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ORIGINAL

Decision No. 14481

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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PICKWICK STAGES, Northern Division,)
A corporation,)
Complainant.)

ORIGINAL

-vs-

W.W.WILCOX et al (Wheelers Hot)
Springs Stage Line),)
Defendant.)

: Case No. 2015

In the Matter of the Application of)
WHEELERS HOT SPRINGS STAGE LINE, for)
a certificate of public convenience)
and necessity.)

: Application No. 10585

Warren E. Libby, for Complainant in Case
No. 2015, and protestant, Pickwick Stages,
Northern Division, in Application No. 10585

O'Melveny, Millikin, Tuller & Macneil, by
W.W.Clary, for defendant in Case No. 2015,
and for applicant in the Application No. 10585.

Earl E. Moss, for Ventura-Ojai Stage Line,
Protestant in Application No. 10585.

T.A.Woods, for American Railway Express
Company, protestant in Application No. 10585.

I. Blalock, for Southern Pacific Company,
Protestant in Application No. 10585.

BY THE COMMISSION:

O P I N I O N

The two proceedings entitled as above were, by stipu-
lation consolidated for hearing and decision. Public hearings
were held before Examiner Williams at Ventura on November 13
and 15, 1924, at which time the matters were submitted on briefs.

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Briefs have been filed and the matters are now ready for decision.

Case No. 2005 is a complaint brought by Pickwick Stages, Northern Division, a corporation, against W.W. Wilcox and Murray Bayles and the above individuals as co-partners doing business under the fictitious name and style of Wheeler's Hot Springs Stage Line, in which complaint it is alleged that defendants are operating automotive stage service for the transportation of passengers and express matter for compensation between Los Angeles and Wheeler's Hot Springs via Ventura and Ojai without first having obtained from the Railroad Commission a certificate declaring that public convenience and necessity require such operation. The complainant prays that the Commission issue its order requiring defendants to desist from all operation until such time as they have first secured a certificate of convenience and necessity in accordance with the provisions of Chapter 213, Statutes of 1919 and amendments thereto.

The answer of defendants denies allegations as set forth in the complaint.

Application No. 10585 is an application filed on behalf of W.W. Wilcox and Murray D. Bayles, co-partners, in which they petition the Railroad Commission for a certificate of public convenience and necessity authorizing the operation of automotive stage service between Los Angeles, Wheeler's Hot Springs and intermediate points via Ventura and Ojai. Said application prays for an order of the Railroad Commission adjudicating the rights of applicant to carry on operation as heretofore conducted and that if it should be held that applicant has no legal and existing right to carry on said operations that applicant be granted a certificate to continue service the year around under the same schedules and rates as such service has been heretofore conducted during the period May 1st to November 1st of preceding years.

With respect to the rights of the co-partnership to operate at the present time. Section 5 of Chapter 213, Statutes of 1917 provides in part that no certificate need be secured by any individual, co-partnership or corporation who was in good faith operating an automotive stage or truck line for the carriage of passengers or property for compensation over a regular route or between fixed termini as of May 1st, 1917. Tariffs were filed in May 1917 covering the service brought into question under the proceedings now before the Commission, but such tariffs were not filed in the name of the co-partnership applicant herein. A tariff was filed by Bayles covering operation of passenger and express stage service between Los Angeles and Ojai via Ventura naming certain other intermediate points such as Calabasas, Newbury Park and Camarillo. A separate tariff was filed on behalf of W. W. Wilcox covering a similar service between Ojai, which was then known as Nordhoff, and Wheeler's Hot Springs. It appears from the testimony of witnesses called in the present proceeding that during the year 1917 Bayles, as an individual, operated an automotive stage for the transportation of passengers and express matter from Los Angeles to Ojai serving certain intermediate points en route over what is known as the Conejo Grade. Wilcox operated as an individual between Ojai and the Springs, passengers being transferred at Ojai. Bayles collected his fare for transportation service rendered by him, and Wilcox the fares provided in his tariff covering transportation from Ojai to the Springs. Both of such lines were operated by their respective owners as individuals and not as a co-partnership, their only relationship being a transfer of passengers from one line to another at Ojai. During the season of 1918 the route from Ojai having been somewhat improved, Wilcox discontinued stage service

entirely and Bayles operated through from Los Angeles to the Springs as an individual and not as a co-partner of Wilcox. Similar operation was carried on by Bayles during the season of 1919, seasons above referred to being for the period May 1st to November 1st of the year. No service whatsoever was rendered during the winter months. At the beginning of the season of 1920 it appears that Bayles had certain financial reverses which prevented his continuance of stage service between Los Angeles, Wheeler's Hot Springs and intermediate points. At the beginning of the season of that year Wilcox entered into an agreement with said Bayles under which Wilcox was to furnish the necessary equipment, pay all expenses, receive all revenues and to employ Bayles as a driver at a fixed monthly salary, the agreement further providing that if there were any net profits accruing from the stage service over and above the costs of operation said profits were to be divided equally between Bayles and Wilcox.

