

APR 24 1978

Decision No. 90230

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of CALIFORNIA SIGHTSEEING TOURS,)
INC., for authority to increase)
certain rates.)

Application No. 57854
(Filed February 8, 1978)

In the matter of CALIFORNIA)
SIGHTSEEING TOURS, INC.,)
Revocation of Certificate.)

Application No. 58370
(Filed September 18, 1978)

Garfield, Tepper & Ashworth, by
Christopher Ashworth, Attorney
at Law, for applicant.
Elmer Sjostrom, Attorney at Law,
for the Commission staff.

O P I N I O N

California Sightseeing Tours, Inc. (Cal-Site), is engaged, among other things, as a passenger stage corporation in the transportation of school children between their homes and 18 schools within the boundaries of the Palos Verdes Peninsula Unified School District. Cal-Site is a corporation organized and operating under the laws of the State of California and is a wholly owned subsidiary of Educational and Recreational Services, Inc. (ERS), which itself, is owned by ARA Services, Inc. (ARA). In A.57854, Cal-Site seeks authority to increase its school bus rates by approximately 50 percent. In A.58370, Cal-Site seeks revocation of its certificates of public convenience and necessity as issued in D.89267 and D.83046. Cal-Site alleges that the transfer of certain commuter

routes to Douglas Bus Lines, Inc., authorized in D.89267, left the transportation of bona fide pupils between their homes and their school in the Palos Verdes Peninsula area as the sole remaining active operation of Cal-Site. Cal-Site alleges that although its certificate contains authority to operate certain other routes for sightseeing, racetrack, and special events, they are all dormant, are not being operated by Cal-Site, and should thus be revoked. Cal-Site further alleges that the revocation of its certificates will not adversely affect the quality of the human environment and that no other carrier will be adversely affected by its request for revocation of its certificates. Public transportation is available in the Palos Verdes Peninsula area.

A public hearing on A.57854 was held in Los Angeles on July 12 and 13, 1978 before Administrative Law Judge William A. Turkish and the matter was submitted pending the submission of certain work papers to the Commission staff, so that the staff could complete and submit its analysis of Cal-Site's request for a fare increase. The submission was set aside following unsuccessful attempts between the staff and Cal-Site to reconcile differences concerning the material to be submitted by Cal-Site and further hearing in the matter was consolidated for hearing with A.58370. The consolidated hearing was heard in Los Angeles on November 20, 1978 and the matters were submitted upon the filing of a late-filed exhibit by Cal-Site's president and concurrent briefs which have been received and considered.

Testifying on behalf of Cal-Site were Angela Garriott, its Harbor City division manager, and James A. Arndt, regional vice president in charge of operations of ARA Transportation Group. Testifying by way of declaration, by stipulation of

counsel, was Mel Sherman, president of Cal-Site. Testifying on behalf of the Commission staff were Ralph Douglas, associate transportation engineer, and Rene Angus, financial examiner. Limited purpose testimony was offered by Ardin L. Larson, assistant business manager of the Palos Verdes Unified School District. Testifying in opposition to the application for revocation of Cal-Site's certificate was Guenther Buerk, city councilman of Rancho Palos Verdes.

Although A.57854 was filed and partially heard prior to the filing of A.58370, the issue presented in A.58370 will be dealt with first as it has a most direct bearing on the disposition of A.57854.

According to witness Arndt, Cal-Site is no longer operating any of the authority granted it except the home-to-school bus operation conducted in the Palos Verdes Peninsula Unified School District area. He testified that all the remaining passenger stage authorities of Cal-Site had either been transferred^{1/} or were entirely dormant.

Witness Arndt testified that Cal-Site also possesses a Class A charter-party certificate, but that it is currently up for sale and no such operations are currently being conducted under said certificate. The witness testified as to the corporate interrelationships of Cal-Site, ERS, and ARA. According to the witness, ARA is divided into four transportation divisions operating in several geographically grouped areas. The western regional division encompasses operations in Hawaii, Los Angeles, and the desert regions of

1/ By D.89267 dated August 22, 1978 the Commission authorized the sale and transfer of certain passenger stage corporation authority from Cal-Site to Douglas Bus Lines.

