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ORIGINAL

Decision No. 12739

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of INTERSTATE MOTOR TRANSIT COMPANY, a corporation of the State of Washington for certificate of public convenience and necessity to operate a passenger service between San Francisco and Southern boundary line of Oregon.	)	Application No. 9289.

Sanborn & Roehl and DeLancey C. Smith, by DeLancey C. Smith, for applicant.
Warren E. Libby for Pickwick Stages, N.D., Inc., protestant.
F. W. Mielke & C. E. Peterson for Southern Pacific Company, protestant.

SHORE, COMMISSIONER:

O P I N I O N

Interstate Motor Transit Company, a corporation has filed application with the Railroad Commission in which it petitions for a certificate of public convenience and necessity authorizing the operation of an automobile stage line between San Francisco and the southern boundary line of the state of Oregon. It is not proposed to render any intrastate business whatsoever, the sole operation to be engaged in by applicant being the transportation of passengers from San Francisco to Eugene, Roseburg, Grants Pass and Portland, Oregon.

The application sets forth the following conditions as justification for the granting of the certificate prayed for:

Applicant is now, and has been, operating over the same route from San Francisco to Portland, Oregon, furnishing passenger service by motor stage; such operation was carried on with the knowledge and consent of the Railroad Commission of California; further, applicant was granted a certificate by the state of Oregon authorizing it to operate motor stages between Portland, Oregon, and the northern boundary line of the state of California. Due to the fact that the Railroad Commission of California has not heretofore assumed jurisdiction over solely interstate carriers, applicant has expended large sums of money in the purchase of equipment and has obligated itself in the future, relying on its certificate issued by the state of Oregon and the position taken by the California Railroad Commission with reference to interstate carriers.

Applicant claims to own one Locomobile 8-passenger stage, one White 11-passenger stage, one Packard 12-passenger stage and one Buick 7-passenger stage, and proposes to operate three round trips per week.

The principal question of jurisdiction involved in this proceeding concerns the interpretation and application of section 9 of the act for the regulation of auto stages (Stats. 1917, Chapter 213, as amended), which reads as follows:

> "Neither this act nor any provision thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this union, except in so far as the same may be permitted under the provisions of the constitution of the United States and the acts of congress."

It has been contended that under the provision of this section the Railroad Commission, in the exercise of its regulatory powers over auto stage transportation companies, has no jurisdiction

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over such companies whose operations are entirely of interstate character. While it is true that the Commission has not heretofore assumed jurisdiction in such cases, this is the first instance where the matter has been considered in any formal proceeding. In other states, however, where similar statutory provisions were in force, this question has been presented and court decisions rendered thereon, which we feel are entitled to great weight in our consideration of the question.

The Supreme Court of the State of Washington, in the recent case of Northern Pacific Railroad Co. v. Schoenfeldt, 216 Pac. 26, said:

> "We have repeatedly held that the legislature may regulate the use of the highways for carrying on business for private gain, and that such regulation is a valid exercise of the police power."

In the same decision the Washington court, after referring to the fact that no Federal statute had been enacted for the regulation of this particular kind of common carrier, and to the well established principle that until congress acts to regulate a particular phase of interstate commerce, state regulation incidentally affecting such interstate commerce is not superceded,-- concludes:

> "That no feature of the act is a prohibition of, or a direct burden upon, interstate commerce."

The same interpretation of the Washington statute to regulate auto stages even though operating in interstate commerce was recognized and upheld by the Federal Court in the case of Interstate Motor Transit Co. v. Kuykendall, 284 Fed. 882.

We agree with the conclusions reached in the foregoing cases, and, in accordance with the principles announced therein, conclude that in the absence of any federal regulation of auto

stage transportation companies, this Commission, as the regulatory body of the State of California, should assume jurisdiction over all transportation companies operating, or seeking to operate as such, under the terms of the regulatory statute (Chapter 213, Stats. 1917), and that this jurisdiction extends to transportation companies such as the applicant, who propose to operate an interstate service.

The allegations, however, set forth in the application, were not sustained by testimony of the president of the company, who testified at the hearing upon this application. His testimony was in effect directly contrary to such allegations, in that he testified that the corporation, applicant herein, had no assets other than a nominal sum received as commissions, and no equipment, nor had it in the past or did it intend in the future to itself own and operate automotive stages for the transportation of passengers as a common carrier as set forth in its petition.

Applicant corporation has an authorized issue of some $4,000 par value stock, all of which is issued and outstanding in the hands of some four individuals. As stated by the president of the company, the corporation itself has received no consideration whatsoever covering stock outstanding but the corporation was formed solely for the purpose of securing operative rights in the different states through which operations would be carried on and thereafter to permit individuals owning passenger machines to operate in the name of the corporation and under the certificates held by the corporation, such individuals to pay all their own expenses of operation and to retain all of their own individual receipts, with the exception of 20%

of the gross receipts, such 20% to be turned over to the corporation and used, one-half for advertising purposes and the other one-half to reimburse the corporation for the use of its name and right to operate and for whatever services the corporation as such might render in the selling of tickets or securing of passengers.

Under Decision No. 5318 in Case No. 1220, dated April 17, 1918, the Railroad Commission held that the practice of so-called leasing of cars on a percentage basis was not desirable from the standpoint of public interest and did not result in the automobile transportation business being conducted on a stable basis. In such decision the Commission directed that all transportation companies should, after a period of 120 days from the date thereof, either own their own equipment (proprietary control being deemed ownership), or lease such equipment for a specified amount on a trip or term basis, the leasing of equipment not to include the service of a driver or operator.

Later, the Commission issued its General Order No. 67, requiring that all such leases be executed in writing. Clearly operation as proposed by applicant herein would be in direct violation of the rules and regulations established by the Commission governing operation of automotive stages in the transportation of passengers or property for compensation, and in view of the evidence submitted in this proceeding we are of the opinion that the application should be denied and an order will be entered accordingly.

I herewith submit the following form of Order.

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O R D E R

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

IT IS HEREBY FOUND AS A FACT that public convenience and necessity do not require the operation by applicant as a transportation company of auto stages over the public highways of this State, between San Francisco and the southern boundary line of Oregon, as proposed by the applicant herein;

WHEREFORE, IT IS HEREBY ORDERED that the application herein be, and the same is hereby denied.

Dated at San Francisco, California, this 23rd day of October, 1923

Commissioners