

ORIGINAL

Decision No. 90675 AUG 14 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of CHECKMATE YELLOW CAR, E. WILSON)
957-P for removal of Restriction)
No. 7 of the permit.)

Application No. 58537
(Filed December 18, 1978)

Kurt Reif, Attorney at Law, for applicant.
Breton K. Lobner, Attorney at Law, for
City of Los Angeles, Department of Airports,
intervenor.
K. D. Walpert, for City of Los Angeles,
Department of Transportation, interested
party.
Randolph L. Wu, Attorney at Law, for the
Commission staff.

O P I N I O N

Applicant seeks to have clause 7^{1/} removed from its charter-party carrier of passengers permit on the grounds, inter alia, that the restriction contained in clause 7 is inconsistent with both the provisions of the Passenger Charter-Party Carrier's Act (Division 2, Chapter 8 of the Public Utilities Code) and Section 602.4 of the Penal Code. Additionally, applicant alleges that the restriction violates due process, equal protection, and the commerce clauses of the U.S. Constitution and is an unjust restraint on trade.

1/ "(7) This permit does not authorize the holder to conduct any operations on the property of or into any airport unless any such operation is authorized by the airport authority involved."

The city and county of San Francisco, as an interested party, filed a written answer in opposition to the application. The city of Los Angeles (City), Department of Airports, as an intervenor, likewise, filed a written protest to the application.

After proper notice, a hearing was held in Los Angeles on March 26, 1979 before Administrative Law Judge William A. Turkish, and the matter was submitted on May 7, 1979 upon the receipt of reply briefs by May 7, 1979.

At the hearing it was stipulated by all appearances that there were no factual issues in dispute and that the issues involved were entirely legal. It was further stipulated that the matter would be submitted upon the filing of briefs, with points and authorities in support thereof.

The issues to be resolved are:

1. Whether World Way, a street within the boundaries of Los Angeles International Airport (LAX), is a public highway.

2. Whether Commission authority under the Passenger Charter-Party Carrier's Act preempts municipal authority to regulate charter-party carriers of passengers upon streets and roadways within the boundaries of LAX, a municipally owned airport.

3. Whether the Commission has authority to place restrictive clauses, such as clause 7, on all charter-party carrier of passengers permits.

4. If the Commission is found to have the authority to place restrictive clause 7 on charter-party carrier of passengers permits, is it violative of the due process clause of the U.S. Constitution.

5. Whether City laws and regulations relating to transportation on roads within the boundaries of City-owned and operated airport violate the commerce clause of the U.S. Constitution and act as a restraint of trade.

Factual Background

Applicant is one of several hundred holders of permits to operate as charter-party carriers of passengers in the Los Angeles Basin area, issued by the Commission under authority contained in the Passenger Charter-Party Carrier's Act (Division 2, Chapter 8, Public Utilities Code, added by Stats. 1961, Ch. 2146). Applicant was first issued such permit effective from February 17, 1978 to February 17, 1979.

Charter-party carrier of passengers permits issued by the Commission authorize the holders of such permits to provide transportation services over public highways.

The Department of Airports of City manages, operates, and controls the airports of City through its Board of Airport Commissioners. Among the airports operated by this department in a proprietary capacity is LAX, covering an area of approximately 3,400 acres. World Way is the principal roadway within the LAX boundaries, passing the main international and domestic terminal buildings and from which access to airport public parking lots is reached. The inner roadway portion of World Way, that area closest to the terminal buildings and separated from the main roadway by raised concrete islands, permits the brief stopping of vehicles for the limited purpose of passenger loading and unloading only. There is a constant admonition on loud speakers in the areas of the white-painted curbs adjacent to the terminal buildings advising the public that the white zone is for immediate loading and unloading of passengers only and that no parking is allowed. The outer or main portion of World Way is used primarily for ingress and egress, to and from the airport, and the airport parking lots. The islands separating the inner roadway from the main roadway of World Way are used by buses,

taxicabs, hotel limousines, and other commercial operators providing transportation services to load and unload passengers.

In 1975, in response to numerous complaints of alleged illegal operations at major California airports by charter-party carriers, constant disputes arising in the area of regulation of small passenger vehicles for-hire at airports, and the limited airport access for members of the traveling public to and from passenger terminal areas, all of which were causing numerous and substantial congestion problems, the Commission added clause 7 to all new charter-party carrier of passengers permits issued or renewed thereafter.

