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Decision No. 90341 MAY 22 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
GERALD L. and GAIL MOORE, dba DE LUX
CHARTERS, for a Class B certificate to
operate as charter-party carrier of
passengers, Fresno. (File NO. TCP-66-B)

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) Application No. 58479
(Filed November 20, 1978)

Nicholas N. Dubsick, Attorney at Law,
for applicants.
E. R. Stent, Attorney at Law, for
Greyhound Lines, Inc.; Ron Mc Kercher,
for Sierra Highlands Bus Co., Inc.; and
Bill Duren, for Fortier Stages Ltd.;
protestants.
Thomas J. Clausen, for the Commission staff.

O P I N I O N

Applicants have applied for a Class B charter-party carrier of passengers certificate. Their home terminal is located at 926 West California Street, Fresno.

Public hearing was held before Administrative Law Judge Edward G. Fraser in Fresno on February 21 and 22, 1979. The matter was submitted after the presentation of evidence by applicants and the protestants.

Applicants are husband and wife. They are operating a single 1966 General Motors 38-passenger bus, which they hold under

a long-term lease. Charters to date have been exclusively for senior citizens and the handicapped. They are operating under the authority of one Hardamon, who has only a charter-party permit.^{1/}

Mrs. Moore testified as follows: The Moore bus is leased to Hardamon and is operated under his authority. It is scheduled on Hardamon charters when an extra vehicle is needed. On Moore charters the applicants use their own bus and retain all sums collected; Hardamon's equipment is seldom used. The application was filed because of the inconvenience of working for another. The Moores cannot schedule charters on days when they may be needed by Hardamon. This is inconvenient for applicants and the public, who require the service provided by the Moores.

Her husband has several years' experience as a charter bus driver and is also a qualified bus and diesel mechanic. She and her son are also qualified and experienced bus drivers. If they receive a certificate they will purchase land and build a garage and terminal after they lease or buy another bus. They will operate under their own name and be listed in the yellow pages and advertise.

Applicants handle the Moore charters as a team. Mr. Moore drives and Mrs. Moore acts as hostess and assists the passengers. Charters for the elderly require an extra person to care for the passengers since the driver is busy handling the bus. Applicants also own a van which is driven by their son. This vehicle is

^{1/} Permitted charter operators are restricted to using vehicles which carry less than 15 passengers or operations under contract with the government, business firms, or schools; to transportation of agricultural workers; or to providing transportation which is incidental to another business. Permits are limited to a 50-mile radius of operation from the home terminal (Section 5384, Public Utilities Code).

utilized to transport the elderly to and from the bus. It is for those passengers who cannot ride public transportation and cannot afford a taxi. It is a free service for those who need it. Mrs. Moore arranges to meet with various groups of the elderly and asks what type of trip they prefer. She then schedules the outings requested, using the Moore bus. They specialize in short five-hour outings, which are favored by many senior citizens. The minimum (5-hour) charge for the bus is \$150, then \$17 an hour. They also charge \$1.15 a mile on some charters, with 70 cents a mile as the fee for moving the bus without passengers to the point of pickup. The deadhead charge is seldom imposed with pickups in Fresno or Clovis.

Mrs. Moore is regularly employed as a tour director by Fresno Travel Service, doing business as Rodeway Tours. She arranges tours and outings for various groups, utilizing all bus companies in the Fresno area. She stated that she prefers to provide service to the elderly. They are easy to deal with and more appreciative than the usual type of passenger. The Moores specialize in serving the elderly, but do not want to accept a restricted certificate. Mrs. Moore advised that they will eventually expand to provide service to the general public. She advised they have been operating in the black and pay all bills due on time. Mr. Moore's brother testified that he has funds to invest and will contribute, if necessary, to get his brother started in the bus business.

Four persons testified for organizations that serve the elderly. All favored the service provided by the Moores. Testimony revealed that the Moores provide free transportation from homes to their bus and return; offer the best tours at the lowest cost; provide half-day, single-day, and up to four-day outings on request; carry baggage; and provide extra care for those who become

frightened or confused. Moore representatives appear at functions attended by senior citizens and ask for suggestions on how tours and service can be improved. All agreed that the service provided by others is not as good. Large operators are too expensive and require an attendant to be with tours for the elderly at all times. The attendant is an employee whose salary must be paid by the organization sponsoring the tour. Other operators also have a tendency to take the elderly on their regular tours, which may not be suitable. They advised that: (1) The Moores had contacted their organizations about providing tours; (2) the Moores issued brochures on their service; and (3) the Moores have been operating for at least 18 months.

The manager of Fresno Travel Center, dba Rodeway Tours, testified that Mrs. Moore is an employee of his company with the responsibility of organizing all types of tours. Two ladies testified who have taken Moore tours. Both praised the service and efforts to please the passengers. One lady has been on four tours in the last year, and the other advised that the Moores never leave without her. Both praised the coffee which is always available, and one stated that she completed a tour with an operator who charged less than the Moores but there was no coffee or extra service.

