

Decision No. 16494

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
G. H. COX for a certificate of pub-)
lic convenience and necessity to op-) Application No. 12243.
erate passenger, freight, express)
and baggage service between Eureka)
and Bridgeville, California.)

Metzler & Mitchell, for Applicant.

BY THE COMMISSION:

O P I N I O N

By his petition filed in this proceeding, G. H. Cox seeks a certificate of public convenience and necessity authorizing the operation of an automotive service for the transportation of passengers, freight, express and baggage between Eureka and Bridgeville and intermediate points via Freshwater, Kneeland, Lawrence Creek, Mullens, Iaqua, Lone Star and Yager. To conduct this service, applicant will use one Ford 5-passenger truck and should the roads in winter time be impassable, horse drawn vehicles will be used. The service proposed is biweekly, leaving Eureka on Mondays and Thursdays, and leaving Bridgeville in the opposite direction on Tuesdays and Fridays. A schedule showing the proposed rates and fares accompanies the application.

A public hearing was held before Examiner Austin at Eureka on March 16, 1926, when evidence was offered, the matter

was duly submitted and it is now ready for decision.

No protest whatever was offered to the granting of this application.

From applicant's testimony it appears that along this route, a distance of fifty miles, there resides a population of about 100 people who are entirely dependent upon applicant for a transportation service. Applicant has been carrying the United States mail to certain of these intermediate points, and also has been conducting a freight, express and passenger service. He stated that the freight tonnage averaged about 1500 pounds per trip; the express shipments, consisting of small packages, amounted to approximately 50 pounds a trip; and he has handled an average of five passengers a week from and to all points. Applicant called two witnesses who testified to the need for the proposed service, corroborating applicant's testimony with regard to the population and volume of business.

The record shows that on April 23, 1924, by this Commission's Decision No. 13461 in Application No. 9616, W. B. Shively was granted a certificate of public convenience and necessity authorizing the operation of an automotive stage line as a common carrier of passengers, freight, express and baggage between Eureka and Bridgeville over the route described in the pending application. Shively and applicant herein entered into an agreement for the sale and transfer of this operative right to applicant, and pursuant to this contract Shively signed an instrument consenting to this transfer, which later was found to be defective. Shively disappeared and efforts to locate him, in order to correct this error, proved inef-

fective. He abandoned the operation of this line, which was then taken over and conducted by applicant herein who has continuously operated it ever since. In the meantime applicant made diligent search for Shively, tracing him to Sparks, Nevada, where he was lost sight of. Applicant brought suit in the Superior Court of Humboldt County, California, for specific performance of the contract to transfer this operative right, but was unable to serve process upon Shively. Because of his inability to obtain a valid transfer of the certificate granted Shively, applicant thereupon filed this application for an independent certificate.

It appears that applicant has made a bona fide effort to consummate the transfer, but has been unable to do so through no fault of his own. His operations in the past have been conducted in good faith, apparently without knowledge of their illegality. Moreover, the record indicates a need for this service. Therefore, in our judgment the certificate sought should be granted.

Applicant also asks for the cancellation of Shively's operative rights, a matter which will receive consideration in a separate proceeding.

Upon full consideration of the evidence, we are of the opinion, and hereby find as a fact that public convenience and necessity require the operation by G. H. Cox of an automotive stage and truck service for the transportation as a common carrier of passengers, freight, express and baggage between Eureka and Bridgeville, serving also the intermediate points of Freshwater, Kneeland, Lawrence Creek, Mullens, Iaqua, Lone Star and Yager.

An order will be entered accordingly.

O R D E R

A public hearing having been held in the above entitled application, the matter having been duly submitted, the Commission being now fully advised, and basing its order on the findings of fact which appear in the opinion preceding this order,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby declares that public convenience and necessity require the operation by G. H. Cox of an automotive stage and truck service for the transportation as a common carrier of passengers, freight, express and baggage between Eureka and Bridgeville, serving also the intermediate points of Freshwater, Kneeland, Lawrence Creek, Mullens, Laguna, Lone Star and Yager.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to said G. H. Cox for the operation of the service hereinabove described, subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof; shall file, in duplicate, tariff of rates and time schedules within a period of not to exceed twenty (20) days from date hereof, such tariff of rates and time schedules to be identical with those attached to the application herein; and shall commence operation of said service within a period of not to exceed thirty (30) days from date hereof.
2. The rights and privileges herein authorized may not be discontinued, sold, leased, trans-

ferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

3. 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.

For all other purposes, except as hereinabove stated, the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 16th day of April, 1926.

K. H. Brundage
C. C. Leamer
Erwin Weerts
Leon A. ...
Commissioners.