

Decision No. 16426

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application (1) )  
of PLEN MATHEWS to sell and FRED )  
SUTHERLAND to purchase an automo- )  
bile stage line between Coronado and )  
Imperial Beach, California; (2) of )  
Fred Sutherland for an extension of )  
said operative right from Imperial )  
Beach to Tia Juana, California; and )  
(3) of Fred Sutherland to link up )  
and connect said operative right be- )  
tween Coronado and Tia Juana with )  
operative rights now possessed be- )  
tween San Diego and Tia Juana and )  
San Diego and Aztec City via National )  
City and Chula Vista. )

APPLICATION NO. 11708.

E. P. Sample and Richard T. Eddy, for Appli-  
cants.

E. V. Winneck and Albert Schoonover, for Geo.  
J. Nixon, Protestant.

BY THE COMMISSION:

O P I N I O N

Plen Mathews, operating, under certificate from this Commission, a stage line for the transportation of passengers and express between Coronado and Imperial Beach, has made application for permission to sell his operating rights to Fred A. Sutherland, who has joined in the application with a request for authority to purchase the same. Applicant Sutherland further asks a certificate of public convenience and necessity authorizing the extension of the service thus acquired from Imperial Beach to Palm City, and the merging of the Mathews service and

the extension thereof to Palm City with the Sutherland operation between San Diego and Tijuana, California, via Palm City.

A public hearing herein was conducted by Examiner Williams at San Diego.

Applicant Mathews acquired the right to operate by purchase from C. A. Jensen, who possessed a prescriptive right for an operation established in good faith prior to May 1, 1917. The applicant is under contract with the United States Government to carry mail between Coronado City and Imperial Beach, and the service rendered by him, both as to passengers and express, is incidental to his service for the government. The distance between termini is eight miles, and applicant has used a small 5-passenger touring car as equipment for this operation. He testified that he could not conduct the passenger and express transportation service except as incidental to the mail delivery, for the reason that the patronage is extremely limited. His schedules were constructed to meet the mail delivery requirements, rather than the demand of the public for transportation. Applicant testified that in 1925 his passenger revenue was approximately \$250.00 and the freight revenue approximately \$20.00. He further testified that there was need of adequate transportation service between termini and to other points; that he was unable to obtain additional equipment and felt that he should retire and permit an operator financially able to provide adequate service to enter the field. The consideration to be paid by Sutherland to Mathews for his operative rights is \$1,000, which is deemed by both parties to balance losses of applicant Mathews during the past six years.

Applicant Sutherland testified that he intends to equip a service between Coronado and Palm City with 21- to 29-passenger safety coaches, and that he has available 31 such vehicles, costing from \$8250.00 to \$11,000.00 each. This applicant now operates a large system between San Diego and the Mexican border at Tijuana, is a large operator of sight-seeing vehicles and taxicabs, and operates a service between San Diego and Chula Vista. He testified that he began operation of the Chula Vista service less than a year ago, upon cessation of service by the San Diego Railway, and that the measure of patronage had been such that he has had to increase the number of vehicles available from two at the beginning to five at the present time. He further testified that he was willing to establish service between Coronado and Palm City, with the idea in mind that by providing adequate facilities patronage would be developed that is not given either to the operation between Coronado and Imperial Beach or to the similar operation of protestant Nixon between Imperial Beach and Palm City; that he had often been urged to provide such service, in order to give through safety coach service between San Diego and the Mexican border, but had not undertaken it because of the existing operative rights. In the present application he is seeking to purchase the Mathews rights, and he testified that he had sought to acquire the operative rights possessed by protestant Nixon.

Applicant Sutherland proposes six schedules daily between Coronado and Palm City, the earliest leaving Coronado at 10:00 a. m. and returning from Palm City at 10:30, and the latest leaving Coronado at 6:00 p. m. and returning to Coronado at

9:30. In addition, he proposes a through schedule during the racing season over the Mexican border (approximately 125 days in winter) from Coronado to Tijuana, with a return service in vehicles carrying passengers only to points beyond Palm City and along the so-called Silver Strand to Coronado. Applicant proposes to deliver passengers at or near the ferry slip in Coronado and to maintain a terminal near the same point.

