

ORIGINAL

Decision No. 92585 JAN 6 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE APPLICATION
OF TIFFANY TOUR AND TRAVEL
SERVICE, INC. FOR REQUEST OF
AUTHORITY TO MAKE MINOR ROUTE
CHANGES AND TO LIFT THE
RESTRICTION ON SIZES OF AUTHORIZED
BUSES FROM LOS ANGELES AIRPORT TO
CITY OF ANAHEIM ONLY.

Application No. 59560
(Filed March 31, 1980;
amended July 29, 1980
and September 6, 1980)

Cadoo, Tretheway, McGinn & Morgan, by C. David Serena, Attorney at Law, for applicant.
Knapp, Grossman & Marsh, by Warren N. Grossman, Attorney at Law, for The Gray Line Tours Company, and James H. Lyon, Attorney at Law, for Airport Service, Inc., protestants.
James H. Lyon, Attorney at Law, for Starline Sightseeing, Inc., and James P. Jones, for United Transportation Union, interested parties.
William Austin, for the Commission staff.

O P I N I O N

By Decision No. 90943 dated October 23, 1979 in Application No. 58772, as amended by Decision No. 91098 dated December 4, 1979, Jamshid Anvaripour, dba Tiffany Tour and Travel Service, Inc. (Tiffany), was authorized to conduct sightseeing service for the transportation of passengers between an area near the Los Angeles International Airport (LAX), on the one hand, and Beverly Hills - Hollywood Downtown Los Angeles (Tour No. 1) and Disneyland (Tour No. 2), on the other hand. To perform this service, Tiffany was required to perform all services in vehicles having a capacity of 20 passengers.

By this application Tiffany seeks authority to include, as an additional attraction, the Universal Studios on its Tour No. 1 and add Knotts Berry Farm as a part of Tour No. 2. Tiffany proposes to use two 20-passenger buses for its Tour No. 1 and acquire two 54-passenger buses for use on Tour No. 2.

The application states that the route changes are needed to accommodate the large number of passengers requesting to see Universal Studios and Knotts Berry Farm. It is alleged that adding these attractions would require less than half a mile detour to Universal Studios and less than a three-mile detour to Knotts Berry Farm. Tiffany states that its request to lift the 20-passenger restriction for Tour No. 2 is reasonable since it has been necessary to lease private transportation for tours overbooked by various hotels. It is also alleged that because of the convenient passenger pickup scheduling it is impossible to arrange pickups of overbooked passengers with another tour agency.

Protests to this application were received from the city of Beverly Hills (Beverly Hills), The Gray Line Tours Company (Gray Line), Airport Service, Inc. (Airport), and Starline Sightseeing Service, Inc. (Starline).

Beverly Hills charged that Tiffany was attempting to deceive the Commission by not mentioning Roxbury Drive in Beverly Hills while showing it as an addition to Tour No. 1. Further, it charges that Tiffany was caught and admitted operating tours on Roxbury Drive in Beverly Hills without authority. Beverly Hills' position is that because of the deliberate effort to deceive the Commission, the application should be denied. Further, such conduct reflects on Tiffany's moral turpitude showing the lack of character necessary to operate a business imbued with the public interest. It asks that Tiffany's operating certificate be revoked.

Gray Line protested the application regarding the proposed change in the size of passenger vehicles to be used on the Disneyland tours. It alleged that present service under Commission authority is adequate and that present and future public convenience and necessity does not justify an increase in Tiffany's vehicle capacity.

Subsequent to the protest filed by Beverly Hills, Tiffany, on July 29, 1980, amended the application deleting Roxbury Drive from its proposal. With that change, Beverly Hills withdrew its protest.

Public hearing was held in Los Angeles before Administrative Law Judge Banks on September 2 and 4, 1980 at which time the matter was submitted. Testimony was presented on behalf of Tiffany by its chairman of the board Horace D. Gray. Testifying on behalf of protestant Gray Line was Bernard Davis, State Housing Director for south central Los Angeles, and Robert Collegeman, Gray Line's vice president of transportation.

At the hearing on September 4, 1980 Tiffany agreed to the amendment of its operating authority to exclude that area around LAX which does not include hotels. With this agreement, Airport withdrew its protest.

Davis testifying for Gray Line stated that he took Tiffany's Disneyland tour and that the debarkation and pickup point was not at Disneyland but rather south of the entrance to the Disneyland Hotel. He stated that as they passed the entrance to the amusement park, Tiffany's driver stated that he was not allowed to stop at certain points. On cross-examination Davis admitted that he was not personally offended by the departure and pickup provided by Tiffany at Disneyland.

