

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Francisco, California

Date: June 16, 2005

Resolution No. L-317

R E S O L U T I O N

**AUTHORIZING THE COMMISSION'S EXECUTIVE
DIRECTOR TO SUSPEND OR REVOKE THE OPERATING
AUTHORITY OF A CHARTER-PARTY CARRIER UPON
CONVICTION OF THE CARRIER OR ONE OR MORE OF
ITS OFFICERS OF CERTAIN MISDEMEANORS OR
FELONIES INVOLVING THEFT OR DISHONESTY**

BACKGROUND

Pursuant to Division 2, Chapter 8 of the Public Utilities Code, the Commission regulates the transportation of passengers by charter-party carriers on the public highways in this state. No carrier may provide this service without first obtaining a permit or certificate from the Commission. The Consumer Protection and Safety Division performs a limited evaluation of the carrier's qualifications for a charter-party carrier permit by, among other things, checking to ensure the carrier has a proper driver's license and has the insurance coverage required under state statute. Current law does not allow CPSD to have access to the state summary criminal history information maintained by the California Department of Justice prior to the Commission's issuance of a charter party carrier permit or certificate however, this information is available to CPSD after issuance of permits or certificates.

DISCUSSION

The Commission cannot assure that a charter-party carrier will not engage in unlawful activities after they are issued a permit or certificate, but the Commission is empowered to swiftly suspend and revoke operating authority if licensed carriers are convicted of specified crimes after they become licensed. Some carriers violate California laws and Commission regulations governing their operations. A few carriers' conduct is so egregious that local authorities prosecute them for fraud and other unfair business practices.

The Commission is empowered to cancel, suspend or revoke the permit or certificate of a carrier, without prior notice or opportunity to be heard in a formal evidentiary hearing, upon a misdemeanor conviction under Division 2, Chapter 8, of the Public Utilities Code or the conviction of certain categories of felonies. PU Code Section 5378(a) reads, in part: "The commission may cancel, revoke, or suspend any operating permit or certificate issued pursuant to this chapter upon any of the following grounds: (3) The conviction of the charter-party carrier of passengers of any misdemeanor under this chapter while holding operating authority issued by the commission or the conviction of the carrier or its officers of a felony while holding operating authority issued by the commission, limited to robbery, burglary, larceny fraud, or intentional dishonesty for personal gain."

We believe the cancellation, suspension or revocation of a charter-party carrier's operating authority should occur immediately after conviction of a qualifying misdemeanor or felony so that the carrier's opportunity for further misconduct is minimized at the earliest possible date. We are therefore delegating authority to the Executive Director to suspend or revoke the permit or certificate of a charter-party carrier upon notification by the General Counsel of the Legal Division that the carrier has been convicted of a qualifying misdemeanor or felony. The Executive Director shall report a suspension or revocation of a charter-party carrier's permit or certificate ordered pursuant to this resolution to the Commission at the earliest Commission meeting after action is taken.

PROCEDURE

Resolution L-317 directs the Executive Director to suspend the operating authorities of charter party carriers on the basis of a verified report from the Commission's General Counsel that the carrier or one or more of its officers has been convicted of certain categories of felonies, or of misdemeanor violations of the Charter Party Carriers Act. The resolution further provides that the Executive Director shall give the carrier notice of any suspension and afford the carrier the opportunity to request a review of the suspension. If the carrier does not request a review, or the Executive Director denies the carrier's appeal, the Executive Director is directed to permanently revoke the carrier's operating authority.

In order to ensure fairness in the application of this procedure, the General Counsel shall obtain a written verification of the criminal conviction from the court wherein the carrier or officer(s) was convicted. The verification shall be limited to convictions that have occurred while the carrier has an active operating authority with the Commission. Guilty pleas or pleas of *nolo contendere* to covered offenses shall be considered to be convictions.

COMMENTS ON DRAFT RESOLUTION

Public Utilities Code §311(g)(1) requires that proposed resolutions on these items be served on all parties and subject to at least 30 days public review and comment before the Commission may vote on them. Section 311(g)(3) and Rule 77.7(f)(9) of the Rules of Practice and Procedure provide that the 30-day period may be reduced or waived by the Commission upon a finding of public necessity. The comment period on this item is being reduced to twelve days under this authority.

