

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PACIFIC AUTO STAGES, a corporation,
and PENINSULA RAPID TRANSIT COMPANY,
a corporation,

Complainants,

vs.

AUTO TRANSIT COMPANY, a corporation,

Defendant.

ORIGINAL

Case No. 2102

Devlin & Brookman, by Douglas Brookman,
for Complainants,

Harry A. Encell and Jas. A. Miller, by
Harry A. Encell, for Defendant.

BY THE COMMISSION -

O P I N I O N

Pacific Auto Stages, a corporation, and Peninsula Rapid Transit Company, a corporation, have herein filed complaint alleging that Auto Transit Company, a corporation, is holding itself out to the public as having the right to carry passengers for compensation between San Francisco and other points on its line on the one hand, and Palo Alto, Mayfield, Mountain View and Sunnyvale on the Peninsula Highway on the other; that said Auto Transit Company is actually engaging in the business of transporting passengers for compensation between said points. Complainants further allege that said Auto Transit Company has never applied for or obtained a certificate of public convenience and necessity authorizing it to engage in the business of transporting passengers for compensation to or from Palo Alto, Mayfield, Mountain View and Sunnyvale; that said company has never obtained and does not now possess any lawful right to engage in said transportation business; that said points of Palo Alto, Mayfield, Mountain View and Sunnyvale are not intermediate points

points along the route of Auto Transit Company which said company has been given the right to serve; that complainants are giving adequate service to and from said points; that there is no need for an additional service to and from said points by Auto Transit Company; and that in carrying passengers to and from said points said Auto Transit Company is unlawfully infringing upon the business of complainants. Complainants pray for an order of this Commission finding that Auto Transit Company has no lawful right to carry passengers for compensation to or from Palo Alto, Mayfield, Mountain View and Sunnyvale; that said points are not intermediate points on the route of Auto Transit Company which said company is entitled to serve; and directing Auto Transit Company immediately to cease transporting passengers for compensation to or from said points.

Defendant, Auto Transit Company, a corporation, duly filed its answer herein. Defendant makes a general denial of the several allegations of the complaint. Defendant in its answer alleges that its operative right to serve intermediate points on its route between San Francisco and Santa Cruz is based on the certificate granted by this Commission's Decision No.5900 on Application No.3669, as decided November 4, 1918, and upon certain tariff filings specifically set forth in said answer.

A public hearing on the above entitled matter was conducted by Examiner Handford at San Francisco, the matter was duly submitted and is now ready for decision.

Witnesses for complainant testified that the service of defendant to Palo Alto had been observed to have begun within the last eighteen months, being particularly in evidence since the establishment of the joint ticket office and station in Palo Alto in the month of August, 1923, and continuing until the present time. The original operation of the defendant's route did not serve the present established station of such company in

Palo Alto, the testimony of Mr. Geo. H. Higgins, President of Auto Transit Company, being that the first time his company operated into Palo Alto was in August, 1923, at the time his company first established a ticket agency in Palo Alto, which agency is still maintained.

By stipulation the record in Application No. 3669 of Auto Transit Company, tariff and time schedule filings and correspondence files of the Railroad Commission relating to Auto Transit Company are to be considered as evidence in this proceeding.

On April 13, 1918, Auto Transit Company, a corporation, filed with the Railroad Commission an application which was assigned Application No. 3669 in which authority was requested to establish auto stage service between "San Francisco and Santa Cruz and intermediate point" the intermediate point therein referred to being Menlo Park and such intermediate point being the only community between San Francisco and Santa Cruz shown on Exhibit "A" which was the rate schedule proposed and Exhibit "B" which was the time schedule proposed, both exhibits being attached to and forming a portion of the above mentioned application. Following public hearings and regular submission of the application the Railroad Commission under date November 4, 1918, by its Decision No. 5900 made its order on Application No. 3669 as follows:

"Auto Transit Company, a corporation, having petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by it of an automobile stage line as a common carrier of passengers between San Francisco and Santa Cruz and intermediate points, public hearings having been held, the matter having been duly submitted and the Commission being fully advised,

THE RAILROAD COMMISSION hereby declares that public convenience and necessity requires the operation by Auto Transit Company, a corporation, of an automobile stage line as a common carrier of passengers between San Francisco and Santa Cruz and intermediate points, except as hereinafter stated; provided, however, that this declaration shall not become effective until said Auto Transit Company, a corporation, shall have procured from the Railroad Commission a supplemental order herein reciting that said Auto Transit Company, a corporation,

"has filed herein certified copies of permits issued by the governing bodies of all political subdivisions through which the proposed route passes, in accordance with the requirements of Section 3 of Chapter 213, Laws of 1917; and provided, further, that the rights and privileges herein granted may not be transferred nor assigned unless the written consent of the Railroad Commission to such transfer or assignment has first been procured.