Collegeman sponsored Exhibits 5 through 10. These exhibits show: (1) Gray Line's tour offerings throughout southern California; (2) Gray Line's equipment fleet that is available (some 115 in Los Angeles) in southern California; (3) Gray Line's hotel and motel pickup schedule for the LAX, Culver City, and Marina Del Rey hotels; (4) Gray Line's route map issued to all drivers indicating the route he must follow; (5) Gray Line's route map for its Airport Route 2 and the hotels it covers; and (6) a schedule comparing 1979 and 1980 revenues for the airport areas which Gray Line serves.

In his testimony Gray reiterated the allegations contained in the application regarding the need for the service requested. He emphasized the need for larger buses for the Disneyland tour stating that it was poor business practice to disappoint customers asking for these tours and to have to recommend another operator.

During cross-examination of Gray, protestant Gray Line introduced Exhibits 1 and 2. Exhibit 1 is Tiffany's flyer that is placed at various hotels to advertise its tours. It shows Tours Nos. 1 and 1-A as Disneyland tours at a cost of \$24, Tour No. 2 as the Beverly Hills movie stars' homes and Hollywood for \$9.50, and Tour No. 3-N as Los Angeles by night for \$9.50. Exhibit 2 is a map of Tiffany's authorized pickup area.

It was pointed out to Gray that the fares, as listed on Exhibit 1, did not coincide with Tiffany's filed tariffs and that Tiffany did not have authority to operate the Los Angeles night tour. Gray stated that he was unaware of this discrepancy and that effective immediately the fares on the authorized tours would be reduced to coincide with the filed tariffs and the Los Angeles night tour would be discontinued.

During cross-examination, because Gray was unable to (1) give a breakdown of revenues and expenses for the proposed changes or explain the financial pages attached to the application, (2) explain the price discrepancy for the various tour changes,

(3) explain the lack of statistics or pro forma financial statements to show the profitability, or lack thereof, of operating the Knotts Berry Farm tour, (4) explain what points of interest were covered in downtown Los Angeles, (5) detail how Tiffany would operate the Universal Studios tour including pickup time and departure, and (6) explain the details of Tiffany's equipment, the hearing was put over until September 6, 1980.

On September 6, 1980 Tiffany amended the application to correct the deficiencies elicited by cross-examination of Gray on September 4, 1980. The amendment included the following:

1. Unaudited financial statements ending July 31, 1980:
 - a. Balance sheet showing total assets of \$48,979, liabilities of \$32,815, and total capital of \$16,164.
 - b. Income statement showing six-month income of \$112,626, expenses of \$97,662, with a profit from operations of \$14,964 before taxes. ✓
2. Pro forma profit and loss statement on a daily basis:
 - a. Hollywood-Beverly Hills-Universal Studios - \$960 income - expenses of \$768.
 - b. Disneyland-Knotts Berry Farm - \$960 gross income - expenses of \$795.
3. Timetable of departure and arrival:
 - a. Hollywood-Beverly Hills-Universal Studios-Los Angeles - Leave LAX area 12:30 p.m.; arrive Universal Studios 3:00 p.m.; depart Universal Studios 7:30 p.m.; return LAX 9:00 p.m.

- b. Disneyland-Knotts Berry Farm -
Leave LAX area 9:00 a.m.;
arrive Knotts Berry Farm 9:30
a.m.; depart Knotts Berry Farm
9:35 a.m.; arrive Disneyland
9:50 a.m.; depart Disneyland
6:00 p.m.; arrive Knotts Berry
Farm 6:15 p.m.; return LAX
6:45 p.m.
4. Proposed tariffs:
 - a. Universal Studios \$24 including
admission.
 - b. Knotts Berry Farm \$23 including
admission.
 - c. Disneyland \$24 including
admission and 11 ride tickets.
5. Negative declaration with respect to the
effect on the environment.

On September 6, 1980 Gray also sponsored Exhibit 4. This exhibit is the reprinted flyer to replace Exhibit 1. It shows only Tour No. 1 as the daily Disneyland tour at a fare of \$23 and Tour No. 2 as the Beverly Hills movie stars' homes and Hollywood tour at a fare of \$7.50. Gray explained he had advised his attorney to take the necessary steps to obtain Commission approval for an increase in fares.

