

Decision No. 14619

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of)
S.F.B. MORSE for a certificate of)
public convenience and necessity to)
operate an automobile passenger bus) APPLICATION NO. 9313
service between Pacific Grove, Monterey)
and Del Monte, and Los Banos and Merced.)

Alan C. Van Fleet for respondent.
Warren E. Libby for Pickwick Stages,
Northern Division, Intervenor.
G. R. Carpenter, Intervenor.

BY THE COMMISSION -

O P I N I O N

On January 16, 1925, the Commission issued, on its own initiative, an order to S.F.B. Morse, applicant herein, directing said Morse to appear and show cause why the certificate of public convenience and necessity heretofore granted by the Commission's Decision No. 13664 under date June 9, 1924, should not be revoked and annulled or for such other action as the Commission might deem proper in the premises.

A hearing on the order to show cause was conducted by Examiner Handford at San Francisco, at which time the respondent appeared, the matter was duly submitted and is now ready for decision.

Public convenience and necessity for the operation of an automobile stage line as a common carrier of passengers between Pacific Grove, Monterey and Del Monte on the one hand and Los Banos and Merced on the other hand, with the provision that no passengers should be carried locally between Merced

and Los Banos and between Pacific Grove and Del Monte was found by this Commission in its Decision No.13664 on Application No.9313, decided June 9, 1924, and granting the operative rights to S.F.B.Morse, the respondent herein. The order in the above mentioned proceeding provided that

"the rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

"No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission."

Information having reached the Commission, by reason of testimony at the public hearings on Application Nos.9889, 10311 and 10488, that the operative rights heretofore granted S.F.B.Morse, respondent herein, under the provisions of Decision No.13664 on Application No.9313 had been leased or assigned to one Joseph Miller and that equipment had been used by said Miller other than the property of respondent Morse, the Commission on its own initiative instituted the instant proceeding by issuing its order to show cause.

It appears from the evidence herein that the certificate holder, S.F.B. Morse, who is also the president of the Del Monte Properties Company, originally secured the certificate rights for the purpose of securing regular transportation service primarily for the purpose of enabling guests of the Hotel Del Monte to have expeditious transportation to and from Yosemite Valley points. Prior to establishing service under the certificate, respondent Morse conferred with one Joseph Miller, an experienced stage operator with certificate rights in the San Joaquin Valley.

An agreement was executed between respondent Morse and Joseph Miller under date July 2, 1924, by which agreement Miller was to sell to Morse a certain Cadillac automobile of at least 11 passenger capacity, for the sum of \$3000. payable on October 16, 1924, with the option to return said stage to said Miller. The agreement further provided for the employment of said Miller as General Manager of the stage line, and as such general manager to do all things necessary in the operation of the line, receiving as compensation all revenues and defraying all expenses, retaining any balance accruing as profit as his compensation as general manager. The agreement further provided for the purchase of the operative rights by Miller for the sum of \$750. on or before November 1, 1924, and also to establish joint rates with said Miller to and from points served by said Miller south of Merced.

Mr. S.F.B. Morse, respondent herein, testified as to his intent and understanding under the agreement herein referred to; that his primary and sole purpose was to place the operation of the line in the hands of a competent stage operator and that he had assumed Miller's familiarity with the stage business so qualified him as being a responsible party; that it was Morse's desire to have a service that would enable him to attract guests to the Hotel Del Monte and adjacent resorts under his control and also to permit such guests to have expeditious transportation to Yosemite Valley points reached through the Merced gateway. Witness further testified that it was not his desire to be permanently in the stage business, if a responsible operator would take over the certificate but that respondent desired to maintain such supervision over the line that would ensure proper and responsible service being given for the benefit of his guests. Witness further testified that he had left the entire handling of the matter, including the draft of the agreement, to his attorney, and that such attorney had handled the detail of the transaction in all its phases.

It appears that the conditions of the agreement were not fully complied with and that after the 11 passenger car was placed in service on the line on July 11, 1924, it was retained only until August 22, 1924, when a seven passenger car was substituted and used for the balance of the season. It does not appear that any payment was made by respondent, Morse, to Miller at any time for the use of the car nor was any amount paid as provided for as the purchase price under the agreement.

The Commission has given careful consideration to the evidence in this proceeding and has carefully reviewed the agreement introduced as an exhibit. Although both respondent Morse and Joseph Miller were advised by counsel in the matter of the agreement, it is apparent after hearing the testimony of respondent, Morse, that he had but little conception of the duties and obligations placed upon him by the order of the Commission granting a certificate. There seems no contention in this proceeding, even by intervenors, that any action has been taken by respondent, Morse, in other than good faith and in a desire to furnish transportation to his guests at the Del Monte resorts. The method in which this has been done has violated two of the provisions of the Commission's Decision granting the certificate, but respondent, according to his testimony, proceeded upon the advice of his legal counsellor. It has not been shown herein that the traveling public have been in any manner inconvenienced by the unauthorized operation which has been conducted over the line during the 1924 season, nor that any profit has accrued to either the respondent or to Miller under the agreement herein referred to.

The operation is a seasonal one, from April 15th to October 15th of each year, and the matter of public convenience and necessity for its operation was established by the Commission in its original decision granting the application therefor. We are of the opinion that it would serve no useful purpose, nor accomplish any public good, to revoke the operative right as heretofore granted in that we are satisfied from the evidence of the respondent, Morse, that there was no intent to wilfully violate the conditions of the Commission's original decision. In this operation no one has profited except the public which has patronized the service. Neither the respondent nor Mr. Miller has received any profit from the initial season's operation, and we are satisfied that as a result of the investigation into this matter initiated by the Commission's order to show cause that future transgressions or failures to fully comply with the Commission's order granting the certificate rights will not be made.

O R D E R

An order to show cause having been issued in the above entitled proceeding, respondent having thereafter duly appeared at a public hearing, the matter having been duly submitted and the Commission being now fully advised,

IT IS HEREBY ORDERED that the proceeding herein initiated by the Commission by its order to show cause as directed to S.F.B. Morse, respondent herein, under date January 16, 1925. be and the same hereby is dismissed.

W. A. C. Dated at San Francisco, California, this 3rd day of February, 1925.

W. A. C.

George D. Squires

Edward C. ...