

Decision No. 16408

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of)
 the ARIZONA STORAGE & DISTRIBUTING)
 COMPANY, an Arizona corporation, for)
 a certificate of convenience and)
 necessity authorizing the applicant to) Application No. 9808
 carry passengers and baggage for hire)
 between Southern California, Arizona)
 and Texas points.)

In the Matter of the Application of)
 BIBB and BRIDGHAM for certificate of)
 public convenience and necessity to) Application No. 9681
 operate passenger service between)
 San Diego and El Paso, Texas.)

In the Matter of the Application of)
 PICKWICK STAGES, INC., a corporation,)
 for a certificate of public con-)
 venience and necessity to extend and)
 operate its automobile stage service)
 as a common carrier of passengers and)
 express matter between El Centro,) Application No. 9561
 California, and the Yuma Bridge on)
 the California-Arizona line just east)
 of Yuma, Arizona, via the regularly)
 traveled road through Holtville, and)
 intermediate points.)

In the Matter of the Application of)
 INTERSTATE STAGES, a common law com-)
 pany, for certificate of public con-)
 venience and necessity to operate a)
 passenger and express service by) Application No. 9758
 automobile between San Diego, Calif-)
 ornia, and Phoenix, Arizona.)

In the Matter of the Application of)
 the UNITED STAGES, INC., a corpora-)
 tion, for a certificate of public)
 convenience and necessity to extend)
 and operate its automobile stage)
 service as a common carrier of pas-)
 sengers and express matter between)
 El Centro, California, and Califor-)
 nia-Arizona State line at Colorado)
 River bridge near Yuma, Arizona, via)
 State Highway through Holtville,)
 Gray's Well and intermediate points.)

T. G. McKesson, for Arizona Storage & Distributing Company, Applicant.

W. A. Sloan, for Bibb and Bridgham, Applicants.

Warren E. Libby and N. C. Folsom, for Pickwick Stages, Inc., Applicant.

H. J. Bischoff, for Interstate Stages, Applicant.

Harry W. Horton and T. Morgan, for United Stages, Inc., Applicant.

Richard T. Eddy, for A. B. Bland and Virgil N. Sams, Protestants.

H. H. Gogarty, F. W. Mielke and F. E. Watson, for Southern Pacific Company, Protestant.

E. T. Lucey, for Atchison, Topeka & Santa Fe Railway, Protestant.

F. B. Dorsey, for San Diego & Arizona Railway, Protestant.

T. A. Woods, for American Railway Express, Protestant.

BY THE COMMISSION:

O P I N I O N

The applications herein are based upon the establishment of an interstate service by auto stage and auto truck between El Paso in the State of Texas and San Diego and Los Angeles in the State of California either by direct route, or by connecting with other operations in the States of Arizona, New Mexico and Texas.

Applicants, the Arizona Storage and Distributing Company, Interstate Stages, and the co-partnership of Bibb and Bridgham, propose a distinctively interstate service, while applicants United Stages, Inc., and Pickwick Stages, Inc., merely propose to extend existing service between El Centro and Yuma Bridge and intermediate points, all points being within the State of California, for the purpose of connecting with operators in Texas, New Mexico and Arizona.

Public hearings in these matters were conducted by Examiner Williams at Los Angeles, San Diego, and El Centro, after which briefs were filed by the parties electing to do so, upon which the matters, according to stipulation of all parties, were consolidated and submitted for decision.

At the time these matters were submitted, this Commission had assumed and was exercising jurisdiction over operations by auto stage and auto truck of an interstate character. Accordingly, applicants and protestants produced a large mass of testimony as to necessity for such interstate operation, and especially as to the necessity of permitting such operations to traverse the public highways in California either for the purpose of reaching terminals or for the purpose of giving intermediate local service, as some of the applicants propose to do.

After the submission of these matters the United States Supreme Court rendered two decisions, each outlining and setting forth the extent of the jurisdiction vested in the respective states to regulate auto stage operators engaged in interstate commerce. The first was the decision of that Court in Buck v. Kykendall, director of Public works of the State of Washington, 267 U. S. 307, 45 S. Ct., 324, 69 L. ed. 623, which was an appeal from a final decree of the Federal Court for Western Washington dismissing an appeal brought to enjoin the enforcement of Section 4 of Chapter III of the Laws of Washington of 1921. That Section prohibited any common carrier for hire from using the highways by auto vehicle between fixed termini or over a regular route without having first obtained from the director of Public Works a certificate declaring that public convenience and necessity required such operations. The highest Court of that state construed the section as applying

to common carriers engaged exclusively in interstate commerce. The main question on this appeal was whether this statute as construed and applied was consistent with the Federal Constitution and legislation of Congress.

The power of the states was held to be limited to the adopting of appropriate regulations to promote safety upon the highways and conservation of their use where the indirect burden imposed upon interstate commerce is not unreasonable.

The Court decided that the Washington statute was a regulation, not of this use of its highways, but of interstate commerce, and that this effect upon such commerce was not merely a burden, but to obstruct it. Such state action was declared to be forbidden by the commerce clause of the Federal Constitution in that it invaded a field reserved by such clause for exclusive Federal regulation. It was further held that action of this kind by a state operates to defeat the purpose of Congress expressed in the legislation giving Federal aid for the construction of interstate highways.