the southwest United States. Within the western region is an ARA transportation group subdivision known as the "Harbor City Division." The operations of both Cal-Site and ERS have been placed within the Harbor City Division for effective economical utilization of facilities, equipment, and personnel. ERS, the parent of Cal-Site, conducts charter-party operations only under its Class A charter-party certificate as well as Los Angeles City School District regular school and charter operations (which are either exempt from FUC regulation or performed under the Class A charter-party certificate of ERS). Upon cross-examination, the witness testified that although Cal-Site and ERS share the same facilities, administrative personnel, maintenance, and some bus equipment, each corporate entity is charged its individual share of operational costs. The witness acknowledged that ERS had an outstanding certificate of public convenience and necessity to operate as a passenger stage corporation in the San Clemente area; that it was being operated by San Clemente Stage Lines, Inc. under an agency relationship; and that Commission approval had been sought to sell and transfer ERS's certificate and equipment to San Clemente Stage Lines, Inc., in a joint application, A.58381, filed September 25, 1978.^{2/}

Responding to a question as to why the Commission authority, contained in D.83257 dated August 6, 1974, for Cal-Site to transfer its passenger stage corporation certificates to ERS was declined by ERS, the witness testified that at the time

^{2/} By D.89748 dated December 12, 1978, authority was granted to ERS to sell and transfer the operative rights and property referred to in A.58381.

a merger was contemplated but a management decision to cancel merger plans caused ERS to decline the transfer. Responding to questions about the San Francisco and Hayward passenger stage authority granted to Cal-Site by D.83046 in A.54806, the witness stated that he was not responsible for northern California but that, to his knowledge, there was no passenger stage corporation operations conducted by Cal-Site in northern California. Because neither the witness nor counsel was aware of the contents of D.83046 or could offer any testimony concerning it, leave was granted to Cal-Site's counsel, stipulated to by staff counsel, to submit a late-submitted testimonial declaration from Cal-Site's president concerning the authority contained in D.83046 along with a motion that should the evidence show that Cal-Site never conducted such operation as authorized in D.83046 or that the operation was dormant, the application to revoke its passenger stage authority include the authority granted in D.83046 so as to conform to proof. The motion was granted, absent any objection by staff counsel.

The declaration of Mel J. Sherman, president of Cal-Site, declares that Cal-Site performs no services of any kind in northern California and that the passenger stage authority authorized by D.83046 has not been operated by Cal-Site or ERS, or any entity connected thereto, for at least two years, based on his own personal knowledge, and that from all information available to him after conducting an inquiry among current and former employees of Cal-Site and ERS, there is no evidence that the operation was ever conducted at all.

Mr. Guenther Buerk, city councilman of Rancho Palos Verdes, testified as a representative of the Palos Verdes Peninsula Transport Committee, an informal committee of council members from the four cities in the Palos Verdes

Peninsula. He protested the revocation of Cal-Site's passenger stage certificates because of the concern with the increase in rates sought by Cal-Site and felt that revocation would not be in the public interest.

Discussion of A.58370

The issue presented herein goes beyond the mere consideration of the request by Cal-Site for revocation of its passenger stage corporation certificates. There appears to be no opposition to the revocation of the passenger stage routes, now long dormant, which are authorized in its certificates. The real issue revolves around Cal-Site's active Palos Verdes Peninsula school bus operation and whether the Commission can continue to exercise regulatory authority over this operation under Public Utilities Code Section 226.^{3/} It is the contention of Cal-Site that since its only operation consists of the transportation of bona fide pupils, it is not a passenger stage corporation as defined in Section 226, and thus, is not amenable to the regulatory jurisdiction of the Public Utilities Commission. In In re Passenger Charter-party Carriers' Act (1963) 60 CPUC 581 we held that under Section 226, carriers "whose operations consist solely in the transportation of bona fide pupils attending an institution of learning between their homes and such institution," are "not required to obtain certificates of

^{3/} Public Utilities Code Section 226, in material part, states as follows: "'Passenger Stage Corporation' includes every corporation or person engaged as a common carrier, for compensation, in the ownership, control, or management of any passenger stage ...except those...whose operations...consist solely in the transportation of bona fide pupils attending an institution of learning between their homes and such institution."

public convenience and necessity regardless of whether or not they charge individual fares." The Commission also noted that if such an operator also carried a class of persons other than bona fide pupils, then certification would be required.

