

LEM

Decision No. 18550

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of
ORVAL OVERALL and E.L.ASKIN,
doing business under the name and
style of Sequoia National Park Stage
Company, to sell and transfer, and
Sequoia National Park Stage Company,
a corporation, to buy certificates
of public convenience and necessity,
and of Sequoia National Park Stage
Company, a corporation, to issue
capital stock.

Application No. 13576

Sequoia and General Grant National
Parks Company, Complainant,)

vs.

Case No. 2342

Orval Overall and E.L.Askin and
Sequoia National Park Stage Company,)
Defendants,)

Gwyn E. Baker, for applicants in application.No. 13576,
and for defendants in Case No. 2342.

Richard T. Eddy, for Sequoia and General Grant National
Parks Company, Protestant, in Application No.13576
and for complainant in Case No. 2342

LOUTTIT, Commissioner:

O P I N I O N

In Application No. 13576 the Railroad Commission is asked
to make its order authorizing Orval Overall and E.L.Askin, doing
business under the name and style of Sequoia National Park Stage
Company, a co-partnership, to sell and transfer to the Sequoia
National Park Stage Company, a corporation, certificates of public
convenience and necessity heretofore granted by the Commission by
Decisions No. 6395, No. 12390, No. 14164 and No. 16758 and author-

izing the corporation to buy such certificates, and other properties, and to issue 350 shares of its common capital stock of the aggregate par value of \$35,000. and assume liabilities in payment therefore.

In Case No. 2342 complainant alleges that no partnership operating under the fictitious name and style of Sequoia National Park Stage Company ever existed between Orval Overall and E.L. Askin and that if the relation established between them in 1919 be regarded by the Commission as a partnership, it was dissolved in 1920 by mutual consent. In effect, it appears to me that complainant asks this Commission to find that the certificates heretofore granted, to which reference will hereafter be made, never vested, or if such certificates did vest, in the partnership they were forfeited by the alleged dissolution of the partnership and that therefore no certificates are in existence for transfer to the Sequoia National Park Stage Company, a corporation.

At the hearing had on May 27th at Visalia on the above entitled matters, the Commission was requested to consider in these proceedings the evidence submitted in Applications Nos. 10473 and 12709.

The partnership status between Orval Overall and E.L. Askin was considered by the Commission in Decision No. 17810, dated December 28, 1926, in Application No. 10473 and No. 12709. In that decision the Commission reviewed the evidence submitted relative to the partnership and concluded as follows:-

"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 insofar as it relates in 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 main-

tain this application. Accordingly the objection of the National Parks Company will be overruled," etc.

I have considered the evidence submitted by complainant in Case No. 2342 and have also considered the evidence submitted in Application No. 10473 and No. 12709. In my opinion the record shows that Orval Overall and E.L.Askin did enter into a partnership and that such partnership was never dissolved. This Commission has never authorized Orval Overall to transfer any of his interest in the certificates which the Commission has heretofore granted to him and E.L.Askin as partners and to which reference will be made herein. It seems to me that Orval Overall is responsible as a partner in such degree and to such extent as would be necessary to make it possible for the Commission to require him to perform the service undertaken by the partnership. I believe that the complaint filed by the Sequoia and General Grant Parks Company should be dismissed.

It appears that by Decision No. 6395, dated June 10, 1919, in Application No. 4561, the Commission granted to Orval Overall and E.L.Askin, co-partners, a certificate of public convenience and necessity to operate an automobile stage line as a common carrier of passengers and express between Lemon Cove and the Sequoia National Park line, serving as intermediate stations the communities at Three Rivers and Kaweah, such service to be operated from Lemon Cove to the park line during such periods of each year as the park may be open to visitors and automobile traffic and during the remaining portion of the year between Lemon Cove and Kaweah. Thereafter, by Decisions No. 12390, dated July 24, 1923, in Application No. 8962, they were authorized to operate a passenger and express service between Three Rivers and Mineral King, and by Decision No. 14164, dated October 10, 1924, in Application No. 10473, to operate between

Visalia and Lemon Cove, via Farmersville and Exeter, as an extension of the operative right between Lemon Cove and Sequoia National Park, to be operated seasonally as a portion of and in conjunction with through stage service from Visalia to Sequoia National Park, ^{via Exeter} provided that no local passengers, baggage or express be handled between Visalia and Exeter and intermediate points. Subsequently, by Decision No. 15758, dated May 24, 1926, and Decision No. 17910, dated December 28, 1926, in Application No. 10473, the co-partners were authorized to abandon the automobile stage service between Kaweah and the former entrance to Sequoia National Park on the westerly boundary thereof, and to re-route said service so as to conduct and operate it, in connection with the service between Visalia and Exeter, from a point on the route between Three Rivers and Kaweah, known as Kaweah Bridge, and thence via Hammond and over the General's Highway to the present entrance to Sequoia National Park upon the southerly boundary of said park.

It now appears that the holders of these certificates have decided to organize a corporation for the purpose of having it take over such operative rights and thereafter of conducting the operations thereunder. Accordingly, Sequoia National Park Stage Company was incorporated on or about August 25, 1926.

