

ORIGINAL

Decision 93215 JUN 16 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Palm Springs Shuttle Service, Inc.,)
a California corporation, for)
authority to operate as a passenger)
and baggage service between Orange)
County and Palm Springs and)
Surrounding Cities: Palm Desert,)
Rancho Mirage, Cathedral City, and)
Indian Wells.)

Application 59866
(Filed August 7, 1980;
amended August 29, 1980
and April 17, 1981)

Dennis Harwood, Attorney at Law, for Palm Springs Shuttle Service, Inc., applicant.
James H. Lyons, Attorney at Law, for Skyview Limousine Service, Inc., and R. D. Rierson, Attorney at Law (Illinois), for Greyhound Lines., Inc., protestants.
James P. Jones for United Transportation Union, interested party.
William O. Austin, for the Commission staff.

O P I N I O N

Palm Springs Shuttle Service, Inc. (applicant), a California corporation, seeks a certificate of public convenience and necessity to provide passenger and baggage service between points in Orange County and Palm Springs and surrounding cities. The application was protested by Skyview Limousine Service, Inc. (Skyview) and Greyhound Lines, Inc. (Greyhound).

Applicant proposes daily round-trip on-call service.

Approximate morning and evening departures and arrivals between the points to be served are:

Depart Orange County	8:00 a.m.
Arrive Palm Springs	10:30 a.m.
Depart Palm Springs	11:30 a.m.
Arrive Orange County	2:00 p.m.
Depart Orange County	6:00 p.m.
Arrive Palm Springs	8:30 p.m.
Depart Palm Springs	9:30 p.m.
Arrive Orange County	12:30 a.m.

It is proposed that passengers will be picked up at their point of departure and delivered to their destination. The proposed individual one-way fare is \$40. The fare for two additional passengers with the same departure and destination would be charged \$20 or 1/2 of the individual fare. Applicant proposes to operate two Dodge one-ton Brougham sports vans with a maximum capacity of 12 passengers and their baggage. The vehicles are to be equipped with bucket seats, stereo headphone, and television for passenger comfort in addition to two-way radios. Applicant estimates annual operating revenues of \$109,200 and expenses of \$92,028 resulting in a net income of \$17,172. The revenue estimate is based on 80 passenger fares per week, averaging four fares per trip, for 39 weeks.

Duly noticed public hearing was held March 23, 1981 at Los Angeles before Administrative Law Judge (ALJ) Banks. The matter

was submitted subject to applicant's filing a corporate financial statement and an amendment requesting authority to issue stock.

At the hearing, applicant's counsel stated that applicant corporation had not yet commenced operation and accordingly had acquired no assets nor incurred any liabilities. He stated that the sole purpose was to operate as outlined in the application. He also stated that Michael Max Drucker, as a condition of the application, would finance the corporation for two months, which is estimated to be \$7,500 per month.

Testifying for applicant was Drucker, founder of the applicant corporation, and Robert William Roark, applicant's vice president.

Drucker stated that he feels there is a problem in transportation between the Palm Springs area and Orange County. He stated that many people in Orange County have second homes in the Palm Springs area and that oftentimes the wife or someone else in the family may be staying in the second home and when another person has to visit it necessitates the use of several cars. He stated that the proposed door-to-door service would provide one-stop service for people rather than requiring them to go to an airport, fly to another airport, and then obtain surface transportation to their destination. He stated that the primary market area of applicant

within Orange County would be the beach area, i.e. Newport Beach, Huntington Beach, Irvine, and Laguna Beach. He stated that this type of service is not now provided by any carrier.

On cross-examination Drucker admitted he had no experience in transportation, and that he had made no survey nor performed any study to determine a need for the proposed service. He stated though it was to be an on-call service, it would not be subject to a minimum number of passengers with departures from Orange County in the morning and from the Palm Springs area in the evening. He also stated that the vehicles will be garaged at his home until a terminal facility is acquired.

On cross-examination by Greyhound, Drucker stated that he would agree to a certificate that restricted operations to door-to-door service with vans having a seating capacity of 12 passengers. With these restrictions stipulated to by applicant, Greyhound stated it had no further interest in the proceeding.

Roark also appeared on behalf of applicant. He testified that his primary business was to assist in the start-up of business operations for major corporations throughout the United States. He stated that neither he nor Drucker will take any compensation from applicant's operations. He stated that he has made

arrangements for employees of his firm, Roark industries, to handle on a gratis basis inquiries and bookings on a 24-hour basis. He stated that applicant does not have any equipment at present but equipment would be obtained under one of the following three arrangements: (1) a syndicate would own the vans and lease them to the corporation, (2) the vans would be leased from an existing leasing company, or (3) Drucker would own the vans and lease them to the corporation. He stated the corporation will hire two drivers to commence operations, with other employees added as required.

