

Decision No. 17810

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 ORVAL OVERALL and E. D. ASKIN, doing)
 business under the name and style of)
 Sequoia National Park Stage Company,) Application No. 10473
 for authority to change routing of)
 stage line under existing certificates.)

In the Matter of the Application of)
 SEQUOIA and GENERAL GRANT NATIONAL PARKS)
 COMPANY for certificate of public con-)
 venience and necessity to operate auto-) Application No. 12709
 mobile passenger and baggage (hand) ser-)
 vice between Fresno, Visalia, Exeter and)
 Sequoia National Park (Giant Forest).)

Gwyn H. Baker and E. M. Wade, for Applicants in Application
 No. 10473;
 Richard T. Eddy and Oakley K. Morton, for Applicant
 in Application No. 12709;
 Earl A. Bagby for California Transit Company, Protestant
 in Application No. 12709.
 H. B. McClure for Visalia Chamber of Commerce.

BY THE COMMISSION:

O P I N I O N

By the supplemental application filed in Application
 No. 10473, Sequoia National Park Stage Company seeks a supple-
 mental order, authorizing the rerouting of its passenger stage
 operations so as to abandon that portion of its present route
 between Kaweah and the entrance on the western boundary of
 Sequoia National Park, and to operate from Kaweah via Hammond
 to a point where the new General's Highway enters the Park on
 its southern boundary. In justification for the proposed re-
 routing, applicants allege that the old road entering the Park

from the west has been abandoned and replaced by a new, better and more direct road, which has been constructed from Hammond to Giant Forest.

By Application No. 12709, the Sequoia and General Grant National Parks Company, a corporation, originally sought a certificate of public convenience and necessity authorizing the operation of an automobile stage service for the transportation of passengers and hand baggage between Fresno, Visalia and Exeter and the Sequoia National Park boundary near Alder Creek Ranger Station, via Lemon Cove, Three Rivers, Kaweah Bridge, Hammond and Middle Fork Road (now known as General's Highway). By an amendment filed prior to the hearing, applicant eliminated Fresno as a terminal and proposes to operate to and from Visalia and Exeter only, the original application remaining unchanged in all other respects. Applicant alleges that it has recently been granted by the Department of the Interior an exclusive franchise to operate all concessions within the park for a period of twenty years and, in order to accommodate the public, it desires to operate a service from the rail terminals to the Park. The proposed equipment will consist of one 11-passenger White bus. Accompanying the application are the proposed tariff of fares and time schedules, together with a certified copy of applicant's Articles of Incorporation.

Public hearings were held before Examiner Austin at Visalia, when both of these proceedings were consolidated for hearing and decision, evidence was offered, the matters were submitted upon briefs, which have since been filed, and they are now ready for decision.

We shall first consider the supplemental application of Sequoia National Park Stage Company (hereinafter referred

to as the Sequoia Company) to permit the rerouting of its lines.

At the outset, our jurisdiction to entertain this application has been challenged by the Sequoia and General Grant National Parks Company (hereinafter referred to as National Parks Company), it being claimed that the application in substance seeks the abandonment of part of its line and a certificate authorizing the operation over new territory, rather than a rerouting of its service. It is contended by the National Parks Company that a new application should have been filed, accompanied by the statutory filing fee of \$50.00. Section 5 of the Auto Stage & Truck Transportation Act, as amended by Statutes of 1923, Chap. 310, provides that no transportation company shall begin to operate on the public highways without first obtaining a certificate of public convenience and necessity and that "Each application for a certificate of public convenience and necessity * * * * * must be accompanied by a fee of 50.00."

We believe it apparent that this section applies only to applications for certificates and not to applications for the rerouting or abandonment of existing service. In the instant case, the Sequoia Company does not seek to change its ultimate objective, viz., the transportation of passengers to the Park, but only the means of arriving at this destination, the change being made necessary by the abandonment of the old road and the substitution of a new one. This will result in the cessation of service over a portion of the old road about five miles in length. Under a fair and reasonable interpretation of the statute, we cannot hold that a new certificate is required to meet this situation, consequently protestant's objection must be over-ruled.

The National Parks Company has also objected to the consideration of the supplemental application, upon the ground that

the applicant is not properly before the Commission.