Discussion

In granting Tiffany its certificate in Decision No. 90943 we stated:

"This nation's antitrust laws and policies are premised on the understanding that competitive service generally results in a superior overall level of service to the public. In the area of sightseeing bus operations, competition will have a direct bearing on the quality of overall treatment afforded passengers, rates, scheduling, equipment condition, and operational innovation generally. California needs an influx of

vigorous, innovative thinking and application if publicly acceptable alternatives to private auto use are to fully develop. We state now that competition in the area of sightseeing bus operations is a most desirable goal.

"We are here dealing with sightseeing service. This class of service, unlike the traditional common carrier passenger stage operation, is essentially a luxury service, recreationally oriented and essentially different from the conventional point-to-point public transportation service, and therefore it is a service less imbued with that essentiality to the public welfare which we usually hold inherent in the underlying concept of public convenience and necessity. Accordingly, it is a service less entitled to the strict territorial protectionism from competition and competitive factors which necessarily is accorded the 'natural' utility monopolies such as electric, gas, or telephone utilities.

"In the sightseeing field a policy of fostering limited competition under regulation would have a beneficial effect for the public interest in that it would tend to lead to development of a territory and improved methods, forms, or routes of transportation and would best meet special requirements of segments of the general public. Furthermore, it would tend to promote good service and to hold down fares. We believe that the competition of ideas and results is healthy and, accordingly, we look to the circumstances of each application in the sightseeing field to determine whether or not the public interest requires certification of that application. The granting or withholding of a certificate of public convenience and necessity is a legislative act which rests in the discretion of this Commission. The Commission may grant a number of certificates covering the same route or routes."

The determination made in Decision No. 90943 that resulted in the issuance of Tiffany's certificate of public convenience and necessity is equally applicable to Tiffany's request to add Knotts Berry Farm and Universal Studios as points of interest on its tours. Accordingly, we believe the application should be granted to add the requested points of interest. Also, the schedules and fares proposed by Tiffany materially differ from those of the protesting carriers.

With respect to the restriction on the size of buses for the Disneyland tour, there is no valid reason why this request should not be granted. Gray Line's contention that since Tiffany's entry into the sightseeing field, its volume of business from the six hotels served by Tiffany has declined is without merit. While Exhibit 10^{1/} shows a decline in revenues of 25 percent for the first six months of 1980 at the six hotels, we are not concerned that Tiffany's entry is the sole cause of the alleged decline in business. General economic conditions and other factors could be equally at fault.

Tiffany, through its board chairman, has demonstrated that it has the financial ability and the experience necessary to provide the additional sightseeing service requested. Tiffany should be authorized to operate a 54-passenger bus to Knotts Berry Farm and Disneyland.

With respect to Tiffany's request to increase the fare to Disneyland, we would point out that a certificate application is not the proper proceeding to increase fares. Section 454 of the Public Utilities Code requires a showing before the Commission and a finding by the Commission that such an increase is justified. The amendment to the application filed at the September 6, 1980 hearing contained no figures or documentation to support the requested increase, nor was any evidence or testimony presented to justify

^{1/} The figures shown in Exhibit 10, as introduced by Collegeman, are unaudited.

the request. Should Tiffany wish to increase its Disneyland tour fare, it should file an application pursuant to Rules 23 and 24 of the Commission's Rules of Practice and Procedure. Regarding the Knotts Berry Farm and Universal Studios additions, since these are new attractions not previously served, the fares requested in the amended application are appropriate.

Findings of Fact

1. By Decision No. 90943 dated October 23, 1979 Tiffany was issued a certificate of public convenience and necessity to provide sightseeing service from hotels around LAX to Disneyland and Hollywood-Beverly Hills.

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

3. The tour changes proposed by Tiffany materially differ from those offered for similar areas by competitors with respect to scheduling and routing.

4. Competition on the proposed tour changes between Tiffany and other certificated sightseeing operators, to the extent it will exist, will have a beneficial effect for the public interest in that it will lead to the development of the territory served and will promote good service.

5. The use of a 54-passenger bus on Tiffany's Knotts Berry Farm-Disneyland tour will have a beneficial effect on the bus and automobile traffic in the area.

6. Tiffany has sufficient experience and financial resources to perform the proposed new service.

7. Public convenience and necessity require that the service proposed by Tiffany to Universal Studios and Knotts Berry Farm be established.

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

9. A certificate application is not the proper proceeding to consider increasing fares.

Conclusions of Law

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

2. The request to increase the fare for Tour No. 2 should be denied.

3. The following order should be effective the date of signature since there is a need for service for the public.

Tiffany 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 ratefixing 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.