IT IS HEREBY ORDERED that no vehicle may be operated under this certificate unless such vehicle is owned by the applicant herein or is leased by such applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that no local business shall be handled by the applicant between Menlo Park or Camp Fremont and San Francisco unless there are vacant seats in the automobiles of applicant, which are not required by through passengers between Santa Cruz and San Francisco, and that no local runs or service is hereby authorized or established between Menlo Park or Camp Fremont and San Francisco, applicant having stipulated that the purpose of establishing the line for which authority is sought is for the accommodation and service of through passengers between Santa Cruz and San Francisco."

On July 17, 1919, the Commission received from the Auto Transit Company its Local Passenger Tariff No.1, (C.R.C. No.1, issued July 18, 1919, effective July 18, 1919.) This tariff shows rates between San Francisco and Santa Cruz and the intermediate points of Mayfield, Cupertino, Saratoga, Los Gatos, Alma and Glenwood. The following notations appear on this tariff "Stages do not stop for passengers at Glenwood or Alma"; "No passengers taken at Glenwood or Alma for Santa Cruz"; "Passengers not taken on (at Alma and Glenwood)"; "Stops to discharge passengers only (at Alma and Glenwood)"; "No passengers taken between Los Gatos and Santa Cruz." Local intermediate fares appeared between Mayfield and Santa Cruz, except that no local fares were shown between Los Gatos, Alma, Glenwood and Santa Cruz.

On January 30, 1920, the Commission received from the Auto Transit Company its Local Passenger Tariff No.2, (C.R.C. No.2, issued January 30, 1920, effective January 31, 1920). This tariff adds rates to and from Palo Alto as an intermediate point and rates between Los Gatos, Alma and Glenwood to Santa Cruz to-

gether with local rates between all the foregoing points. This tariff bears the notation "Issued under special permission of the Railroad Commission of the State of California, No.10/180, 11/106 of January 26, 1920,

No further addition of intermediate points was made in subsequent issues of tariffs until the filing of Local Passenger Tariff No.6, (C.R.C. No.6, issued August 17, 1925, effective August 20, 1925), in which tariff appears on the San Francisco-Santa Cruz route the additional intermediate stations of Mountain View, Sunnyvale, Lexington, Holy City, Summit, Sand Hill, Vine Hill Road and Felton Road.

Time Schedule No.1 of Auto Transit Company as filed with the Railroad Commission July 17, 1919, to become effective July 18, 1919, shows the following intermediate stops between San Francisco and Santa Cruz: Mayfield, Cupertino, Saratoga, Los Gatos, Alma and Glenwood. The following notations appear on this time schedule: "Alma and Glenwood - Passengers not taken on. Stops to discharge passengers only." "Stages do not stop for passengers at Glenwood or Alma." "No passengers taken at Glenwood or Alma for Santa Cruz."

On August 23, 1921, the Auto Transit Company issued its "Daily Time Schedule" to be effective August 27, 1923, in which Sunnyvale and Palo Alto appear as additional points to be served and the restrictions as regards Alma and Glenwood as appearing in Time Schedule No.1 are eliminated.

Time Table No.2 of Auto Transit Company, received by the Railroad Commission on June 26, 1923, (issued June 25, 1923, effective July 1, 1923, and cancelling all previous issues) adds Mountain View and Summit as intermediate points.

Time Schedule No.3 of Auto Transit Company issued September 4, 1924, effective September 15, 1924, (cancelling all previous issues) adds on the San Francisco-Santa Cruz Division the following intermediate points: Burlingame, Belmont, Redwood City,

Holy City, San Hill, Vine Hill Road and Felton Road.

No further addition of intermediate points appears in Time Schedule No.4 of Auto Transit Company as issued May 18, 1925, and effective June 1, 1925, this being the current time schedule now being operated.

