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MAY 8 1979

Decision No. 90269

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Invitation Tours for )  
a Certificate of Public Convenience )  
and Necessity to operate a passenger )  
stage service between nine Bay Area )  
counties and selected agricultural )  
points of interest in or adjacent to )  
Stanislaus and San Joaquin Counties.)

Application No. 57825  
(Filed January 20, 1978)

Delvan W. Miles, for applicant.  
Richard M. Hannon, Attorney at Law, for  
Greyhound Lines, Inc., protestant.  
Thomas Enderle, for the Commission staff.

O P I N I O N

This is an application for a certificate of public convenience and necessity authorizing operations as a passenger stage corporation between the San Francisco Bay Area and certain points and places in and about Stanislaus and San Joaquin Counties.<sup>1/</sup> Public hearing was held April 17, 1978 before Administrative Law Judge Thompson at San Francisco and the matter was submitted on memoranda of points and authorities received April 27, 1978.

The Administrative Law Judge requested memoranda of points and authorities because of his opinion that the operations proposed by applicant may not be subject to the Commission's jurisdiction. Applicant filed this application upon the advice of the Commission's staff. Greyhound Lines, Inc., protestant herein, argues that the operations proposed are those requiring a certificate authorizing passenger stage corporation operations. Jurisdiction is always an issue in any proceeding whether or not specifically raised by the parties. We consider that issue.

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<sup>1/</sup> The destination area is slightly larger than the two named counties.

Findings

1. Applicant was organized in January 1978 as a nonprofit corporation whose primary and specific purposes are to acquaint members of the public with the basic industries in American Society and to assist members of the public to gain a better understanding of the basic industries, their interrelationships, and their impact on the individual.

2. Its initial program is one aiming to provide a better understanding of the effect of agriculture upon the individual in urban society and will consist of one-day, two-day, and three-day courses of instruction which will include lectures, audio visual materials, printed literature, and tours by chartered bus to farms, ranches, canneries, nurseries, research facilities, irrigation facilities, almond hullers, crop dusters, or feed mills. A fee will be charged covering the instruction, noontime meals, and, in connection with courses continuing for more than one day, lodging.

3. In connection with the courses of instruction, applicant will pick up those persons who have enrolled at any place in an area included in Sonoma, Napa, Solano, Marin, San Francisco, San Mateo, Santa Clara, Alameda, and Contra Costa Counties, extending generally from Santa Rosa to San Jose. The pickups will be made with a bus chartered at Santa Rosa, San Francisco, or San Jose in any order more convenient at the particular time. After all who have enrolled have boarded, the bus will proceed by any convenient route through the Diablo Range to such points applicant selects as the site for the curricula at that time. The places where the bus may stop for instruction purposes will include some of a wide variety of agricultural points of interest, within and around the counties of San Joaquin and Stanislaus at which some agricultural activity is taking place. Following the course of instruction, those who had enrolled will be returned by applicant to the place where they had been picked up.

4. Applicant has agreements with some 33 farmers, ranchers, and other operators of some facility related to agriculture, under which the operators have obligated themselves to permit applicant to visit, not in excess of twice per year, the facilities of the operators in connection with the course of instruction. The agreements provide that the operator may, with reasonable notice, withdraw its invitation if during a period of maximum activity it believes that the visit may be disruptive of efficient operation of the facility.

5. By this application, applicant seeks a certificate of public convenience and necessity under Section 1032 of the Public Utilities Code authorizing it to operate as a passenger stage corporation for the carriage of persons with a chartered bus in connection with the presentation of its courses of instruction.

6. If its application is granted applicant intends to publish and file a tariff which will describe the bus operations in the course as tours. The descriptions are set forth in Appendix A, attached hereto. Applicant intends to maintain fares for the tours at a sum less than the enrollment fee; said fares will approximate the quotient of dividing the estimated cost of chartering a bus divided by 25 passengers. It is the intention of applicant, however, only to accept persons for the tour who pay the full amount of the enrollment fee.

