Decision 93726 NOV 13 1981 ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of WESTERN TRAVEL PLAZA, INC., a California corporation, for a certificate of public convenience and necessity to operate as a passenger stage corporation pursuant to the provisions of Section 1031, et. seq. of the California Public Utilities Code in the Counties of Alameda, Contra Costa, Los Angeles, Marin, Fresno, Mariposa, Merced, Monterey, Orange, Sacramento, San Diego, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Tuolumne, and Yolo.

Application 59818
(Filed July 17, 1980;
amended September 23, 1981)

In the Matter of the Application of KINTETSU INTERNATIONAL EXPRESS (USA), INC., a California corporation, for a certificate of public convenience and necessity for passenger sight-seeing service in Alameda, Contra Costa, Los Angeles, Marin, Mariposa, Merced, Monterey, Orange, San Diego, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Stanislaus, and Tuolumne Counties.

Application 60174
(Filed January 7, 1981;
amended September 21, 1981)

In the Matter of the Application of NIPPON EXPRESS U.S.A., INC., a New York corporation, qualified to do business in California, for a certificate of public convenience and necessity to operate as a passenger stage corporation pursuant to the provisions of Section 1031, et. seq., of the California Public Utilities Code in the Counties of Alameda, Contra Costa, Fresno, Los Angeles, Marin, Mariposa, Merced, Monterey, Orange, Sacramento, San Diego, San Francisco, San Joaquin, San Mateo, Santa Clara Santa Cruz, Solano, Sonoma, Stanislaus, Tuolumne, and Yolo.

Application 60181
(Filed January 9, 1981;
amended September 23, 1981)

In the Matter of the Application of JATS ENTERPRISE, INC., a California corporation, for a temporary and permanent certificate of public convenience and necessity to operate as a passenger stage corporation pursuant to Section 1031, et. seq. of the California Public Utilities Code, in the Counties of Alameda, Contra Costa, Los Angeles, Marin, Fresno, Mariposa, Merced, Monterey, Orange, Sacramento, San Diego, San Mateo, San Francisco, San Joaquin, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Tuolumne, and Yolo,	Application 60221 (Filed January 27, 1981; amended September 23, 1981)
In the Matter of the Application of JETOUR USA, INC., a California corporation, for a certificate of public convenience and necessity to operate as a passenger stage corporation to provide sightseeing tours between specified points in California and for interim temporary authority.	Application 60286 (Filed February 22, 1981; amended September 23, 1981)

Lillick, McHose & Charles, by Charles L. Coleman, III, Attorney at Law, for Kintetsu International Express (USA), Inc., applicant in A.60174.
Minami, Tomine & Lew, by Eugene Tomine, Attorney at Law, for Nippon Express USA, Inc., applicant in A.60181.
Graham & James, by David J. Marchant, Attorney at Law, for JATS Enterprise, Inc., applicant in A.60221.
Milton W. Flack, Attorney at Law, for Jetour USA, Inc., applicant in A.60286.
Howard L. Everidge, Attorney at Law (New Mexico), for California Parlor Car Tours; Daniel J. Custer, Attorney at Law, for O'Connor Limousine Service; J. Mark Lavelle, for Dolphin Tours; and Malcolm Gissen, Attorney at Law (Wisconsin), for The Gray Line, Inc.; protestants.

OPINION AND ORDER

By amended applications, each of the applicants in these consolidated cases seeks a certificate of public convenience and necessity to continue to conduct a portion of its tour business in California which it perceives to be threatened by our decision in the complaint phase of Dolphin Tours v Pacifico Creative Service, Inc. (Decision (D.) 92455, December 2, 1980, Case (C.) 10732). Each applicant seeks only that authority that the Commission requires that it have; each states that it believes no Commission authority is required; and each has filed a motion to dismiss its application. Temporary certificates were granted to all five applicants. Rehearing was granted in these matters.

Only California Parlor Car Tours Company (CPCT) has filed an amended protest to the amended applications.

The motions to dismiss are unanswered. Each contends that the business conducted by applicants with regard to local tour operations through charter-party carriers is not subject to Commission regulation because (1) the holding out or dedication required for certificated operation is lacking and (2) applicants' local tour operations are so incidental to their primary business activity as to require no Commission certification.

