

ORIGINAL

Decision No. 91395 MAR 4 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of U. S. MESSENGER AND
DELIVERY SERVICE, INC., for a
permit to operate as a charter-party
carrier of passengers, San Francisco
(File No. TCP-1221-P).

Application No. 58991
(Filed July 12, 1979)

Marvin Handler, Attorney at Law, for applicant.
Jonathan V. Tufts, for himself, protestant.
Rita Clark, for the Commission staff.

O P I N I O N

Applicant is a California corporation with a terminal in San Francisco, California. It proposes to operate with 2 three-passenger sedans, 2 four-passenger, 2 five-passenger, and 2 eight-passenger vans, a total of 7 vehicles. Applicant has applied to provide a specialized charter service outside of San Francisco, under Section 5384(b) of the Public Utilities Code, which refers to specialized carriers who provide passenger transportation in vehicles carrying less than 15 passengers and of less than 7,000 pounds gross weight.^{1/}

1/ "5384. The commission shall issue permits to persons, who are otherwise qualified, whose passenger carrier operations fall into the following categories:"

* * *

"(b) Carriers using only vehicles under 15-passenger seating capacity and under 7,000 pounds gross weight."

Section 5371 provides for the issuance of an annual permit for operations conducted under Section 5384.

Applicant has operated a messenger service in the San Francisco Bay Area for a number of years. It has indicated that the proposed charter operation will be instituted under a fictitious name as "UNITED SEDAN SERVICE". Applicant's Statement of Financial Condition, dated April 4, 1979, shows \$247,000 cash on hand, \$227,000 accounts receivable, and total assets of \$621,000; liabilities total \$232,379. It is evident that applicant has the financial stability, equipment, and personnel to initiate and conduct the proposed service.

Protestant is a San Francisco taxi driver who owns and publishes a weekly newspaper called the SAN FRANCISCO TAXI NEWS. He testified that he received a brochure which stated applicant was offering passenger pickup service along with package delivery; on June 8, 1979, at 2:30 p.m., Jonathan V. Tufts (Tufts) telephoned applicant from the vicinity of Third and Townsend Streets, in San Francisco, and asked for cab service. A white van appeared after a 45-minute wait and drove him to the Hall of Justice, at Seventh and Bryant Streets in San Francisco. The van had a separate seat next to the driver and was designed for handling freight. Tufts was charged \$3 and offered to pay cash; the driver refused to accept it, so Tufts signed a voucher and was billed by mail. Tufts testified that the charge was excessive for transporting a passenger six blocks; it was twice what cab fare would be, although the driver explained fares were determined by zone of pickup and where the passenger left the vehicle.

Tufts filed an informal complaint on June 11, 1979. Applicant received a letter dated June 12, 1979, from the Transportation Division of the Commission, which advised it had been reported that passenger service was being provided in the San Francisco Bay Area and that it should be discontinued until

proper authority was first obtained from the Commission. A hearing in Application No. 58991 was held in San Francisco before Administrative Law Judge Fraser, on September 24, 1979 in order to receive evidence with respect to Tuft's protest.

Applicant's representative stated that transportation of passengers was initiated as part of a test to determine if there was a market for the service. He advised that the test was completed without first obtaining legal advice, which was a mistake, but any violation of law was inadvertent since the action taken was to obtain information, not to start a new business. Applicant also stipulated that no service will be provided ~~out of~~ ^{from} San Francisco to eliminate future misunderstandings. SS

Tufts argued that applicant's unlawful venture as a San Francisco taxicab is an indication of the lack of fitness required by Section 5375 of the Public Utilities Code. He concluded that applicant should be denied any authority to transport passengers for hire.

Discussion

Taxicabs are excluded from the passenger Charter-party Carriers' Act (Section 5353(g) of the Public Utilities Code) and this Commission has no authority to regulate them. Unlawful operation as a San Francisco taxicab is within the purview of the San Francisco Police Department. Tufts contacted the police officer responsible for taxi operation and control and was advised that the San Francisco Police Department would not oppose the application since Tufts' complaint to the department alleged only a single violation. Applicant's brief venture as a San Francisco taxicab operator, without first obtaining the necessary authority, is not a sufficient basis to justify a denial of the application, since applicant has satisfied all of the other statutory requirements.

Findings of Fact

1. Applicant has requested authority to operate vehicles carrying less than 15 passengers and of less than 7,000 pounds gross weight, as a charter-party carrier under Section 5384(b) of the Public Utilities Code.

2. Applicant has the ability, experience, financial stability, equipment, and personnel to institute and conduct the proposed service.

3. There is a public need for the proposed service.

4. The permit to be granted will be restricted to prohibit applicant from operating within the City and County of San Francisco.

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.

Conclusions of Law

1. A brief venture as a San Francisco taxicab operator, without authority, is not a basis for a denial of a charter-party carrier of passengers permit.

2. The application should be granted to the extent provided in the following order.

U. S. Messenger and Delivery Service, Inc. is 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. 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.

Applicant is also placed on notice that under Section 5371 of the Public Utilities Code the permit issued by the following order must be renewed annually by further order of the Commission.

O R D E R

IT IS ORDERED that:

1. Subject to the following restrictions a charter-party carrier of passengers permit shall be issued to U. S. Messenger and Delivery Service, Inc., authorizing operations as a charter-party carrier of passengers, as defined in Section 5384(b) of the Public Utilities Code.

Restrictions

1. No service will be provided between points within the City and County of San Francisco.
2. Charter-party operations authorized herein shall be performed with vehicles under 15-passenger seating capacity and under 7,000 pounds gross weight.
2. In providing service pursuant to the permit, applicant shall comply with and observe the following service regulations.


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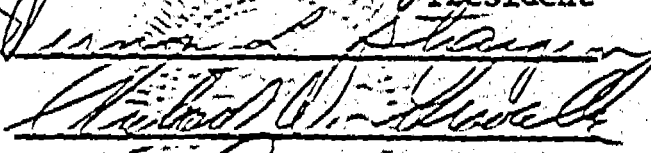
Failure to do so may result in a cancellation of the operating authority.

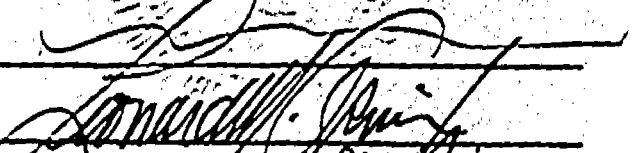
Applicant will be required, among other things, to comply with and observe the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 115-Series.


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

Dated MAR 4 1980 , at San Francisco, California.



President





Commissioners

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