

Decision No. 90985 NOV 6 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of DENNIS FELSO for a Certificate)
of Public Convenience and Necessity)
authorizing the Applicant to)
operate a Passenger Stage service,)
with sightseeing tours available)
to the public on a per capita)
basis between points in San)
Francisco and Marin Counties,)
pursuant to the provisions of)
Section 1031, et seq. of the Public)
Utilities Code of the State of)
California.)

Application No. 58214
(Filed July 11, 1978)

Dan W. Lacy, Attorney at Law, for Dennis Felso,
applicant.

Richard M. Hannon, Attorney at Law, for The Gray
Line, Inc.; and James S. Clapp, Attorney at
Law, for O'Connor Limousine Service, Inc.;
protestants.

Eldon M. Johnson, Attorney at Law, for Golden
Gate Sightseeing Tours, Inc., and Sequoia
Stages; and Warren K. Miller, for Sequoia
Stages and Eastshore Lines; interested parties.

Tom Enderle, for the Commission staff.

O P I N I O N

Applicant Dennis Felso requests a certificate to operate as a passenger stage corporation for the purpose of conducting a per capita sightseeing tour from three hotels in downtown San Francisco to points of interest in San Francisco, Fort Funston, Yerba Buena Island, and Sausalito. The application was protested by Golden Gate Sightseeing Tours, Inc., Sequoia Stages, O'Connor Limousine Service, Inc., and The Gray Line, Inc. (Gray Line). A hearing was held in San Francisco before Administrative Law Judge Pilling on December 14, 1978, and the matter submitted on January 11, 1979.

Applicant intends to operate his proposed 7-hour one-trip-a-day tour Monday through Friday (holidays excluded) from June to November inclusive. The tour will begin at 9:00 a.m. and end at approximately 4:00 p.m. Box lunches will be provided. The fare will be \$20 per person. The last stop on the tour will be at the Sausalito Ferry slip, at which point his patrons will have the option of taking an expense-paid ferry trip to San Francisco or ride back to San Francisco on his bus. Applicant does not propose to own, lease, or physically operate any buses in his service but will charter a bus when needed. He will act as tour conductor and be his company's sole employee. Applicant will not carry any bodily injury or property damage insurance but will rely on the insurance carried by the charter-party carrier for insurance protection. Applicant was employed as a tour guide by Native Sons Tours during two recent summers and claims to have learned about all aspects of the business, including many of the behind-the-scenes aspects of a guided tour operation. Applicant expects that at least 50 percent of his passengers will be generated by hotel employees to whom he will pay a commission for so doing.

Each day applicant will charter a bus, with driver, of sufficient capacity to transport the number of persons he expects to take the tour. The company from whom he charters the bus will pay all operating expenses incurred in the bus operation, furnish insurance protection for applicant, and, as a charter-party carrier, take care of all of the things associated with a charter-party operation. The only insurance applicant will purchase himself will be of the kind carried by a travel agent. Applicant estimates he can charter a bus for seven hours for \$130. Applicant does not claim to have any garage facilities at which to check out the bus to see that it conforms to safety laws.

Applicant presented a yearly projection which showed that based on the 130 tours he expects to conduct during the year he will net \$41,860 using a 40-passenger bus full to capacity on each tour, or net \$17,486 on a 25-passenger bus full to capacity on each tour, or will turn in a minus net profit of \$6,890 using a 10-passenger bus full to capacity on each tour. Applicant claims he is able to commit \$5,000 to the initial operations.

Applicant prepared a map (Exhibit No. 2) which showed his proposed tour routes and Gray Line's San Francisco and Sausalito tour routes. The routes differ somewhat, the difference being that applicant proposes to tour Yerba Buena Island, the Mission District of San Francisco, and Fort Funston. Also, applicant will traverse more streets in Chinatown and will give his patrons the option of returning expense paid to San Francisco from Sausalito by ferry. Gray Line's San Francisco city tour is 37 miles in length and applicant will operate over 30 miles of the same routes.

A group tour operator testified that applicant had worked for him in the group tour business and that applicant was the subject of favorable comments made by people who had taken the group tour. The group tour operator testified that in his tour repertoire he has a tour across the Golden Gate Bridge which includes a trip back on the Sausalito ferry and that the ferry trip is highly popular.