Discussion of Issues

It is applicant's contention that World Way is a public highway, the use of which may not be withheld by the State or City following the issuance of a charter-party carrier of passengers permit from this Commission under the Passenger Charter-Party Carrier's Act. Applicant supports this contention by citing numerous definitions of "highway", "public highway", "roadway", and "public roadway" from various municipal and state codes and further cites U.S. v Barner (D.C. 1961) 195 F Sup 103 as support. Applicant further urges that because World Way falls within one or more of the definitions as listed above, is used hourly by the general public without reservation as to use, and has been so used for more than five years, its use falls under the regulation of this Commission under Section 5358 of the Public Utilities Code.^{2/}

City concedes that the permit of applicant authorizes him to operate on "public highways" but contends that World Way is not a highway to be included within this definition since

^{2/} Public Utilities Code Section 5358 provides that "'public highway' includes every public street, road, or highway in this State. (Added 1961, Ch. 2146.)"

World Way is not a dedicated public street or highway. This contention is correct. We take official notice of City Engineer Map No. 7920, dated April 1936, as revised April 8, 1968, which supports City's contention that the street known as World Way, lying wholly within the boundaries of LAX, is not a dedicated public street and is not maintained or operated from public tax funds.

World Way is under the control of and is maintained by the Department of Airports, a separate proprietary department of City which is a self-sufficient entity operating under its own generated income under the authority granted it in Article XXIV of the Los Angeles City Charter.^{3/}

Applicant has gone to great lengths in searching out and citing various irrelevant and inapplicable City and California code sections (with the exception of Public Utilities Code Section 3509) to support his position. For example, he cites the California Vehicle Code definitions of 'highway' and 'private roadway' as applicable to the status of World Way but fails to

^{3/} "Sec. 238. There is hereby established a Department of Airports (hereinafter in this article referred to as the Department) to be under the management and control of a board of five commissioners to be known as the Board of Airport Commissioners (hereinafter referred to as the Board), to which the provisions of Article VI of this charter shall apply insofar as applicable. (Added, 1947.)

"Sec. 238.3. Such department shall have control of its own revenues or funds, and expenditures of all bond funds relating to its facilities or activities. (Added, 1947.)"

consider the case of Sills v Forbes (1939) 33 Cal App 2d 219 which states:

"In considering the definitions of the words 'highway' and 'private road', as used in these sections, we must bear in mind that, when used in the Vehicle Code they are used for the special purposes of that act, and that sections of other codes and the decisions under them relating to the use of the same or similar words can have little bearing on the solution of this problem."

Likewise, he cites U.S. v Barner, supra, which is also inapplicable here. That case merely held that an intoxicated citizen who drives a motor vehicle over a street within a U.S. air base can be prosecuted for driving under the influence on a highway (as highway is defined in the California Vehicle Code).

He completely overlooks the case of City of Oakland v Burns (1956) 46 C 2d 401 which has direct application to the issue involving the status of World Way and which also disposes of several of the issues presented herein. In Oakland the California Supreme Court held that the principal roadway leading into the Oakland airport was not a public street, road, or highway since (1) the airport was owned and operated by City in a proprietary capacity, and (2) the roadway was never formally dedicated to the public use. The Court recognized the private nature of streets located within airport property held and maintained by a city in its proprietary capacity and concluded that a city has all power concerning its use even though such roads are open to the public. Further, the Court held that no title by prescription can be acquired against such city, or its subdivisions, in land reserved for or devoted to a public use, such as an airport. The Court also concluded that since the road was determined to be a private road and not a public way, the Commission could not, by license or permit, grant authority

for its use. The Court states on page 408 that "...[d]efendants do not contend that the Public Utilities Commission has any power of regulation over private roads and no constitutional or code provision gives it such power." (Citation omitted.)

Applicant further contends that the State Passenger Charter-Party Carrier's Act preempts municipal authority to regulate charter-party carriers of passengers upon streets and roadways within the boundaries of LAX and cites Atlas Mixed Mortar Company v City of Burbank (1927) 202 Cal 660 in support thereof. We do not find that case applicable here. While it may be stated as a general principle that statewide laws preempt local regulations to the extent they conflict, as was found in the Atlas case, we do not find any such conflict herein between any State code and municipal code, or between any State code and the regulations of City's airport authority. Charter-party carrier of passengers permits issued by the Commission authorize the holders of those permits to provide transportation services over public highways; they do not provide authorization to provide such services on private property. As we stated above, LAX's roads are private property (City of Oakland, supra).

Transportation performed pursuant to permits by the Commission must be in compliance with all traffic laws and local ordinances. The rules promulgated by the Board of Airport Commissioners are rules which limit the use of private property, even though open to the general public, and compliance with such rules and regulations must similarly be complied with by charter-party carriers of passengers. Therefore, we do not find any conflict between the Commission's authority to grant charter-party carrier of passengers permits and any rules adopted by the Board of Airport Commissioners regarding the picking up or dropping off of passengers at LAX.