7. Because the activity at many agricultural points of interest is seasonal, and because of applicant's agreements with operators which provide for two visits in any given year, probably no more than two such tours will cover identical points of interest in any given year.

Discussion

Unless specifically stated otherwise, all references are to sections of the Public Utilities Code. Section 1031 provides that no passenger stage corporation shall operate or cause to be operated any passenger stage over any public highway in this State without first having obtained from the Commission a certificate declaring that public convenience and necessity require such operation. "Passenger stage corporation" is defined in Section 226 as including every corporation or person engaged as a common carrier, for compensation, in the ownership, control, operation, or management of any passenger stage over any public highway in this State between fixed termini or over a regular route. That section also provides for exclusions of certain types of operations not pertinent here. "Passenger stage" is defined in Section 225 to include a motor vehicle used in the transportation of persons, or persons and their baggage or express. The operative language in Section 226 is "every corporation or person engaged...in the ownership, control, operation, or management of any passenger stage..." The terms "as a common carrier", "for compensation", "over any public highway in this state", and "between fixed termini or over a regular route" are phrases of qualification. For purposes in this case we need only consider the latter.

Section 215 provides:

"'Between fixed termini or over a regular route' means the termini or route between or over which any highway common carrier usually or ordinarily operates any auto truck or other self-propelled vehicle, or any passenger stage corporation usually or ordinarily operates any passenger stage, even though there may be departures from such termini or route, whether such departures be periodic or irregular."

Section 1035 provides:

"Whether or not any stage, auto stage, or other motor vehicle is being, or is proposed to be operated as a passenger stage corporation 'between fixed termini or over a regular route' within the meaning of this part is a question of fact, and the finding of the commission thereon is final and is not subject to review. Any act of transporting or attempting to transport any person or persons by stage, auto stage, or other motor vehicle upon a public highway of this State between two or more points not both within the limits of a single city or city and county, where the rate, charge, or fare for such transportation is computed, collected, or demanded on an individual fare basis, shall be presumed to be an act of operating as a passenger stage corporation within the meaning of this part."

It is the last sentence of Section 1035 that is responsible for what appears to be a widely held opinion that any enterprise that involves carrying a group of persons in a motor vehicle where the persons individually pay money to the entrepreneur is a passenger stage corporation. That sentence provides a rebuttable presumption, nothing more.<sup>2/</sup> As is specifically stated in the prior sentence, the matter of the operation between fixed termini or over a regular route is a question of fact. It is a fact which is to be determined from all of the evidence; and the Commission's finding is not subject to judicial review.

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2/ A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption. (Evidence Code Section 602.) A rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden of proof. (Evidence Code Section 601.)

Section 215 means exactly what it states; however, there appears to be a tendency to read into it more than it provides. Fixed termini means nothing more than the particular points or places that a common carrier holds itself out to board and/or disembark any passenger who desires to utilize its service to the exclusion of other points and places. A practical illustration is to consider a passenger at Palo Alto desiring air transportation to Eureka; he would not consider PSA, Air California, American Airlines, or TWA because they do not go to Eureka. He would find that Hughes Airwest serves Eureka but in order to use that line he would have to present himself at San Francisco International Airport. Regular route means nothing more than the particular route over which a common carrier holds itself out to the public to operate. One illustration is a sightseeing tour where the passenger by payment of a fare may view whatever sights there may be on the specified route. Another illustration is the passenger stage in some rural areas that operates over a particular route to the exclusion of others and will board any passenger that flags it down on that route and permit him to disembark at any place along that route. The fixed termini or regular routes of a passenger stage corporation are the termini between which, or the routes over which, the carrier ordinarily transports passengers.

The relationship between a passenger stage corporation and its passenger is in contract. It holds itself out to the public to contract with anyone to transport passengers over its line provided the person complies with its tariff conditions (such as payment of fare and tendering himself at the specified places on its line). The contract is entered into upon the passenger meeting those conditions and the common carrier is liable for any breach thereof.