The president of Falcon Charter Service (Falcon) testified that he had orally committed Falcon to charter buses to applicant as needed in applicant's operation, but that he would not enter into a written contract covering that commitment; that he would place applicant on Falcon's insurance policy as a coinsured; and that he would charge applicant \$180 for a 45-passenger bus. He testified that no particular buses would be earmarked for charter to applicant.

Protestant O'Connor Limousine Service, Inc. based its objection on the fact that it had an application pending--Application No. 56580--which was submitted in May of 1977 to provide per capita fare sightseeing tours within San Francisco and to Muir Woods, and Sausalito with a Sausalito ferry ride. O'Connor Limousine Service, Inc. argues that any need for the service alleged by the applicant herein will be satisfied by O'Connor Limousine Service, Inc. should the Commission grant Application No. 56580. (Subsequent to the hearing, the Commission granted O'Connor Limousine Service, Inc.'s application in Decision No. 90157.) ✓

Protestant Golden Gate Sightseeing Tours, Inc. objected to the application on basically the same grounds as O'Connor Limousine Service, Inc. Golden Gate Sightseeing Tours, Inc. had an application before the Commission which it alleged would, at least in part, satisfy the need for the sightseeing service proposed by applicant. (Subsequent to the herein hearing, the Commission in Decision No. 90106 granted Golden Gate Sightseeing Tours, Inc. per capita fare authority to operate between San Francisco and Sausalito and Muir Woods, including a Sausalito ferry ride.)

Gray Line contends that applicant's proposed service basically duplicates the per capita fare service which Gray Line provides and that applicant proposes to add a few whistles and bells to Gray Line's basic city tour but does little else. Applicant's proposed service would be competitive with Gray Line's deluxe city tour for which Gray Line charges \$6.40 and its Sausalito and Muir Woods tour for which Gray Line charges \$6.30. It operates these tours the year around. Its city tour has six daily departures in the summertime and five in the wintertime and its Sausalito and Muir Woods tour has two daily departures. It operates 45 buses driven by its own employees. It employs between 115 and 120 persons. It advertises its services extensively.

The Gray Line witness testified that persons taking its Sausalito and Muir Woods tour are given the option of returning to San Francisco by ferry from Sausalito at their own expense.

Discussion

The Commission's General Order No. 98-A (GO 98-A), Part 12, requires, in part, the following:

"12.01. DRIVER STATUS. Passenger stage corporations and charter-party carriers shall not operate any passenger stage unless the driver thereof is under the complete supervision, direction and control of the operating carrier, and is:"

* * *

"(b) An employee...of another Commission-authorized carrier that owns or possesses the vehicle... This agreement for the utilization of the second carrier's vehicle and driver by the operating carrier shall be evidenced by written contract between the two carriers..."

Applicant proposes to conduct operations as a passenger stage corporation. As an operating carrier applicant is required by GO 98-A to assume complete supervision, direction, and control of any person driving in his service. Under the charter arrangement which applicant intends to enter into with Falcon, all responsibility for the operation of the bus will remain with Falcon but applicant will direct the movement of the bus where and when it will travel. Applicant would, therefore, not be in violation of GO 98-A if there were a contract between it and the charter carrier under which he assumed control of the driver. Essentially, applicant's proposal amounts to a tour organizer business rather than that of a carrier of passengers. However, under Section 1035 of the Public Utilities Code, he would be presumed to be a passenger stage corporation by his act of offering transportation on an individual-fare basis by bus between fixed termini and over a regular route.

These circumstances prevent us from granting him a passenger stage certificate to operate as the applicant proposes. However, if applicant is willing to acquire buses and drivers under an arrangement which comports with GO 98-A he should not be denied a certificate. Accordingly, we will require him in accepting the certificate to agree to abide by the requirements of GO 98-A in acquiring buses for his operation. His refusal to so agree will result in a denial of his application.

Findings of Fact

1. Applicant requests a certificate to operate as a passenger stage corporation to conduct one sightseeing trip per day from three hotels in downtown San Francisco through San Francisco to Yerba Buena Island, Fort Funston, and thence to Sausalito, and return to the origin hotels giving his passengers the option of returning from Sausalito to San Francisco via an expense-paid ferry trip.
2. Tours will take place Monday through Friday (holidays excluded) from June to November, inclusive.
3. Applicant will charge \$20 per person which includes furnishing a box lunch.
4. Applicant will utilize a bus each day furnished by a charter-party carrier to carry the tour passengers.
5. Applicant will act as the tour guide.
6. Applicant's proposed sightseeing operations differ substantially from those performed by any of the protestants.
7. Public convenience and necessity require the issuance of the requested passenger stage certificate.
8. Applicant's type of arrangement for the utilization of buses and drivers furnished to him by others does not meet the requirements of GO 98-A.

