

Decision No. 91384 MAR 4 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
John Arthur Terry England, dba)
Heritage Charter for a Class "B")
certificate to operate as a Charter)
Party Carrier of Passengers, S. Jose.)
(File B-9.))

Application No. 59080
(Filed August 21, 1979)

John A. T. England, for himself, applicant.
Mark Herman Wagener, for Coast Counties
Charters, protestant.
Rita Clark, for the Commission staff.

O P I N I O N

Statement of Facts

John Arthur Terry England (England) is a young man currently employed primarily as a printer. During the past seven to ten years he has spent much of his time driving a bus for a nonprofit volunteer organization transporting church-sponsored young people's touring groups around the United States. In 1976 his nonprofit employer went out of business and England ended up owning a bus. Out of these church-associated activities he gradually evolved a desire to form his own company to offer low cost comfortable charter bus service to youth, Sunday school, senior citizen, singles, and music and choir groups.

With his 1956 GMC 46-passenger bus largely paid for, and \$1,400 in cash, England obtained a number of advance bookings (secured by 25 percent deposits) and made application to this Commission as provided for under the Passenger Charter-party Carriers' Act for a Class "B" certificate to operate as a charter-party carrier

of passengers. His application was initially protested by Greyhound Lines, Inc. (Greyhound) and by Peerless Stages, Inc. (Peerless), both holders of Class "A" certificates under the Act. In conformity with the provisions of Section 5375.1 of the Public Utilities Code which require that if an applicant desires to operate in a territory already served by the holder of a certificate, the Commission shall hold a hearing before granting a certificate, a duly noticed public hearing was held in San Francisco on December 10, 1979, at the conclusion of which the matter was submitted. Neither Greyhound nor Peerless made an appearance at the hearing; however, at the hearing another Class "A" certificate holder, Coast Counties Charters, entered an appearance, stating contentions reasonably pertinent to the issues, and was permitted to participate fully. The staff entered no objections to certification of the applicant.

Discussion

The factors which this Commission must consider in determining whether or not to grant a Class "B" charter-party carrier of passengers certificate to an applicant, as relevant here, are set forth in Sections 5375 and 5375.1 of the Public Utilities Code. Section 5375 sets up a basic requirement that the proposed service be one required by public convenience and necessity; that the applicant possess satisfactory fitness and financial responsibility to initiate and conduct the proposed service; and that the applicant will faithfully comply with the rules and regulations of the Commission.

We have no difficulty concluding that the applicant has shown fitness and financial responsibility to initiate and conduct the proposed service. He owns a full-size bus, substantially paid for, and has other assets sufficient to meet his current expenses and liabilities. He is otherwise gainfully employed as a printer

and has been able to arrange with his employer for time off whenever he is successful in booking charters. It is his intent to phase himself out of printing and into charter operations. He plans to do the driving himself. He has seven years experience in driving buses, including the one he now owns, all over the United States in tour service, the very activity he now plans to work into, and involving much of the clientele he anticipates obtaining his business from. He has experience in performing routine maintenance on his own bus. From actual experience obtained in operating his 1956 GMC Scenicruiser bus he has obtained operating cost figures which show that he can anticipate profitable operations.

Public convenience and necessity, broadly speaking, are synonymous with the public interest. In the charter-party carrier of passengers field, the public interest is best served by promotion and maintenance of such quantity of responsible competition as will provide good quality service to the general public at competitive rates which in turn are compatible with the maintenance of quality service and a reasonable return to the operator. In the instant proceeding the applicant has demonstrated that the public interest requires this proposed service. While protestant Coast Counties Charters provided testimony to the point that there is adequate existing service (noting that while it has 12 buses available in the same general area as the applicant proposes to operate in, only 5 to 6 are in daily use, and that West Valley Charter has another 16 to 18 buses available but only 4 to 5 in daily use), there was no showing of the probable extent of that traffic, if any, which these carriers would possibly lose if England were to be certificated. While protestant's witness testified that it handles church-related

charters,^{1/} there was no showing that its charter work was with any of those churches named by the applicant (see Exhibit No. 1) as having booked with the applicant. The applicant testified that his own church, for example, has found the expense of renting or leasing charter services too expensive and consequently owns 10 of its own buses. The applicant believes from his church work that by structuring his service at a cost below that of other charter services he will obtain some of that custom now being performed by church-owned buses. His success in lining up bookings and getting deposits indicates that his expectations are not unrealistic. His experience also indicates to him that he can furnish a quality service with his Scenicruiser bus and make what he considers to be a reasonable return. Thus far, England has presented an example of a would-be competitor who has analyzed the market and identified and sought out a segment in which he is willing to risk his capital in the hope of developing a profitable business. He will therefore be meeting an unsatisfied public requirement.^{2/}

That England is willing to comply with Commission rules and regulations is evidenced by the fact of this application. Furthermore, he has obtained the requisite insurance coverage and Highway Patrol Safety clearances, and has filed evidence of this with the Commission. We have no reason to believe that in the future he will not comply with our rules and regulations. The Coast Counties Charters witness told of rejecting a booking to take a charter for Faith Temple into Yosemite Park beyond the Lodge to Badger Pass,

^{1/} The witness related how his father had begun charter-party carrier service in essentially the same fashion as proposed by the applicant, working initially with church charters, and had gradually expanded service. They still do church charter work.

^{2/} Accordingly, it is appropriate to exempt England from the exclusionary provisions of Section 5375.1 of the Code.

considering the trip unsafe in snow conditions, while the applicant accepted the booking. England disagreed on the safety issue, stating that he was a competent driver with years of safe driving experience including ice and snow driving. He asserted that the competency of the driver and condition of his equipment should control. We note that the Glacier Point Road from Chinquapin to the Badger Pass ski area is listed on maps of Yosemite National Park as open in winter, although closed just beyond the ski area. Whether individual operators choose to accept charters under such conditions where the law does not prohibit operation must be a matter left to professional judgment.

Findings of Fact

1. England has the satisfactory experience, ability, fitness, and financial ability to initiate and conduct the proposed service.
2. The Commission has no reason to doubt that England will faithfully comply with the rules and regulations of the Commission.

3. England's proposed operations are oriented toward a church-associated segment of the potential charter market, a segment which seeks charter services providing lower charter rates than those presently generally available.

4. To the extent the existing charter-party carriers are not meeting the requirements of this church-associated segment of the potential charter market, they are not providing service satisfactory to the Commission.

5. It can be seen with certainty that there is no possibility that the charter-party service proposed may have a significant effect on the environment.

Conclusions of Law

1. Public convenience and necessity require that the service proposed by England be established.

2. The certificate sought by England 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 John Arthur Terry England, dba Heritage Charter, authorizing him 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 applicant's home terminal at 16066 Highland Drive, San Jose, CA 95127.

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

Applicant 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.

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

Dated MAR 4 1980, at San Francisco, California.

John S. Bryson

President

Richard W. Goodell

[Signature]

Commissioners

*I dissent
Yernon L. Sturgeon*

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