On October 14, 1981 our staff filed a brief asking us to again review the position it took in the Dolphin Tours v Pacifico Creative Service, Inc. complaint proceeding, supra: that entities who are essentially tour brokers, using the services of charter-party carriers to perform transportation, are not public utility common carriers. Also, staff advances the opinion that sightseeing or tour service generally, regardless of who owns the equipment, is not public utility common carriage because it does not involve

point-to-point transportation. We are basing this decision on the pleadings. No hearings have been held, other than a prehearing conference. None are necessary.

Description of Service

All of these applications describe virtually the same service. Illustrative is the following as quoted from the Kintetsu application.

> "Applicant will offer these tours exclusively to persons who, before entering California, have previously contracted in Japan with the Kinki Nippon Tourist Co., LTD. (KNT) for a prepackaged tour originating in Japan which includes one or more of the tours described herein as optional tours exercisable after arrival in California. Applicant will under no circumstances provide the tours described herein to any persons other than those described in the preceding sentence.
>
> "Applicant has provided these tours since 1974.
>
> "Applicant currently receives annually approximately 40,000 Japanese tourists booked on KNT all-inclusive group package tours originating and wholly prepaid in Japan. The prepayment covers hotels, most meals, transfers, the services of tour escorts and guides, and a city tour of San Francisco or Los Angeles, whichever is the location of the tourist's hotel. Applicant now provides or arranges for all of these prepaid services except the tour escorts, who accompany the group from Japan. This flow of Japanese tourists provides substantial benefits to California in terms of both increased international understanding and substantial revenues to California businesses such as hotels, restaurants, retail stores, and transportation companies.

"Of these 40,000 Japanese tourists visiting California annually, about 10,000 annually take optional local sightseeing tours. These tours are promoted in conjunction with the prepaid package but are sold on an individual basis after the tourists arrive in California. KNT promotes these local tours heavily in Japan, so that the tourists know what tours are available under what conditions before their departure. Virtually all KNT tourists who take local tours take those Applicant now provides, although they are in no way required to do so.

"This substantial use of Applicant's current local tours demonstrates that these tourists need and have come to expect the services for which Applicant now requests authority. This need has arisen for two reasons. Most Japanese tourists have little or no command of spoken English, and thus derive little benefit from sightseeing tours conducted by English-speaking guides. For these tourists the availability of tours conducted by a Japanese-speaking guide greatly enhances their enjoyment of their stay and their opportunity to learn about the United States. Further, American customs and habits are as unfamiliar to most of these tourists as is the English language. In these respects, Japanese tourists do not differ from American tourists in foreign countries where the native language is not the tourists' mother tongue. For example, American tourists taking prepaid group tours in Japan through such companies as American Express almost always take sightseeing tours conducted by English-speaking guides rather than wander unfamiliar foreign streets by themselves.

"Group package tours are very popular with Japanese tourists, in large measure because Japanese-speaking tour escorts and guides are available 24 hours a day to answer questions, solve problems and make arrangements. Thus, it is of substantial advantage to Japanese tourists visiting California on KNT's package tours to have available to them Applicant's local tours, about which they can inform themselves before their departure from Japan and which Applicant coordinates smoothly with the rest of the tour services which these tourists have purchased. For

example, Applicant's guide gives each tourist signed up for one of its local tours leaving in the morning a wake-up call and makes sure that the tourist does not miss the bus. Also, Applicant adjusts all claims for accidents or damages occurring as a result of Applicant's local tours, including claims not filed until after the tourist's return to Japan. Working together, Applicant and KNT are in a position to resolve such problems for a Japanese tourist who spends only two to three days at most in any given city in California relieving him of the substantial burden of having either to process claims during his short stay in California or to attempt to resolve them by correspondence after his return.

"The separate sale of these local tours in California serves the needs of these tourists far better than the sale of these tours in Japan as part of a prepaid package. Although some tourists book local tours in advance in Japan, many tourists prefer not to make advance purchase of some or all of these tours, and their sale in California allows the tourist maximum flexibility to plan his free time on his arrival in California, when he knows best his needs and desires. Thus, the sale of these tours in California offers the tourist the maximum of flexibility and choice."

These local tours offered as optional to the holder of the packaged overseas tour are provided using vehicles chartered from California operators holding charter-party certificates.

Referring to the only tour for which an amended protest was filed, Kintetsu offers its customers a Yosemite National Park Tour for $67.00 adult fare from San Francisco which leaves at 7:30 a.m. and returns at 8:00 p.m. Its frequency is determined by demand of its customers.