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. The written acceptance shall contain a statement that applicant agrees to abide by Part 12.00 of General Order No. 98-A when he utilizes the buses and drivers of others in his operation. 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.

- (f) In the event applicant does not furnish the written agreement as set out in Ordering Paragraph 2(a) within the time specified, the application is denied.

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

Dated NOV 6 1979, at San Francisco, California.

John E. Bryson
President
Joseph L. Stinson
Richard W. Cavale
Walter J. Schick
Edward J. Smith
Commissioners

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION
PSC - 1096

Showing passenger stage operative rights, restrictions, limitations, exceptions and privileges applicable thereto.

All changes and amendments as authorized by the Public Utilities Commission of the State of California will be made as revised pages or added original pages.

SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS AND SPECIFICATIONS.

Dennis Felso, an individual, by the certificate of public convenience and necessity to operate as a passenger stage corporation granted by the decision noted in the margin, is authorized to transport passengers between the St. Francis Hotel and the Fairmont Hotel, on the one hand; and points of interest in downtown San Francisco, Yerba Buena Island and Sausalito, on the other hand, over and along the route hereinafter described, subject, however, to the authority of this Commission to change or modify said route at any time and subject to the following provisions:

- (a) All service herein authorized shall be limited to the transportation of round trip passengers only who shall be returned to the originating hotel.
- (b) Operations will be Monday through Friday (holidays excluded) from June to November, inclusive.
- (c) No passengers shall be transported except those having the point of origin at the St. Francis Hotel and/or Fairmont Hotel.
- (d) Dennis Felso shall furnish this Commission with written agreement that he will abide by Part 12.00 of this Commission's General Order No. 98 in utilizing buses and drivers furnished by others which shall be limited to those carriers holding either a Class A or Class B charter-party certificate from this Commission.
- (e) Passengers shall have the option of returning from Sausalito to San Francisco via ferry trip at carrier's expense.

Issued by California Public Utilities Commission.

Decision No. 90985, Application No. 58214.

SECTION 2. ROUTE DESCRIPTION.

Route 1. St Francis and Fairmont Hotels - San Francisco,
Yerba Buena Island, Sausalito:

Commencing at the St. Francis Hotel, thence east on Post to Kearny, north on Kearny to Sutter, west on Sutter to Leavenworth, north on Leavenworth to California and east to the Fairmont Hotel, east on California to Drumm, north on Drumm to Sacramento, west on Sacramento to Front, north on Front to Clay, east on Clay onto the Bay Bridge approach, east across the Bay Bridge to Treasure Island, around Treasure and Yerba Buena Islands and back onto the Bay Bridge, over Highways 80 and 101 to the Civic Center, south on Van Ness to Market, west on Market to Dolores, south on Dolores to 18th Street, east on 18th Street to Folsom, south on Folsom to 24th Street, west on 24th Street to Castro, north on Castro to Market, west and south on Market to Portola, west on Portola to Twin Peaks Boulevard, north on Twin Peaks Boulevard, south on Twin Peaks Boulevard to Portola, Portola to Woodside Avenue, Woodside west to Laguna Honda, north on Laguna Honda to 7th Avenue, north on 7th Avenue to Kirkham, west on Kirkham to 9th Avenue, north on 9th Avenue to South Drive in Golden Gate Park, north on South Drive to the De Young Museum Music Concourse area, through that area to John F. Kennedy Drive, west on John F. Kennedy Drive through the Park to the Great Highway, south on the Great Highway to Fort Funston where lunch will be served, north on the Great Highway to Point Lobos Avenue, east on Point Lobos Avenue to 34th Avenue, north on 34th Avenue to Legion of Honor Drive, north on Legion of Honor Drive to El Camino Del Mar, east on El Camino Del Mar to Lincoln Boulevard, north on Lincoln Boulevard to Highway 101, north on Highway 101 across the Golden Gate Bridge to Bridgeway Boulevard in Sausalito, south on Bridgeway to the Golden Gate Ferry terminal in Sausalito, across San Francisco Bay on the ferry, or back to the hotels, from the San Francisco ferry terminal, by bus. Return shall be by the most direct route.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision No. 90985, Application No. 58214.