

this State between Nevada City, Nevada County, California, and Downieville, Sierra County, California, and all intermediate points between said Nevada City and Downieville.

That said V. W. Bowers, under the fictitious name of Nevada City-Downieville Stage, is now and has been ever since the first day of July, 1926, operating unlawfully and without authority from this Commission an automobile stage line for the transportation of persons and property over the public highways of this State between said Nevada City and Downieville and all intermediate points.

Said complainant prays for an order of this Commission finding that said defendant V. W. Bowers has no lawful right to engage in the business of transporting passengers or property for compensation by auto stage, or otherwise, between said Nevada City and said Downieville or any intermediate points, and directing said defendant V. W. Bowers immediately to cease transporting passengers or property for compensation to and from any of said aforementioned points.

V. W. Bowers, the above named defendant, in answer to said complaint, denies generally and specifically all the material allegations contained in said complaint and prays that said complainant take nothing by reason of his said complaint and that his (Bowers) application above named for certificate of public convenience and necessity be granted.

V. W. Bowers has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by him of an automobile stage line as a common carrier of passengers and freight between Nevada City and Downieville and intermediate points.

Applicant proposes to charge rates and to operate on a time schedule in accordance with Exhibits A and B, attached to said application and to use 1½ ton motor truck when weather permits and wagon sleighs when weather conditions prevent use of motor trucks.

Said N. P. Fischer protested the granting of said application.

A public hearing in the above entitled proceedings was conducted by Examiner Satterwhite at Nevada City, the matters were submitted and are now ready for decision. Said matters were consolidated for the purpose of receiving evidence and for decision.

N. P. Fischer, complainant, testified in his own behalf and also called V. W. Bowers, defendant, as his witness in support of said allegations of unlawful operations as contained in said complaint.

Said defendant V. W. Bowers testified as a witness in his own behalf, but called no other witnesses either in connection with the above entitled complaint or in support of said application for a certificate of public convenience and necessity.

The record shows that the said defendant is now the United States mail carrier between Nevada City and Downieville and way points and has been such mail carrier ever since the first day of July, 1926. The evidence shows that simultaneously with the commencement of his mail service the defendant began to transport passengers and freight between Nevada City and Downieville and way points and that he has continuously since that time and now is engaged in transporting in connection with his mail service passengers and freight. Defendant's mail

contract requires that he make six trips a week, daily, except Sundays, between these terminals and it appears that defendant shortly after the commencement of his mail service posted in the leading hotel at Nevada City and at various places along the route traversed by him stage schedules, showing the leaving and arriving time of his stage at Nevada City and Downieville. There is but one main route between Nevada City and Downieville, which is now travelled by the said complainant, which is the identical route traversed by the defendant. The defendant denied that he makes any direct solicitation for business from the public, but the record shows that the following table was personally posted by the defendant in a prominent place in the lobby of the leading hotel at Nevada City, as well as other prominent public places along the route, which time table was printed upon a goodly sized placard in large black type as follows:

NEVADA CITY DOWNIEVILLE STAGE

U.S.M.

Leaves Nevada City	12:30 p.m.	Leaves Downieville	6:20 a.m.
Arrive North San Juan	1:20 p.m.	Arrive Good Year Bar	6:35 a.m.
Arrive Camptonville	2:00 p.m.	Arrive Camptonville	7:15 a.m.
Arrive Good Year Bar	3:30 p.m.	Arrive North San Juan	8:15 a.m.
Arrive Downieville	4:00 p.m.	Arrive Nevada City	9:15 a.m.

Defendant also placed in the advertising columns of the daily newspaper of Nevada City the following advertisement of his time schedule:

NEVADA CITY - DOWNIEVILLE STAGE
U.S. MAIL ROUTE.

Leaves Nevada City Week Days	- - - - -	12:15 p.m.
Arrives at Downieville	- - - - -	4:00 p.m.
Leaves Downieville Week Days	- - - - -	6:00 a.m.
Arrives at Nevada City	- - - - -	9:15 a.m.

Defendant testified that his only purpose or reason for posting and publishing these time tables was for the purpose of informing the general public of the arrival and departure of the mail between the points which he was serving. The record does not disclose definitely just when the defendant began to accept compensation for the transportation of passengers or freight, but it does appear by defendant's own admissions that he did begin to charge compensation, both for the transportation of passengers and property, in the latter part of September, 1926, and has continued to do so ever since. Said defendant at no time published or established any definite rate schedules, but the following excerpt from his testimony shows that he did charge from time to time a maximum of \$5.00 and a minimum of \$2.00 for the transportation of passengers between Nevada City and Downieville. (See p. 12, Line 8, Trans. testimony).

- "Q. You say you started to charge in September? A. Yes, the latter part.
- Q. What is your charge for carrying passengers between Nevada City and Downieville? A. Well, depends - I haven't got a regular charge.
- Q. What does it depend on-- how much money the passenger has? A. Yes, whether he is flush or not.
- Q. You find that out before taking him in? A. Yes.
- Q. You get him for all you can get? A. Not always.
- Q. What is your limit? A. \$5.00.
- Q. When he is flush? A. When he is flush.
- Q. What do you generally get, generally five dollars?
- A. No, sometimes two or three."

