

Decision No. 18464

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA TRANSIT CO., a corporation,
and R. R. YOUNG, doing business under
the name of YOSEMITE TRANSIT,

Complainants,

vs.

CASE NO. 2179

C. D. VIRGILIO, E. H. KELLOG, TOM GOGOS,
C. M. GOTCHIS, W. R. MYGATT, MRS. TOM GOGOS,

Defendants.

ORIGINAL

Earl A. Bagby and L. J. Smallpage, for Complainants,

James D. Meredith for Defendants.

BY THE COMMISSION -

O P I N I O N

California Transit Co., a corporation, and R. R. Young, an individual doing business under the name of Yosemite Transit, have complained of defendants C. D. Virgilio, E. H. Kellog, Tom Gogos, C. M. Gotchis, Mrs. Tom Gogos and W. R. Mygatt alleging that said defendants, and each of them are engaged in the business of transporting passengers for compensation, as common carriers of said passengers between fixed termini and over regular routes, within the State of California and over the public highways thereof, without first having obtained a certificate from the Railroad Commission declaring that public convenience and necessity require such operation; that none of said defendants or any of their predecessors in interest, were actually operating in good faith, or at all, prior to or during the year 1917 and that all of the operations complained of are contrary to and in violation of the provisions of Chapter 213, California Statutes of 1917, and effective amendments thereto; that the regular routes and fixed termini over which said defendants and each of

them have been and are transporting passengers for compensation are as follows:- (1) between Sacramento and Stockton over the state highway known as the upper Sacramento Road and Cherokee Lane, (2) between Stockton and Oakdale over the main highway via Hogan Road and Escalon, (3) between Stockton and Camps Nos. 1, 2 and 3 and main camp of Oakdale and San Joaquin Irrigation District at points about 9 miles northeast of Jamestown over the main road via Oakdale and Jamestown, (4) and between Sacramento and all points in the State of California for which passengers can be secured; that defendants, and each of them, in carrying on the transportation business as complained of also carry passengers to and from points intermediate to the termini herein mentioned; and that defendants and each of them in the carrying on of the transportation business as complained of are operating jointly, each with the other, and with full knowledge of and in defiance of the statutory law. Complainant California Transit Co. further alleges that it maintains lawful operation for the transportation of persons between Sacramento and Stockton, between Stockton and Manteca via French Camp, and to all points intermediate thereto and to many other points within the State of California, and complainant Yosemite Transit, in a similar manner, operates between Stockton and Oakdale, Stockton and Sonora, Stockton and Jamestown, Tuolumne and Yosemite Junction, and to all intermediate points and other points within the State of California; that the alleged unlawful service is doing great and irreparable injury to the business of complainants; and is detrimental to the public service offered and furnished by said complainants.

Complainants pray for an order of this Commission requiring defendants and each of them to cease all transportation of passengers for compensation and operating either as a common carrier of passengers or as a carrier of passengers between fixed termini or as a carrier of passengers over regular routes within the State of California and in particular between the termini and

over the regular routes contained in the complaint.

Defendants Tom Gogas, Mrs. Tom Gogas, E. H. Kellog, C. D. Virgilio and C. M. Gotchis duly filed their answers herein, said answers being a general denial of the allegations of the complaint.

Upon the issue as presented by the complaint and answers a public hearing was conducted by Examiner Handford at Stockton, the matter was duly submitted and is now ready for decision.

C. D. Virgilio, one of defendants herein, testified that he resided in Sacramento and was proprietor of the Cosmopolitan Labor Agency in that city. Witness described the method of handling applicants for employment as to the fee exacted and the deposit required from applicants to cover transportation to the place of employment. The amount collected from applicants for employment covering transportation was turned over to the driver of the vehicle and if a sufficient number was not obtained to warrant a trip, 5 persons usually being the minimum transported from Sacramento to Melones Dam, the employee was given his option of waiting until the next day or taking the train or stage and if the latter option were chosen, the transportation deposit was refunded and the employee sought his own method of transportation. Witness had turned over employees to defendants Gogas, Gotchis and Kellog, paying them the deposits previously made by such employees. Witness has personally transported no passengers or laborers, nor has he operated or had any interest in the operation of stages for the carriage of passengers or employees.

B. F. Southerland, residing at Jamestown, testified that on September 24, 1925, he applied for work at the Cosmopolitan Labor Agency in Sacramento; that he was accepted for employment at Melones Dam, paying an employment fee of \$2.00 and a transportation charge of \$5.00, that he with ten others boarded an automobile driven by defendant Tom Gogas and were transported to Jamestown.