This plan of operation continued through the seasons of 1920, 1921, 1922, 1923 and 1924. Both co-partners testified at the hearing that there had been no profits and accordingly no division of such profits between the alleged co-partnership. The annual reports filed by the Wheeler's Hot Springs Stage Line, however, show that for the year 1922, a profit was made in the operation of such stage service, although no division of such profits was made between the two applicants herein nor did the co-partners as such share an equal amount of the loss incurred in such operation during other seasons.

From the brief history of the operations of this stage service as outlined above and a review of the evidence submitted in these proceedings, we are of the opinion and hereby find as a fact that W.W. Wilcox and Murray D. Bayles, co-partners, doing business under the fictitious name of Wheeler's Hot Springs

Stage Line were not operating automotive stage service for the common carriage of passengers and express matter between Los Angeles and Wheeler's Hot Springs via Newbury Park, Camarillo, El Rio, Montalvo, Ventura and Ojai and that such co-partnership has no right to operate automotive stage service between such points due to operation in good faith prior to May 1st, 1917 and continuously thereafter.

With respect to the necessity for the establishment of stage service over the route herein proposed to be served by the co-partnership. This application was protested by Pickwick Stages, Northern Division, a corporation, operating automotive stage and express service between Los Angeles, Ventura and intermediate points hereto hereinabove named; Ventura-Ojai Stage Line operating automotive stage service between Ventura and Ojai and intermediate points; American Railway Express Company and Southern Pacific Company operating a passenger and express rail service between Los Angeles, Ventura and Ojai.

Applicants propose to operate one round trip per day between Los Angeles and the Springs using in such service 1-8 passenger Packard Touring car and to charge rates as at present set forth in tariff now on file. Counsel for applicant admitted that the service of existing carriers between Los Angeles, Ventura and Ventura and Ojai is adequate to meet the demands of the traveling public between such points. There is no dispute as to the necessity for stage service beyond Ojai to and including Wheeler's Hot Springs. Applicants, however, did contend that service to points beyond Ojai to and including the Springs could not be rendered profitably unless the stage used in such service was permitted to pick-up and discharge passengers and express matter locally between all intermediate points,

provided it had empty seats available on its one round trip per day between Los Angeles and the Springs.

A number of witnesses were called from various points along the route who testified that they preferred to use the stage of applicants when available for transportation between Los Angeles and such other intermediate points principally due to the fact, as it would appear from the evidence, that such stage was of a touring car type and would be more convenient and comfortable than the stage type of equipment used by protestant automotive carriers.

Protestant Southern Pacific Company operates five round trips per day between Los Angeles and Ventura and one round trip per day between Ventura and Ojai, express matter being carried on the trip between Ventura and Ojai and on the two trips between Los Angeles and Ventura by the American Railway Express Company. Protestant Pickwick Stages, Northern Division, has submitted an exhibit showing seating capacity on stages operated via Los Angeles and Ventura for July, August, and September 1924 which exhibit shows that of its scheduled trips between such points for the month of July it operated a total of 7761 seats north bound of which 3325 were occupied and 4436 vacant; for the same month southbound, 7706 were operated, 3542 occupied and 4164 vacant. For the month of August, north bound 7456 seats were operated, 3976 occupied and 3480 vacant; south bound for the same month 7396 seats were operated, 3743 occupied and 3653 vacant. For the month of September, north bound, 7273 seats were operated, 3345 occupied and 3928 vacant. South bound 7485 seats operated, 3618 occupied and 3869 vacant. This exhibit would tend to show that this particular protestant operates sufficient equipment over this particular division to adequately serve

passenger demands made upon it. There is no question but that the Southern Pacific Company, in its rail service has sufficient coaches available to care for any and all traffic offering between Ventura, Los Angeles and points served by the rail line; also as to rail service between Ventura and Ojai. The evidence further shows that the Ventura-Ojai schedule and the schedules between Ventura and Los Angeles have always had available sufficient equipment to handle any and all passenger traffic offered.

From a review of the evidence and exhibits introduced in this proceeding there can be no question as to the existing stage and rail lines being adequately able to care for passenger and express transportation demands between Los Angeles, Ventura and Ojai and intermediate points. This is further substantiated through statements of counsel for applicant to the effect that they admitted that the existing transportation services were rendering an adequate service to which they had no complaint to make nor were they in the present proceeding attacking in any manner whatsoever the efficiency of existing lines of transportation.