Said defendant testified as follows in connection with his charges for freight. (See p. 14, Line 18, et seq., Trans.).

- Q. I will show you the original of your application, and attached to it are certain fares on page 2 of the exhibit, which are passenger fares, and following page 1, freight, in cents per pound. Look at those two pages, and let me know if they are the same rates you have been charging since September? A. No. I have no regular rates, I just make any kind of rate; sometimes I give one fellow- all depends on what he has got, if he has a ton it is cheaper than if he only has a hundred pounds.

- Q. These people that come to you offer you something to carry freight, and you fix a rate for it? A. Yes Sir.
- Q. As you will take one pound or a ton, is that right? A. Yes.
- Q. How high do you go? A. I don't care, the more the merrier, five tons, fifteen tons, I don't care - a hundred ton.
- Q. You haul all you can get? A. If they give it to me, yes."

The testimony shows that the said defendant, in the course of his daily trips, has carried passengers on an average of two or three times a week and has carried also daily various kinds of commodities from Nevada City to way points and to various persons and particularly to certain merchants at Downieville. The record shows that the movement of freight is almost entirely from Nevada City to Downieville, but that defendant has carried passengers from time to time in either direction. The record shows that the above named complainant has repeatedly warned and advised said defendant that the transportation of passengers and freight which defendant was conducting was unlawful in the absence of a certificate of public convenience and necessity from the Railroad Commission, but nevertheless, in spite of the fact that said defendant was advised that his transportation business was being operated unlawfully, defendant persisted in transporting many passengers and considerable freight as above indicated between Nevada City and Downieville and intermediate points.

Said V. W. Bowers, in support of his above entitled application, offered very little testimony to justify the granting to him of an additional stage and truck service between Nevada City and Downieville. He testified to the effect that he expected to be able to purchase the operative rights of said M. P. Fischer as soon as he secured the contract to transport United States mail, but that Fischer had refused to sell out to him and moreover he admitted that he could not make expenses in the sole transportation of the U. S. mail and that he had resorted to hauling passengers and freight, in order to make his operations profitable, or at least to break even. Applicant offered no testimony at all to show that the service of said M. P. Fischer, the present author-

ized operator, was inadequate or unsatisfactory or that any complaints had ever been made against such service.

Downieville is the county seat of Sierra County and has a population of only a few hundred. Nevada City is the county seat of Nevada County and has a population of about 1000 people. The record shows that the passenger and freight traffic moving between these two terminals, including way points, is rather small in volume and that the present authorized operator is fully equipped to take care of all passenger and freight traffic moving between these terminals as well as way points. There is no evidence in the record at all to show that the additional service proposed by said applicant, W. V. Bowers, is at all necessary to meet the present demand of traffic between Nevada City and Downieville.

After a careful consideration of all the evidence in this proceeding, we are of the opinion and hereby find as facts that V. W. Bowers is unlawfully and without authority of this Commission operating an auto stage service, as a common carrier, for the transportation of passengers and property between Nevada City and Downieville and intermediate points; and that public convenience and necessity do not require the proposed service between Nevada City and Downieville and intermediate points and the application should be denied.

O R D E R

A public hearing having been held in the above entitled proceedings, the matters having been submitted, the Commission being now fully advised in the premises;

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby finds as a fact that V. W. Bowers, the defendant above named, is operating an auto stage as a transportation com-

pany, as defined by Chap. 213, Stats. 1917, as amended, as a common carrier for the transportation of persons and property for compensation over the public highways of this State between Nevada City and Downieville and intermediate points; that such operations were commenced by said defendant in the latter part of September, 1926, and that said defendant has continuously since that time and now is engaged in said transportation business as a common carrier and that no certificate has ever been granted by this Commission to said V. W. Bowers, declaring that public convenience and necessity require such operations by said defendant; and basing its order upon the foregoing findings of fact and the further finding of facts and statements of facts contained in the Opinion, which precedes this Order;

IT IS HEREBY ORDERED that V. W. Bowers, defendant herein, be and he is hereby ordered and directed to cease and discontinue forthwith said operation of an auto stage as a common carrier of passengers and property for compensation over the public highways of this State between Nevada City and Downieville and intermediate points.

IT IS HEREBY FURTHER ORDERED that the secretary of this Commission cause to be delivered to the district attorneys of Sierra County and Nevada county a certified copy of this order.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity do not require the operation by V. W. Bowers of an automotive service for the transportation of persons or property between Nevada City and Downieville and intermediate points, and

IT IS HEREBY ORDERED that said application of said V. W. Bowers for a certificate of public convenience and necessity to operate an auto stage line for the transportation of passengers and freight between Nevada City and Downieville and intermediate points be and the same is hereby denied.

Dated at San Francisco, California, this 23rd day of February, 1927.

Edmund Scott
H. B. Brundage
C. J. ...
Leon Abbott
Thos. S. ...
Commissioners.