

ORIGINAL

Decision No. 13247

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

B. P. McCONNABA, doing business under
the name and style of McCONNABA'S
OFFICIAL AUTO SERVICE,

Complainant,

-vs-

G. F. WILHEITE,

Defendant.

Case No. 1952.

Mahan & Mahan, by L. E. Mahan, for complainant.

J. Logan Beamer and S. E. Metzler, for defendant.

BY THE COMMISSION:

O P I N I O N

B. P. McConnaha, complainant in this proceeding, alleges
in substance and effect:

That said defendant, G. F. Wilhite, is now and has been
for some time prior to the filing of said complaint operating,
unlawfully and without authority from this Commission, an auto-
mobile and auto truck for the transportation of persons and prop-
erty for compensation between the city of Eureka and Orleans, in
Humboldt County, over the public highway leading from said Eureka
to said Orleans.

Said complainant is operating, under the fictitious
name of McConnaha's Official Auto Service, auto stages and trucks
for the transportation of persons and property between Eureka and

Orleans and intermediate points and has filed tariffs and time schedules with the Railroad Commission of the State of California in accordance with the law. The operative rights of B. P. McConnaha were established by virtue of the fact that he was operating prior to the 1st day of May, 1917 and has ever since continued in good faith to so operate.

G. F. White, the above named defendant, in answer to said complaint, denies all the material allegations contained in said complaint and further alleges that he is operating a duly licensed taxicab service between said town of Orleans and said city of Eureka and other places and that this Commission has no jurisdiction to enjoin or restrain the said defendant from engaging in such transportation business.

A public hearing in the above entitled matter was conducted by Examiner Satterwhite at Eureka on November 27, 1923.

Complainant and defendant each testified in his own behalf and called several witnesses during the course of the proceedings.

The testimony shows that the defendant has for about two years last past been conducting a taxicab service and a gasoline service station at Orleans, where he resides. He has solicited the hauling of passengers for hire anywhere in and out of the town of Orleans and particularly between Orleans and Eureka and other communities such as Requa, Del Norte, Happy Camp and Yreka. The record shows without contradiction that at least 75 per cent of the passengers carried by the said defendant have been transported between Orleans and Eureka and intermediate points, and that 50 per cent of this business is solely between Orleans and Eureka. Defendant makes his headquarters in Eureka at the Grand Hotel and through active solicitation there and elsewhere secures considerable

patronage from persons who have occasion to travel from and to Eureka, which is the county seat of Humboldt County. Arrangements are such between the defendant and the proprietor of the Grand Hotel that applications are made either direct or by phone call for seat reservations for transportation to Orleans and intermediate points or elsewhere. Although the defendant testified that he operates a "for rent" service car between Eureka and Orleans or elsewhere and holds himself out to go anywhere and at any time provided satisfactory arrangements can be made with his prospective patrons, the evidence shows (including said defendant's own admission) that it has been his practice for many months prior to the commencement of these proceedings to carry two or three or more passengers in his five or seven passenger car and collect from each of them, under a separate and individual arrangement, \$5.00 apiece or more for passage to Orleans or intermediate points over the public highway by way of Arcata and Trinidad.

The record shows that the defendant has made, during the period above mentioned, at least two and often three trips weekly between Orleans and Eureka, carrying two or three or more passengers and collecting individual fares from each. It appears that no definite time table was followed but it was the common practice for defendant to leave Orleans if possible at about 6:00 a.m., about an hour ahead of the regular time schedule of said complainant, B. P. McConnaha, and leave Eureka about 7:00 a.m. or later in the forenoon, the leaving time being often determined by the number of patrons seeking transportation.

This Commission, in a recent case wherein a similar charge of alleged unlawful operation was being considered, said in part in its Decision No. 11296 in Case No. 1781:

"Cars rented on a 'for hire' basis should be rented by the trip, irrespective of the number of passengers transported, and the holding out by the operator should be on the basis of an individual transaction with the party hiring the car, otherwise such operation conducted with a degree of regularity sufficient to warrant the car's being classified as 'used in the business of transporting persons or property for compensation,' as referred to in the statutory enactment, would subject the operator, in the opinion of the Commission, to the penalties prescribed in section 8 of the enactment upon complaint and conviction before the proper tribunal."

After a careful consideration of all the evidence, we are of the opinion and hereby find as a fact that G. F. Willhite is unlawfully and without authority of this Commission operating a motor stage service as a common carrier of passengers between Orleans and Eureka and intermediate points.

The said complainant offered little or no evidence in support of his allegations that said defendant was operating unlawfully auto trucks for the transportation of property for compensation between the city of Eureka and Orleans, and as to such portion of the complaint the matter will be dismissed.

O R D E R

A public hearing having been held in the above named proceeding, the matter being submitted and the Commission now being fully advised in the premises,

THE RAILROAD COMMISSION HEREBY FINDS AS A FACT that G. F. WILLEITE, the defendant herein, is operating an auto stage as a transportation company as defined by Chapter 213, Statutes of 1917, as amended, as a common carrier for the transportation of persons for compensation over the highways of this State between Orleans and Eureka and intermediate points; that such operations were commenced by defendant subsequent to May 1, 1917, and that no certificate has ever been granted by this Commission

declaring that public convenience and necessity require such operations by said defendant; and basing its order upon the foregoing findings of fact and the further findings and statements of fact contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that G. F. Willhite, defendant herein, be, and he is hereby ordered and directed to cease and discontinue forthwith said operation of an auto stage as a common carrier of passengers for compensation over the highways of this State between Orleans and Eureka and intermediate points.

IT IS FURTHER ORDERED that the Secretary of this Commission cause to be delivered to the District Attorney of Humboldt County a certified copy of this order, together with a request that he institute and prosecute appropriate proceedings for the enforcement of the provisions of this order.

IT IS FURTHER ORDERED that the said complaint be, and it is hereby dismissed in respect to other matters contained therein relating to the unlawful operation of auto trucks for the transportation of property.

Dated at San Francisco, California, this 24th day of March, 1924.

Chas. S. Sweeney

Dwight Martin

J. F. Whittsey
Commissioners.