In view of the foregoing the issue in this proceeding narrows down to a single one as to whether or not a certificate should be granted to the present applicants permitting the co-partnership to carry passengers and express matter locally solely for the reason that the additional revenues accruing to the co-partnership from such local business will enable it to continue rendering service to the Springs at a profit or at a minimum loss instead of a loss which would probably occur if local service were prohibited.

Mr. Wilcox, one of the co-partners herein, is the owner and operator of Wheeler's Hot Springs and he testified in effect "we have to give local service in order to take care of our patrons." While it is true that the co-partnership

testified that it was not their intention to build up a purely local business, but only to take care of local traffic when empty seats were available on its stages to and from the Springs, they also testified in effect that they desired to advertise this business, develop it to the greatest extent possible and to put on all equipment necessary to handle all traffic which could be developed, both through and local.

With respect to the necessity for local service. From testimony offered it appears that since 1915 or the inception of this stage service up to the present time no service was given whatsoever during the period November 1st to May 1st of each year. This, applicant contended, was due to the fact that such stage service could not be operated through to the Springs north of Ojai. It did not appear, however, that applicants attempted during such period the road was open to travel between Los Angeles, Ventura and Ojai, and irrespective of the claimed needs of such local traffic, no effort whatsoever was made by applicants herein to care for such business.

We do not believe that it is a sound policy nor in the interest of public service to authorize the establishment and operation of a local stage service solely upon the ground that more revenue would accrue to the operator through the granting of such local service and would accordingly benefit him in the operation of a transportation service to a summer resort owned by a co-partnership in that such operation, thereby permitting him to better care for his own guests, as it is obvious that practically all local business handled by such local service will be taken away from the existing carriers who are admittedly rendering an adequate and efficient service the year around, winter and summer.

After careful review of the evidence, exhibits and briefs filed in this proceeding, we are of the opinion and hereby find as a fact that public convenience and necessity require the

operation by applicant co-partnership of automotive stage service for the transportation of passengers and express matter between Los Angeles and Wheeler's Hot Springs, via Ventura and Ojai; but that public convenience and necessity does not require operation of stage service either locally or on through stages to and from the Springs, of passengers or express between Los Angeles, Ventura and Ojai and intermediate points, inclusive, other than the pick-up or discharge of passengers, Ojai to Los Angeles and intermediate points, inclusive, when such passengers are destined to or originate at a point north of Ojai to and including Wheeler's Hot Springs. An order will be entered accordingly.

O R D E R

Public hearings having been held in the above entitled proceedings, evidence introduced, briefs having been filed, the matter being submitted and now ready for decision, and basing its order on the statements and findings of fact as set forth in the above preceding opinion;

IT IS HEREBY ORDERED that W.W.Wilcox and Murray D. Bayles, as individuals, and as co-partners, doing business under the fictitious name and style of Wheeler's Hot Springs Stage Line be and they hereby are ordered to cease forthwith the operation of an automotive stage line for the transportation of passengers and express for compensation between Los Angeles and Wheeler's Hot Springs and intermediate points, except and only in accordance with the certificate of public convenience and necessity hereinafter granted.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by W.W.Wilcox and Murray D. Bayles, co-partners doing business under the fictitious name and style of Wheeler's

Hot Springs Stage Line of an automotive stage line for the transportation of passengers and express matter between Los Angeles and Wheeler Hot Springs and intermediate points, provided, however, that public convenience and necessity do not require the operation by said co-partnership of automotive passenger and express service either by the operation of local stages or upon through stages, between Los Angeles, Ojai and intermediate points, inclusive, except such passengers or express packages that are picked up or discharged in said territory when originating at or destined to points north of Ojai to and including Wheeler's Hot Springs.

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity be and the same hereby is granted subject to the following conditions:

Express matter authorized to be handled under certificate hereinabove granted will be limited to express packages not to exceed 100 pounds in weight.

Applicants shall file within a period of fifteen (15) days from date hereof written acceptance of the certificate herein granted which written acceptance shall contain a statement to the effect that such co-partnership understands the restrictions as contained in said certificate and that said restrictions will be fully complied with.

Applicant shall file within a period of not to exceed twenty days from date hereof tariff of rates and time schedules, such tariff of rates to be identical with tariff of rates as now on file with the Railroad Commission with the exception that local rates between intermediate points shall be eliminated in accordance with the restrictions as contained in the certificate herein granted; service to commence within five (5) days after filing of said tariff of rates and time schedules.

The rights and privileges herein authorized

may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission thereto has first been secured.

No vehicle may be operated by applicant co-partners unless such vehicle is owned by them or is leased under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 27th day of January, 1925.

H. A. Brundage
C. Seavey
Egerton Shore
George D. Squires
Frank E. ...
Commissioners