In support of his application, applicant Sutherland produced 40 witnesses from Imperial Beach, Seabreeze, South San Diego and other points, nine of whom were examined under oath. The remainder of the testimony was received by stipulation on the part of protestant Nixon that similar testimony would be given by the other thirty-one witnesses who were present.

All the witnesses examined were positive that the existing methods of transportation were not only inadequate, with inconvenient and indirect routing, but detracted from the development of an inviting residential section. It was their belief that a service such as is proposed by applicant Sutherland, with the type of equipment he uses, together with the frequent schedules proposed by him, would meet all the requirements of the beach cities as well as of persons living between Imperial Beach and Palm City, a distance of  $3\frac{1}{2}$  miles, and by connection with the frequent service between San Diego and Tijuana, would provide a general system of transportation for the territory south and west of San Diego that would encourage rapid development. Many of these witnesses from Imperial Beach and other points testified that they did not use the Nixon

service because its schedules were not adapted to their needs. Some of them are engaged in business in San Diego and require a somewhat different schedule than that now maintained by protestant Nixon.

The granting of the application was opposed by George J. Nixon, who operates a service between Imperial Beach and San Diego under certificate from this Commission granted by Decision No. 9918 on Application No. 7315. This service was established early in 1922 and has been conducted almost continuously since that time by Mrs. Beulah P. Nixon, wife of the protestant, who has lately been assisted by her son in driving. The service was originally conducted with one small touring car, but about a year ago a new car of 5-passenger capacity was purchased and has since been used.

It was the testimony of Mrs. Nixon that at no time, on any schedule, has the vehicle carried more than three passengers, and that frequently, for ten days at a time, no passengers are transported by her. In addition, Mrs. Nixon testified that the operating receipts for the year 1925 totaled \$124.70, while the out-of-pocket cost of operation, not including depreciation or any payment for driver, amounted to \$214.45. She further testified that the gross passenger receipts from January 1 to February 28, 1926, amounted to \$38.20. The round trip distance between Imperial Beach and San Diego is approximately 30 miles. Mrs. Nixon testified that the operation never had been profitable, and this seems obvious from the revenue received and the distance of round-trip operation.

In addition to the daily round trip to San Diego and return, protestant operates a service from Imperial Beach to

Palm City at 6:35 each morning, returning from Palm City at 7:00 o'clock and operating also at 6:00 p. m. from Imperial Beach to Palm City and return. These schedules are to connect with the Sutherland stage service between San Diego and Palm City. Protestant testified that special trips are made upon demand, outside of these schedules, and that the gross revenue heretofore testified to included all the money received from special trips. Protestant's main operation is limited to the transportation of passengers received west of Palm City along the highway to Imperial Beach.

The testimony was conflicting as to the population of the area served, applicants indicating that the population of Imperial Beach is about 300, while Mrs. Nixon testified that the actual population is 78, and that there are, in addition, 77 members of a troop of cavalry stationed at Camp Hearne, about one-quarter of a mile from Imperial Beach. There are, however, many persons concerned in the matter of transportation facilities who do not live in either the community of Imperial Beach, South San Diego or Seabreeze. It seems apparent that the restricted operation of protestant Nixon cannot be made profitable unless there should be a considerable increase in population.

Protestant's schedule calls for a trip to San Diego from Imperial Beach at 9:00 o'clock in the morning, and there is no return schedule until 4:45 in the afternoon. It seems plain from the testimony of witnesses that this service is not useful because of the long period between the going and returning trips. Such through schedules as protestant provides are

merely to form connections with the existing Sutherland service, and, according to protestant's own testimony, these schedules are not used except by a very limited number. Mr. Nixon on the stand testified that he was financially able to provide any equipment and operate any schedules that might be necessary, but contended that the patronage did not justify any better service than is now being given.

