

ORIGINAL

Decision No. 90514 JUL 3 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application )  
of MICHAEL A. KADLETZ, dba Goodtime )  
Tours and Company, for a certi- )  
ficate of public convenience and )  
necessity to offer a one-half day )  
sightseeing tour between Buena )  
Park, Anaheim, Ca., on one hand, )  
and Newport Beach and Laguna )  
Beach, Ca., on the other. )

Application No. 58302  
(Filed August 18, 1978)

Michael A. Kadletz, dba Goodtime Tours  
and Company, for himself, applicant.  
James H. Lvons, Attorney at Law, for  
Orange Coast Sightseeing Co., protestant.  
Thomas P. Hunt, for the Commission staff.

O P I N I O N

Michael A. Kadletz, dba Goodtime Tours and Company (Goodtime), seeks a certificate of public convenience and necessity to establish and operate a one-half day narrated round-trip sightseeing tour from the Anaheim-Buena Park areas to the Newport Beach-Laguna Beach areas along routes described in the application.

A public hearing was held in Los Angeles on March 15, 1979 before Administrative Law Judge N. R. Johnson, and the matter was submitted. Testimony was presented on behalf of Goodtime by Michael A. Kadletz and in opposition to the granting of the certificate on behalf of protestant, Orange Coast Sightseeing Company (Orange Coast), by its president, Mr. D. W. Boyles, who is also president of Airport Service, Inc., the parent company of Orange Coast.

Goodtime currently operates one-, two-, and three-day round trips from points in Orange County to Palm Springs. According to the testimony, patrons of these Palm Springs tours have frequently recommended that Goodtime establish a one-half day tour as proposed in this application. Goodtime proposes that after pickup of passengers at the Convention Center Hotel in Buena Park, the Holiday Inn located on Beach Boulevard, the Anaheim Sheraton Hotel, other Anaheim area hotels, and the Fun Bus terminal in Anaheim the narration will commence as the bus heads toward Newport Beach. After leaving Newport Beach the bus will stop at Corona Del Mar where passengers will have 30 minutes to shop and browse along the oceanfront shops. The bus will then travel to Laguna Beach where passengers will have one hour to have lunch and explore the beachfront shops. An alternate route to be used depending on traffic and weather conditions would include taking the ferry to Balboa Island. The entire trip will take from four hours and forty minutes to six hours depending on the pick-up point utilized.

The proposed fares will be \$7.50 for adults, \$7 for juniors ages 12 to 17, \$5.50 for children ages 5 to 11, and no charge for children under age 5.

According to the testimony, it is proposed that the scheduled stops be changed from time to time to permit attendance at such special attractions as the art festival and sand castle contest.

Goodtime's witness presented brochures issued by The Gray Line Tours and Orange Coast indicating that neither company offered tours that duplicated the proposed one-half day tour.

Mr. Boyles presented two exhibits. One was an equipment list of Airport Service, Inc. indicating that as of March 12, 1979 it owned in excess of 80 buses equipped with air conditioning and public address systems, and the second, a brochure of sightseeing tours offered by Orange Coast. According to the testimony, Orange

Coast's Tour 1, in addition to stopping at Lion Country Safari and Mission San Juan Capistrano, encompassed many of the same points of interest included in Goodtime's proposed tour. Mr. Boyles further testified that his company has been actively and competently promoting Tour 1 for a number of years but that in spite of all its efforts the average revenue per mile realized from this tour is \$1.03 as compared to a system average of \$2.44. He believes Goodtime's proposed tour will directly compete with Orange Coast's Tour 1 and further dilute the revenue per mile. He noted that patrons could take Tour 1 for an adult fare of \$5.50 if they browsed through the shops at Lion Country Safari rather than take the tour. He further testified that stopping privileges are not important to tourists who would rather spend their time reviewing the background and features of unique points of interest and, on this basis, believes there is no demand for the proposed one-half day tour. In addition, in its closing statement, Orange Coast notes that no public witnesses were presented and the only evidence on public necessity by Goodtime was vague references to requests of passengers on the Palm Springs tours. Orange Coast argues that this incomplete showing contrasts sharply to the testimony presented by its president to the effect that there is little public demand for the proposed tour. On this basis alone Orange Coast argues that the application should be denied.

In determining whether or not to grant a certificate the Commission considers such factors as: (1) public requirements for the service, (2) adequacy of existing service, (3) adequacy of proposed service, (4) quality of proposed service, (5) revenue requirements and rates, (6) technical feasibility, (7) technical competence and financial integrity of the operator, (8) economic feasibility of the proposed operations, and (9) present operations. (Silver Beehive Tel. Co. (1970) 71 CPUC 304.)

Also, there is no question that Goodtime has the burden of proving public convenience and necessity to obtain a certificate. But there is no requirement that this burden be met by public witness testimony, particularly in an application for a sightseeing tour in a resort area, which is sui generis, and by its nature serves an itinerant vacationing public. Consequently, the lack of public witnesses testifying in support of the proposed tour is not in and of itself an adequate basis for denial of the application.

