not allow charter operations to points outside of a 50-mile radius, such as Sacramento or Fresno.

Sanders' evidence of public convenience and necessity consisted entirely of the testimony of its president, Theodore T. Sanders, and of its vice president, Jesse L. Sanders, who are brothers.

2/ "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...governmental agencies... Such permits shall be limited to a 50-mile radius of operation from the home terminal."

No documentary evidence was offered, nor were any public witnesses called. Theodore T. Sanders testified that he had received requests for charter service from the United Cerebral Palsy Center on Lincoln Avenue in Oakland, from a group associated with Alameda College seeking transportation for the handicapped, from the High Street Convalescent Hospital, and from the University of California. He also testified that nightclubs known as the End Zone and Apartment C had called seeking transportation to football games. He reported that an administrator from McClymonds High School had inquired about charter service to the Fresno relays. He stated there were other groups which had called, but he could not remember their names. Finally, he related that many of his friends and acquaintances, particularly in Oakland's Black community, knew he operated a bus company and wanted to use his services. In addition, Jesse L. Sanders testified that two church groups, later identified through other testimony as the Perry Temple on Market Street and the Bethel Temple on East 14th Street, had requested service. Sanders is compelled to refuse all such offers of charter business because it lacks operating authority from the Commission.

There was no evidence offered that such persons or groups could not obtain charter bus services from other operators in the area. Sanders' evidence did not suggest that the existing charter-party carriers of passengers serving the greater Oakland area are not providing services which are satisfactory to the Commission and adequate for the public. (Public Utilities Code Section 5375.1)

Protestants' Evidence

Evidence for Peerless was presented by its president, Alex V. Gaeta, and its secretary-treasurer, Ernie Held. Mr. Gaeta testified that Peerless operates as both a passenger stage corporation and as a charter-party carrier, pursuant to a Class A

certificate, No. TCP-18-A; that its passenger stage operations are in the Oakland to Santa Cruz corridor; that its headquarters are in Oakland; that its charter operations subsidize its passenger stage operations; that in 1977 its gross operating revenues were \$1,722,882, two-thirds of which was earned by charter operations; that its net income after taxes was \$9,793; that it operates 16 over-the-road buses with passenger capacities ranging from 41 to 49; that it operates 19 transit buses with passenger capacities ranging from 38 to 53; that it has excess equipment capacity which is available to persons seeking charter bus services in the greater Oakland area; and that if an additional charter carrier is certificated, it will divert substantial charter revenues from Peerless.

Mr. Gaeta also testified that AC Transit offers charter services to the public in the greater Oakland area; that it has a fleet of 900 transit buses; that it has a charter department employing three or four persons; and that its gross revenues from charter operations in fiscal year ending September 30, 1977, were \$700,000.

Mr. Held testified that Peerless had served the handicapped in the Oakland area. He described 20 separate charters during 1978, involving three handicapped groups, the Oakland A's Boosters, the Water's Edge Convalescent Home, and the Alameda County Association for the Mentally Retarded.

A witness for Greyhound testified as to its operations. In addition to its regular routes, Greyhound operates a charter bus service in California pursuant to Class A certificate No. TCP-12-A. Greyhound has 1,752 intercity buses licensed to operate in California with passenger capacities ranging between 38 and 43. These buses are fully equipped with restrooms, air conditioning, reclining seats, public address system, and baggage compartments. Greyhound advertises the availability of its charter service to the public by the use of a brochure (Exhibit 10). It also markets its services specifically to the Black community. Exhibit 11 is a

copy of an ad published in April and May, 1978, in Ebony, Jet, Black Enterprise, and Dawn. It should be noted, however, that this ad is related to regular route service and does not mention charter services. Exhibit 12 for Greyhound describes its charter business originating in Oakland during January and February 1978. The exhibit shows that Greyhound had 10 charters during that period involving 14 buses and 525 passengers, which earned gross revenue of \$9,161.66. Greyhound's Exhibit 13 is a traffic study of Greyhound's charters originating in Alameda, Contra Costa, Marin, San Mateo, Santa Clara, San Francisco, and Napa Counties during February 1978. This five-page exhibit shows 83 separate charters, involving a total of 98 buses and 3,375 passengers, which produced \$60,052.12 in gross revenues. Of these 83 trips, 7 originated from the cities to which Sanders would limit its operations. These 7 trips involved 7 buses and 247 passengers and earned \$6,524.62 in gross revenue, or 11 percent of the charter revenues reported in Exhibit 13.

Testimony for Guiton was presented by Mr. Andre Guiton. Mr. Guiton is a sole proprietor operating out of Oakland. Guiton provides charter services pursuant to a Class B certificate No. TCP-6-B. Guiton operates approximately 65 buses, at least 20 of which are available at all times to supply charter services to the public. Mr. Guiton's clientele are mostly members of the Black and minority communities of Oakland. He introduced the profit and loss statement from his 1977 federal income tax return which showed a net loss of \$56,490. Mr. Guiton further testified that the existing carriers in the Oakland area can handle all the charter business; that there is no necessity for another carrier in the Oakland area; and that the certification of another carrier would have an adverse effect upon his business.

Discussion

It clearly appears from the evidence of the protestants that the city of Oakland and the cities adjacent thereto are adequately served by Greyhound, Peerless, Guiton, and AC Transit. They provide a variety of equipment types and sizes to the public. The equipment pool from which potential charter patrons may draw is 2,752 buses.^{3/} Although many of these pieces of equipment will be substantially dedicated to providing regular route or charter transportation, yet each carrier protestant has excess capacity which can be made available for additional charter business. Moreover, each carrier protestant testified to its willingness and ability to provide services to the handicapped.

Theodore Sanders argued that his company specializes in the transportation of handicapped persons; yet, because he lacks operating authority from the Commission, he could not accept charter business from handicapped groups or any other group. He was unwilling, however, to agree to accept a certificate restricted to the transportation of handicapped persons, stating that it would be uneconomical to stand ready to serve only relatively infrequent handicapped charters; and that in order to provide service to the handicapped, he would need unrestricted authority, so that service to the general public could help support service to the handicapped. No protestant voiced any objection to the grant of a certificate limited to the transportation of groups including handicapped persons.

^{3/} Greyhound 1,752, AC Transit 900, Guiton 65, and Peerless 35.

The Commission would be willing to authorize the issuance of a Class B certificate limited to the transportation of groups which include some handicapped persons. However, Sanders does not request such authority, but has specifically rejected the idea of such a limited certificate.

In our view the record and the law compel us to the following findings, conclusions, and order.

Findings

1. The evidence of public need for the proposed service is minimal.
2. Public convenience and necessity do not require the proposed transportation service.
3. The city of Oakland and the cities contiguous thereto are already served by certificate holders, i.e., Greyhound, Peerless, and Guiton, and by AC Transit.
4. There is no evidence that the services provided by Greyhound, Peerless, and Guiton, and the additional services provided by AC Transit, are inadequate for the public or otherwise unsatisfactory.
5. The services provided by Greyhound, Peerless, and Guiton are adequate for the public.

Conclusions

1. Section 5375 of the Public Utilities Code provides in part:

" . . . 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..."

2. The Commission is not required by law to grant a certificate unless required by public convenience and necessity.

3. Since we have found that public convenience and necessity do not require the proposed transportation service, the certificate should be denied.

O R D E R

IT IS ORDERED that the application for a Class B charter-party certificate is denied.

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

Dated at San Francisco, California, this 17th day of OCTOBER, 1978.

William J. Gannon President
Veronica L. Thompson
Charles J. Gwathmey
Clair T. DeRosa Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.