Issues

We need address only the contention of our staff that sightseeing-tour service is not public utility common carriage, and we will confine most of our discussion to the points of statutory interpretation. Although we have been frustrated with our regulation of sightseeing-tour carriers as public utility carriers, which the staff touches on in its brief, our decision today does not turn on that frustration. Rather, it turns on legal analysis. We think, as a practical matter, our decision can and will result in more meaningful regulation, albeit a different form, that protects the public, respects local governmental entities and which should do no harm to California's tourism industry.

Is Sightseeing or Tour Service a Public Utility Passenger Stage Operation?

We agree with our staff that sightseeing service, as contrasted to the point-to-point movement of passengers, is not public utility passenger stage corporation service. The question of whether tour service is public utility service within the statutory scheme set out by the Legislature has, we believe, been taken as given far too long. The present reanalysis is somewhat akin to our relatively recent reanalysis of whether driveaway service for transporting vehicles fits within the statutory scheme of regulated for-hire carriage; we found, after 28 years of regulation, it did not (D.89807 issued December 19, 1978).

Staff points out that "the common thread of PU Code Sections 208, 225 and 226 is transportation" (staff brief, p. 9). For example, Section 226 speaks of transportation between "fixed termini" (point-to-point) or "over a regular route." "Over a regular route" contemplates, we believe, the situation where one terminus is not fixed, but rather encompasses a route or area. Also, the concept of "over a regular route" in connection with public utility common carriage or transportation must be looked at in connection with the Supreme Court's analysis of the elements of common carriage transportation:

> "The California Supreme Court has defined transportation as '...the taking up of persons or property at some point and putting them down at another.' (Emphasis the Court's) Golden Gate Scenic Steamship Lines, Inc. v. PUC (1962) 57 C 2d 373, 380. This certainly is not descriptive of the typical sightseeing service, which is a round trip for the purpose of viewing sights, not to reach a particular place." (Staff brief, p. 9.)

Accordingly, we believe, given the statutory scheme for bus regulation in California, and this judicial interpretation of transportation, "over a regular route" as used in Section 226 means transportation from "here to there" and not a closed door loop. As such, sightseeing or tour service is not passenger stage corporation service. This means the test of determining

routes and schedules before service is authorized, and approval of rate levels, are activities we should no longer engage in with respect to tour or sightseeing service.

However, our discussion would not be complete without an analysis of PU Code § 1031, which specifically mentions "sight-seeing buses", and the genesis of this Commission's sightseeing-tour bus regulation.

For the last 54 years, it has been assumed that PU Code § 1031 authorizes the Commission to regulate sightseeing operators. Today, we reexamine the validity of this assumption. We find that the PU Code provides neither authorization nor structure for regulation of sightseeing operators.

PU Code § 1031 provides:

> "No passenger stage corporation shall operate or cause to be operated any passenger stage over any public highway in this State without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation, but no such certificate shall be required of any passenger stage corporation as to the fixed termini between which, or the route over which, it was actually operating in good faith on July 29, 1927, in compliance with the provisions of Chapter 213, Statutes of 1917, nor shall any such certificate be required of any person or corporation who on January 1, 1927, was operating, or during the calendar year 1926 had operated a seasonal service of not less than three consecutive months' duration, sight-seeing buses on a continuous sight-seeing trip with one terminus only. Any right, privilege, franchise, or permit held, owned, or obtained by any passenger stage corporation may be sold, assigned, leased, mortgaged, transferred, inherited, or otherwise encumbered as other property, only upon authorization by the commission."

For this discussion the critical portion of this statute lies in the words "nor shall any such certificate be required of any person or corporation who on January 1, 1927, or during the calendar year 1926 had operated a seasonal service of not less than three consecutive months' duration, sight-seeing buses on a continuous sight-seeing trip with one terminus only."

Taken as it stands, this portion of the statute is only a grandfather provision. It states that certain specified sight-seeing operators may operate as passenger stage operators without having a certificate of public convenience and necessity authorizing such passenger stage operations. In other words, the provision literally does nothing more than excuse certain specified sightseeing operators from having to apply for a passenger stage certificate.

This analysis is bolstered by comparison of the words "sight-seeing buses on a continuous sight-seeing trip with one terminus only" (PU Code § 1031, emphasis added) with the words found in § 1035 of the Code. That section provides, in pertinent part: "Any act of transporting...any persons by stage, auto stage, or other motor vehicle upon a public highway of this State between two or more points...shall be presumed to be an act of operating as a passenger stage corporation within the meaning of this part." (Emphasis added.)