In the original Application No. 10473, filed September 16, 1924, E. L. Askin and Orval Overall, doing business as co-partners under the name of Sequoia National Park Stage Company are named as applicants and by Decision No. 14164 in this application dated October 10, 1924, a certificate was granted to these persons as co-partners. In the supplemental application their names appear in the title as being engaged in business under the name and style of Sequoia National Park Stage Company, but no allegation has been made in the body of the application with respect to the parties. Mr. Askin testified that the Sequoia National Park Stage Company was an existing partnership composed of Orval Overall and E. L. Askin, each owning one-half of the company's franchise. Mr. Askin admitted that the annual report of the Sequoia National Park Stage for the year 1923, which he himself verified, set forth (on page 10) that E. L. Askin owned 51 per cent of the company, W. J. Ogilvie $24\frac{1}{2}$ per cent, and F. H. Ogilvie $24\frac{1}{2}$ per cent, and that the annual report for 1925 did not contain the names of the partners nor their proportionate shares, and he further stated that on December 31, 1925, when this report was filed, neither W. J. Ogilvie nor F. H. Ogilvie, nor any one other than applicant and Orval Overall had any interest in the company. Mr. Orval Overall, called by the National Parks Company, testified that Askins purchased his interest in the Sequoia Company's stage line during 1920, a lot in Visalia having been transferred from Askin to Overall in full settlement of his entire interest in the partnership. At another point in his testimony, he stated there were still some adjustments

to be made in respect to this settlement, but that the matter had not yet been determined. He has attended hearings before the Commission in matters pertaining to the company and has signed papers. He stated that when the agreement for dissolution had been made with Mr. Askin he undertook to do everything necessary, in order legally to effect the transfer of the property to Askin, but that these formalities had not yet been consummated. At most, the evidence shows an agreement between Overall and Askin to dissolve the partnership, which has been partially carried into effect, but through neglect or oversight of the parties the dissolution of the partnership has not been formally accomplished.

We are concerned with the status of the partnership only in so far as it relates to its capacity to maintain this application; all questions concerning the relationship between the partners or any accounting that may be necessary must be determined by the courts. Nor are we here required to determine the effect of such conduct upon the Sequoia Company's operative rights, this being a matter which should form the subject of a separate complaint. In our judgment the evidence does not show that the partnership is not competent to maintain this application. Accordingly, the objection of the National Parks Company will be overruled and we shall now consider the merits of the application.

Mr. A. L. Askin described the present route followed by the Sequoia Company and the route proposed to be substituted. The road formerly used within the Park is narrow and steep, stage operations over it having been difficult and expensive. Within the past four years the Government and the

State authorities have built a new road known as the General's Highway, extending from Three Rivers to Giant Forest, which is quite wide and with easy grades. The application contemplates the abandonment of service between Kaweah and the western boundary of the Park, (no residents being affected by this save three ranchers and their families who have consented to the cessation of the service) and stages will be rerouted over the new road via Hammond to the Park boundary, reducing the distance between Three Rivers and Giant Forest by about eight miles. Within the Park the old road will be used only for outbound travel whenever traffic is congested.

The Sequoia Company commenced operations between Lemon Cove and the Park in June, 1919; its service was extended west-erly to Visalia pursuant to Decision No. 14164, in Application No. 10473, dated October 10, 1924, upon the abandonment of pas-senger operations by the Visalia Electric Railway; and operations between Visalia and the Park were commenced about June 1, 1925, continuing until the close of the season, September 30, 1925. Prior to June, 1925, the Al Askin Stage Company commenced op-erations, pursuant to Decision No. 14164, in Application No. 10460, between Visalia and Lemon Cove, this service being de-signed to replace the local operations of the Visalia Electric Railway, and continued until August, 1925, when it ceased its operations with the consent of this Commission. The two lines were operated separately, each maintaining a distinct service. At present the Sequoia Company is operating over the proposed new road under temporary permission granted in this proceeding by the Commission's Decision No. 15768, dated May 24, 1926. In connection with its through service the Sequoia Company

operated a White 20-passenger bus between Visalia and Lemon Cove, where passengers destined to the Park were transferred to touring cars, the Park authorities having objected to the operation of the bus within the Park. This bus was originally owned by the Al Askin Stage Line, but when the latter became defunct it was transferred to the Sequoia Company. Prior to 1926 the Sequoia Company conducted its transportation service within the park under annual permits granted by the Department of the Interior, but this authority was not renewed in 1926, due to the franchise then granted by the Department to the National Parks Company. Applicant also conducts a stage service to Mineral King and in addition handles express, mail and freight, the latter service embracing a general trucking business. In addition to the bus, applicant owns several touring cars, and can arrange for further equipment to accommodate the Park passengers.

