

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ-302  
Administrative Law Judge Division

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**RESOLUTION**

RESOLUTION ALJ-302. Resolves the Appeal from Revocation of Walker's Charter Service's Charter-Party Carrier Permit (PSG-911).

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**SUMMARY**

This Resolution resolves the Appeal from Revocation of Walker's Charter Service's (Walker) Charter-Party Carrier Permit (PSG-911)<sup>1</sup> issued on April 15, 2014, by the Commission's Safety and Enforcement Division (Safety Division) pursuant to its authority under Pub. Util. Code § 5387(c) and Resolution TL-19099. Safety Division permanently revoked Appellant's authority to operate under Pub. Util. Code § 5387(c)(1)(E) on the basis that Appellant had knowingly employed a driver without a current and valid driver's license of the proper class, a passenger vehicle endorsement, or the required certificate to drive a bus, i.e., without a required Student Pupil Activity Bus (SPAB) or school bus certificate for an SPAB charter. (Vehicle Code § 546.) Safety Division issued the revocation predicated upon a September 19, 2013 letter from the Department of California Highway Patrol (Highway Patrol), Enforcement and Planning Division.

It was shown at the Appeal Hearing that neither the Highway Patrol nor the Safety Division demonstrated that Appellant Walker was improperly providing a SPAB activity at the time of the citation, and that therefore the revocation was erroneously issued. Vehicle Code § 546 is only applicable to charters conducted pursuant to a contract between a charter-party carrier and a school. We find that the charter giving rise to the revocation was not "an SPAB charter" as a matter of law. Consequently, we find no violation of Pub. Util. Code § 5387(c)(1)(E) occurred as stated by Safety Division.

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<sup>1</sup> James Franklin Walker, doing business as Walker's Charter Service.

The Highway Patrol and Safety Division failed to show (1) that the College and Career Readiness Office in the Oakland Unified School District was a school; and (2) they failed to show that the transportation service was for a school sanctioned pupil activity.

The basis for the revocation by the Safety Division was erroneous and it is hereby rescinded.

**BACKGROUND**

The Commission regulates charter-party carriers of passengers primarily pursuant to the Passenger Charter-Party Carriers’ Act (Pub. Util. Code § 5351, et seq.). Under Pub. Util. Code § 5387(c)(1)(E), a charter-party carrier shall have its authority to operate permanently revoked by the Commission if it commits the act of knowingly employing a bus driver who does not have the required certificate.<sup>2</sup> Enforcement of Pub. Util. Code § 5387(c) necessarily requires reference to another statute for determination of which “required certificate” Safety and Enforcement Division (Safety Division) determined was required of the driver who conducted the charter that gave rise to the revocation. Student Pupil Activity Bus (SPAB) is defined in Vehicle Code § 546.<sup>3</sup> Resolution TL-19099 provides the current procedural framework for

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<sup>2</sup> Pub.Util. Code § 5387(c)(1)(E) provides: A charter-party carrier shall have its authority to operate as a charter-party carrier permanently revoked by the commission or be permanently barred from receiving a permit or certificate from the commission if it commits any of the following acts: . . .

(E) Knowingly employs a bus driver who does not have ...the required certificate to drive a bus.

<sup>3</sup> Vehicle Code § 546 provides, in pertinent part, that:

A “school pupil activity bus” is any motor vehicle, other than a schoolbus, ...by a passenger charter-party carrier, used under a contractual agreement between a school and carrier to transport school pupils at or below the 12th-grade level to or from a public or private school activity, or used to transport pupils to or from residential schools, when the pupils are received and discharged at off-highway locations where a parent or adult designated by the parent is present to accept the pupil or place the pupil on the bus.

...

The driver of a school pupil activity bus shall be subject to the regulations adopted by the California Highway Patrol governing schoolbus drivers, except that the regulations shall not require drivers to duplicate training or schooling that they have otherwise received which is equivalent to that required pursuant to the regulations, and the regulations shall not require drivers to take training in first aid. However, a valid certificate to drive a school pupil activity bus shall not entitle the bearer to drive a schoolbus.

permanent revocation of a charter-party carrier's operating authority pursuant to mandate in Pub. Util. Code § 5387, et seq.<sup>4</sup> In this case, Safety Division revoked Appellant's permit to operate for knowingly employing a driver that did not have an SPAB certificate that was required for an SPAB charter.<sup>5</sup>

### **REVOCAATION**

On April 15, 2014, Safety Division revoked Walker Charter Service's (Walker) charter-party carrier permit by letter. Safety Division's revocation letter states that it had received a letter dated September 19, 2013, from the Department of California Highway Patrol (Highway Patrol) and stated:

A terminal inspection conducted by the Golden Gate Division Motor Carrier Safety Unit from the [Highway Patrol] which includes evidence that the carrier has committed a violation described in Public Utilities Code section 5387(c)(1)(A), (B), or (E) involving operations without a certificate or permit, operations during a safety suspension, or employment of a driver who the carrier knew was unqualified to operate a bus.<sup>6</sup>

This was the only basis on which Safety Division revoked Appellant's operating authority. The Commission regulates the operations and practices of charter-party carriers of passengers pursuant to the Passenger Charter-Party Carriers' Act (Pub. Util. Code § 5351, et seq.). Under Pub. Util. Code § 5387(c)(1)(E), a charter-party

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<sup>4</sup> Pub.Util. Code § 5387.3 provides:

(a) A charter-party carrier described in subdivision (c) of Section 5387, that has received a notice of ...revocation of its permit to operate, may submit to the commission, within 15 days after the mailing of the notice, a written request for a hearing. The charter-party carrier shall furnish a copy of the request to the Department of the California Highway Patrol at the same time that it makes its request for a hearing.