We will now rephrase the operative language in Section 226, incorporating the definitions in Sections 225 and 215, in terms of an offer to contract and compare it with applicant's offer with respect to its proposed operation. The reason why applicant's proposed operations will not be those of a passenger stage corporation should immediately become apparent.

A passenger stage corporation is one who offers to the public to enter into a contract of carriage to transport a person by motor vehicle from a place at which it specifies that it will receive passengers to another place or series of places it specifies it will carry passengers, all of such places being located on a line or route which is usually or ordinarily operated by it any departures therefrom being periodic or irregular.

Applicant will offer to the public to enter into a contract with a person to provide a course of instruction of the effect of agriculture upon the individual in urban society, the fee for the course to include the pickup of the person at any place in a defined area about San Francisco Bay and a return to that place following the course, a noon meal, and in the event of the course being beyond one day, adequate lodging, the furnishing of printed matter related to the course, audio visual presentations, lectures by persons engaged in agricultural related activities, and visits to places involved in agriculture, including, but not limited to, such places as cattle ranches, orchards, canneries, nurseries, research facilities, irrigation facilities, almond hullers, crop dusters, and feed mills. Consider that a person pays applicant \$96 for the two-day course; is he entitled under that contract to be picked up by applicant at the Fairmont Hotel in San Francisco and be transported by motor vehicle to a particular place or particular places in San Joaquin or Stanislaus counties and returned to the Fairmont Hotel? May he demand to be carried to A.B.C. Almond Hullers in Modesto or XYZ Cattle Ranch at French Camp? Obviously not. Would applicant be

in breach of contract if during a course of instruction it did not take the enrolled person to any almond huller in San Joaquin or Stanislaus Counties? Not unless in its offer it stated that it would do so, and its proposal regarding operations indicates that such would not be the case. In connection with the use of a motor vehicle for its course of instruction, it might be maintained that any point in the described San Francisco Bay Area would be a terminus because applicant has held itself out that it would pick up and discharge persons at any point within that area; however, its offer does not include carrying that person to a particular point or place in San Joaquin or Stanislaus Counties - it merely states that the person will be carried to some points of agricultural interest in or around said counties without further particularization. That scarcely is a "fixed terminus".

Greyhound and staff make much of the fact that in the pursuit of applicant's enterprise the chartered bus usually or ordinarily will utilize State Highway 12, State Highway 4, or Interstate Highway 580. That is true because they are the only practical roads through the Mt. Diablo Range between the San Francisco Bay Area and San Joaquin and Stanislaus Counties. The mere traversing of a road does not constitute operations over a regular route. Applicant does not offer any "sightseeing" while traversing those roads through the Mt. Diablo Range; in fact the customer will not know nor really care which highway is to be used. Applicant does not propose to pick up or discharge persons at any points on and along those highways through the range. As far as the public that would use applicant's service is concerned any highway would be as satisfactory as any other highway provided there were to be no resulting interference in connection with the completion of the course of instruction as advertised.

Applicant proposes to engage in the education business, not in the passenger stage business.



Two other points require discussion. If applicant were to receive the certificate it seeks, it would be its intention to publish and file a tariff maintaining fares which are less than the enrollment fee for the course. It is the intention of applicant, however, to accept only those persons who pay the full amount of the enrollment fee. That is an anomaly that could have serious legal consequences. If what applicant proposes to do constitutes transportation of persons as a passenger stage corporation, it must, under Section 486, file a schedule of fares for the "transportation of persons between termini". "Transportation of persons" as used in the Public Utilities Code is defined in Section 208 as including "every service in connection with or incidental to the safety, comfort, or convenience of the person transported and the receipt, carriage, and delivery of such person and his baggage". (Emphasis added.) It is also interesting to contemplate what might occur if applicant did publish a tariff as intended and a customer tendered the "tariff fare" to applicant. If applicant refused the tender and was otherwise able to provide that person "passage on the tour", it could be subject to liability for damages as a common carrier. On the other hand, if applicant accepted the tender, what portion of the course of instruction would not be available to the customer? Applicant could not blindfold the customer nor plug his ears.