Comments were filed on May 18, 2005 by the Greater California Livery Association and on May 20, 2005 by the California Bus Association. The Livery Association asked that the provisions of this resolution not be made applicable to charter party carriers, since according to them, charter party carriers generally are not involved in serious criminal behavior. The Association criticized the resolution as being unduly harsh on charter party carriers who may have inadvertently committed misdemeanor violations of the Charter Party Carrier Act by failing to have a waybill or for operating a vehicle that does not have a properly displayed permit number. The Association also expressed its interest in establishing an advisory board to work with the Commission to solve problems in the charter party carrier business.

The California Bus Association's comments were directed towards the use of the word "owner" in the Resolution, arguing that because of complexities in corporate ownership it is unfair to suspend the license of a carrier due to the crime(s) of a possibly remote owner. The statute, however, applies to all charter party carriers regardless of where the owner is located. In staff's view, all owners need to be held accountable for their crimes.

The Commission does not intend to use this process as a vehicle to punish inadvertent violations of law, and does not intend to request the suspension or revocation of a charter party carrier's licenses for minor technical violations of the Charter Party Carrier Act. This process is intended to suspend and revoke the operating authority of carriers who are convicted of criminal violations of the act (whether particularly egregious or demonstrating a pattern and practice of defiance of the Act) and when carriers are convicted of certain qualifying felonies.

FINDINGS OF FACT

1. Some charter-party carriers, after being issued an operating permit or certificate by the Commission, have been convicted of violating the Charter-Party Carriers' Act or of committing other crimes that endanger consumers or their property.
2. The conduct of a few charter-party carriers is so egregious that local authorities prosecute and obtain convictions for fraud and other unfair business practices.
3. Delegation of authority to the Executive Director will allow staff to protect consumers from unfair and/or illegal business practices.
4. Prompt action by the staff is necessary for the protection of the public. The proposed resolution would permit the full implementation of the actions prescribed by the Public Utilities Code for charter-party carriers.

CONCLUSIONS OF LAW

1. Public Utilities Code Section 5378(a)(3) provides that this Commission may cancel, suspend or revoke the permit of a charter-party carrier, without prior notice or opportunity to be heard through a formal hearing, that has been convicted of certain misdemeanors or felonies.
2. Under Section 7 of the Public Utilities Code, the Commission may delegate to the Executive Director the authority to suspend or revoke a charter-party carrier's permit or certificate. The Executive Director's actions will be ministerial based upon the Commission's stated policy to implement Section 5378(a)(3) at the earliest possible date to protect consumers.

ORDER DELEGATING AUTHORITY

1. The Executive Director shall suspend pursuant to Section 5378(a)(3) of the Public Utilities Code the operating authority of any charter-party carrier upon written notification from the Commission's General Counsel that the carrier or one or more of its officers has been convicted of a misdemeanor violation of the Charter Party Carriers' Act or has been convicted of certain

felonies, limited to burglary, larceny, robbery, fraud or intentional dishonesty for personal gain.

2. In order to ensure fairness in the application of this procedure, the General Counsel shall obtain a written verification of the criminal conviction from the court wherein the carrier or officer was convicted. The verification shall be limited to convictions that have occurred while the carrier has an active operating authority with the Commission. Guilty pleas or pleas of *nolo contendere* to covered offenses shall be considered to be convictions.
3. The Executive Director shall promptly furnish the carrier with written notice of any suspension of its operating permit or certificate. The notice of any such suspension shall inform the carrier that it may request a review of the suspension to the Executive Director within ten days of the mailing of the notification.
4. The Executive Director shall respond to a request for review within ten days of receipt of said request with a decision either affirming the suspension and permanently revoking the operating permit, reversing the suspension upon good cause shown, or continuing the suspension until the appeal of the underlying offense has been resolved or the time for filing such an appeal has expired.
5. The Executive Director shall be authorized to extend the period to render a decision on a request for review for up to 14 days if he or she finds that additional time is needed to investigate the carrier's appeal.
6. The suspension will become a permanent revocation of the carrier's operating authority if the carrier does not request a review within ten days of the mailing of the notice of suspension
7. Each suspension or revocation issued under authority of this resolution shall recite that it was issued pursuant to this resolution. Each such suspension or revocation, when signed by the Executive Director, shall be deemed to be the order of the Commission.
8. The Executive Director shall report to the Commission after taking action pursuant to this resolution at the earliest Commission meeting of the suspension or revocation of a charter-party carrier permit or certificate.
9. Any charter-party carrier whose permit or certificate is suspended and revoked pursuant to Section 5378(a)(3) that wishes to obtain a certificate or

permit shall reapply for the desired authority.

10. Resolution L-317 is enacted.

This resolution is effective today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of June 16, 2005 the following Commissioners approved it:

STEVE LARSON
Executive Director