As noted earlier, transportation has been defined by the California Supreme Court as the act of picking up persons at one location and setting them down at another. Transporting between two or more points is passenger stage operation. Movement on a continuous sightseeing trip with one terminus only is sight-seeing operation, but not transportation. The Code very clearly establishes this dichotomy between passenger stage operations, on the one hand, and sightseeing operations, on the other.

We have also examined the provisions of the Auto Stage and Truck Transportation Act of 1917, a predecessor to Article 2 of Chapter 5 of the Public Utilities Act. We do not find that the terms of Section 1(c) of that Act compel a different conclusion from that reached above. Section 1(c) of the 1917 Act[1/] excluded from the definition of the term "transportation company", "corporation or persons...in so far as they own, control, operate or manage taxicabs, hotel busses or sight-seeing busses..." In 1927 this exemption from the term "transportation company" was deleted from the Code, at the same time that § 1031 was enacted. This deletion of the exemption does not provide a basis for concluding that sightseeing operations are passenger stage operations or are "transportation" or that § 1031 authorizes regulation of sightseeing operators. As noted above, we elsewhere explain that under §§ 208, 225, and 226, sightseeing is not transportation. the deletion of the exemption from "transportation company" does nothing more than reflect that fact.

1/ "The term 'transportation company,' when used in this act, means every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever owning, controlling, operating or managing any automobile, jitney bus, auto truck, stage or auto stage used in the transportation of persons or property as a common carrier for compensation over any public highway in this state between fixed termini or over a regular route and not operating exclusively within the limits of an incorporated city or town or of a city and county; provided, that the term 'transportation company,' as used in this act, shall not include corporations or persons, their lessees, trustees, receivers or trustees appointed by any court whatsoever, in so far as they own, control, operate or manage <u>taxicabs, hotel busses or sight-seeing busses</u>, or any other carrier which does not come within the terms 'transportation company' as herein defined." (Emphasis added.) (Sec. 1(c).)

The deletion of "sightseeing buses" from exempt status understandably caused the 1927 Commission to assume it must start regulating this activity. However, as has already been shown, that Commission should have concentrated on what the new code provided, rather than on what was no longer present. The section did provide a grandfathering of those sightseeing carriers who wished to be passenger stage corporations. It did not, by omitting exemptions, transfer sightseeing buses, hotel buses, or taxicabs into passenger stages.

One of the ironies created by the 1927 Commission is that it determined to regulate sightseeing, but not hotel bus operations or taxicabs. All three operations were formerly exempted under the Auto Stage and Truck Transportation Act. All three exemptions disappear in the Public Utilities Act. Yet, only sightseeing operations were brought under the Commission's ambit. Under what authority was the 1927 Commission permitted to select those whom it would regulate?

We can easily see how the 1927 Commission mistakenly determined it was obligated to regulate sightseeing service. We are equally appreciative of how this error, once started, continued unabated. No one, including the Commission, ever thought to critically examine this ruling and it continued, fully effective yet wrong, to this day. Now that the error has been brought to light we must resolve what to do.

We have already taken the first and most difficult step. We have acknowledged that we were wrong. As a Commission we were wrong in 1927 when the initial mistake was made and we were wrong in 1981 when we continued the same mistake. We can only thank Justice Mosk for collecting a compendium of judicial apologies in his concurring opinion in Smith v Anderson (1967) 67 C 2d 635, and commend it to all who might have visions of infallibility.

Having discovered the error it may not be ignored. The fact that it was long believed to be correct does not validate an erroneous assumption of jurisdiction never given to us. (Trabue Pittman Corp. v County of LA (1946) 29 C 2d 385.) This situation is not at all akin to the requirement of dedication found by the California Supreme Court to be an implied part of public utility status. (Richfield v PUC (1960) 54 C 2d 419.) That was an implied characteristic of an entity that would otherwise be under our statutory purview. It was an additional finding required before we could regulate. In the present instance we have an industry of specialized carriers under our regulation that would never have been under public utility regulation, but for the initial error.

Aside from the legal analysis of the statutory scheme, concluding tour or sightseeing service is not passenger stage corporation service, we note that sightseeing or tour service is essentially a luxury service, as contrasted with regular route, point-to-point transportation between cities, commuter service, or home-to-work service. In those cases members of the public may be in a situation where they have no other mode for essential travel. And, there it is in the public interest to regulate rates, schedules, and service for what may very well be captive patrons.