Mr. Askin testified that if the Sequoia Company were deprived of its Park passengers it will operate at a loss, since there is not sufficient local business to maintain the service. Considerable testimony was introduced relative to applicant's revenues and the number of passengers handled, which indicates that a substantial part of applicant's income is derived from handling passengers destined to the Park, and which supports his testimony that applicant cannot afford to lose this business. This witness also described his negotiations with the National Parks Company relative to the acquisition of the Sequoia Company's line, which failed of consummation. Mr. H. A. Hunkins, Vice-president and General Manager of the National Parks Company, stated that there was not room for

two transportation companies operating between Visalia, Exeter and Giant Forest, and admitted that in his judgment there was not sufficient local business between Visalia and the Park line to support a stage service. Superintendent John R. White, of Sequoia National Park, testified that the Sequoia Company's service had been satisfactory, other than the transfer of passengers at Lemon Cove, the Department authorities having refused to sanction the operation of the 20 passenger bus within the Park. He admitted, however, that he had heard no complaints from passengers concerning this transfer. Mr. C. W. Berry, proprietor of the Johnson Hotel at Visalia, testified that personally he would prefer a through service to the Park, but had heard no passengers complain of the service received. Another witness, Mr. H. J. Beidleman, Secretary of the Visalia Chamber of Commerce, testified relative to the transfer of passengers at Lemon Cove, stating however that he had heard no complaints from passengers.

Relative to Application No. 12709, of the National Parks Company, it appears that this applicant is a corporation organized to operate a general resort business in Sequoia and General Grant National Parks, holding a franchise from the Department of the Interior authorizing it to conduct such business within these parks for a term of 20 years from March 27, 1926. It proposes to conduct a through transportation service for passengers and baggage between Visalia, Exeter and Giant Forest, excluding express and all local service between points outside the Park, Mr. Hunkins expressing the opinion that the local travel and the eastern tourist travel could not conveniently be handled in the same stages. The service is designed

primarily to accommodate visitors and encourage the development of the Park. Applicant proposes to use one 11 passenger bus of the Yellowstone type, so designed as to permit the removal of the top, in order that passengers may observe the scenery, together with such additional equipment as the development of traffic may require, applicant having sufficient financial ability to provide an adequate and dependable service. Arrangements have been made with various tourist agencies throughout the country for the sale of tickets over the proposed stage line. This applicant offered in evidence resolutions adopted by the Exeter and Visalia chambers of commerce, the former favoring this application, and the latter endorsing an adequate through transportation service from Visalia via Exeter to the Park. Superintendent White also testified to the necessity for a through service from valley points to Giant Forest. Pending the outcome of this proceeding, applicant has initiated a hotel bus and sightseeing service between Visalia and the Park, operated solely for the convenience of applicant's patrons.

Several witnesses were called by the Sequoia Company in support of its protest against the application of National Parks Company. In substance these witnesses testified that the service of the Sequoia Company had been adequate and dependable; that they had heard no complaint relative to the transfer of passengers at Lemon Cove; and some commented favorably upon the express service and also the freight service which, however, is not involved here. Witnesses from Three Rivers testified that this point was a center for tourists embarking upon mountain trips, many of them hiring saddle horses and mules from persons engaged in this business there. They stated that if the installation of through service to the Park by National Parks

Company should result in the abandonment of local service by the Sequoia Company, thereby depriving Three Rivers of stage service, tourists desiring to reach that point would be put to great inconvenience, and the packing and saddle horse business at Three Rivers would be seriously affected, one witness stating that this business would probably be diverted to the owner of a similar concession within the Park. Some of them testified they had observed no tendency on the part of tourists to avoid mingling with local travellers, but, on the contrary, tourists had shown a disposition to be quite sociable.