Testifying on behalf of protestant Skyview was its president, Ben Kalmuk. He stated that Skyview presently operates a scheduled daily service as a passenger stage between Los Angeles and Palm Springs and between various points in Orange County, Long Beach, Seal Beach, Torrance, and Palm Springs. He stated that Skyview has offices in both Los Angeles and Palm Springs providing daily service in each direction. He explained that his service is an on-call service with passengers picked up and delivered to a central point and transported to their destination in one of his four 11-15 passenger limousines. He sponsored an exhibit showing a listing of passengers carried from Palm Springs to Disneyland and Disneyland to Palm Springs for February 1981 and the first 20 days of March. It shows that Skyview operated 11 days in February carrying an average of 6.6

passengers and 14 days in March also carrying an average of 6.6 passengers. He explained that Skyview distributes flyers to hotels in Palm Springs to make persons aware of its Palm Springs to Los Angeles-area service.

On April 17, 1981 applicant amended the application requesting authority to issue stock and execute a promissory note. Applicant proposes to issue 750 shares of its no par value common stock to Drucker for \$10 per share. Applicant also proposes to borrow \$7,500 from Drucker, issuing a promissory note. The promissory note would bear interest at a rate equal to the prime interest rate as set by the Bank of America on April 1 of each year. Interest would be payable annually with principal and interest due and payable three years from date of execution.

Applicant alleges that the issuance of stock and borrowing of funds will be sufficient for start-up and two months of operation.

The pro forma balance sheet attached to the amendment reflecting the stock subscription and loan by Drucker shows assets of \$15,000, liabilities of \$7,500, and a net worth of \$7,500.

Discussion

We are not convinced that the record supports a determination that applicant's proposed service is necessary to serve the public. While the record does establish Drucker's financial stability, the evidence presented regarding need for the proposed service is inadequate. Further, the evidence that was presented leads to the

conclusion that the proposed service would not be in the public interest.

The only evidence supporting the claim for the need for the proposed service was Drucker's statement that he had spoken to "others" who expressed the opinion that such service was necessary to enable persons spending the weekend in Palm Springs to return to their homes in Orange County. No market survey or study was conducted. The income and expense projections are only the unsupported estimates of Roark and Drucker. Neither Drucker nor Roark has any experience in the passenger transportation business. Applicant has no employees and Roark testified that it was not envisioned that there will be any full-time employees and that employees of his firm had agreed to provide telephone answering service with an allocation of expenses. Applicant has no terminal in Palm Springs and neither of its witnesses was able to explain how deadheading between the two areas would be handled.

During cross-examination the following exchange took place between witness Drucker and protestants' counsel:

"Mr. Lyons: I just have one more question.

"Q Why in the world would an orthopedic surgeon be trying to get into this business.

"ALJ Banks: That was my question.

"Mr. Lyons: I'm sorry.

"The witness: One of my colleagues asked that and I didn't have a good answer for him.

"ALJ Banks: You still don't have?

"The witness: I still don't have."

In short, applicant did not make a convincing showing of the ability to conduct the proposed service. We will deny the application because applicant simply did not meet its burden of presenting, in the hearing room, a well-developed proposal.

We note that the proposed route is one Drucker commutes over frequently. While the service might accommodate him, giving some income tax deductions for commuting expense since he would commute via his entity, a more extensive showing of public need is required.

While we reach this conclusion, we reach it reluctantly, because it is this Commission's general policy to encourage increased competition and entry into the field of passenger transportation. We will deny the application without prejudice in the event applicant wishes to resubmit a more complete application. Because we deny this application, no other issues need be discussed.

Findings of Fact

1. Applicant is a California corporation not now operating. No stock has been issued.

2. Applicant has requested authority to provide on-call passenger service between Orange County and the Palm Springs area on a seven-days-per-week basis.

3. Applicant proposes to purchase or lease two 10-12 passenger vans and to hire two drivers.

4. Applicant has no employees. Neither applicant's principal, an orthopedic surgeon, nor its business consultant has any experience in the passenger stage business.

5. No market survey or study of the need for the proposed service was performed. No public witnesses testified in support of the application.

6. The income and expense projections were unsupported estimates of applicant's principal and its business consultant.

7. Applicant has not demonstrated the need for the proposed service or the ability to conduct such service.

Conclusion of Law

The application should be denied without prejudice.


A.59866 /RZE


O R D E R


IT IS ORDERED that Application 59866 is denied without prejudice.


This order becomes effective 30 days from today.


Dated JUN 16 1981, at San Francisco, California.



President








Commissioners