The second case was that of Geo. W. Bush & Sons Co. v. Maloy, et al., Public Service Commission of Maryland, 267 U. S. 317, 45 S. Ct., 326, 69 L. ed. 627, which presented two features not present in the Buck case. The first was that the highways in question in this latter case were not constructed or improved by Federal aid. The Court held that this difference did not prevent the application of the rule declared in the Buck case. The second feature was that here the permit was refused by the State Commission, not in obedience to a mandatory provision of the State statute, but in the exercise in a proper manner of the broad discretion vested in it. It was held that this difference was not of legal significance in this connection, the Court saying:

"The state action in the Buck Case was held to be unconstitutional, not because the statute prescribed an arbitrary test for the granting of permits, or because the director of Public Works had exercised the power conferred arbitrarily or unreasonably, but because the statute as construed and applied invaded a field reserved by the commerce clause for federal regulation."

Under these decisions it is settled that a state is without power to regulate interstate commerce by auto stage and auto truck, except as to reasonable restrictions upon the use of the highways. The applications herein which seek certificates for interstate operations, are thus found to be beyond the jurisdiction of this Commission, and we are, therefore, without power to grant or deny authority for the exercise of interstate operating privileges. In view of this fact, it is useless to discuss the testimony of applicants and protestants as to a need of any interstate service, and the applications of the Arizona, Storage and Distributing Company, Interstate Stages of Arizona, and of the co-partnership of Bibb and Bridgham, therefore, may be dismissed from further consideration, as these three applicants propose no service, except incidental to interstate service within the State of California. There is proof in the record that existing intrastate rail and auto services are adequate and efficient.

It is to be borne in mind, however, that the California Legislature of 1925 passed an amendment to Section 9 of Chapter 213, of the Act of 1917 (Auto Stage and Truck Transportation Act.) which provides:

"Neither this act nor any provision thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this union, except in so far as the same may be permitted under the provisions of the constitution of the United States and the acts of congress provided, however, that with reference to transportation companies operating solely in

interstate commerce between any point or points within this state and any point or points in any other state or in any foreign nation, the railroad commission shall have the power to prescribe such reasonable, uniform and non-discriminatory rules and regulations in the interest and aid of public health, security, safety, convenience and general welfare as shall in its opinion be required by public convenience and necessity. (Amended, Ch. 254, Stats. 1925, p. 433)."

Under this provision, interstate auto carriers will be required to comply with such rules and regulations as this Commission, under such authority, shall establish.

The subject matter before the Commission thus reduces itself to a determination of the method of establishing service between El Centro and Yuma Bridge, which service is sought by applicants Pickwick Stages, Inc., and United Stages, Inc.

Subsequent to the submission of the instant applications, the Commission, by its Decision No. 13568 on Case No. 1972, revoked and annulled the operative rights previously possessed by A. B. Bland for an automobile passenger service between El Centro and Yuma Bridge. Subsequently, also, the Commission by its Decision No. 13695 on Application No. 10164 authorized the transfer to United Stages, Inc., of the automobile passenger service of A. B. Bland between El Centro and Holtville. Continuously therefrom United Stages has furnished, pending determination herein, adequate service between El Centro and Yuma Bridge.

In considering the two applicants for this service, we find that the record herein indicates that the largest volume of traffic from Arizona to California via Yuma is destined to the Los Angeles terminus, which is served by applicant United Stages. This fact seems to weigh in favor of United Stages as the applicant entitled to conduct this service, for which the record shows necessity. In addition, the volume

of traffic between termini is not sufficient to support two carriers.

It is our conclusion, therefore, that the application of the Arizona Storage & Distributing Company, Bigg and Bridgman and Interstate Stages of Arizona should be dismissed for want of jurisdiction.

We further find as a fact, upon the record herein, that public convenience and necessity require the establishment by United Stages, Inc., of automobile stage service for the transportation of passengers and express matter between El Centro and Yuma Bridge and intermediate points, and that public convenience and necessity do not require the service between the same termini as proposed by applicant Pickwick Stages, Inc. An order will be so entered.

O R D E R

Arizona Storage & Distributing Company, Interstate Stages of Arizona and Bibb and Bridgman having made application to the Railroad Commission for certificates of public convenience and necessity to operate automobile passenger service between Los Angeles and San Diego and Yuma, Arizona, and El Paso, Texas, public hearings having been held, the matters having been duly submitted and now being ready for decision,

IT IS HEREBY ORDERED that said applications and each of them be dismissed for want of jurisdiction.

United Stages, Inc., and Pickwick Stages, Inc., having each made application to the Railroad Commission for a certificate of public convenience and necessity to operate passenger and express service between El Centro and Yuma Bridge, and points intermediate, public hearings having been held, the matters having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

HEREBY DECLARES that public convenience and necessity require the establishment of passenger and express service as proposed by United Stages, Inc., but not by Pickwick Stages, Inc., between El Centro and Yuma Bridge, and intermediate points, over and along the following route:

Via State highway through Holtville and Gray's Well; and

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

- I. Applicant shall file with this Commission, within twenty (20) days from date hereof, its written acceptance of the certificate herein granted as an extension and enlargement of its present operative rights, and not as a new or separate right.
- II. Applicant shall file, in duplicate, time schedules and tariff of rates identical with those as set forth in Exhibit attached to the application herein within a period of not to exceed twenty (20) days from date hereof, and shall commence operation of the service herein authorized within a period of not to exceed thirty (30) days from date hereof.
- III. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been secured.
- IV. No vehicle may be operated by applicant under the authority hereby granted unless such vehicle is owned or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that the application of Pickwick Stages, Inc., be and the same hereby is denied.

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 7th day
April, 1926
of ~~December~~, ~~1925~~.

H. P. Rowland
C. Seaver
Emundson
Leon White
Commissioners