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ORIGINAL

Decision No. 00233 APR 24 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
GOLDEN STATE LIMOUSINE, INC., a
California corporation, for authority
to acquire a passenger stage corpora-
tion certificate from AIRLINE LIMOUSINE
SERVICE, INC., and to issue stock.

Application No. 58395
(Filed October 4, 1978)

Handler, Baker & Greene, by Daniel Baker and
Walter Walker, Attorneys at Law, for Golden
State Limousine, Inc., and Airline Limousine
Service, Inc., applicants.

Sally Morgan Spencer, Attorney at Law, for
Clifford Spencer; and Patrick H. Kelley,
Attorney at Law, for Ralph R. Renma;
protestants.

Masaru Matsumura, for the Commission staff.

O P I N I O N

By this application Golden State Limousine, Inc.
(Golden State) proposes to acquire the certificate of Airline
Limousine Service, Inc. (Air-line) and seeks authority to issue stock.

Golden State is a California corporation newly formed
for the purpose of acquiring the certificate of Airline and perform-
ing service under that authority which will commence as soon as such
certificate is transferred. Airline is a California corporation
which presently operates as a passenger stage corporation pursuant
to a certificate of public convenience and necessity issued by this
Commission in Decision No. 85255 dated December 16, 1975 in
Application No. 55458. Airline transports passengers and their baggage
between points in the counties of Alameda, San Mateo, and Santa
Clara, on the one hand, and San Francisco International Airport,
Oakland International Airport, and San Jose Municipal Airport, on the
other hand.

M. Eloise Brown, president of Golden State, has made a written offer to Airline to purchase its certificate of public convenience and necessity for \$16,000 in cash, which Airline has accepted. The transaction is to take place when this Commission authorizes the transfer. The purchase price of \$16,000 has been placed in escrow until the agreement is consummated. ✓

In support of the transfer, the application notes that Airline is in poor financial condition and has been unable to comply with the requirements of the Commission. Airline has not filed annual reports for at least two years, and its authority was suspended in early 1978 for failure to maintain adequate liability insurance. The authority has since been reinstated. Airline was also ordered to cease and desist the use of unauthorized and fictitious names and PSC numbers.

The application asserts that Golden State "will be operated by a group of experienced and highly competent motor carrier professionals". Brief resumes of these persons are attached to the application as Exhibit "G".^{1/} The company is also adequately financed. A pro forma balance sheet, showing the assets and liabilities to be transferred to the corporation, is set forth below.

<u>Assets</u>	
Cash on hand	\$26,000
Motor vehicles	23,500
Communication equipment	21,234
Total assets	<u>70,734</u>
<u>Liabilities and Equity</u>	
Contract obligation	\$19,000
Stockholders' equity	<u>51,734</u>
Total liabilities and equity	70,734

^{1/} Inez Howard has been substituted for Brian K. Willson, who is no longer associated with Golden State. She will serve as a director and as a vice-president.

Golden State presently has available 11 vehicles for passenger service, and will purchase more vehicles if the business requires it.

Golden State also requests authorization to issue 51,500 shares of capital stock to M. Eloise Brown in exchange for the assets shown above.

The application requested that the Commission issue an ex parte decision granting the authority sought. However, on November 2, 1978, the Commission received a copy of a letter from an attorney for Ralph R. Renna (Renna) to an attorney for Airline, which demanded that Airline cease its efforts to transfer the certificate to Golden State. This demand was based upon the argument that such a transfer was in violation of a contract and was, in addition, a fraudulent conveyance.

At the suggestion of Golden State's attorney a prehearing conference was held on January 18, 1979. Two protestants appeared at the prehearing conference and requested that the application be heard. The first of the protestants was Sally Morgan Spencer, attorney at law, appearing for her father Clifford Spencer, a stockholder and former president of Airline. This protest was subsequently withdrawn. The second protestant was Renna. He claims a contractual interest in the certificate with which this application is concerned. It should be noted, however, that one cannot obtain an ownership or security interest in a certificate of public convenience and necessity without the authority of the Commission. (Public Utilities Code Sections 851 and 1031.)

One day of hearing was held on January 25, 1979, before Administrative Law Judge Robert T. Baer. Golden State introduced its application into evidence (Exhibit 1) together with a copy of the certificate (Exhibit 2), a revised equipment list (Exhibit 3), and a copy of a letter dated October 26, 1978, (Exhibit 4) indicating a change of principal place of business to 1055 Elsie Mae Drive, Boulder Creek, California 95006, the home of Mrs. M. Eloise Brown,

president and, prospectively, sole stockholder of Golden State. Mrs. Brown also testified concerning Golden State's anticipated operations, revenues, expenses, equipment, organization, and facilities.

Protestant Renna limited his participation in the proceeding to cross-examination of Mrs. Brown, examination of Victor Long^{2/} under Evidence Code Section 776, and argument. Renna's cross-examination of Mrs. Brown was intended to demonstrate her lack of qualifications to run a passenger stage corporation. While Mrs. Brown has admittedly no experience in passenger stage operations, she has had successful business experience, and demonstrated on the witness stand a thorough understanding of the present operations of Airline and its overhead and revenues. She also testified that she has assets of \$70,000 which she could make available to the corporation should it need additional financing.