(b) Upon receipt by the commission of the hearing request, the commission shall hold a hearing within a reasonable time, not to exceed 21 days, and may appoint a hearing officer to conduct the hearing. At the hearing, the burden of proof is on the charter-party carrier to prove that it was not in violation of subdivision (c) of Section 5387.

(c) The revocation of the permit to operate may only be rescinded by the hearing officer if the charter-party carrier proves that it was not in violation of subdivision (c) of Section 5387, and that the basis of the revocation resulted from factual error.

<sup>5</sup> Exhibit H.

<sup>6</sup> April 15, 2014, Revocation Letter at 1.

carrier shall have its authority to operate permanently revoked by the Commission if it commits the act of knowingly employing a bus driver who does not have the required certificate to drive a bus. This is the authority cited by Safety Division in revoking Walker's operating authority.

## APPEAL

### School Pupil Activity Bus Certificate Requirement (Vehicle Code Section 546):

Appellant filed a timely appeal on the grounds that it did not violate Pub. Util. Code § 5387(c)(1)(E) because the charter giving rise to the revocation was not an SPAB charter and therefore the driver was not required to have an SPAB or School Bus certificate to conduct the charter. A California Department of Motor Vehicles' Driver Record Information (Ex. C) otherwise shows that driver Miles was otherwise duly licensed, although that is irrelevant to this revocation which turns solely on whether he was unlawfully driving on a SPAB trip, for which he is not licensed.

Appellant's Appeal from Revocation was deemed timely received on April 30, 2014. The Commission granted the request for an Appeal Hearing. The Appeal Hearing took place on May 21, 2014, and was continued to June 9, 2014, when the Highway Patrol failed to appear.<sup>7</sup>

Appellant Walker<sup>8</sup> and Safety Division appeared as parties. Parties were allowed to file briefs. The record for this appeal is composed of the documents served by the parties, the transcript of the hearing, documents identified as exhibits at the hearing, and the briefs.

### School Bus Certification Requirements

Vehicle Code § 546 defines the requirements for an SPAB stating, in pertinent part, "A "school pupil activity bus" is any motor vehicle, other than a schoolbus,..." Vehicle Code § 545 states that a "schoolbus" is a motor vehicle designed, used, or maintained for the transportation of any school pupil at or below the 12<sup>th</sup>-grade level to or from a public or private school or to or from public or private school activities, except the following: d) A school pupil activity bus. (Emphasis added.) The Safety Division appears to have relied upon the highway Patrol's September 19, 2014 written assertion of an SPAB violation for the revocation citation.

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<sup>7</sup> The Highway patrol also failed to participate in the telephonic prehearing conference on May 15, 2014.

<sup>8</sup> In fact, James F. Walker, Sr., and James F. Walker, Jr., both appeared, and James F. Walker, Jr. appeared *pro se* on behalf of Walker Charter Service.

### Walker's Appeal

It is undisputed that the trip was an overnight trip from the Oakland, California, to Universal City, California, departing on May 29, 2013, and returning May 30, 2013. The destination was Universal Studios. It is also undisputed that although driver Miles was properly licensed to drive a charter bus he was not also appropriately licensed for a SPAB.

Walker timely filed an appeal asserting that the bus trip in question was not a SPAB activity because Walker's charter contract was not with a school and was not for a Student Pupil Activity which would invoke Vehicle Code § 546. Walker produced Ex. A, a Transportation Request by the College and Career Readiness Office.<sup>9</sup> Walker argues that the transportation service provided at the request of the College and Career Readiness Office was not an educational, school related, trip.

The burden of proof in an Appeal from Revocation is on the charter-party carrier to prove that it was not in violation of subdivision (c) of Section 5387. (Pub. Util. Code § 5387.3(b)) The revocation of the permit to operate may only be rescinded if the charter-party carrier proves that it was not in violation of subdivision (c) of Section 5387 and that the basis of the revocation resulted from a factual error. (Pub. Util. Code § 5387.3(c))

The Safety Division made Highway Patrol Inspector Weaver available for examination by Walker. The Highway Patrol witness' testimony is clear: he believes, but never offered any adequate explanation in either the September 19, 2013 letter, his responses to examination by Walker, or in re-direct by Safety Division counsel, other than his opinion, that the College and Career Readiness Office is a "school" as intended in the phrase "public or private school activities" in Vehicle Code § 545. His explanation was that in his opinion, the College and Career Readiness Office was a "school" precisely because it was part of the Oakland Unified School District. (Tr. Vol. 2 at 127.)