We recognize that today's decision is a departure from past Commission precedent. We are sure those companies who are already in business and doing well under regulation will take vocal exception with this decision. However, we believe our analysis of the statutory scheme for bus regulation in California is sound. Aside from the legal analysis requiring us to find sightseeing-tour service is not common carriage, we believe this change in our regulation will allow us to engage in better entry and rate regulation over point-to-point common carriers, and ultimately enable us to provide better regulation for the user of regular route, point-to-point bus service.

Once This Decision Is Effective
What Regulation Remains for
Sightseeing-Tour Carriers?

We believe ensuring sightseeing-tour carriers have public liability limits of at least the level prescribed by our General Order (GO) 101[2/] is in the public interest. However, given our finding that these carriers are not public utilities subject to the provisions of Division 1 of the PU Code, we can find no residual basis for continuing regulation over nonpublic utility sightseeing-tour carriers with respect to liability insurance. But since this gives us concern, we later address the means by which we will seek legislative action to ensure adequate liability insurance is required.

Having found sightseeing-tour carriers are not public utilities means there will, after the following order is effective, be no more rate, route, or service regulation by this Commission.

2/ Current GO 101 minimum insurance limits are:

Kind of Equipment (Passenger Seating Capacity)	*For bodily injuries to or death of 1 person*	*For bodily injuries to or death of all persons injured or killed, in any one accident (subject to a maximum of $100,000 for bodily injuries to or death of one person)*	*For loss or damage, in any one accident, to property of others (excluding cargo)*	*Minimum for Single Limit Coverage*
7 passengers, or less	$100,000	$300,000	$50,000	$250,000
8 to 12 passengers, incl.	100,000	350,000	50,000	400,000
13 to 20 passengers, incl.	100,000	450,000	50,000	500,000
21 to 30 passengers, incl.	100,000	500,000	50,000	550,000
31 to 40 passengers, incl.	100,000	600,000	50,000	650,000
41 passengers or more	100,000	700,000	50,000	750,000

The Transition Period Pending
Judicial Review of This Decision

This decision finds tour-sightseeing carrier operations are not those of a public utility common carrier. As such, given no PU Code sections that bestow jurisdiction for regulation, if the following order were effective in all respects today we would suddenly end all regulation over this specialized type of carrier. We anticipate some parties will seek rehearing of this decision[3/] and, if rehearing is not granted, seek review of this decision by the California Supreme Court. That takes time. We are particularly concerned that sightseeing-tour carriers be adequately insured. Maintaining public liability insurance at the levels our GO 101 prescribes is undoubtedly in the public interest. Therefore, we will expeditiously seek a sponsor to propose legislation that requires intrastate sightseeing operators to carry liability insurance in amounts at least equal to that required of passenger stage corporations by this Commission.

We will provide that the following order, as it relates to completely ending our jurisdiction to regulate these carriers, be effective 30 days from today. This means a timely filed application

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3/ Although in one sense these matters are now in rehearing on the issue of whether temporary certificates should have been granted to these carriers, our decision today on jurisdiction moots that issue. Also, since the jurisdictional issues raised, and which are determinative in this decision, as so different than those in D.92455, C.10732, supra, where the California Supreme Court denied a writ of review, parties should apply for rehearing with the Commission if they take exception with today's decision. Also, since this is a landmark decision in the area of bus regulation we will accept applications for rehearing from any person interested in this matter in order for all views and positions to be fully aired.

for rehearing will stay this decision and order; and if we deny rehearing we will stay the order pending completion of judicial review by the California Supreme Court. This allows ample time for the Legislature to consider the question of required liability insurance limits.

In the meanwhile, until judicial review is completed, we will process sightseeing-tour carrier matters as follows:

1. Pending and new applications for operating authority will be granted ex parte with temporary certificates upon a showing the applicant has liability insurance prescribed by GO 101. This will be done by interim decisions and orders.
2. Applications for rate increases will be processed in our usual fashion.
3. All sightseeing-tour carriers will be required to maintain the limits of liability insurance set by GO 101.

We believe these procedures reflect the spirit of this decision yet allows an orderly transition process. It means, on balance, there will be no irreparable harm to the public or the carrier industry. However, we fully expect existing carriers desirous of protection from competition to have a different view.

