

ORIGINAL

Decision No. 90271 MAY 8 1979.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of DALE BRATTEN, an individual
dba CHARTER-A-RIDE, for a permit to operate
as a charter-party carrier of passengers,
Lennox, California. (TCP-927-P)

Application No. 57708
(Filed November 23, 1977)

Application of GEORGE WARREN ENGLISH, an
individual doing business as CHARTER-A-
RIDE, for a charter-party carrier of
passengers permit, Lennox, California.
(TCP-991-P)

Application No. 58035
(Filed May 2, 1978)

David P. Roche, Attorney at Law, for Dale
Bratten and George W. English, applicants.
Michael E. Waldorf, Deputy City Attorney,
for the City of Los Angeles, protestant.
Peter Fairchild, Attorney at Law, for the
Commission staff.

O P I N I O N

By these applications, Dale Bratten (Bratten) and George Warren English (English) seek permits to operate as a charter-party carrier of passengers pursuant to Section 5384^{1/} of the Public Utilities Code (Code). Both Bratten and English propose to operate out of Lennox.

1/ "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 industrial and business firms, governmental agencies and private schools or who only transport agricultural workers to and from farms for compensation or who only conduct transportation services, which are incidental to another business. Such permits shall be limited to a 50-mile radius of operation from the home terminal.

"(b) Carriers using only vehicles under 15-passenger seating capacity and under 7,000 pounds gross weight."

The city of Los Angeles (City) protested Bratten's application on the grounds that Bratten has continued to operate his limousines, some with meters, at the Los Angeles International Airport in the fashion of a taxi, and that recently (October, 1977) multiple charges were filed against his drivers for Vehicle Code violations, Public Utilities Code violations, and Los Angeles Municipal Code violations. The City also protested English's application on the grounds that his application lists exactly the same vehicles as shown on Bratten's application; that the business names for both parties are the same; and that they both use the same business address.

The two applications were consolidated for hearing and, after due notice, public hearings were held on June 7 and 8, and October 23, 1978 in Los Angeles before Administrative Law Judge Bernard A. Peeters. The matters were submitted on the latter date.

The evidence shows that Bratten initially filed for a renewal of his permit, but was advised by the staff that since he was dropping the name of his partner from the renewed permit, it would be necessary for him to file for an entirely new permit whereupon he remitted an additional \$50 to come up to the \$100 filing fee for a new permit. Subsequently, Bratten sold his business and assets to English. Since February 5, 1978, Bratten has had nothing to do with Charter-A-Ride. Bratten orally requested to withdraw Application No. 57708.

English testified that he had purchased Charter-A-Ride's assets from Bratten, namely, the vehicles and some office equipment for \$6,000 on the basis of a verbal agreement. English is to pay Bratten \$200 per month for 30 months under this agreement. After arranging for the transfer of the fictitious name "Charter-A-Ride" from Bratten to English, English began operating the business as of February 5, 1978 under the impression that he has temporary authority to operate as long as he has an application on file for proper operating authority. English has been operating as Charter-A-Ride ever since that time.

Exhibit 3 is a copy of Bratten's permit to operate as a charter-party carrier of passengers under File No. TCP-510-P. It was under this permit that English believed (quite incorrectly) that he had interim or temporary authority to operate until such time as his own application was acted upon plus the fact that he was assigned TCP No. 927-P. On the reverse side of Exhibit 3 there are seven restrictions placed upon the authority, as well as a list of the vehicles authorized to be operated under the permit. Among the restrictions is one which prohibits the holder of the permit to conduct any operations on the property of any airport unless authorized by the airport authority involved excepting delivery and pickup of persons with whom prearranged charter service has been made. English indicated he was familiar with all of the restrictions on the back of the permit. Exhibit 4 is a record of inspection by the Department of Weights and Measures, county of Los Angeles, with respect to the odometers on the vehicles operated by English. Said exhibit shows that odometers on the five listed vehicles were properly sealed on March 13, 1978. Exhibit 5 is a safety compliance report issued by the Department of the California Highway Patrol to English in connection with the vehicles being operated. Said Department of Motor Vehicles' report shows that there were no violations found. Exhibit 13, introduced by the staff, contains the financial statements of English and a list of the vehicles he is operating. While the balance sheet, as of July 5, 1978, shows a net worth of \$5,300.00 and the profit and loss statement for the period February 5, 1978 to July 5, 1978 shows a net income of \$5,362.68, cross-examination developed that there are numerous expense items that are not reflected on these documents. Therefore, the accuracy of the statements is questionable. Exhibit 12 contains the results of the staff's further audit of the waybills of Charter-A-Ride. The staff observes that English has shown some improvement in maintaining records. However, the printed format of his waybill does not permit an accurate assessment of the information required by General Order No. 98-A.