The staff position raises no objections to the revocation of Cal-Site's passenger stage authority except for the home-to-school bus operation in the Palos Verdes Peninsula. The staff apparently concedes that Cal-Site conducts absolutely no other passenger stage operations other than the home-to-school transportation of pupils. However, it would have the Commission retain regulatory authority over this operation under the theory that Cal-Site is the alter ego of ERS, its parent corporation, which transports other types of passengers, and thus the school bus operation of Cal-Site should be attributed to ERS and not be exempted from the provisions of Section 226. The staff supports its alter ego doctrine on the fact that Cal-Site is a wholly owned subsidiary of ERS, that both corporations have the same corporate officers, that Cal-Site operates as part of an operating division of ERS,

and that the application, A.54649, for the Palos Verdes school bus service authorized by the Commission in D.82794 was made by ERS, aka Cal-Site.^{4/}

The staff submits that these facts satisfy the conditions for the application of the alter ego doctrine and that Cal-Site should be determined to be the alter ego of ERS,

^{4/} Commission records disclose that the Commission originally granted authority for operation of the Palos Verdes school bus operation to a Dominic A. Mannino, dba M & M Charter Lines, Inc. (M & M), in D.68868 dated April 13, 1965. In D.70743 dated May 24, 1966, the Commission authorized Dominic A. Mannino, to sell certain rights and equipment to M & M. In D.72411 dated May 16, 1967 the Commission assumed regulatory authority over Cal-Site wherein Cal-Site was granted certain passenger stage authority for sightseeing purposes as well as authority to sell and issue all of its stock to Dominic A. Mannino. ERS apparently acquired all the stock in Cal-Site sometime between 1967 and 1969 and in M & M between 1966 and 1969 because on December 4, 1969, in a joint application, authority was sought by Cal-Site and M & M for Cal-Site to acquire all the stock of M & M and the latter to merge into Cal-Site. At the time, ERS owned all the stock of both Cal-Site and M & M. The authority was granted in D.76608, dated December 23, 1969, and a new certificate was issued to Cal-Site, which included all the passenger routes of M & M except for the Palos Verdes school bus operation. On February 8, 1974 ERS, aka Cal-Site, applied for a certificate of public convenience and necessity for the Palos Verdes school bus service in A.54649, giving as its legal name, California Sightseeing Tours, Inc., and authority was granted to Cal-Site in D.82794. In A.54950 dated June 10, 1974 Cal-Site sought authority to transfer its passenger stage bus certificate, which included the Palos Verdes school bus operation, to ERS and, although the sought authority was granted in D.83257, the authority was declined by ERS. (According to testimony, a merger was contemplated between Cal-Site and ERS at the time, but the merger was dropped.)

requiring continued regulatory authority of the school bus operation under Section 226, since ERS maintains active charter-party carrier passenger operations.

The conditions under which a corporate entity may be regarded as the alter ego of an individual or other organization vary according to the circumstances in each case since the doctrine is essentially an equitable one. The original rule which provides a basis for disregarding the existence of a corporation and considering it as being a part of an individual or another organization is: first, that the corporation is not only influenced and governed by that person, but that there is such a unity of interest and ownership that the individuality, or separateness, of such person and corporation has ceased; and second, that the facts are such that an adherence to the fiction of the separate existence of the corporation would, under the particular circumstances, sanction a fraud or promote injustice. (Trans Arrow, Inc. (1963) 61 CPUC 304.) While it is not disputed that Cal-Site is a wholly owned entity of ERS, that Cal-Site and ERS have the same corporate officers, and that Cal-Site operates as part of an operating division of ERS, we previously held that in the case of a wholly owned subsidiary corporation, "control" is not the sole issue upon which the applicability of the alter ego doctrine turns. In the last analysis, the parent corporation exercises whatever control it deems appropriate. (In re Petroleum Pipeline Rates (1964) 62 CPUC 238.) The real issue herein is whether the recognition of the separateness of Cal-Site and ERS would promote fraud and injustice or would be used as an attempt to evade regulation. We cannot find that it would. The evidence and history shows that Cal-Site was not created by ERS for purposes of regulatory