Walker, by contrast, offered in his appeal's opening statement and in examining the Highway Patrol witness, a definition of "school" from the California department of education's website:

The term "school" is used to refer to all educational institutions having the following characteristics:

1. One or more teachers to give instruction;
2. An assigned administrator;

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<sup>9</sup> Transcript at 19.

3. Based in one or more buildings; and
4. Enrolled or prospectively enrolled students.<sup>10</sup>

Appellant Walker argues that the College and Career Readiness Office does not meet this description and is therefore not a school. Walker also argues that the Oakland Unified School District is itself an administrative entity and not itself a “school.” The name on Ex. A, the Transportation Request, Claire Mueller, is readily and publicly available on the Oakland School District’s website where she is listed in the College and Career Readiness Office, and not associated with any school. Nor does the College and Career Readiness Office appear on the Oakland School District web site’s list of schools, which, incidentally, lists a principal and an address of all Oakland School District’s schools, including specialized schools for Alternative Education, Special Education, and the convention elementary and high schools, etc.<sup>11</sup>

Neither the Highway Patrol nor the Safety Division demonstrated that Walker improperly transported students from a school on a school sanctioned trip. This should be an easy piece of evidence to establish: that the party being served is a school and therefore the requisite terms of service are for a SPAB. Safety Division and Walker were permitted to brief the case. Safety Division failed to show that the College and Career Readiness Office organized the trip intending it to be a “school related social ... activity” (Education Code § 35330(a)) or that it provided supervision (Education Code § 35330(a)(4)) or that the trip counted as “attendance” (Education Code § 35330(c)). Instead, we are offered only the opinion of the Highway Patrol and Safety Division that this was a SPAB trip.

Appellant has met its burden of proof and the revocation should be rescinded.

### **SAFETY**

The Commission has broad authority to regulate charter-party carriers, particularly with regard to safety concerns. (See, for example, Pub. Util. Code §§ 451, 5382, and 5387.) We are mindful that the statutory scheme under which the revocation in this case arises is intended to secure the safety of charter-party carrier passengers.

### **CONCLUSION**

We conclude that undisputed evidence presented at the Appeal Hearing demonstrates that the charter in question was not conducted under contract with a school. Vehicle Code § 546 is only applicable to charters conducted pursuant to a contract between a

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<sup>10</sup> <http://www.cde.ca.gov/ds/si/ds/dosinfo.asp>.

<sup>11</sup> <http://www.ousd.k12.ca.us/schoolsdirectory>.

charter-party carrier and a school. We find that the charter giving rise to the revocation was not “an SPAB charter” as a matter of law. Consequently, we find no violation of Pub. Util. Code § 5387(c)(1)(E) occurred. The basis for the revocation is erroneous and the revocation is rescinded.

### **COMMENTS**

The draft resolution of Administrative Law Judge Long in this matter was mailed in accordance with Section 311 of the Public Utilities Code and Rule 14.5 of the Commission’s Rules of Practice and Procedure. No comments were served by either party.

### **FINDINGS OF FACT**

1. Departing on May 29, 2013, and returning May 30, 2013, Appellant provided transportation services for the College and Career Readiness Office, a part of the Oakland Unified School District.
2. The Safety Division revoked Appellant’s charter-party carrier permit TCP PSG-911 citing a violation listed in a Highway Patrol terminal inspection report for “use of a driver who did not possess the appropriate SPAB certification or School Bus certification on a SPAB charter.”
3. Neither the Highway Patrol nor the Safety Division demonstrated that the transportation service was in fact a School Pupil Activity Bus event.
4. Neither the Highway Patrol nor the Safety Division demonstrated that the College and Career Readiness Office is a school, a requisite fact for the violation.

### **CONCLUSIONS OF LAW**

1. Pub. Util. Code § 5387(c)(1)(E) requires permanent revocation of a charter-party carrier’s operating authority if the carrier knowingly employs a bus driver who does not have the required certificate to drive a bus.
2. Vehicle Code § 545 defines a “School Pupil Activity Bus” as “any motor vehicle, other than a schoolbus, operated by a common carrier...used under a contractual agreement between a school and carrier to transport school pupils at or below the 12<sup>th</sup>-grade level to or from a public or private school activity...”
3. Safety Division erred in revoking Appellant’s operating authority for knowingly employing a driver who does not have an SPAB certificate. The charter in question

was not an SPAB charter because it was not conducted under a contractual agreement with a school.

4. Appellant met its burden of proof to show that the revocation of its authority was based on factual error.
5. This Resolution is consistent with the Commission's continuing safety oversight and enforcement in regulation of this charter-party carrier.

**THEREFORE, IT IS ORDERED** that the revocation Charter-Party Carrier Permit TSP PSG-911, of James Franklin Walker, doing business as Walker's Charter Service, is rescinded. It is hereby reinstated.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on \_\_\_\_\_, the following Commissioners voting favorably thereon:

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PAUL CLANON  
Executive Director

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