In 1977 the California Supreme Court had two occasions to determine the issue of preemption involving Commission regulatory authority over charter-party carriers of passengers and municipal regulation at airports. (See Rannel Hollingsworth v Public Utilities Commission, S.F. No. 23528; Walter Hoffman, Limousine Service of S. F. v Public Utilities Commission, S.F. No. 23529.) In both cases this Commission revoked the charter-party carrier of passengers permits held by each after the Commission determined they were performing acts in violation of airport rules which prohibit solicitation of passengers without permission of airport authorities. Both petitioned for writs of review, arguing, as complainant herein, that the Commission's regulatory authority preempts any airport rules that restrict the operations of charter-party carriers of passengers. The Supreme Court denied the petitions for writ of review, thereby sustaining the Commission's actions which, under the principle set forth in People v Western Air Lines, Inc. (1954) 42 C 2d 621, 633 is "...a decision on the merits both as to the law and the facts presented in the review proceedings. This is so even though the order of this Court is without opinion."

In view of the foregoing, we find no conflict of jurisdiction between State and local authority, no conflict between State and local laws or regulation in the matter, and thus no issue of preemption to resolve.

Applicant next challenges the authority of the Commission to place a restrictive clause, such as clause 7, on all charter-party carrier of passengers permits, alleging that it is inconsistent

with and thus violative of the intent stated in Section 5352^{4/} of the Public Utilities Code and contrary to Section 602.4^{5/} of the California Penal Code which, he urges, must be read in conjunction with Section 5352 and exempts limousines from requiring airport permits. Applicant's contention is without

4/ Public Utilities Code Section 5352 provides:

"The use of the public highways for the transportation of passengers for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon such highways; to secure to the people adequate and dependable transportation by carriers operating upon such highways; and to secure full and unrestricted flow of traffic by motor carriers over such highways which will adequately meet reasonable public demands by providing for the regulation of all transportation agencies with respect to accident indemnity so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public. (Amended 1963, Ch. 2148.)"

5/ Penal Code Section 602.4 provides:

"Every person who enters or remains on airport property owned by a City, County, or City and County but located in another County, and sells, peddles, or offers for sale any goods, merchandise, property, or services of any kind whatsoever to members of the public, including transportation services, other than charter limousines licensed by the Public Utilities Commission on or from the airport property, without the express written consent of the governing board of the airport property, or its duly authorized representative, is guilty of a misdemeanor.

"Nothing in this Section affects the power of a County, City, or City and County to regulate the sale, peddling or offering for sale of goods, merchandise, property, or services. (Emphasis added.)"

merit. In the first place, while it is true, as contended by applicant, that Section 5352 states the legislative intent in the enactment of the Passenger Charter-Party Carrier's Act, it is simply that and nothing more. It is a general provision of purpose and although it states such purposes in general positive expressions of speech, it neither defines the authority of the Commission nor limits the authority of the Commission in any manner as contended by applicant. Applicant need not look for explicit or implied meaning in that section in search of Commission authority because there is more to the Passenger Charter-Party Carrier's Act which follows Section 5352 and which deals with Commission authority. Specifically, we direct applicant's attention to Section 5371, and especially to Section 5375 which, in part, provides as follows:

"The Commission may, with or without hearing, issue or refuse to issue a permit... If the Commission finds that public convenience and necessity require the proposed transportation service..., it shall issue the permit...to conduct the requested operations, or may issue it for the partial exercise of the privilege sought, and may attach to the permit...such terms and conditions as, in its judgment, are required in the public interest; ..." (Emphasis added.)

Clearly, it is obvious that Section 5375 gives the Commission authority to impose clause 7, if it is deemed in the public interest. In Decision No. 86670, we discussed the necessity to attach conditions to charter-party carrier of passengers permits and we determined therein that clause 7 was in the public interest. Applicant has failed to offer or make any showing that clause 7 is not in the public interest. Applicant contends only that the restriction is invalid or, in

the alternative, that the Commission is without authority to impose it. The burden of proof is upon applicant to show that clause 7, or any other restriction, is not in the public interest and should be removed. Applicant has clearly failed to meet the burden in this proceeding.

Secondly, applicant's reliance on Penal Code Section 602.4 to support his contention that limousines are exempt from being required to obtain airport permits and thus in conflict with clause 7 is greatly misplaced. Section 602.4 applies only where the subject airport is owned by one county or city (or both) but is physically situated in a second county. Such interpretation was approved in People v Singer (1975) 50 Cal App 3d Sup 9, 11. We take official notice of the fact that LAX and City are located within the city and county of Los Angeles. Therefore, the provisions of Section 602.4 do not apply in the situation herein. California Government Code Section 50474 grants a local agency specific powers in connection with the erection and maintenance of airports. Among such powers is the authority to "regulate the use of the airport and facilities and other property or means of transportation within or over the airport." (Emphasis added.) Thus, there is clear and specific statutory authority for City, in its proprietary capacity, to regulate all transportation within the airport boundary. Finally, if that not be considered determinative, we again point out to applicant that the right of an airport proprietor (City) to control its undedicated streets has clearly been settled by case law in City of Oakland v Burns, supra.