Cross-examination of Mr. Long (as an adverse witness) by Renna under Evidence Code Section 776 explored the background of Mrs. Brown's offer and Airline's acceptance of the offer, to purchase Airline's certificate. On August 29, 1978, a special meeting of Airline's stockholders was held. Mrs. Brown's offer, dated August 29, 1978, to purchase Airline's certificate for \$16,000 was read and a resolution to accept the offer was passed. The minutes of the meeting and the testimony of Mr. Long indicate that there are 64 outstanding shares of Airline held by six stockholders. The motion to accept Mrs. Brown's offer was approved by a majority of the outstanding

^{2/} Victor Long is a stockholder of Airline and its acting president. He is also a vice president of Golden State, former husband of M. Eloise Brown, its president, and father of George L. Long, its secretary.

shares.^{3/} Although Renna suggested that there were improprieties connected with the stockholders meeting and the sale itself, none were demonstrated.

At the end of Airline's evidentiary presentation, Renna moved that the application be denied for failure of Golden State to comply with Rules 33, 35, 36, and 37. The motion was taken under submission.

Renna renewed his motion in his closing argument. Renna first observed that Golden State had failed to comply with Rule 33(b), which requires that applications under Sections 816 to 830 of the Public Utilities Code shall allege the "amount and kind of stock...which applicant desires to issue, and, if preferred, the nature and extent of the preference..."

The evidence shows that Golden State, upon obtaining Commission authorization, will issue 51,500 shares of capital stock to M. Eloise Brown in exchange for cash of \$26,000 and assets valued at \$25,500. Mrs. Brown will be the sole stockholder. Under the circumstances it may be inferred that Golden State intends to issue a single class of common stock with par value of \$1.00. The Commission concludes that Golden State has substantially complied with Rule 33(b).

^{3/} George Makare, 9 shares; Phil Wheeler, 8 shares; and Victor Long, 8 shares (and 8 shares as proxy for Arthur Strawn) voted in favor of the sale. Donald Beaupre, 8 shares, was absent, and Clifford Spencer, 23 shares, apparently voted against the proposal. He resigned as president immediately after the vote, effective at midnight on August 29, 1978.

Renna also contends that Golden State has not alleged or proved the "purposes for which the securities are to be issued", as required by Rule 33(c)(1), in that it has not described in detail the property it is acquiring by the issuance of stock, the consideration to be paid for such property, or the method of arriving at the amount.

The application at page seven indicates that the property to be transferred to the corporation in exchange for stock is \$26,000 in cash, \$16,000 of which will be paid to Airline for the certificate, vehicles worth \$23,500 (two 1977 Cadillacs, one a limousine) and radio equipment with a value of \$21,234, less contracts payable of \$19,000. The information required by Rule 33(c)(1) would be especially significant for utilities which calculate their rates using a depreciated rate base. But even in such cases the cost of the operating authority would not be included in rate base but only the historical cost of the physical assets. The information provided is sufficient for the purposes of a transfer of a passenger stage certificate and Golden State has substantially complied with Rule 33(c)(1).

Renna further contends that Golden State has not complied with Rule 35(b) by failing to show Airline's book cost of the certificate. The primary purpose of the requirement of Rule 35(b) is to insure that in a transfer proceeding, utility property continues to be carried on the books of the transferee utility at its historical cost. Where operative rights are concerned neither the transferor nor the transferee utility is allowed to capitalize the cost of acquiring such rights. That cost does not enter into the ratemaking process. Having protected the public interest by insuring the exclusion of such costs in ratemaking, the Commission has done its primary duty in a transfer

proceeding. The Commission concludes that Golden State has substantially complied with Rule 35(b)^{4/}

It is also argued by Renna that no financial statements of Airline, either balance sheets or income statements, are attached to the application or in evidence, as required by Rule 36. It is clear from the evidence, however, that Airline has had a checkered financial history. When Clifford Spencer resigned he took all the vehicles used by Airline. Since that time it has operated using vehicles leased from Mrs. Brown. Moreover, the acting president of Airline, Victor Long, did not have access to the records of the corporation prior to August 30, 1978, when he took over the management of the firm. He testified that the only records he could get together were for the period since August 30, 1978. Although the record is not certain on this point, it appears that the company records for periods prior to August 30, 1978, may be in the possession of Clifford Spencer, the former president.

In Decision No. 85255 dated December 16, 1975, in Application No. 55458, the Commission stated at page 4:

"In an operative rights transfer proceeding, the Commission is concerned with the question whether such transfer would be consistent with the public interest...

"The words 'public interest' relate to a question of good faith, ability to continue the operation, sufficiency of equipment, financial ability, or a willingness to abide by the law and Commission rules."

^{4/} The Commission takes official notice that in Decision No. 85255 dated December 16, 1975 in Application No. 55458 it was recited at page 2 that Airline purchased the subject certificate for \$10,000.

