

ORIGINAL

Decision 93406 AUG 4 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION,
CITY OF LOS ANGELES,

Complainant,

vs.

COSMO SALES AND LEASING, INC;
dba CHECKER TRANSPORTATION SERVICE,
TCP 1314-P,

Defendant.

Case 10910
(Filed September 24, 1980)

James V. Ferro, Attorney at Law, for
Department of Transportation, City
of Los Angeles, complainant.
Seymour R. Holtzman, Attorney at Law,
for Cosmo Sales and Leasing, Inc.,
defendant.

O P I N I O N

The Department of Transportation, City of Los Angeles (Department) alleges that it is responsible for administering and enforcing those city ordinances which regulate taxicabs.

Cosmo Sales and Leasing, Inc. (defendant) holds a charter-party permit. It allegedly operates a taxicab service in Los Angeles without having obtained the appropriate operating authority from the Department. The complaint further alleged that defendant's vehicles are painted in bright colors and are equipped with taximeters and toplights, thus simulating legitimate taxicabs. Allegedly, defendant will dispatch vehicles by radio to patrons who telephone for a taxicab. It is also alleged that defendant's drivers cruise, respond to hails, and park in recognized taxi stands.

Department further alleged that some of the vehicles do not have commercial licenses as required by Vehicle Code § 260(a) and that mileage measuring devices have not been calibrated and sealed (Cal. Admin. Code, Title 4, Article 20). Department also alleged that defendant does not record the names and addresses of its patrons, that drivers are allowed to lease vehicles, and that the TCP number is not displayed. (These items would be governed by Commission General Order 98 if defendant were found to be a charter carrier.)

The complaint seeks a cease and desist order and revocation of defendant's permit.

Defendant did not file an answer; however, in light of the charges made, it was decided to convene an evidentiary hearing, rather than to issue a decision based on defendant's constructive admission of the facts alleged. A hearing was held before Administrative Law Judge (ALJ) Gilman in Los Angeles on December 10, 1980.

At hearing, defendant appeared by an attorney who argued that no evidence should be received because he had not been given sufficient time to prepare for hearing.^{1/}

During the argument on this point, the ALJ offered defendant's attorney an opportunity to orally allege any facts claimed to constitute a meritorious defense; he was unable to do so. The ALJ thereupon ruled that Department should have the right to proceed to present all of its case in chief without further delay. He also ruled, however, that defendant should have a further opportunity to file a pleading alleging facts, if any, which counsel

^{1/} The file indicates that defendant, but not his attorney, was given written notice of time and place of hearing. The record also indicates that the Commission's administrative staff and complainant knew or should have known that defendant was represented by counsel.

believed constitute a defense. This pleading could also include a request for further hearings to cross-examine or to introduce rebuttal evidence.

The Department called investigators to describe trips they had taken in defendant's vehicles. In each case they called a telephone number advertised by defendant, asking for taxi transportation. In each case a vehicle responded, transporting them for compensation between points in Los Angeles. Two officials of another taxi carrier also described defendant's operation. Defendant's attorney did not cross-examine or produce evidence.

Both parties filed written pleadings in the nature of briefs. The matter was thereupon taken under submission on April 1, 1981.

Discussion

Due Process

Defendant's attorney contends that the rulings described above denied his client due process and that the proceeding must therefore be dismissed.

Defendant was given ample opportunity to show that it would have raised one or more material issues of law, if all notices had been given. Further, it is now plain from the testimony presented that no such defense exists.

Factual Questions

In its brief, defendant raised three questions of fact.

The first of these is irrelevant. Defendant first asserted that some or all of the meters installed in its cabs were set for mileage, not money. This fact, even if demonstrated, would not make defendant a taxicab under Los Angeles' ordinance or a charter-party carrier under the Passenger Charter-party Carriers' Act.

Defendant next claims that witnesses called by Department were biased because of their association with another taxicab operation. However, even if that testimony were disregarded, there is an abundance of evidence which indicates that defendant's operation is that of a taxicab. Defendant has not denied that allegation.

