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ORIGINAL

Decision No. 90069 MAR 13 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:  
Jerry Fortman dba JERRY'S AMBUL-CAB  
SERVICE dba PHYSICIANS AMBUL-CAB  
SERVICE for certificate of public  
convenience and necessity to operate  
an Ambul-Cab passenger service between  
Martinez, Brentwood, and Danville,  
California.

Application No. 56780  
(Filed September 28, 1976;  
amended October 12, 1976)

CITY OF MARTINEZ, a public entity,

Complainant,

vs.

JERRY FORTMAN, doing business as  
PHYSICIANS AMBUL-CAB SERVICE OF  
CONTRA COSTA COUNTY,

Defendant.

Case No. 10125  
(Filed June 21, 1976)

JERRY FORTMAN, dba PHYSICIANS  
AMBUL-CAB SERVICE OF CONTRA COSTA  
COUNTY and a PUC Licensee,

Complainant,

vs.

DICK POMEROY, dba POMEROY AMBULANCES,

Defendant.

Case No. 10197  
(Filed October 29, 1976)

Stephan C. Williams, Attorney at Law, for Jerry Fortman, applicant in A.56780, defendant in C.10125, and complainant in C.10197.  
John E. Waltz, City Attorney, for City of Martinez, complainant in C.10125.  
Richard Wilson Pomeroy, for himself, defendant in C.10197.  
Walter Howell, for Goodhew Ambulance Service, Inc., protestant in A.56780.  
Garv Hursh, Attorney at Law, for California Ambulance Association, and Gregory F. Jilka, Attorney at Law, and Michael E. Mickelberry, for Contra Costa Medical Systems, Inc., dba Michael's Ambulance Service, intervenors.  
Kathleen Nimr, for Nancy C. Fahden, Supervisor, interested party.  
William J. Jennings, Attorney at Law, and Masaru Matsumura, for the Commission staff.

#### C O M M I S S I O N

Both complaints test this Commission's jurisdiction to regulate a certain type of health-related transportation under the Passenger Charter-party Carriers' Act (Sections 5381 et seq., Public Utilities Code). Both Jerry Fortman (Fortman) and Dick Pomeroy (Pomeroy) employ van-type vehicles for nonemergency transportation of persons in wheelchairs or gurneys to and from hospitals, clinics, or doctor's offices for medical care, treatment, or diagnosis. The transportation is on a nonscheduled, prearranged on-call basis; a passenger is normally picked up at the door of his individual residence, rest home, or other facility, and then delivered and picked up at an individual destination for the return trip. Wherever possible, trips are scheduled to allow ride-sharing between passengers having the same or closely located origin or destination. Much of the total revenue for this type of transportation is provided by Medi-Cal programs administered by the California Department of Health.

The jurisdictional question had previously been considered by this Commission in Goodhew Ambulance, Inc. et al. v Medi-cabs (1970) 71 CPUC 293. The Commission there held that the Legislature did not intend that this form of transportation should be regulated as charter-party carriage. After full hearing and submission of both the application and the City's complaint, Administrative Law Judge Gilman issued a Proposed Report which indicated that the language of Sections 5353 and 5359, Public Utilities Code, did not support the conclusion reached in Goodhew, supra. The Report proposed that the Commission should overrule its prior holding and that Fortman's operation should be held to be within the scope of the charter-party carrier permit held by him.

After exceptions and replies to exceptions were filed,<sup>1/</sup> the Legislature adopted, and the Governor signed into law, Senate Bill 1971 (Ch. 1136, Statutes 1978) which amended Public Utilities Code Sections 226 and 5353 to specifically exempt from our jurisdiction the transportation of persons in either passenger stage or charter-party service in "medical transportation vehicles".

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<sup>1/</sup> Because of the potential statewide effects of such a holding, the ALJ permitted the filings of pleadings in the nature of replies and/or exceptions by nonappearances. The following participated without appearing: Robert Russell for the City of Los Angeles; Courtesy Services of San Bernardino; Advisory Committee on Emergency Medical Services; and Hartson's Ambulance Service, Inc.

The vehicles employed in the transportation at issue are not by their nature inherently medical transportation vehicles. Both operations use van-type vehicles which are adaptable to a wide variety of uses. The purpose for which they are employed is, however, clearly medically related. They are used for transportation of persons in wheelchairs or gurneys to and from hospitals, clinics, or doctors' offices for medical care, treatment, or diagnosis. In view of this purpose, we find the transportation at issue to be clearly within the exclusion from our jurisdiction intended by the Legislature in enacting Chapter 1136, Statutes 1978.

Both complaints and the application should accordingly be dismissed for lack of jurisdiction.

Finding

Fortman and Pomeroy employ van-type vehicles for nonemergency transportation of persons in wheelchairs or gurneys to and from hospitals, clinics, or doctors' offices for medical care, treatment, or diagnosis

Conclusions

1. The transportation at issue, described in the finding above, is transportation in medical transportation vehicles.
2. The transportation at issue is not subject to the jurisdiction of the Commission.

O R D E R

IT IS HEREBY ORDERED that:

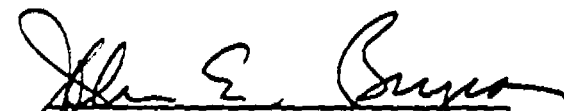
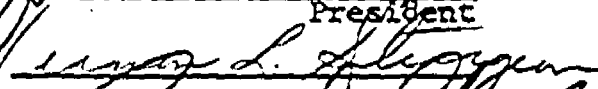

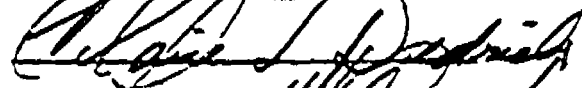

1. Application No. 56780 is dismissed.
2. Cases Nos. 10125 and 10197 are dismissed.

A.56780 et al. dz

3. Copies of this order shall be provided to all appearances and all participants listed in Footnote 1.

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

Dated at San Francisco, California, this 13<sup>th</sup> day of MARCH, 1979.

  
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President  
  
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Commissioners