Two of the protestants made statements for the record. Greyhound Lines, Inc. (Greyhound) produced exhibits and testimony. Exhibit 5, placed in evidence by Greyhound, reveals that a 40-mile radius from Fresno (the normal pickup zone of a Class B certificate) includes Chowchilla as a northern boundary, Tulare to the south, westerly to Coalinga, and east to the Sierra foothills. Exhibit 6 shows more than 50 Greyhound north-south regular schedules out of or through Fresno. Other schedules are local and connect Fresno

with Visalia, Bakersfield, Hanford, Paso Robles, and Barstow. Exhibit 7 lists the nine terminals and sales agents that Greyhound maintains in and within 50 miles of Fresno. Exhibit 8 describes the 1,852 buses by type, size, and carrying capacity that Greyhound retains in California out of a total fleet of 4,135. Exhibit 9 is a colored brochure used by Greyhound to advertise its charter equipment and service. Exhibit 10 consisting of yellow pages from the Fresno telephone book lists 15 bus operators including the city of Fresno. Exhibit 11 lists all charters carried by Greyhound out of Fresno during the months of March and August 1978. March has 28 charters involving 34 buses and 1,083 passengers, with a revenue of \$16,390.74; August lists only 19 charters with 21 buses and 774 passengers, with a revenue of \$8,982.98. The grand total is 55 buses and 1,857 passengers; revenue totals \$25,373.72. Greyhound's witness (an Assistant Director of Operations) testified there are already too many bus operators in Fresno. If the number is increased, all will suffer from decreasing revenues. He noted that Greyhound maintains numerous local schedules which operate at a loss. Charter revenue is essential to justify these schedules which are continued for public convenience. Exhibit 12 was introduced to illustrate that Greyhound lost \$185,780 in California intrastate operations during the 12 months ending on June 30, 1978. The witness testified that March and August were selected on Exhibit 11 because they are typical winter and summer charter months. If these statistics are projected over 12 months, it gives Greyhound an annual charter income of \$152,000, with 330 buses employed. This sum almost totals Greyhound's loss in California for the 12 months identified. He testified that charter

revenue is extremely important to Greyhound because it is the cream of the business. He stated that applicants seem to be managing a tour operation rather than a charter business. He defined a tour as a group traveling with a guide who makes all arrangements and who is with the group at all times until the end of the tour; a charter is a group who merely combine to rent a bus. He stated Greyhound is willing to transport Mrs. Moore's tours at any time. Greyhound never turns down a charter.

The other protestants adopted the Greyhound argument. The Fortier representative stated that he can transport Moore tours for the same rates as the applicants' and would be glad to do so at any time. He noted that applicants seek to qualify a tour and travel business as a charter operator by leasing one bus.

Discussion

Applicants have been operating for at least 24 months without authority under the illusory protection of the Hardamon permit. We have been informed that since the hearing they have suspended operations as a charter-party carrier pending the outcome of this matter.

Applicants are providing an important service for the senior citizens of Fresno. Their application was supported by representatives of the elderly who testified and by others who appeared and sat through the hearing. The service provided was personal and specialized. It was tailored to the passengers, and interference with protestants was minimal since the extra charge imposed by the latter for a guide or guardian on tours for the elderly made charters too expensive. Applicants are requesting an authority to provide a necessary public service at reasonable cost.

They have two years' experience, unintentionally obtained without authority, and their operation has been profitable. Their financial stability is indicated by 24 months of successful operation and the fact dealers will lease them equipment. A family member has certified that he will provide additional financial support if needed.

We are issuing a Class B charter-party certificate to a small operator who proposes a relatively limited and specialized service. However, we are concerned that should the certificate be transferred, the successor carrier may institute broader scale operations that were not contemplated when the certificate was originally issued. Accordingly, it is reasonable to restrict the certificate to the operation of three buses and a van until further order. By such means we can monitor the need for additional charter service in the Fresno area along with the applicants' or any successor's operations before modifying the restriction.

Greyhound was the only protestant to present evidence. Its operation is statewide and not likely to be incapacitated by applicants' limited operation in the Fresno area. Conversely, it seems that most of applicants' potential riders will not accept transportation from other large carriers due to the higher cost factor or an inability to provide the extra care required by the elderly and handicapped. If applicants do not operate, these people may have no service. The application should be granted.

Findings

1. Applicants have the ability, experience, equipment, and financial resources to perform the proposed service.
2. Public convenience and necessity require that the service proposed by applicants be established.

3. Applicants should be authorized to pick up passengers within a radius of not more than 40 air miles from their home terminal in Fresno.

4. Applicants' proposed service, with a maximum of three buses and a van, will have insignificant competitive effect on protestants' operations.

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

6. There has been demonstrated a present need by the elderly for the proposed charter service. Accordingly, the following order should be effective the date of signature to most expeditiously enable the commencement of service.

The Commission concludes that the proposed authority should be issued as provided in the following order.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity, to be renewed each year, is granted to Gerald L. and Gail Moore, authorizing them to operate as a Class B charter-party carrier of passengers, as defined in Section 5383 of the Public Utilities Code, from a service area encompassing a radius of 40 air miles from applicants' home terminal at 926 West California Street, Fresno.

2. In providing service pursuant to the certificate herein granted, applicants shall comply with and observe the following service regulation. Failure to do so may result in a cancellation of the operating authority granted by this decision.

Applicants will be required, among other things, to comply with and observe the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's

General Order No. 98-A, and the insurance requirements of the Commission's General Order No. 115-A.

3. Applicants are required to operate with no more than three buses and a van until further order of this Commission.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 22nd day of MAY, 1979.

John E. Boyer
resident
James L. Stevenson
Charles W. Smith
Edward W. Jones
Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.