

Decision No. 17103

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of R. MILLER, for certificate of public convenience and necessity to extend the operation of automobile stage line from Palm Ave. (formerly Potter Inn) on Pacheco Boulevard near the Town of Martinez to the Town of Concord and intermediate points.

ORIGINAL

Application No. 10645

J. E. Rodgers and A. F. Bray, by  
A. F. Bray, for Applicant.

A. B. Tinning, District Attorney of Contra Costa  
County, for Contra Costa County, Protestant.

C. M. Carrigan, for Southern Pacific Company, Protestant

Charles A. Beck, for San Francisco-Sierra Motor Coach  
Lines, Protestant.

BY THE COMMISSION:

O P I N I O N

In this proceeding, R. Miller seeks a certificate of public convenience and necessity authorizing the operation of an automobile stage service, as a common carrier of passengers, between Palm Avenue, on Pacheco Boulevard near Martinez, and Concord and intermediate points, as an extension of and in conjunction with his present stage service now operated between Martinez and Palm Avenue, pursuant to authority granted by this Commission's Decision No. 7848, in Application No. 5878. The entire route is in Contra Costa County. Applicant's proposed

rates, time schedule, and a general description of his equipment, appear in the application.

A public hearing was held before Examiner Austin at Martinez, when the matter was submitted, and is now ready for decision.

Applicant's testimony shows that he has been operating a stage line from Martinez to Palm Avenue, a point on the road to Concord about one mile east of Martinez, which he desires to extend to Concord; and he is also operating a stage line between Martinez and Bay Point. Applicant proposes to use two busses exclusively for the proposed service to Concord, which will accommodate the traffic, and is prepared to furnish other equipment if needed. In so doing he will not be obliged to transfer equipment from his other line, as new equipment is being constructed for the proposed service. Applicant has discussed this matter with merchants and business men at Martinez and Concord, and residents along the proposed route, some of whom would find the service convenient in enabling them to reach Martinez, the county seat, on legal business, and in some instances school children would use this service to Concord in order to attend the agricultural courses. At present, he testified, there is no direct service between Martinez and Concord. The Southern Pacific Co. operates one round trip daily between these points, charging a fare double that proposed by applicant and, in addition, the San Francisco-Sacramento Railroad Co. operates through Concord, connecting with the Southern Pacific lines at Bay Point. Applicant proposes to operate on a schedule of five round trips daily, his running time between

termini being thirty minutes, for a one way fare of 25 cents. For the past six years applicant has conducted a jitney bus service at Martinez, and has found it necessary to go to Concord two or three times daily, carrying an average of six passengers per day. He has also observed jitney busses from Concord in Martinez four or five times a week.

Applicant called five witnesses consisting of representative business men of Martinez and Concord, who testified in substance that the proposed service would be convenient, beneficial and necessary to those desiring to travel between those points, including those having legal business at the county seat, jurors and tax payers. Two of these witnesses testified that the existing rail service is inconvenient and does not accommodate the public, and that the only feasible method of transportation is by means of jitney busses, specially hired for the trip, or through the accommodation of friends driving their own automobiles. One witness, a business man of Concord, stated that the service formerly maintained by Southern Pacific Company was adequate, but since the advent of the electric line it has been so curtailed that there is practically no means of public transportation between the two towns.

The granting of this application was protested by Southern Pacific Company, the County of Contra Costa, and San Francisco-Sierra Motor Coach Lines.

The protestant, Southern Pacific Company, submitted statements showing its passenger train schedule, and fares between the points in question. The time schedule shows but one

round trip daily except Sundays, leaving Martinez at 9:40 a.m. and arriving at Concord at 10:15 a.m.; and leaving Concord at 4:15 p. m. and arriving at Martinez at 5:20 p.m. In addition to the one-way fare of 42 cents between Martinez and Concord, commutation tickets are sold at reduced rates.

The protest of San Francisco-Sierra Motor Coach Lines was based on the ground that applicant's stage line, if established, would constitute part of a through service from Martinez to San Francisco, rendered in connection with the rail lines of San Francisco-Sacramento Railroad Co. with which applicant will connect at Concord, and thereby will compete with an automobile stage service which protestant desires to establish from San Francisco to Martinez, via the San Francisco-Richmond ferry to Richmond, as part of a through service between San Francisco and San Francisco Recreation Camp, in Tuolumne County. Its application (No. 10684) is still pending, having been submitted since the hearing of this case. Protestant introduced evidence tending to show the possibility of such a through service being conducted by applicant in connection with the electric line, and offered testimony that its proposed through service between San Francisco and Martinez would be superior, both as to lower fares and as to shorter running time. Applicant stated that he contemplated only a local service between Martinez and Concord, and had made no arrangements with the electric line for a through service from Martinez to San Francisco via Concord.

This protestant referred to this Commission's Decision No. 12780, Application No. 9208, dated November 5, 1923, authorizing the operation by Wm. V. Hogan, doing business as Concord Transit Co., of an automobile stage line between Pacheco and Con-

cord. According to the time schedules on file (which were introduced by stipulation) , Concord Transit Co. undertakes to operate but two round trips daily over its route. Although this carrier was notified of the hearing of this proceeding, he did not see fit to appear or enter any protest.