The California Transit Company protested the granting of any certificate to National Parks Company, unless the latter should agree to the publication of joint rates with protestant from all points on its line. This Mr. Hunkins objected to, stating that although no understanding had been had with the railroad companies for refusing such concurrences to the stage line, nevertheless until the latter was in a position to develop as much traffic as the railroad this applicant could not agree to the granting of joint rates, stating further that this was a matter which could not be determined now, but must be considered at the proper time. He testified that as a rule the patrons of the Park do not use the highway stages, most of them originating from eastern points. Mr. E. A. Bagby, Secretary of California Transit Company, described in detail the stage system operated by his company, its equipment and schedules, and stated that joint rates had been published with many other connecting stage lines. The former manager of the concessions at Giant Forest, between 1920 and 1923, inclusive, testified that during that period a large proportion of the guests registered at

the Park originated in California; the agent of California Transit Company at Exeter testified that from four to five passengers daily transferred from the Southern Pacific trains and the California Transit stages to the Sequoia Company's stage line; and Mr. Arthur Granger, Assistant Manager of the Hotel Johnson at Visalia, stated that his observation indicated that rail and stage passengers arriving at Visalia were about evenly divided. Superintendent White testified that the Park authorities did not favor discrimination against any class of passengers arising from the method of transportation employed, and he would favor the publication of joint rates with stage lines if necessary to prevent discrimination. Mr. Berry, one of the proprietors of the Johnson Hotel, testified that a large proportion of the hotel patrons arrived in private automobiles and on stages, the train service having steadily declined in recent years. It also appears from the testimony of Mr. Askin that he has published joint rates with the Southern Pacific, the Santa Fe and the California Transit Company.

The evidence indicates that the Sequoia Company for many years has conducted an adequate and dependable service, handling passengers to Sequoia National Park. It is true that this applicant can no longer maintain a through service to points within the Park, but must now stop at the Park boundary. This, however, is due to circumstances beyond its control, operations within national parks being exclusively within the jurisdiction of the Federal government. The National Park Company cannot well urge this circumstance against the Sequoia Company, for the former is largely responsible for this condition, this company itself having acquired the privilege of conducting the transportation service within the park. Moreover the department itself has excluded the Sequoia Company and by so doing is estopped to complain of that company's inability to render a through service.

The evidence indicates that the Sequoia Company cannot survive upon the local traffic alone between Visalia and the Park boundary, and it is apparent that it will be stripped of its through passenger traffic if a certificate is granted to the National Parks Company. The Commission believes that in view of the adequate service rendered in the past by the Sequoia Company and which it still renders in so far as it is able to do so under existing conditions, it is not sound policy to permit the inauguration of a competitive service which will ultimately drive this line into bankruptcy. Furthermore, the needs of such communities as Three Rivers, Lemon Cove and other points, which would suffer by the cessation of local service are entitled to our consideration. Under the circumstances, the application of the Sequoia Company for a rerouting of its service will be granted, and the application of the National Parks Company for a certificate of public convenience and necessity will be denied.

Upon full consideration of the evidence, we are of the opinion and hereby find as facts,

1. That public convenience and necessity require the rerouting by the Sequoia National Park Stage Company of its service, as prayed for in the supplemental application herein.

2. That public convenience and necessity do not require the operation by Sequoia and General Grant National Parks Company, a corporation, of an automobile stage service for the transportation of passengers and hand baggage as a common carrier between Visalia and Exeter, and Sequoia National Park boundary near Alder Creek Ranger Station, via Lemon Cove, Three Rivers, Kaweah Bridge, Hammond and Middle Fork Road (now known as General's Highway).

An order will be entered accordingly.

O R D E R

A public hearing having been held in the above entitled applications, the matters having been duly consolidated and 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 do not require the operation by Sequoia and General Grant National Parks Company, a corporation, of an automobile stage service for the transportation of passengers and hand baggage as a common carrier between Visalia and Exeter, and Sequoia National Park boundary near Alder Creek Ranger Station, via Lemon Cove, Three Rivers, Kaweah Bridge, Hammond and Middle Fork Road (now known as General's Highway), and

IT IS HEREBY ORDERED that the application of said Sequoia and General Grant National Parks Company (Application No. 12709) be and the same is hereby denied.

IT IS HEREBY FURTHER ORDERED that Orval Overall and K. L. Askins, co-partners doing business under the firm name and style of Sequoia National Park Stage Company, applicants in the supplemental application filed in Application No. 10473 herein, be and they hereby are authorized to abandon the automobile stage service heretofore conducted by said applicants between Kaweah and the former entrance to Sequoia National Park on the westerly boundary thereof, and to reroute said service so as to conduct and operate the same, in connection with their present service from Visalia and Exeter, from a point on their present route between Three Rivers and Kaweah, known as Kaweah Bridge and thence via Hammond

and over and along the General's Highway to the present entrance to Sequoia National Park upon the southerly boundary of said Park.

Dated at San Francisco, California, this 28th day of December.

Albany

Ernest

Thomas
Commissioners.