The authority under which defendant, Auto Transit Company, is entitled to operate between San Francisco and Santa Cruz is derived from the certificate granted in the order of this Commission in its Decision No.5900 on Application No.3669 as decided November 4, 1918. In such application the only intermediate point proposed to be served was Menlo Park and the decision conferred no authority for the service of any other intermediate point and restricted the service to such intermediate point in the following language:

"IT IS HEREBY FURTHER ORDERED that no local business shall be handled by the applicant between Menlo Park or Camp Fremont and San Francisco, unless there are vacant seats in the automobiles of applicant, which are not required by through passengers between Santa Cruz and San Francisco, applicant having stipulated that the purpose of establishing the line for which authority is sought is for the accommodation and service of through passengers between Santa Cruz and San Francisco."

The situation herein presented has previously been presented to the Commission in the application of Motor Transit Company for an order validating certain alleged operative rights (Decision No.13454 on Application No.8454 as decided April 22, 1924). In the opinion in such proceeding the Commission discussed the matter of operative rights as follows:

"This Commission by its Decision No.9065 of June 7, 1921, on Case No.1442, A.B. Watson vs. White Bus Line, et al., (Opinion and Orders, C.R.C. Vol.20, p.18) established the principle that no transportation company subject to regulation by this Commission under the authority conveyed by Chapter 213, Statutes of 1917, and effective amendments thereto could enlarge or expand operative rights beyond those existing as of May 1, 1917, or subsequently granted by this Commission by a certificate of public convenience and necessity unless a certificate of public convenience as provided for in the statutory law had been issued by the Commission following application therefor and affirmative showing by an applicant. This decision was sustained

"by the California Supreme Court by its decision in Case S.F.10099 (64 Cal. Dec.278).

Enlargement of operative rights and territory served in the absence of the authority conferred by certificate of public convenience and necessity granted by this Commission after proper application is illegal."

"Applicant, Motor Transit Company, has contended throughout these proceedings that any enlargement of operating rights or increase in the character of the holding out to the public of service in the carriage of persons or property has been authorized by the Commission by reason of its authority as contained in special permissions authorizing the issuance of tariffs, and relying specifically on the tariffs authorized issued under Rules 10 and 11 of the Commission's General Order No.51 which provides 'Regulations governing the construction and filing of tariffs containing Rates, Fares, Classifications, Rules and Regulations for Transportation Companies as defined in Chapter 213, Laws of 1917' as adopted by this Commission on November 6, 1917, and effective January 1, 1918. The rules provide as follows:

"Rule 10. APPLICATION TO CHANGE RATES.

- a. Unless the commission otherwise orders or authorizes, no change shall be made by any transportation company in any rate, fare, toll, rental, charge, or classification, or in any rule, regulation or contract relating to or affecting any rate, fare, toll, rental, charge, classification or service, or in any privilege or facility, except after thirty days' notice to the commission and to the public.
- b. For good cause shown the commission may permit changes in tariff rates, fares, charges, classifications, rules or regulations on less than thirty days' notice. This authority will be exercised only in cases where actual emergency or real merit is shown."

Rule 11, APPLICATION TO INCREASE RATES.

- a. No transportation company shall raise any rate, fare, toll, rental or charge or so alter any classification, contract, practice, rule or regulation as to result in an increase in any rate, fare, toll, rental or charge, under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified.
- b. Increases in rates, fares, tolls or charges or alterations in classifications, rules or regulations, resulting in increases in rates, fares, tolls or charges must not be included in a tariff publication unless the same has previously been authorized by the commission, and notation must be made in tariff in connection with each such increase, as follows:
'Published under authority of the Railroad Commission of the State of California, No. ____ of (date) _____."

"as hereinabove set forth and in accordance with the principle annunciated by this Commission in its Decision

"No. 9065 of June 7, 1921, on Case No. 1442 - A. B. Watson vs. White Bus Line, et al., (Opinions and Orders, C.R.C. Vol. 20, p. 18) no transportation company subject to regulation by this Commission under the authority contained in Chapter 213 and effective amendments thereto, can enlarge or expand operative rights beyond those existing as of May 1, 1917, or subsequently granted by this Commission by a certificate of public convenience and necessity unless in accordance with the provisions of the statutory law a certificate of public convenience and necessity has been applied for and thereafter issued by the Commission in an appropriate proceeding. This decision was thereafter sustained by the California Supreme Court on September 19, 1922, by its Decision No. 10099 (64 Cal. Dec. 278). With the establishment of this principle and its affirmation by the California Supreme Court, it is now obvious that no enlargement of operative rights, either as to routes served or expansion of rights for the carriage of property, can be made without a proper showing in an appropriate proceeding resulting in authority as conferred by a certificate of public convenience and necessity. It is equally applicable as regards increase in the scope of operative rights, such as the enlargement of same by the inclusion of additional stations or operative points in territory not specifically covered either by operative right existing as of May 1, 1917, or rights thereafter conferred by certificate.