The applicant presented Mrs. Levering, a charter-party carrier of passengers who has had a permit for such operation for the past year and has been in the business for approximately 6 years. She testified that the city of Los Angeles, Department of Airports, does not issue any form of a permit for charter-party carrier of passengers to operate at the Los Angeles International Airport (Exhibits 6 and 7). Mrs. Levering also testified that it is her understanding, and one shared in the permitted limousine industry, that after an application for a charter-party permit is filed and the insurance coverage is obtained, the safety inspection made by the highway patrol, and a TCP number issued, this constituted interim authority from the Commission to operate until the actual permit is issued.

In support of its protest, the City presented three witnesses: a Mr. Atila Fenyes, owner of the Royal Coach Livery, a limousine company, and the chairman of the Southern California Livery Operators Association consisting of 18 members operating approximately 100 limousines in the Southern California area; William D. Grant, a police officer at the Los Angeles International Airport; and Fred H. Coleman, an employee of the Department of Public Utilities and Transportation of the city of Los Angeles.

Mr. Fenyes testified generally as to the operations of a typical limousine company. He stated that basically they operate Cadillacs and that they offer a prestige type of service. Advertising is generally done in the yellow pages and in several charity publications. Usually they operate on the basis of contracts with large companies, such as, with respect to his company, NBC, ABC, ITT, and City Bank of New York. He testified that the photographs in Exhibits 1 and 2 are pictures of Charter-A-Ride vehicles which have the outward appearance of a taxicab rather than a limousine, such as the type Mr. Fenyes operates, or the members of his association operate. ✓

Mr. Fenyes described the operations at Los Angeles International Airport by certain charter-party carriers of passengers using vehicles such as are depicted in the photographs in Exhibits 1 and 2. He pointed out that a legitimate limousine service, such as he and the members of his association operate, does not have illuminated lights on top of the roof as do taxicabs, nor do they have markings on the doors such as indicated in the photographs, thereby confusing the public as to whether they are really dealing with a limousine or a taxicab. He also described how these types of vehicle operators "cruise" the Los Angeles International Airport terminals seeking passengers which the true limousine operator does not do since he already has been engaged prior to coming to the airport. Mr. Fenyes went on to state that his organization has made special arrangements with the airport management whereby the vehicles of the members of his organization will have a place to park temporarily while waiting to pick up their client from an inbound flight. He also stated that this special privilege is open to any legitimate operator and that the purpose of this arrangement is an attempt on the part of the airport authorities to control the traffic problem at the Los Angeles airport posed by "cruising" charter-party carriers.

Mr. Grant's testimony dealt primarily with the fact that during the years 1973 and 1974 he was involved in arresting a number of limousine operators who were violating the City's law in that they were involved in soliciting customers on airport property and thereby blocking traffic contrary to the law. During this period the officer stated that he had made approximately 100 arrests for violation of said laws. During his current assignment at the airport he has made 10 arrests, 7 of which involved limousine operators, and of the 7, 5 convictions were obtained. He also testified that, in the past, he had seen Charter-A-Ride limousines cruising the airport; however, no arrests were made of this operator. Officer Grant explained that a number of limousine operators have been causing a considerable problem at the airport because of the confusion between a true limousine

and a taxicab operator in the mind of the public, and that such limousine operators attempt to solicit customers by cruising on the inner circle at very slow speeds attempting to pick up passengers (which causes a considerable traffic problem and impinges upon the taxicab functions at the airport). He also stated that there is more than an adequate supply of taxicabs at the airport. Officer Grant pointed out that there are approximately 900 taxicabs serving Los Angeles International Airport and that there currently is a list of 14 limousine operators who are authorized to use the special parking area at the airport. He pointed out that a legal limousine operator usually parks in the airport parking lot, crosses to the baggage area, meets his passengers, sees that their baggage is picked up and brought to the curb, then gets the car, curbs it, loads, and leaves.

Mr. Coleman's testimony shows that his duties are primarily involved with taxicab operations and licensing; however, in carrying out these duties he has had occasion to observe the operation of regular limousines and other than regular limousines at the Los Angeles International Airport and surrounding areas. He testified that on June 5, he followed a Charter-A-Ride limousine on the streets around the airport, and the limousine cruised from one hotel to another. He pointed out that there is an overabundance of taxi service at the International Airport, and that his department has received no complaints with respect to inadequate limousine service in terms of availability at the airport, or, for that matter, in the city generally.

The staff presented Mr. Austin, a Transportation Analyst II, who testified that he was familiar with the operation of Charter-A-Ride. He performed some audits of this operator starting on April 21, 1976 and again on March 17, 1978. The first audit was done at the request of the City in order to determine compliance with General Order No. 98-A. Austin's last audit of Charter-A-Ride is summarized in Exhibit 12. This exhibit shows the result of the audit made of

1,063 waybills covering the period February 5 through June 30, 1978. Exhibit 13, introduced by Mr. Austin, contains the financial statement of English, dba Charter-A-Ride. Although Mr. Austin testified that it was his opinion that English was operating unlawfully, he was also of the opinion that English was of the belief, although mistakenly, that he was operating under color of authority (whereby an applicant for renewal of a permit is allowed to continue operating after the permit is expired until such time as official action has been taken upon the renewal application). Mr. Austin recommended that, on the basis of Bratten's request to withdraw his application, it should be dismissed, and that Bratten refrain from any and all activities in the field of providing public transportation service. His recommendation with respect to English is that if English's application is granted, it should contain restrictions which the parties agreed to.