According to the record, there is no service directly comparable to the proposed tour offered in the area. It is true that Orange Coast's Lion Country Safari tour covers much of the same area as the proposed tour. However, it also includes a tour of Lion Country Safari and Mission San Juan Capistrano which are not included in Goodtime's proposed tour. These marked differences are sufficient to render the competition clause of Public Utilities Code Section 1032 inapplicable for the proposed tour.

At the hearing it was disclosed that the two 1962 GMC 41-passenger buses listed in Exhibit D to the application have been replaced by a 1978 15-passenger Dodge van. It was also shown that the net worth as of July 1, 1977, shown in Exhibit E to the application, was no longer applicable and is probably somewhat understated because of the evaluation of the real estate included in the financial statement. Goodtime also presented testimony indicating that it was financially solvent and making a profit.

Findings of Fact

1. Goodtime has sufficient equipment, experience, and financial resources to perform the proposed service. ✓
2. Goodtime has met the burden of proving public convenience and necessity for the purposes of a sightseeing tour.
3. Public convenience and necessity require that the service proposed by Goodtime be certificated.

4. Sightseeing tours are a specialized type of passenger stage service primarily serving an itinerant segment of the public.

5. There is presently no sightseeing tour of the Newport Beach-Laguna Beach areas substantially similar to the tours proposed by Goodtime.

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

Conclusion of Law

The Commission concludes that the application should be granted as set forth in the ensuing order.

Goodtime is hereby 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 over a particular route. 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. The certificate of public convenience and necessity issued to Michael A. Kadletz, dba Goodtime Tours and Company, is modified to authorize operations as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the points set forth in Route 3. Appendix A of Decision No. 89269 is amended by incorporating First Revised Page 2 and First Revised Page 7, attached hereto, in revision of Original Page 2 and Original Page 7.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure to do so may result in a cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if he accepts the certificate he will be required, among other things, to comply with the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 101-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and file tariffs and timetables, in triplicate, in the Commission's office.
- (c) 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 establishment of the authorized service.
- (d) The tariff and timetable filings made pursuant to this order shall comply 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.

(e) Applicant shall maintain his 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 his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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

Dated at San Francisco, California, this 3rd day of JULY, 1979.

John E. Bay  
President  
Veronica L. Stinson  
Deborah L. Conner  
Cheryl T. Schmitt  
James M. Smith  
Commissioners

Section 1. General Authorizations, Restrictions, and Specifications.

Michael A. Kadletz, doing business as Goodtime Tours & Co., is authorized as a passenger stage corporation to transport passengers over the routes hereinafter described subject to the authority of this Commission to change or modify said routes at any time and subject to the following provisions:

- (a) All service herein authorized shall be limited to the transportation of round-trip sightseeing passengers only.
- (b) All trips will begin and terminate (Route 1) in Buena Park, Anaheim, or Santa Ana, or (Route 2) within the on-call service territory described in Route 2, \*or (Route 3) from pickup points described in Route 3.
- (c) Applicant shall not pick up or discharge passengers except within the limits described in each service route as hereinafter set forth. This restriction shall not prevent stopovers for the purpose of permitting sightseeing passengers to visit various points of interest along the route.
- (d) The term "on-call" as used herein refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs and timetables shall show the conditions under which each authorized "on-call" service will be rendered.
- (e) There shall be no transportation of baggage except that which is incidental to a trip by sightseeing passengers.
- (f) Service shall be operated daily with no fewer than 10 passengers except at the operator's discretion.

Issued by California Public Utilities Commission.

\*Added by Decision No. 90514, Application No. 58302.



Route 2. ON-CALL SIGHTSEEING SERVICE: ORANGE COUNTY -  
PALM SPRINGS

From points in the on-call service territory bordered on the north by State Highway 91, on the south by State Highway 1 (Pacific Coast Highway), on the west by State Highway 39 (Beach Boulevard), and on the east by State Highway 55, Interstate Route 5, and State Highway 133; thence by the most direct route to Hadley's Fruit Market in Cabazon for a 45-minute rest stop, thence by Route 1, above, to Palm Springs and return to the points of origin, following one-, two-, or three-day tour options.

\*Route 3. SIGHTSEEING SERVICE: ANAHEIM/BUENA PARK-NEWPORT  
BEACH/LAGUNA BEACH

From authorized pickup points, described below, and return, along the most convenient and appropriate streets and highways to sightseeing attractions in Newport Beach, Corona del Mar, and Laguna Beach, including a 30-minute stopover at Newport Beach and a one-hour stopover at Laguna Beach and, optionally, a ferry trip to Balboa Island. Pickups and return drop-offs shall be permitted from the following locations only:

<u>Hotel:</u>	<u>Location:</u>	<u>City:</u>
Convention Center Hotel	7675 Crescent Avenue	Buena Park
Holiday Inn	7000 Beach Boulevard	Buena Park
Sheraton-Anaheim Hotel	1015 Ball Road	Anaheim
"Fun-Bus" Terminal	304 Katella Way	Anaheim
**various	**various	Anaheim

\*\*Anaheim Pickup Territory includes hotels and motels within the boundaries of Santa Ana Freeway on the north, Euclid Street on the west, Chapman Avenue on the south, and State College Boulevard on the east.

( END OF APPENDIX A )

Issued by California Public Utilities Commission.

\*Added by Decision No. 90514, Application No. 58302.