Finally, defendant contends that some of its operations either begin or end outside of Los Angeles city limits. As explained more fully below, the Commission does not have or claim jurisdiction over taxicab operations regardless of whether they are inter- or intra-city.

Therefore even if defendant were to prevail on any or all of the issues, such success would have no impact on the outcome of this proceeding.

Preemption

Defendant claims that the Passenger Charter-party Carriers' Act preempts local ordinances regulating taxicabs which operate across city or county boundaries. That claim is untenable. Public Utilities Code § 5353(a) and (g)^{2/} demonstrates that the Passenger Charter-party Carriers' Act was meant to confirm and ratify the power of local governments to regulate both intra- and inter-city taxicab operations.

2/ "The provisions of this chapter [the Passenger Charter-party Carriers' Act] do not apply to:

"(a) Transportation service rendered wholly within the corporate limits of a single city or city and county."

* * *

"(g) Taxicab transportation service licensed and regulated by a city or county, by ordinance or resolution, rendered in vehicles designed for carrying not more than eight persons excluding the driver."

Scope of Charter Authority

There is a traditional division of responsibility between state and local government under which taxicab regulation is a local function. (In Re Martinez (1943) 22 C 2d 259, cf. People v Western Airlines (1954) 42 C 2d 621.)

In our opinion, this division of responsibility is sound public policy. The Commission will do nothing to disturb or weaken it. For that reason, this Commission does not knowingly issue charter-party permits or certificates to authorize anyone to engage in either intra- or inter-city taxicab operations.

Our staff, upon renewal of authority, should add an endorsement on charter permits and certificates which expressly states that the holder is not authorized to engage in taxi operations under the charter authority.

It is appropriate to allow a carrier to retain an endorsed certificate or permit when there is any reason to believe that at least a part of his operations may be subject to the Passenger Charter-party Carriers' Act. Here, however, there is no reason to believe that the defendant plans to conduct any non-taxi operations. Consequently, it has no legitimate use for a charter permit. The only reason why a carrier in defendant's situation might wish to hold such a permit is to obstruct legitimate local taxi regulations by means of frivolous or vexatious litigation. It is, therefore, appropriate to apply § 5378(g). That statute authorizes us to revoke an unused permit.

Findings of Fact

1. Defendant was offered ample opportunity to state facts constituting a defense. It has failed to do so.
2. Defendant conducts taxicab operations using vehicles designed for carrying not more than eight persons, excluding the driver.

3. Defendant does not plan to conduct any operations which are colorably subject to the Passenger Charter-party Carriers' Act.

4. Defendant has no legitimate need for a permit.

Conclusions of Law

1. Defendant was offered ample opportunity to argue, to state facts purporting to constitute a defense, to produce evidence, to cross-examine, and to request additional hearings. It was not denied due process of law.

2. The transportation service defendant performs, including its inter-city taxicab service, is not subject to Commission jurisdiction.^{3/}

3. Defendant's permit does not authorize it to conduct taxicab operations.

4. The Passenger Charter-party Carriers' Act does not preempt city or county regulation of taxicabs, whether or not a taxicab provides inter-city service.

5. The Commission can revoke charter-party authority held by a carrier who performs no service subject to the Passenger Charter-party Carriers' Act.

^{3/} If there are any local jurisdictions which do not exercise their power to regulate both classes of taxicab operations, defendant has failed to demonstrate that fact. (Cf. Evidence Code § 453, under which a party is required to give notice and make a showing of any local ordinance relied upon.) ✓

ORDER

IT IS ORDERED that Charter-party Permit TCP 1314-P held by Cosmo Sales and Leasing, Inc. is revoked.

This order becomes effective 30 days from today.

Dated APR 4 1951, at San Francisco, California.

J. C. Boyer President
Richard D. Gavelle
Lawrence J. ...
Victor ...
J. M. ... Commissioners