

JC

Decision No. 11592

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of }
C.S. SIRVAIN for certificate of } Application No. 8668
public convenience and necessity to }
operate an automobile passenger, }
freight, express and baggage service }
between Sacramento and Jackson.)

Raymond Salisbury for applicant
Milton T. Farmer, for Amador
Central Railway, protestant,
C.C. Graves, for American Railway
Express Company, protestant,
C.E. Spear, for Southern Pacific
Company, Protestant,
T.G. Negrich, for John Smalley,
J.J. Ratto and A. Dunham, protestants.
Geo. J. Bradley, Merchants' & Manu-
facturers' Association of
Sacramento, Amicus Curiae

BY THE COMMISSION:

OPINION

This application was heard before Examiner
Eddy at Sacramento on March 21st.

The applicant owns four trucks. He proposes
to operate a freight, baggage and express service between
Sacramento and Jackson via Slough House, Bridge House, Drytown,
Amador City, Sutter Creek and Jackson. The freight service
will be operated three times a week, leaving Sacramento at
10:00 a.m. on Monday, Wednesday and Friday, arriving Jackson 5:00
P.m.; on the return trip the truck will leave Jackson Tuesday,
Thursday and Saturday at 10:00 a.m. and arrive Sacramento 5:00

p.m. If the desired certificate is granted, the applicant will purchase a 12-passenger car which will leave Sacramento daily at 7:00 a.m., arriving Jackson at 11:00 a.m.; on the return trip the car will leave Jackson at 1:00 p.m.; and arrive Sacramento 5:00 p.m.

No one of the points which the applicant desires to serve is located on a railroad. Jackson is about two miles east of Martell, the terminus of the Amador Central, while Sutter Creek, Amador, Drytown and Plymouth are north of Martell. Automobile passenger stages are now operated between Jackson and Plymouth and between Plymouth and Sacramento. Freight destined to the five communities named must be transported by truck from the station of the Amador Central at Martell. The Amador Central is a short line of railroad about twelve miles long and extends from Martell to Ione, the latter the terminus of a branch line of the Southern Pacific running in a northeasterly direction from Galt. The record indicates that, although the distance from Sacramento to Martell is only sixty miles, the average time freight is in transit between these points, or between San Francisco and Martell, is three days.

The applicant testified that he had interviewed the merchants at the points which he proposes to serve and that all "seem to want the service". A petition requesting that the certificate be granted was introduced at the hearing by the applicant. This petition was signed by five residents of Jackson, three each of Sutter Creek and Amador City and two of Slough House. The only person present at the hearing in behalf of the applicant was Mr. J. J. Strait, who was with Mr. Sirvain when he called upon the merchants along the proposed route and was prepared to testify only that the persons interviewed expressed a desire for the service.

A petition was also introduced by the Amador Central Railroad signed by some 33 merchants of the communities hereinabove named, which petition was to the effect that such merchants were satisfied with the present freight and passenger service and protested against the granting of a certificate of public convenience and necessity as applied for by applicant herein. The latter protest against the proposed service was signed by the President of the Amador Chamber of Commerce, while the petition submitted by the applicant in support of his proposed application was said to have been "drawn up" by the Secretary of that body. A telegram has since been received from the Secretary of the above mentioned Chamber of Commerce stating that he had refused to sign the petition or to appear in behalf of the applicant.

A situation of this kind demonstrates the oft repeated declarations of the Railroad Commission to the effect that petitions of this nature are of little, if any, help to the Commission in reaching a conclusion as to requirements of public convenience and necessity for a proposed stage service.

We have repeatedly held that the mere desire of an applicant to enter into the business of automotive stage service or his unsupported testimony with respect to public need for such a service is insufficient to warrant the granting of a certificate of public convenience and necessity under the provisions of State law. Public convenience and necessity may best be shown in cases of this nature through the testimony of competent witnesses who have used existing service or will use the proposed service as to the inadequacy of existing service and that additional service as proposed is necessary to meet the traffic requirements of the communities proposed to be served.

It was intimated at the hearing, and is reiterated in a brief filed since the hearing by counsel for the applicant, that it was "practically impossible either for petitioner or his opponents to obtain witnesses from points in Amador County" which the applicant desires to serve. It was suggested that although the service was desired by them, some of the merchants of Amador County were afraid to testify in support of the application and others would not assume the burden of traveling to Sacramento for that purpose. For this situation the Commission is not responsible. Applications are set for hearing at points, which in the judgment of the Commission, will best meet the convenience of all interested parties. For good cause shown, and when the request has been made sufficiently far in advance of the date of hearing to enable the Commission to notify all interested parties, we are always willing and frequently do, change both the date and place of hearing. Requests of this character should not be delayed until a hearing heretofore set is called and the representatives of the Commission and parties protestant have been put to the inconvenience and expense of attending such hearing. Had applicant herein requested a change in the date or place of this hearing at the time he received notice of the original setting, the Commission would, in all probability, have granted such a request. To wait, however, until a hearing is called upon the date and at the place as originally set and then to ask for a postponement solely upon the ground that witnesses could not be secured, must and will be denied as all parties applicant before this Commission will be expected to proceed on the date and at the time and place fixed.

The responsibility for a showing of public convenience and necessity is upon the applicant and that burden is not met, particularly in a case of this kind, by the testimony of applicant

alone. The application will be denied and an order will be entered accordingly.

ORDER

A public hearing having been held in the above entitled proceeding, evidence submitted and the Commission being fully advised,

IT IS HEREBY ORDERED that the above entitled application be, and the same hereby is denied.

Dated at San Francisco, California, this 4th day of April, 1923.

C. Seavey
H. B. Anderson
Irving Martin
Eugene Shore
J. M. Whittier
Commissioners