In its memoranda of points and authorities Greyhound cites Application of David W. Dean, D.84763 in A.55636 (1975 unreported), and C.F. Stahl, et al. (1965) 64 CPUC 405 in support of its argument that applicant's proposed operations are those of a passenger stage corporation. In both cases the carrier in its holding out to the public announced with particularity the point or points it regularly serves and to which the passenger would be carried. We quote Dean (at mimeo. page 3), "The brochure in Exhibit 1 sets out in detail the itinerary of the proposed tour and provides that there could be slight variations in the itinerary depending upon which wineries were

in production and the particular interests of the participants. The witness explained, however, that each tour would be substantially as shown in the brochure." In Stahl the operation in question was from in front of a particular grocery store in San Ramon to a particular skate arena in Hayward on certain evenings during the week and return transportation several hours later. The operations in the cited cases bear little resemblance to those proposed by applicant. ✓

Additional Finding

8. Applicant does not propose to engage, as a common carrier, for compensation, in the ownership, control, operation, or management of any passenger stage over any public highway in this State between fixed termini or over a regular route.

Conclusions

1. In the conduct of its proposed enterprise applicant will not be a passenger stage corporation as defined in Section 226.

2. In the conduct of its proposed enterprise applicant is not required to obtain from the Commission a certificate declaring that public convenience and necessity require such operation pursuant to Section 1031.

3. The application should be dismissed. ✓

ORDER

IT IS ORDERED that the above-entitled application is dismissed. ✓

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

Dated at San Francisco, California, this 8<sup>th</sup> day of MAY, 1979.

John E. Gynor  
President  
Norman L. Sturgeon

[Signature]  
[Signature]  
Commissioners

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

Proposed Tours and Individual Fares

Two-Day Tours:

First Day - Each tour will originate in San Francisco, San Jose, or Santa Rosa and proceed via the most appropriate routing by Vallejo, San Rafael, Oakland, or San Jose as indicated in Exhibit A with one or more pickups enroute to the day's tour of a variety of agricultural points of interest,\* meals and lodging predominately in the Stanislaus and/or San Joaquin Counties.

Second Day - A continuing of the tour to other agricultural points of interest\* predominately in San Joaquin and/or Stanislaus Counties and returning to San Francisco, San Jose, or Santa Rosa in the evening via the route of the previous day.

About ten tours are anticipated annually.

Proposed individual, adult, round-trip fare....\$97.00.

Children 8-16 years of age, when accompanied by an adult....\$69.00.

From Santa Rosa, adult and children, add \$4.50 each.

From Petaluma, adult and children, add \$3.50 each.

From San Rafael, Novato, and Vallejo, adult and children, add \$2.50 each.

Above fares exclude two meals and lodging in an intended package fare.

Three-Day Tours:

An expanded program of the two-day tours with the same points of origin, routing, and pickup points, proceeding to the San Joaquin/Stanislaus area specified in Exhibit A for three complete days experiencing agricultural operations\* and issues, returning at the end of the third day via the routing of the first day.

About three tours are anticipated each year, beginning in the summer of 1979.

An appropriate tariff will be filed early in 1979.

One-Day Tours:

With the same points of origin, routing, and pickup points as the two- and three-day tours, this tour would visit several agricultural points of interest within the same area as specified in Exhibit A. Return that evening would be via the morning's pickup points to the original point of origin.

Initiation of service is intended for early 1979 with the submission of a tariff in the fall of 1978.

\* Agricultural or agriculturally related points of interest would include some of the following, but not limited to:

cattle ranches  
orchards  
canneries

nurseries  
research facilities  
irrigation facilities

almond hullers  
crop dusters  
feed mills