Protestant Contra Costa County introduced in evidence Ordinance No. 176 adopted by its Board of Supervisors on June 4, 1923, prohibiting the operation of any "automobile, jitney bus, auto truck, stage or auto stage used in the business of transportation of persons or property, or as a common carrier for compensation," over certain designated public highways within the county, including the highway over which applicant here seeks permission to operate. The violation of this ordinance is made a misdemeanor and it is declared therein that it has been passed

"in the interest of public safety and for the protection of the traveling public upon said highways under the general police power granted said Board."

On behalf of the county, the District Attorney stated it was the policy of the county to bar from its highways, in order to conserve them, all of the traffic described in the ordinance.

In considering the effect of this ordinance, we shall refer to certain provisions of the Auto Stage and Truck Transportation Act. (Stats. 1917, Ch. 213).

Section 1 (c) defines a transportation company as one operating "over any public highway in this State between fixed termini or over a regular route;" section 1 (d) defines the term "public highway" as meaning "every public street, road or

highway in this State;" section 2 prohibits transportation companies from operating over the public highways except in accordance with the provisions of the statute; section 5 exacts of such carriers a certificate of public convenience and necessity before commencing operations, and clothes the Commission with power to issue these certificates; and section 4 provides in part:

"The Railroad Commission, in the exercise of the jurisdiction conferred upon it by the Constitution of this State and by this act, shall have power and authority to make orders and to prescribe rules and regulations affecting transportation companies, notwithstanding the provisions of any ordinance or permit of any incorporated city or town, city and county, or county, and in case of conflict between any such order, rule or regulation and any such ordinance or permit, the order, rule or regulation of the Railroad Commission shall in each instance prevail."

In connection with this positive declaration of the statute, we must consider the repeal of section 3 of the original act, by the amendment of 1919 (Stats. 1919 Ch. 280).

Section 3, of the act of 1917, required every carrier subject to the statute, before commencing the operation of its line, to obtain from the legislative or other governing board or body of each incorporated city or town, city and county, and county within or through which it intended to operate, a permit authorizing such operations within such political subdivisions. The form of the application for a permit was prescribed, a public hearing was required upon notice by publication to the public, and the form of the permit was set forth. In addition, certain powers were vested in the political subdivisions with respect to the supervision of service, the licensing of drivers, the filing of indemnity bonds, and the regulation of rates, service and safety. As the law then existed, a county

could prevent the operation of a stage line within its borders, by denying a permit. But in 1919, this section was repealed, and as the statute now stands, no power is expressly conferred upon cities, towns or counties to supervise or regulate such carriers in any way.

It is apparent that the legislature has vested in the Commission exclusive power to certificate, authorize and regulate the operations of common carriers over the public highways between fixed termini or over a regular route. The ordinance in question, if valid, would necessarily operate to strip from the Commission all power to authorize such carriers to conduct their operations over any of the roads therein designated. In our opinion the statute contemplates no such divided authority over these carriers; in fact, the repeal of section 3, in 1919, indicates exactly the contrary, the legislature having then withdrawn the power which had previously been vested in the local legislative tribunals. We believe that the ordinance is repugnant to this statute.

But even though the ordinance may be legally inoperative, it is nevertheless entitled to our most respectful consideration as indicating the policy of the Board of Supervisors of Contra Costa County in respect to the operation of stage lines over certain of its county highways. It is an important factor to be considered in determining whether public convenience and necessity will be subserved by authorizing the proposed service. All other things being equal, we should feel inclined to deny a certificate, upon such a showing by the county. But if there be substantial evidence of public convenience and necessity which in our judgment would warrant the proposed service, we believe

it our duty so to declare, and to issue a certificate accordingly. Under the law this is a function we cannot abdicate to the county authorities, however much we may respect their judgment, or whatever weight we may accord their opinions.

We believe that the evidence in this case is sufficient to warrant the authorization of the proposed service. Accordingly a certificate will be granted.

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 R. Miller of an automobile stage service, as a common carrier of passengers between Palm Avenue on Pacheco Boulevard near the town of Martinez, and Concord, and intermediate points, the same to be operated and conducted as an extension of and in conjunction with applicant's present automobile stage service between Martinez and Palm Avenue, the whole being operated as one consolidated and unified automobile stage service.

An order will be entered accordingly.

#### O R D E R

A public hearing having been held in the above entitled proceeding, the matter having been duly submitted, the Commission being now fully advised and basing its order on the finding of fact which appears 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 R. Miller of an automobile stage service,



as a common carrier of passengers between Palm Avenue on Pacheco Boulevard near the town of Martinez, and Concord and intermediate points, the same to be operated and conducted as an extension of and in conjunction with applicant's present automobile stage service between Martinez and Palm Avenue, the whole to be operated as one consolidated and unified automobile stage service.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to said R. Miller in the operation of the service hereinabove described, subject to the conditions hereinafter set forth:

1. Applicant shall file its 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, transferred 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 it 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 13th day of July, 1926.

H. B. Prudig

Edward  
Leon Whittell

9.

Commissioners.