O R D E R

IT IS ORDERED that:


1. Appendix A of Decision No. 90943, as amended by Decision No. 91098, is further amended by incorporating Second Revised Page 2 and First Revised Page 4, attached hereto, in revision of First Revised Page 2 and Original Page 4.


2. The restriction on size of vehicle for service to Disneyland as contained in Decision No. 90943 is canceled.

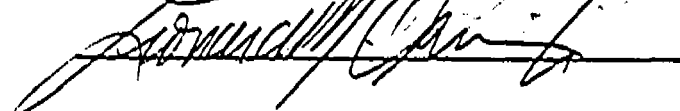
3. The request to increase the fare for Tour No. 2 is denied without prejudice.

The effective date of this order is the date hereof.

Dated JAN 6 1981, at San Francisco, California.



President




Commissioners

Appendix A
(Dec. 90943)
(Dec. 91098)

TIFFANY TOUR AND TRAVEL SERVICE, INC.
(a California corporation)

Second Revised Page 2
Cancels
First Revised Page 2

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

Jamshid Anvaripour, doing business as Tiffany Tours and Travel Service, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct a sightseeing service for the transportation of passengers between the Los Angeles International Airport service area, as hereinafter set forth, on the one hand, and points of interest in Orange and Los Angeles Counties, on the other hand, over and along the routes hereinafter described, subject to the following conditions and restrictions:

- a. Motor vehicles may be turned at termini and intermediate points, in either direction, at intersections of streets or by operating around a block contiguous to such intersections in accordance with local traffic regulations.
- b. When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.
- *c. All service herein authorized shall be limited to the transportation of only round-trip passengers and such service performed on (a) tour No. 1 shall be restricted at all times to the use of a maximum of two (2) motor vehicles, each, not to exceed 20 passengers, including driver and (b) on tour No. 2 to a maximum of two (2) motor vehicles, each, not to exceed 57 passengers including driver.
- d. Applicant shall not pick up or discharge passengers except within the limits of the specified service area 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.
- e. Tour No. 1 - Beverly Hills-Hollywood-Downtown Los Angeles:
Service will be rendered on a year-round basis, Monday through Saturday of each week, excluding New Year's Day, Thanksgiving Day, and Christmas Day.

Issued by California Public Utilities Commission.

*Amended by Decision No. 92585, Application No. 59560.

Appendix A
(Dec.90943)

TIFFANY TOUR AND TRAVEL SERVICE, INC.
(a California corporation)

First Revised Page 4
Cancels
Original Page 4

SECTION 3. ROUTE DESCRIPTIONS.

Subject to the authority of this Commission to change or modify such at any time, Tiffany Tour and Travel Service, Inc. shall conduct said sightseeing passenger stage operations over and along the following routes:

*Tour No. 1 - Beverly Hills-Hollywood-Downtown Los Angeles

Commencing at any point in the Los Angeles International Airport Service area along the most appropriate route or routes to La Cienega Boulevard, thence, north on La Cienega Boulevard to Wilshire Boulevard, west on Wilshire Boulevard to Beverly Drive in the City of Beverly Hills, north on Beverly Drive to Sunset Boulevard, east on Sunset Boulevard to La Brea Avenue in the City of Los Angeles, north on La Brea Avenue to Hollywood Boulevard, east on Hollywood Boulevard to Highland Avenue in the City of Hollywood, north on Highland Avenue to State Highway 101. Continue in a northerly direction to Lankershim Boulevard, northeast on Lankershim Boulevard to the Universal Studios where passengers shall debark for a tour of the studio. Thence, return northwest on Lankershim Boulevard to State Highway 101, south on State Highway 101 to Temple Street off ramp, east on Temple Street to Broadway, north on Broadway to Sunset Boulevard, east on Sunset Boulevard to San Pedro Street, south on San Pedro Street to Fifth Street, west on Fifth Street to Figueroa Street, and return over and along the most appropriate route or routes to the Los Angeles International Airport Service area.

*Tour No. 2 - Disneyland

Commencing at any point in the Los Angeles International Airport Service area along the most appropriate route or routes to Interstate Highway 405 (I-405), south on I-405 to State Highway 91, east on State Highway 91 to Beach Boulevard, south on Beach Boulevard to the Knotts Berry Farm located at La Palma Avenue and Beach Boulevard in the City of Buena Park. Return north on Beach Boulevard to State Highway 91, east on State Highway 91 to Harbor Boulevard, south on Harbor Boulevard to the Disneyland playground located at Harbor Boulevard and Ball Road in the City of Anaheim.

Issued by California Public Utilities Commission.

*Amended by Decision No. £2585, Application No. 59560.