We think the record is clear as to the need of the service proposed by applicant Sutherland and as to the desire on the part of prospective patrons for this grade of service. We also believe it is clearly shown that service between Coronado City and Palm City cannot be profitably maintained except as a component part of the entire Sutherland operation. To provide for the establishment of such service, applicant Sutherland is seeking to acquire the operating rights of applicant Mathews. There remains only the question as to whether the existing service of protestant Nixon between Imperial Beach and Palm City, and to San Diego, is and has been adequate. The owner of this business testified that during the four years of its operation it had been unprofitable, but, as he explained, the service had been maintained on schedule with unfailing regularity in the firm belief that eventually the operation would become a self-sustaining or profitable one. With this view we cannot agree. Most of the witnesses for applicant testified that they could not conveniently use the service provided by protestant. Some of them, residing at Imperial Beach, testified that they preferred to use the Mathews service to Coronado City, and then, by a street car ride to the ferry, a journey by ferry, and another street car

ride, reach their destination in the city of San Diego. Others testified that they had walked to Palm City in order to make use of the Sutherland stages. If the testimony of protestant as to the population in and about Imperial Beach is correct, then the population has decreased since his operation was established. Protestant does not offer to provide any different or better equipment than he now uses, except a small truck for freight purposes, although it appears that the truck he now possesses is seldom used for freight transportation. We are of the opinion that the service maintained by protestant has not been adequate; and from the record in this proceeding, we believe that a frequent service, conducted with vehicles of the type proposed by applicant Sutherland, and a linking up of the entire system, will be more to the public interest than would the protection of the Nixon service by denial of the application herein. The public is not satisfied at this time to patronize touring car equipment, and naturally seeks and will support any service that meets modern requirements as to capacity and safety of operation. Nor do we find any reason in the record for protecting a service that has operated continuously at a great loss in the hope that eventually it would develop into a profitable business. To deny the application herein would be, we believe, a step tending to prevent the establishment of adequate transportation facilities for all that region south and west of the city of San Diego.

#### O R D E R

Plen Mathews having made application to the Railroad Commission for authority to sell his operative rights between Coronado



City and Imperial Beach to Fred A. Sutherland, who joins in the application with request for authority to purchase and to extend said operative rights so to be acquired from Imperial Beach to Tijuana, California, and to link up and connect said rights between Coronado City and Tijuana with the operative rights now possessed by him between San Diego and Tijuana, San Diego and Aztec City and San Diego and Chula Vista, a public hearing having been held, the matter 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 service as proposed by applicant Sutherland for the transportation of passengers only between Coronado City and Tijuana, California, via Imperial Beach and Palm City, linking this operation with the operative rights heretofore granted to applicant Sutherland or legally established by him between San Diego and Tijuana, San Diego and Aztec City and San Diego and Chula Vista, over and along the following routes:

Between Coronado City and Imperial Beach via the Silver Strand highway; between Imperial Beach and Palm City via direct county highway through South San Diego; and between Palm City and Tijuana via National Avenue; and

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

IT IS HEREBY FURTHER ORDERED that the sale and transfer of the operative rights of applicant Mathews between Coronado City and Imperial Beach to applicant Sutherland be and the same hereby is approved, with the understanding that said oper-

ating rights of applicant Mathews are extinguished, and that said rights continue in the certificate granted to applicant Sutherland, save and except that said applicant Sutherland shall transport express matter weighing not in excess of 100 pounds between Coronado City and Imperial Beach. The terms and conditions to which this order is subject are as follows:

- I. Applicant Sutherland shall file with this Commission within twenty (20) days from date hereof his written acceptance of the certificate herein granted; 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 hereby authorized within a period of not to exceed thirty (30) days from date hereof.
- II. 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.
- III. No vehicle may be operated by applicant Sutherland 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.

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 12<sup>th</sup>  
day of April 1926.

H. H. Brundage  
C. L. Weaver  
Ernest J. Smith  
Leon A. White

COMMISSIONERS.

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