"The rules and regulations as adopted by this Commission under its General Order No. 51 provide the method and procedure under which rates should be filed with this Commission and for the public. These regulations do not and cannot change the requirements imposed by the statutory law as to authority required to be obtained by any transportation company desiring to operate over the highways of this State between fixed termini or over a regular route in the carriage of persons or property for compensation."

"The record in this proceeding supports the conclusion and finding of fact that Motor Transit Company has by tariff filings for the carriage of property over routes for which it had no legal authorization gradually built up an express business over its system which the Commission is now asked to approve irrespective of a showing that the rights have not heretofore existed. The Commission will not approve or authorize any operative rights which have not been shown to exist and must confine and base its authority upon the showing of public convenience and necessity for the authorization of express and package service as appearing in this record."

The situation herein presented is analogous to that heretofore presented to the Commission in the matter of the application of the Motor Transit Company, supra, in that by tariff and time schedule filings the defendant, Auto Transit Company, has exceeded the authority conferred by the certificate of public convenience and necessity heretofore granted by the Commission in its Decision No. 5900 on Application No. 3669, as decided November 4, 1918. Such

decision authorized in the order, a service between San Francisco and Santa Cruz with a limited right as regards the intermediate points of Menlo Park and Camp Fremont, and the latter point was practically identical with Menlo Park. By the original tariff filing on July 17, 1919, over eight months after the date of the decision, Auto Transit Company filed a tariff adding the intermediate points of Mayfield, Cupertino, Saratoga, Los Gatos, Alms and Glenwood. In subsequent tariff filings, as hereinabove more specifically referred to, additional stations were added as follows: Palo Alto, Mountain View, Sunnyvale, Lexington, Holy City, Summit, Sand Hill, Vine Hill Road, and Felton Road. Time schedules filed also show the addition of intermediate stations beyond the authorization contained in the decision granting the certificate of public convenience and necessity, adding also the stations of Belmont, Redwood City and Burlingame.

The Commission cannot by reason of the filing of time schedules and tariffs which purported to offer service and rates to points unauthorized in its original decision now hold that these rights to serve intermediate points between San Francisco and Santa Cruz were lawfully acquired or that they are now possessed by defendant, Auto Transit Company. The records of the Commission as shown by its Decision No.5900 on Application No.3669 and by the time schedules and tariffs subsequently filed establish conclusively that the defendant, Auto Transit Company, has never had any authority to serve intermediate points on its route between San Francisco and Santa Cruz with the exception of the intermediate points of Menlo Park and Camp Fremont, and with out a limited right - dependent upon seats being available in its cars and not required by through passengers between San Francisco and Santa Cruz.

After full consideration of all the matters herein presented, we are of the opinion and hereby find as a fact that the defendant, Auto Transit Company, has no certificate of public con-

venience and necessity authorizing the serving of any intermediate point on its route between San Francisco and Santa Cruz, excepting as to the intermediate point of Menlo Park,

O R D E R

A public hearing having been held on the above entitled complaint, the matter having been duly submitted, the Commission being now fully advised and basing its order on the finding of fact as set forth in the opinion which precedes this order.

IT IS HEREBY ORDERED that defendant, Auto Transit Company, a corporation, cease all operation to and from, and between, all intermediate points on its route between San Francisco and Santa Cruz excepting the intermediate point of Menlo Park, such intermediate points hereby ordered discontinued being as follows: Burlingame, Palo Alto, Redwood City, Sunnyvale, Mayfield, Cupertino, Saratoga, Mountain View, Los Gatos, Alma, Glenwood, Lexington, Belmont, Holy City, Summit, Sand Hill, Vino Hill Road, and Felton Road, such cessation of operation to be effective as of September 22, 1925; and prior to such date to cancel all tariffs and time schedules now on file with this Commission containing rates and fares or time points not in consonance with this order.

The effective date of this order is hereby fixed as ten (10) days from the date hereof.

Dated at San Francisco, California, this 12th day of September, 1925.

Chas. J. ...
George ...
Leon ...
COMMISSIONERS.