B. L. Richards, residing at Jamestown, testified that he accompanied the previous witness on September 24, 1925, was similarly employed, paying the same employment fee and transportation charge.

C. R. Chandler, residing at Woodland, testified regarding securing employment at the Cosmopolitan Labor Agency in Sacramento on September 28, 1925, paying to the clerk in the employment office an employment fee of \$2.00 and a transportation charge of \$5.00, that he and others were transported to Melones Dam by defendant Gogas; that another car left the employment office at the same time for Melones Dam, driven by defendant Getchis.

Ed Hart, residing at Woodland, testified he accompanied the previous witness on September 28, 1925, securing employment, paying the \$2.00 employment fee and \$5.00 transportation charge and being transported to Melones Dam by defendant Gogas.

E. E. Kellog, one of defendants herein, testified he resided at 1620 "F" Street, Sacramento; that he was in the business of transporting passengers; that he had hauled employees from the Cosmopolitan Labor Agency in Sacramento to Melones Dam; that he had handled at the rate of \$5.00 per passenger with a minimum of \$25.00 per trip, the collection being made by the employment agency who turned the money over to him in a lump sum; that in the few instances where less than five passengers were available for transportation and the trip had been made, there had been camp equipment, tools or supplies to be transported and the \$25.00 minimum was collected. Witness had practically no back haul although stated that he would have accepted anyone who might have applied, provided they wished to hire the car, not on the basis of individual passengers.

C.M. Getchis, one of defendants herein, testified that he resided in Sacramento and was engaged in the business of running an automobile for hire; that he had hauled passengers from the

Cosmopolitan Labor Agency at Sacramento to the construction work and camps at Melones Dam, receiving as compensation \$35.00 per trip for seven passengers, \$40.00 for eight passengers, \$55.00, however, being the minimum charge per trip; and that the compensation was paid by the clerk at the Cosmopolitan Labor Agency. Witness has also made trips to Lake Tahoe, Jamestown and Napa.

Tom Gogas, one of defendants herein, testified that he resided in Sacramento ^{and} was engaged in the business of operating a car for hire; that in connection with such business he transported laborers to any point, trips having been made from January 10, 1925, to October 29, 1925, from Sacramento to Grass Valley, Walnut Grove, Redding, Wesley, Mountain Gate, Placerville, Pitt River, Garden Valley, Sierra City, Maxwell, Lake Tahoe, Lake Almanor, Loylton, Marysville, Jamestown, Fairfield, Cloverdale, Cordelia, Elmira, Chico Rice Fields, Rio Vista Junction, Winters, and Durham; that these trips were made on the basis of an amount being agreed upon for the rent of the car; and that no return loads or individual return passengers had been hauled.

E. E. Kellog, one of the defendants herein, testified he was engaged in the business of automobile transportation and had been since 1913; that he had made trips from Sacramento to Oroville, Merced Falls, Placerville, beet fields in the Sacramento Valley, Hamilton City, Klamath Falls, Mt. Whitney, Mineral King, Yosemite Park, Sutter City, Maxwell and Melones Dam; and that he had no regular routes, his service being available to any point to which his patrons desired transportation and at rates based on the distance traversed and the number of passengers offering.

From the record in this proceeding it appears that defendants E. E. Kellog, Tom Gogas and C.M. Gotchis are engaged in automobile service by rent cars; that they operate to any point

and at any time when patronage can be secured on an agreed rate per trip, that such rate varies with the number of persons handled although a minimum is exacted dependant upon the distance to be traversed. As to defendant C. D. Virgilios the evidence shows that he is the proprietor of the Cosmopolitan Labor Agency at Sacramento; that in the business conducted by such agency deposits are taken from patrons for transportation to the location of the employment; and that such deposits are turned over by the employment office to the operators of automobiles transporting laborers to the point of employment.

As regards the defendant Mrs. Tom Gogas, the record shows that the car operated by Tom Gogas, her husband, is registered in her name, there being no evidence that she has participated in any of the alleged operation beyond the fact that a car registered in her name has been used by her husband.

After full consideration of the record in this proceeding we are of the opinion that no showing has been made which justifies the conclusion that defendants herein have conducted their operation in the handling of laborers from Sacramento to Melones Dam or other points alleged in the complaint as a common carrier or in violation of the statutory provisions as contained in Chapter 213, Statutes of 1917, and effective amendments thereto. The order herein will provide for the dismissal of the complaint.

O R D E R

A public hearing having been held on the above entitled complaint, the matter having been duly submitted and the Commission being now fully advised,