Thus, the main concern in a transfer proceeding is the financial ability and qualifications of the transferee not the transferor's financial condition. We conclude that the record contains sufficient data on Golden State's financial condition and that the missing financial statements of Airline do not necessitate denial of the application.

Renna asserts that Golden State has not complied with Rule 37(a), in that its application does not show the "territory or points served, the nature of the service, [or] the effect of the transaction upon the present operation or rights of the applicant carrier...." It is clear that the territory and points served will continue to be those specified in the certificate; that the nature of the service is and will be an on-call transportation by limousine or luxury automobile at per capita rates, and that the effect of the transaction will be that Airline will have no further operating authority and that Golden State will operate in its place and stead.

Renna also argues that the application does not show the names of all common carriers with which the proposed service is likely to compete. (Rule 37(a).) This requirement is primarily for applicants seeking new operating authority. Where existing competitive relationships will be unaffected, as in a simple transfer application such as this one, the applicant may be excused from complying with this portion of Rule 37(a), or the portion requiring the mailing of a copy of the application to potential competitors.

Renna argues that the acceptance by Airline's stockholders ✓ of Mrs. Brown's offer to purchase the certificate is defective and that therefore the Commission lacks jurisdiction to authorize the transfer. Renna has not adduced any evidence that would suggest that the acceptance of the offer was defective.

Finally, Renna argues that the transfer of the certificate will leave Airline a corporate shell, empty of valuable assets and unable to pay its creditors. Renna claims to be one of such creditors. It is not the role of the Commission to enforce the rights of creditors. Renna's cause of action based upon contract is the subject of Action No. 415557 in the Santa Clara County Superior Court. The Commission should not allow itself to be used to adjudicate claims that are the subject of a Superior Court proceeding.

Findings

1. There is no evidence which would suggest that the acceptance by Airline's stockholders of the offer of M. Eloise Brown to purchase Passenger Stage Certificate No. 978 for \$16,000 was in any way defective.

2. The violations by applicants of the Commission's Rules of Practice and Procedure alleged by Renna are insubstantial and do not constitute sufficient grounds to deny this application.

3. Golden State has the ability to continue the operation now run by Airline, has sufficient equipment to operate, has the requisite financial ability, and is willing to abide by the law and Commission rules.

4. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions

1. The proposed sale and transfer would not be adverse to the public interest and should be authorized.

2. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Airline and the issuance of a certificate in appendix form to Golden State.

3. Golden State 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 after the effective date hereof, Airline Limousine Service, Inc. may sell and transfer the operative right referred to in the application to Golden State Limousine, Inc.

2. Golden State Limousine, Inc., on or after the effective date hereof, may assume the contractual obligation set forth in Exhibit I of the application, and for the purpose specified in this proceeding, may issue 51,500 shares of its capital stock.

3. Golden State Limousine, Inc. shall file with the Commission the report required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

4. Within thirty days after the transfer Golden State Limousine, Inc. shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

5. Golden State Limousine, Inc. 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.

6. On or before the end of the third month after the transfer, Golden State Limousine, Inc. 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 Airline Limousine Service, Inc. for the period commencing with the first day of the current year to and including the effective date of the transfer.

7. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 5, a certificate of public convenience and necessity is granted to Golden State Limousine, Inc. 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.

8. The certificate of public convenience and necessity granted by Decision No. 85255 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 5.

9. Golden State Limousine, Inc. 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.

10. Golden State Limousine, Inc. 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.

11. The authority granted by this order to issue stock will become effective when Golden State Limousine, Inc. has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$103. In all other respects 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
James L. Sturgeon
Richard D. Howell
Clair J. [unclear]
Arnold J. [unclear]
Commissioners

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
94010
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By [Signature]

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Appendix A

GOLDEN STATE LIMOUSINE, INC.
(a corporation)

Original Title Page

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

TO OPERATE AS A PASSENGER STAGE CORPORATION

PSC-978

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. 90233,
dated APR 24 1973, of the Public Utilities
Commission of the State of California, in Application No. 58395.

SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS, AND SPECIFICATIONS.

The certificate hereinafter noted supersedes all operative authority heretofore granted to Golden State Limousine, Inc., a corporation, or its predecessors.

Golden State Limousine, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers and their baggage between points in the counties of Alameda, San Mateo, and Santa Clara, on the one hand, and the San Francisco International Airport, Oakland International Airport, and San Jose Municipal Airport, on the other hand, over the most appropriate routes subject to the following provisions:

- (a) No passengers shall be transported except those having point of origin or destination at one of the following places:
 - 1. San Francisco International Airport.
 - 2. Oakland International Airport.
 - 3. San Jose Municipal Airport.
- (b) When service is rendered it shall be on an "on-call" basis. Tariffs and timetables shall show the conditions under which such "on-call" service shall be operated.
- (c) Service shall be provided with vehicles seating no more than nine passengers.

Issued by California Public Utilities Commission.

Decision No. 90233, Application No. 58395.