The corporation, which has an authorized capital stock of \$50,000.00, divided into 500 shares of the par value of \$100.00 each, all common, proposes to issue \$35,000.00 of such stock in payment for the operative rights referred to above, and for the physical properties, now in use, which are set forth in Exhibit

"B" as follows:-

<u>Operative Property</u>	<u>Value</u>
White bus	\$7,500.00
Packard-Twin Special	2,500.00
Packard-Twin, Series 2-25	2,500.00
Packard Twin Special	1,250.00
Cadillac	1,500.00
White Truck	3,000.00
<u>Non-Operative</u>	
Tools, compressor, gas pumps and tank	500.00
Real property	1,200.00
Building	6,000.00
Jewett Sedan	800.00
Packard Truck, Model "B"	3,000.00
Garford Truck	1,800.00
Reliance-4-wheel trailer	500.00
Graham- 4-wheel trailer	500.00
Safe	75.00
Six chairs and oak desk	125.00
Filing cabinet and sub-files	60.00
Typewriter	70.00
Check protector	50.00
Cabinet, counter and office desk	150.00
	<u>333,080.00</u>
Total.....	<u>\$33,080.00</u>

In addition to these items it is alleged that \$2,366.00 was expended in litigation in securing and protecting certificates, consisting of filing fees, attorney's fees, travelling and other expenses. Current assets and liabilities, which will be taken over by the corporation, appear to be nominal in amount.

A financial statement covering the operations for the year 1926 of the business and properties involved in this proceeding, was filed with the Commission on March 25, 1927, showing the cost of the physical properties used, at \$31,034.71, and a reserve for accrued depreciation of \$18,561.51, leaving a net figure of \$12,473.20. The valuation of \$33,080.00, filed as Exhibit "B" was prepared by U.D. Switzer, State Inheritance Tax Appraiser of the County of Tulare.

Giving consideration to this testimony and all the circumstances surrounding the proposed transfer of properties and issue of stock, it appears to us that the transfer of the operative

rights should be authorized, but that the total amount of stock which the corporation should be authorized to issue at this time in payment for all of the properties referred to above, should not exceed \$20,000.00. The distribution of this stock between the partners is a matter for them to determine.

I herewith submit the following form of order:-

O R D E R

A public hearing having been held on the above entitled matters and the Railroad Commission being of the opinion that Case No. 2432 should be dismissed; and that Application No. 13576 should be granted as to the extent indicated in this order and subject to the terms and conditions of said order, that the amount of stock herein authorized is reasonably required for the purposes specified herein and that the expenditures for such purpose are not in whole or in part reasonably chargeable to operating expenses or to income, therefore,

IT IS HEREBY ORDERED that the complaint filed in Case No. 2342 be, and the same is hereby, dismissed.

IT IS HEREBY FURTHER ORDERED that Orval Overall and E.L. Askin, co-partners doing business under the firm name and style of Sequoia National Park Stage Company, be, and they hereby are, authorized to sell and transfer to Sequoia National Park Stage Company, a corporation, the certificates of public convenience and necessity and other properties referred to in the foregoing opinion, and Sequoia National Park Stage Company, a corporation, be, and it hereby is, authorized to issue not exceeding \$20,000.00 of stock in payment for such certificates and the physical and other properties referred to in said opinion, subject to outstanding indebtedness,

The authority herein granted is subject to the following conditions;--

1. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission or any other rate fixing body as a measure of value of said property for rate fixing, or any purpose other than the transfer herein authorized.
2. Applicants, Orval Overall and E.L.Askin, shall immediately unite with applicant, Sequoia National Park Stage Company, a corporation, in common supplement to the tariffs on file with the Commission, applicants, Orval Overall and E.L.Askin, on the one hand withdrawing, and applicant, Sequoia National Park Stage Company, a corporation, on the other hand accepting and establishing such tariffs and all effective supplements thereto.
3. Applicants, Orval Overall and E.L.Askin, shall immediately withdraw time schedules filed in their name with the Railroad Commission and applicant, Sequoia National Park Stage Company, a corporation, shall immediately file, in duplicate, in its own name, time schedules covering service heretofore given by applicants, Orval Overall and E.L.Askin, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicants, Orval Overall and E.L.Askin or time schedules satisfactory to the Railroad Commission.
4. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the

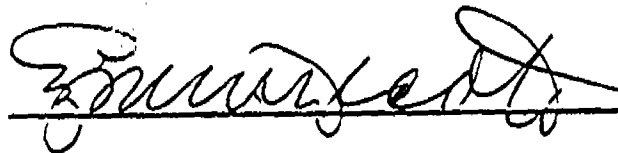
Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been secured.

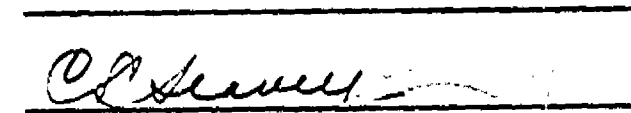


5. No vehicle may be operated by applicant, Sequoia National Park Stage Company, a corporation, unless such vehicle is owned by said applicant or is leased under a contract or agreement on a basis satisfactory to the Railroad Commission.
6. Applicant, Sequoia National Park Stage Company, a corporation, shall keep such record of the issue of the stock herein authorized and of the disposition of the proceeds, as will enable it to file, within thirty(30) days after such issue, a verified report, as required by the Railroad Commission's General Order No. 24, which order insofar as applicable, is made a part of this order.

IT IS HEREBY FURTHER ORDERED that the application insofar as it involves the issue of \$15,000.00 of stock be, and it hereby is, dismissed without prejudice.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

DATED at San Francisco, California, this 27th day of June, 1927.



Commissioners.