

ORIGINAL

Decision No. 92881 APR 7 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Butterfield Transport, Inc., dba)
Butterfield Express Co., for)
transfer of Class "A" certificate)
to operate as a charter-party)
carrier of passengers to James)
Victor Pike, an individual)
(TCP-137-A).)

Application No. 58768
(Filed March 27, 1979)

Virant & deBrauwere, by John E. deBrauwere, Attorney
at Law, for James Victor Pike, and Carl D. Barrett,
for Butterfield Transport, Inc., applicants.

O P I N I O N

Application No. 58768 requests authority for James Victor
Pike (Pike), an individual, to acquire and for Butterfield Transport,
Inc. (Butterfield), dba Butterfield Express Co., to transfer Class A
charter-party carrier Certificate TCP-137-A (the certificate) to Pike.
A hearing was held before Administrative Law Judge Pilling on
January 31, 1980 and January 20, 1981.

Application No. 58768 was initially consolidated for hearing
with Application No. 58767, which was an application by Butterfield to
transfer the certificate to Robert E. Keech (Keech). At the initial

hearing Butterfield, through its president, Carl D. Barrett (Barrett), and Keech moved to dismiss Application No. 58767. The request was later granted by Decision No. 91438, which dismissed Application No. 58767.

Also at the initial hearing Barrett moved to dismiss Application No. 58768, claiming that his signature on that application was a forgery. Pike objected to the dismissal of Application No. 58768 and claimed that Barrett's signature on the application was that of Barrett. Pike explained that the certificate had originally belonged to Pike and that he had sold and transferred it to Butterfield, (approved by resolution of the Commission) but that Butterfield had defaulted on the agreement of sale in failing to make the installment payments. Pike further explained that he is suing Barrett and Butterfield in court (Case No.C 312477, Superior Court for the County of Los Angeles) because of Butterfield's default and was attempting to obtain a court order requiring Butterfield to transfer the certificate back to Pike. The hearing was continued awaiting the outcome of the court case.

On August 25, 1980 Pike filed with the Commission a petition to compel approval of Application No. 58768. Attached to the petition was a copy, certified by the court clerk, of the order of Judge Jerry Pacht issued in the above court case which ordered Barrett to transfer the certificate to Pike and Richard DeWitt (DeWitt). Also attached to the petition was a copy of the bond, the filing of which was made a condition of the order, certified by the court clerk as having been filed with the court. The court order recites that neither Barrett nor Butterfield appeared in the case even though they had due notice of the place and date of the court hearing.

At the Commission's continued hearing neither Barrett nor Butterfield nor any representative of them appeared, although the Commission's formal files show that both Barrett and Butterfield were notified by mail of the hearing date. At the continued hearing Pike testified that when he sold the certificate to Butterfield he had Barrett, on behalf of Butterfield, sign the application which was eventually filed in this proceeding as security for Butterfield's performance under the sales agreement in the event Butterfield defaulted on the agreement. Pike testified that Barrett signed the application in Pike's presence and that the signature on the application was that of Barrett. Pike also testified

that at the time he sold the certificate to Butterfield he also sold Butterfield a bus for conducting operations under the certificate. Pike stated that he repossessed the bus some time ago. DeWitt testified that while he was named along with Pike in the injunction to receive the certificate he "deferred" his right in the certificate to Pike.

As of January 20, 1979 Pike had a net worth of approximately \$290,000. Pike stated that since that time his net worth has improved. He operated a charter bus company for 10 years and is currently in the bus leasing business. He has ten 47-passenger buses and ten 41-passenger buses, any of which can be used in the proposed charter-party operation.

Findings of Fact

1. The application requests authority to transfer the certificate from Butterfield to Pike.
2. The application was signed by Barrett, as president of Butterfield, and by Pike.
3. Barrett willingly signed the application as security for Butterfield's performance of the agreement of sale of the certificate from Pike to Butterfield.
4. Butterfield defaulted on the agreement of sale by failing to make the required installment payments.

5. Pike and DeWitt sued Barrett and Butterfield in court over Butterfield's default, and they obtained a court order requiring Barrett to transfer the certificate to Pike and DeWitt.

6. Barrett and Butterfield failed to participate in the continued hearing though they had ample notice.

7. DeWitt consented to have the certificate transferred to Pike alone.

8. Pike has the ability, experience, equipment, and financial resources to perform the proposed services.

9. The proposed transfer is in the public interest.

Conclusions of Law

1. Barrett willingly consented to the transfer when he signed the application as security for Butterfield's performance.

2. Barrett's present acquiescence to the transfer is not necessary due to the judicial order requiring Barrett to transfer the certificate.

3. Barrett's motion to dismiss the application should be denied.

4. The application should be granted.

Pike 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.

O R D E R

IT IS ORDERED that:

1. Charter-party carrier Certificate TCP-137-A is authorized to be transferred from Butterfield Transport, Inc., dba Butterfield Express Co., to James Victor Pike, an individual.

2. In providing service pursuant to the certificate herein transferred, applicant shall comply with and observe, among other things, 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. Failure to do so may result in cancellation of the operating authority.

3. When the required California Highway Patrol clearances are received by the ²Commission's Passenger Operations Branch and the evidences of adequate protection against liability imposed by law are filed in compliance with General Order No. 115-Series, the annual renewable certificate on Form PE-695 will be issued to applicant by the Passenger Operations Branch under the authorization of Resolution PE-303, approved July 29, 1975.

4. The motion of Barrett to dismiss Application No. 58768 is denied.

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

Dated APR 7 1981, at San Francisco, California.

John E. Bayne
President

Michael D. Sproule

Lanman C. Jones

Newton Calver

Phyllis C. Mew
Commissioners