It was stipulated between all parties that the following seven conditions could be imposed on any permit issued to English:

1. This permit shall not authorize the holder to conduct any operation on the property of any airport unless authorized by the airport authority involved, excepting the delivery and pickup of persons (and attendant baggage) with whom prearranged charter service has been made.
2. The driver of a charter-party vehicle on airport property shall, on request of any agent of the airport authority involved, show such agent the record of the requested charter; such record shall comply with General Order No. 98-A, Section 13.01.
3. The permit holder shall maintain all records required by General Order No. 98-A, Part 13.
4. The permit holder shall have inspected and sealed all odometers and speedometers in charter-party vehicles as required by the California Business and Professions Code.

5. The permit holder shall not paint or so decorate with slogans, logos, or any other words or symbols which are not an integral part of the company name vehicles authorized for use under this charter-party carrier permit.
6. There shall be no top light, sign, nor any other appurtenance of any configuration or color on any charter-party vehicle.
7. The permit holder shall not use any taxi meter or similar meter which shows the fare owed by a passenger.

At the close of the hearing the staff recommended that a permit be issued to English with the above agreed upon conditions attached to it.

Discussion

The evidence presented gives us concern regarding the fitness of English to be in the regulated charter-party business. He has operated without Commission authorization and without filing a record of required liability insurance with the Commission, the latter of which jeopardizes the public. Such disregard of the public interest convinces us that the application should not be granted, for, given English's past history, we believe such conduct and disregard for Commission regulations would very likely continue.

Findings of Fact

1. Bratten withdrew Application No. 57708.
2. The staff issued File No. TCP-991-P to English's Application No. 58035.
3. English purchased the physical assets of Charter-A-Ride from Bratten. Among these assets are six vehicles as listed in Exhibit 13.
4. The financial statement of English shows a net worth of \$5,300.00 as of July 5, 1978 and a net income of \$5,362.68 for the period February 5, 1978 to July 5, 1978.

5. The expenses on English's profit and loss statement (Exhibit 13) are grossly understated.

6. A projected summary of earnings for one year, testified to by English, shows that on an estimated revenue of \$60,000 and expenses of \$51,352, a profit of \$8,648 before taxes could be expected from the proposed operation.

7. The staff's criterion for determining financial capability of any applicant for a charter-party carrier permit is that a current balance sheet show a favorable current ratio, i.e., the current assets exceed current liabilities.

8. Exhibit 13 shows English's current assets to be \$1,000 and current liabilities to be \$300.

9. When a charter-party carrier of passengers permit has expired and the operator has applied for renewal of the permit but such renewal has not been authorized prior to the expiration date, the staff considers such applicant to have temporary authority to continue to operate until such time as the Commission acts upon the application. When a person applies for the first time for a charter-party carrier of passengers permit the staff assigns a file number to such application, which does not constitute temporary authority of any kind. In the case of English, File No. TCP-991-P was assigned.

10. Bratten filed his application on November 23, 1977. English filed his application on May 2, 1978.

11. English believed that, in view of the fact both he and Bratten had filed applications for authority to operate as charter-party carrier of passengers, they automatically had temporary authority until such time as the Commission acted thereon. English stated his belief that since he was assigned a TCP-991-P number this constituted the temporary authority to operate.

12. There is no record of liability insurance by English having been filed with this Commission.

Conclusions of Law

1. Bratten's application should be dismissed.

2. The assignment of a file number by the staff to an application for a charter-party carrier of passengers authority does not constitute temporary authority to commence operations.

3. English has been operating in violation of Sections 5371 and 5391 of the Public Utilities Code since February 5, 1978 in that he has been operating as a charter-party carrier of passengers without proper authority and has been conducting such operations without the requisite required liability insurance.

4. The flagrant disregard of the statutory requirements, even though done under an ostensible misunderstanding of the requirements, does not make English reasonably fit to conduct the proposed operations in compliance with the law and orders of this Commission.

5. Application No. 58035 should be denied.

6. Application No. 57708 should be dismissed in accordance with applicant Bratten's oral request.

O R D E R

IT IS ORDERED that:

1. The application of George Warren English, Application No. 58035, an individual doing business as Charter-A-Ride, for a charter-party carrier of passengers permit, Lennox, California, is denied.

2. Application No. 57708 is dismissed.

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

Dated at San Francisco, California, this 8th day of MAY, 1979.

John E. Bryson
President

Clair J. ...
... ..
Commissioners

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