evasion. Cal-Site and ERS were separate corporations with different shareholders and corporate officers at one time engaged in passenger bus operations. Through acquisitions and mergers, ERS acquired Cal-Site as a wholly owned subsidiary. Both corporations sought and were granted certificates of public convenience and necessity for passenger stage bus operations or charter-party carriers of passenger bus permits by this Commission over the years. For some reason unexplained, the authority to transfer and merge all the rights of M & M Charter Lines, Inc., into Cal-Site omitted the Palos Verdes school bus operation in the certificate issued to Cal-Site in 1969. However, ERS, aka Cal-Site, applied for the certificate for such route in 1974 and such authority was granted to Cal-Site. Although the reasons for submitting its application for the school bus certificate under the name of ERS, aka Cal-Site, were not developed fully on the record, testimony indicates that ERS and Cal-Site were contemplating a merger at the time, but this idea was later rejected and the merger never took place. Whatever the reason, we do not view this as any more persuasive to invoke the alter ego doctrine than the other reasons advanced by staff counsel. In all prior applications for operating authority or rate applications we have recognized the separateness of Cal-Site and ERS, and we see no reason to do otherwise now merely because Cal-Site has sold its active operating routes and is left with only its Palos Verdes school bus operation and several long dormant and nonoperating routes. As we interpret Public Utilities Code Section 226, a corporation whose operations consist solely in the transportation of bona fide pupils attending an institution of learning between their homes and such institution is not a passenger stage corporation

and thus is exempt from the regulatory authority of this Commission. "Operations" as that word is used in Section 226 does not include authorized but dormant route authority. It denotes only active operations. Since Section 226 exempts bona fide school bus operations from regulatory control, absent any other operations conducted by a passenger stage corporation, we see no reason not to grant the application of Cal-Site for revocation of its certificates of public convenience and necessity as authorized in D.89267 and D.83046. On the general subject of dormant operating authority, we recently issued Decision No. 89804 in Case No. 10601, Kadletz v Gray Line Tours, dated December 19, 1978, which contains a comprehensive discussion on the subject of abandonment relating to passenger stage operations. That decision found continued voluntary dormancy to be at least a very strong indication of intent to abandon operating authority, and that dormant or essentially abandoned authority should be revoked.

Findings of Fact

1. The routes authorized by the certificates of public convenience and necessity issued to Cal-Site in D.89267, with the exception of route 7, the Palos Verdes Peninsula Unified School District bus operation, have been dormant and not in operation for at least two years.

2. The route authorized by the certificate of public convenience and necessity issued to Cal-Site in D.83046 has been dormant and not in operation for at least two years.

3. The revocation of the certificates of Cal-Site will not have any negative effect on the environment.

4. Cal-Site is not the alter ego of ERS.

5. The only operation being conducted by Cal-Site is the transportation of bona fide pupils from their homes to school.

Conclusion

The certificates of public convenience and necessity issued to Cal-Site in D.89267 and D.83046 should be revoked as the routes

authorized in said certificates, with the exception of the transportation of bona fide pupils, have been dormant for at least two years and are considered abandoned.

Application No. 57854

Inasmuch as the order which follows will revoke the certificates of public convenience and necessity held by Cal-Site based on the findings and conclusions of A-38370 above, and inasmuch as the operation of the Palos Verdes Peninsula Unified School District is the only operation being conducted by Cal-Site, such operation is exempt from the regulatory authority of this Commission pursuant to Public Utilities Code Section 226 and A.57854 should, therefore, be dismissed.

O R D E R

IT IS ORDERED that:

1. The certificate of public convenience and necessity granted to California Sightseeing Tours, Inc. by Decision No. 89267, in appendix form, as Appendix A (PSC-801) attached thereto, is hereby revoked.
2. The certificate of public convenience and necessity granted to California Sightseeing Tours, Inc. by Decision No. 83046, in appendix form, as Appendix B attached thereto, is hereby revoked.
3. All tariffs and timetables presently on file with this Commission in the name of California Sightseeing Tours, Inc. are canceled.

4. Application No. 57854 is dismissed.

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

Dated at San Francisco, California, this 24th day of APRIL, 1979.

John E. Byron
President
George L. Sturgeon
Charles W. Stone
Alan J. Sedgwick
James H. King
Commissioners