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Turning now to the remaining issues relative to the constitutionality of City's laws and regulations relating to transportation on roads within the boundaries of LAX and the restriction of clause 7, we find no legal argument or legal basis in any pleading or brief submitted by applicant to support allegations of unconstitutionality. Applicant has instead advanced a number of unsubstantiated allegations which are issues of fact rather than the issues of law which the parties stipulated are involved herein. In any event, however, the constitutionality of City's laws and regulations governing matters within the boundaries of LAX is not a subject matter within the jurisdiction of the Commission to decide. The same is true for applicant's allegation that City's actions relating to transportation within the boundaries of LAX constitute a restraint of trade.

With respect to applicant's contention that clause 7 is violative of the Federal Antitrust Act (Sherman Act), we suggest that applicant review Parker v Brown (1943) 317 US 341, 87 L ed 315 wherein it was held that the Sherman Act was directed to the actions of individuals or corporations and not to State legislation. Likewise, we direct applicant's attention to the case of Widows v Koch (1968) 263 CA 2d 228, 235 which holds that Business and Professional Code Section 16600 (the Cartwright Act) is not applicable to restraints by government as is alleged by applicant.

Finally, as to applicant's challenge of the Commission's authority to impose clause 7 (which is derived from the Public Utilities Code) as being unconstitutional, this Commission cannot determine that any State statute involved in this proceeding is unconstitutional, absent such determination by an appellate court. (California Constitution, Article III, Section 3.5.) Applicant may appeal the denial of this order and, thus, seek a determination by the review court of constitutionality of the statutes in question.

Findings

1. Applicant is the holder of a charter-party carrier of passengers permit issued by the Commission which authorizes him to operate as a charter-party carrier of passengers.

2. LAX is owned and operated by City in its proprietary capacity through the Department of Airports.

3. The streets and roadways within the boundaries of LAX are undedicated private streets and roadways and not within the definition of public highway as expressed in Public Utilities Code Section 5358.

4. World Way, a roadway within the boundaries of LAX, is a private roadway open to general public use, but subject to rules, regulations, and restrictions imposed by City.

5. California Government Code Section 50474 grants authority to local agencies to regulate the use of airports within its territory and the means of transportation within the airport.

Conclusions of Law

1. Public Utilities Code Section 5352 relates to the use of public highways, as defined in Section 5358, and does not include private streets or roadways. ✓

2. Public Utilities Code Section 5375 grants authority to the Commission to issue charter-party carrier of passengers permits as well as the authority to attach any terms or conditions to such permits in the public interest. ✓

3. The Commission is without authority to declare a statute unconstitutional. ✓

4. Determination of the constitutionality of City laws, rules, or regulations relating to the operation of an airport by City in its proprietary capacity is not a subject matter within the jurisdiction of the Commission. ✓

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5. The Federal Antitrust Act (Sherman Act) and California Penal Code Section 602.4 are not in conflict with Public Utilities Code Section 5352. ✓

6. Clause 7 is within the authority of this Commission to impose on all charter-party carrier of passengers permits issued by the Commission. ✓

7. The regulation of undedicated private roadways within the boundaries of an airport, owned and operated by a local government in its proprietary capacity, is solely within the jurisdiction of said government entity. ✓

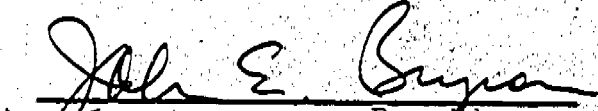
8. The relief sought by applicant should be denied. ✓

O R D E R

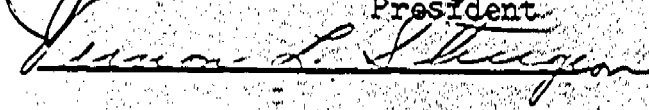
IT IS ORDERED that the relief requested by applicant is denied.

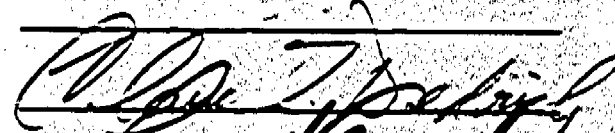

The effective date of this order shall be thirty days after the date hereof.

Dated AUG 14 1979, at San Francisco, California.



President





Commissioners

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