

Decision No. 12023

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
CARL E. HOFER for certificate of)
public convenience and necessity to)
operate motor truck service between)
Irvine, California and Laguna Beach,)
California.)

ORIGINAL

Application No. 8712

T. A. Woods for applicant and American Railway
Express.

Clyde Bishop for Crown Stages, Protestant.

BY THE COMMISSION:

O P I N I O N

Carl E. Hofer has applied to the Railroad Commission for a certificate of public convenience and necessity to operate motor truck service between Irvine and Laguna Beach.

A public hearing was held at Laguna Beach by Examiner Williams.

Applicant conducts an agency for the American Railway Express on a commission basis at Laguna Beach, an unincorporated community of about 1000 normal population, though it has reached as high as 15,000 during the summer season. Laguna Beach is a resort and hundreds of families make it a vacation point for weeks at a time. In order to make his agency effective applicant began transporting express matters between termini in November, 1922, meeting all trains. In addition applicant is contract carrier between points for the United States mails. It was admitted that applicant received from American

Railway Express Company 25 cents per 100 pounds for transporting express matters, which arrangement was made when the agency was established.

February 19, 1923, applicant ceased such transportation of express matter in obedience to advice from the Railroad Commission that the operation without legal certificate was being conducted in violation of Chapter 213 of the Acts of 1917, as amended. Since that time protestant Crown Stages has transported express matter between termini at its established package rates. Applicant immediately filed his application for a certificate of public convenience and necessity to transport express and freight between termini and intermediate points at the rate of 25 cents per 100 pounds, indiscriminately.

Applicant presented many witnesses in his behalf, whose testimony, in general, was that the service of protestant Crown Stages was inefficient and unsatisfactory, while that given by applicant between November 1, 1922 and February 19, 1923, was satisfactory. These witnesses pointed out specific instances of inefficiency on the part of protestant. Applicant's testimony is sufficient to establish local preference for applicant's service. This is further emphasized by the fact that protestant did not produce one witness from Laguna Beach to prove efficient or satisfactory service.

Protestant employs a combination passenger and freight vehicle on its regular thrice daily schedule between Santa Ana and Laguna Beach, via Irvine. This vehicle has a rear compartment 4 x 8 x 5½ feet, to carry all express or freight tendered. Protestant's testimony, through L. E. Shute, its General Manager, was that this compartment would convey 2500 pounds. A truck is used to transport express and freight in excess of the capacity of this vehicle combination.

Protestant filed exhibits purporting to show that without the revenue incident to hauling express, the service between Irvine and Laguna Beach, maintained by protestant, would sustain a loss. In our opinion, after careful analysis, these exhibits do not conclusively sustain this contention.

The larger question involved is whether an extension of the nation wide through service of the American Railway Express is to become available, at the usual rates of this company, to the people of Laguna Beach. This company has published rates that show only slight increases over the company's rates to Irvine. A comparison of the difference in rates on first class matter if the application is granted and the rates of protestant, between Irvine and Laguna Beach, is found in the following:

<u>WEIGHT</u>	<u>APPLICANT</u>	<u>PROTESTANT</u>
10 pounds	4 cents	15 cents
20 "	5 "	25 "
30 "	9 "	25 "
50 "	15 "	35 "
80 "	24 "	35 "
100 "	30 "	35 "

Wider differences are shown on other class and commodity rates. From the above it is seen that the American Railway Express, by using applicant's service will be able to serve Laguna Beach at a slightly increased rate, due to the fact that applicant will transport express matter at a uniform rate of 25 cents per 100 pounds. Applicant also has the contract for carrying United States mails and parcel post. As against this apparent advantage Mr. T. A. Woods, Superintendent of the American Railway Express, testified that the Laguna Beach office would have to be abandoned if required to depend on protestant's service and rates. Protestant was offered a stipulation that applicant's service would be restricted to matter consigned by American Railway Express.

but declined. Protestant made no offer of adjusted service or rates.

While rates are not the sole test of public convenience and necessity we have indulged in this discussion to show the reasons for our conclusion that the need of the service of the American Railway Express cannot be met either by the rates or service of protestant. Applicant proposes to make connection with all trains at Irvine which service is not offered by protestant. Public convenience and necessity is best served by the extension of usual and familiar utility facilities where same are needed and upon the best terms possible for the public. In this proceeding we believe this will be done by granting authority to applicant to transport express matter between Irvine and Laguna Beach when consigned only via American Railway Express and at the rate proposed in Exhibit "A" of the application. The testimony does not justify the establishment of any other express or freight service. This will leave the field clear to protestant to conduct its usual business as it existed prior to November 1, 1922, the date of the establishment of an American Railway Express office at Laguna Beach.

O R D E R

Carl E. Hofer having applied to the Railroad Commission for a certificate of public convenience and necessity to operate express and freight service between Irvine and Laguna Beach, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by Carl E. Hofer of an automobile freight service for the transportation of express matter consigned via American Railway Express only between Irvine and Laguna Beach, over and along the following route:

Main county highway between Irvine and Laguna Beach
and that a certificate of public convenience and necessity there-
for be and the same hereby is granted on the following conditions:

- i. - That applicant, Carl E. Hofer, shall file within fifteen (15) days from date hereof, his written acceptance of the certificate herein granted, and shall file within thirty (30) days of the date hereof, duplicate tariff of rates and time schedules, in accordance with General Order No. 51 of the Railroad Commission, and shall begin service within sixty (60) days from date hereof.
- ii. - That applicant, Carl E. Hofer, shall not sell, lease, assign or discontinue the service herein authorized, unless such sale, lease, assignment, or discontinuance shall have been authorized by the Railroad Commission.
- iii. - That no vehicle shall be operated by applicant unless such vehicles are owned by said applicant, or are leased under an agreement satisfactory to the Railroad Commission.

Dated at San Francisco, California this 3d day
of May, 1923.

C. Seavey
H. B. ...
Dwight Martin

Commissioners.