Decision No. 14237.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of the Key System Transit Company, a corporation, for an order permitting the establishment of a passengor fare of 36 cents from San Francisco to Oakland and return, including an admission ticket to Idora Park.	)	APPLICATION NO. 10181.

BY THE COMMISSION:

OPINION ON PETITION FOR REHEARING

The application of the Key System Transit Company, above entitled, was denied on September 11, 1924 (Decision No. 14042), and on September 30, 1924 that company filed its petition for rehearing, alleging several grounds upon which it predicates a contention that the order denying the application is contrary to law.

We are of the opinion that no good cause for rehearing has been made to appear in said petition, and therefore shall deny the same, but in order that the position of this Commission in connection with this matter may be properly understood by all parties, we desire to state that we cannot admit, in any sense, the contention of applicant that rate questions such as the one presented in this proceeding, dealing with matters the administration of which has been specifically vested in this Commission

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under the Constitution and laws of this State, become questions not within our jurisdiction to determine merely because no formal opposition to the rate application appears at the hearing thereon. We, therefore, cannot consider well taken the position that, as alleged in the petition for rehearing, this Commission had in this proceeding "no question before it which it was competent to determine". On the contrary, it is our opinion that the application of legal, administrative and regulatory principles to facts presented in rate proceedings of this particular character is one of the essential and characteristic functions of this Commission. In the present instance, in which the basic facts are uncontroverted, it would appear that the sole function of the Railroad Commission is the application to those facts of certain well known rate-making principles. It is but one of the many instances in which we are called upon to interpret the facts that have been presented to us, and to apply to them rules of law or administration in the interest of the public good.

This is a proceeding in which applicant seeks to file certain alleged "excursion rates". By Section 21, Article XII of the Constitution of this State, we are empowered to authorize the issuance of tickets at such rates. A strictly transportation excursion rate is, therefore, without question, lawful and proper, and the filing of such rates has been authorized by this Commission in numerous instances. The propriety of rates of this character is, however, to be tested by general rate-making principles, among the most important of which is that which forbids the assessing of any rate which produces an undue discrimination, and it is provided by the Public Utilities Act (Sec.67) that the existence or non-existence of such discrimination is a question of fact

upon which the Commission's findings and conclusions shall be final. This was specifically recognized by the Supreme Court of this State in the case of Live Oaks W. Users' Ass'n. v. Railroad Commission. 66 C.D. 408 (Decided September 21,1923), in which the court, speaking through Mr. Justice Seawell, said:

> "The above cited article of the Constitution (Art.XII,Sec.23) and sections of the Public Utilities Act (Secs.67 and 17b) are conclusive upon the question that the Railroad Commission's decision and order in the instant case on the question of discrimination and classification is not subject to annulment by this court".

Section 17(b) of the Public Utilities Act provides the basic principles under which this Commission operates in connection with the problems here under consideration, and it was our opinion at the time of the issuance of our order denying this application, and is now our opinion, that the rates proposed by this application are indefensible when tested by fundamental rate-making principles. While it may be true, as alleged in the petition for rehearing, that these rates would not produce more than a technical discrimination between persons traveling from San Francisco to Idora Park over applicant's ferry and Key System trains, and persons traveling to the park from points in the East Bay district over applicant's street railway system, it nevertheless remains a fact, in our opinion, that an undue discrimination will result between passengers traveling on the proposed round trip excursion rate including an admission ticket to Idora Park of 36 cents from San Francisco to applicant's station at 55th Street and Telegraph Avenue, Oakland, and other passengers traveling from San Francisco to the same station over the same route and in the same conveyances who are to be charged the same sum for the transportation alone. The discrimination arises between persons who propose to utilize the independent 132

amusement facility of Idora Park and those who do not propose to utilize that facility. Excursion rates or fares should, in our opinion, cover solely the transportation service rendered by the carrier itself. The principle was declared in the Interstate Commerce Commission tariff circular ruling quoted in our Decision No.14042 above mentioned, and has universally been recognized by regulatory bodies. It has been restated, in substance, in Conference Ruling No.28 of the Interstate Commission, as follows:

> "28 Tickets for Transportation and Meals. Hotel Accomodations,etc. A carrier publishes a tariff offering certain transportation fares and rates for personally conducted tours with tickets to cover meals, hotel accomodations, etc., and declines to sell the transportation ticket to any one who does not also purchase the tickets covering meals and hotel accomodations: Held, that the two matters must be kept separate, and carriers may not decline to sell such transportation without tickets for meals and hotel accomodations".

The proposed rate, being in the same amount per passenger as that now in effect for ordinary business, could not be classed as an excursion rate were it not for the fact that applicant intends to pay to the amusement park its admission fee of ten cents (10¢) in the case of passengers traveling under the socalled excursion tariff. Applicant thus, in effect, proposes to charge passengers who desire to visit the amusement park the sum of twenty-six cents (26¢) for a round trip, and other passengers who do not desire to use this separate facility the sum of thirty-six (36¢) for the identical transportation service. This also appears from applicant's Petition for Rehearing, in which it is declared

that,

> "The record in this case shows that petitioner sells its transportation for the sum of twenty-six (26) cents, and in connection therewith it sells a ticket of admission to Idora Park for the sum of ten (10) cents. The sale of the admission ticket is made as the agent of Idora Park and petitioner has never become beneficially interested in such proceeds".

Whether or not the transportation company itself owns or controls the amusement park, hotel, or other non-transportation facility cannot, of course, be the criterion. Applicant serves this amusement park from its station at 55th Street and Telegraph Avenue, Oakland and there could be no objection to the carrier acting as agent for the amusement park in selling tickets of admission thereto, provided that no passenger is refused the excursion rate to the carrier's station because he does not purchase a ticket to the amusement park.

Enough has been said in our former opinion in this matter to show the basis for our conclusion that the fundamental factors of discrimination are present in the instant case. The passenger who does not intend to patronize the amusement park, and whom it is proposed to charge 36 cents for a round trip to 55th Street and Telegraph Avenue would in most instances ride in the same conveyances over the same route and under conditions similar in every respect to those which would apply to the passenger who, after leaving the car at 55th Street and Telegraph Avenue, proposes to cross the street and enter the amusement park. What a passenger plans to do in connection with a non-utility facility entirely separate and distinct from the strictly transportation service and after such service has been concluded cannot, in

our opinion, become the basis for a discrimination in rates.

This Commission is empowered by the Constitution (Sec. 21,Art.XII) to authorize the issuance of excursion tickets at special rates. It is of the opinion that such rates should be tested by the general principles upon which non-excursion rates are tested, and must therefore refuse to allow the filing of the rates proposed in this application.

O R D E R

Petition for rehearing having been filed in the above entitled matter by the Key System Transit Company and no good cause therefor appearing,

IT IS HEREBY ORDERED that said petition for rehearing be and the same is hereby denied.

Dated at San Francisco, California, this 3rd day of November, 1924.

C. L. Seavey

H. M. Bourn

J. E. Whitten

Commissioners.