<u>These Particular Applicants</u>

These five applicants hold temporary certificates. We have not held evidentiary hearings in these consolidated proceedings, unlike the related matter of A.58739, Pacifico Creative Service, Inc. (which is addressed by a separate decision granting a certificate of public convenience and necessity). Given our jurisdictional holding in these proceedings we will grant the applications to the extent of continuing the present certificates until further order of this Commission. Should rehearing be granted or this decision be

remanded by the California Supreme Court, we anticipate continuing the certificates pending further processing in these proceedings.

Findings of Fact

1. Tour or sightseeing bus service involves operation over a loop, returning to the point of departure, after viewing or visiting points of interest.

2. GO 101 contains requirements for minimum liability insurance coverage for bus companies.

3. The public interest would be served and protected by sightseeing-tour buses being covered by insurance limits prescribed in GO 101.

Conclusions of Law

1. PU Code §§ 208, 225, and 226 describe public utility common carriage as transportation between distinct points.

2. Sightseeing-tour service, originating and terminating at the same point, is not public utility or passenger stage corporation service.

3. Sightseeing-tour carriers should not be regulated as public utilities.

4. PU Code §§ 1031 and 1032 are applicable only to public utility passenger stage corporations.

5. These applications should be granted.

IT IS ORDERED that:

1. Applications 59818, 60174, 60181, 60221, and 60286 are granted to the extent that the temporary certificates previously issued continue in effect until further order.

2. Western Travel Plaza, Inc., Kintetsu International Express (USA), Inc., Nippon Express U.S.A., Inc., JATS Enterprise, Inc., and Jetour USA, Inc. may continue to operate as sightseeing-tour carriers so long as they maintain the liability insurance prescribed by GO 101.

3. After this order is effective: (a) carriers with tariffs on file with this Commission for sightseeing-tour service may cancel those tariffs, and (b) certificated carriers performing sightseeing-tour service may conduct California intrastate operations absent rate, route, or service regulation by this Commission.

4. Interested persons, although not appearances in these consolidated proceedings, may apply for rehearing.

With respect to Ordering Paragraphs 1 and 2 this order is effective today; in all other respects this order becomes effective 30 days from today.

Dated NOV 13 1981, at San Francisco, California.

I dissent. See my separate opinion.
John E. Bryson

RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Joseph E. Bodovitz, Executive Director

A. 59818, et al.
D. 93726

COMMISSIONER JOHN E. BRYSON, DISSENTING:

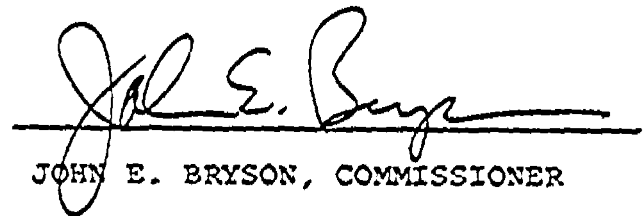
The majority of Commissioners today decide that the Public Utilities Commission lacks legal authority to regulate sightseeing buses. The decision therefore removes all rate and route restrictions over these operators. Absent petitions for further administrative or judicial review, an open market will be created 30 days from today.

I share the majority's belief that it is preferable, on policy grounds, to reduce the Commission's regulation of sightseeing buses. On balance, any consumer benefits derived from regulation are outweighed by the costs to taxpayers, and to bus operators and their customers, of administering the regulatory program.

However, I am unable to concur in the legal analysis by which the majority reaches its decision today. In ruling that round trip loop tours do not operate over "regular routes" (see Public Utilities Code Section 226), the majority adopts a strained interpretation of Supreme Court precedent and our Legislative mandate. If the Commission were interpreting the Code for the first time, perhaps my concerns would be overridden by policy considerations. Instead, the majority today overturns 54 years of Commission decisions, and the legitimate expectations of bus operators derived from this tradition. Changes of this magnitude should be left to the Legislature.

A. 59818, et al.
D. 93726

Today's reinterpretations of the Public Utilities Code appear to produce at least two awkward results. First, the reading of Section 226 language "between fixed termini or over regular routes" removes only round-trip sightseeing trips from regulation. Otherwise identical one-way trips not qualifying as "loop" service would remain regulated. Second, today's decision absolves tour operators (or at least those who operate no one-way tours) of the requirement to maintain adequate liability insurance. As the majority concurs, this result ultimately is undesirable.



JOHN E. BRYSON, COMMISSIONER

November 13, 1981
San Francisco, California