

Decision No. 19344

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA TRANSIT CO., a corporation,
Complainant,

-vs-

AUTO TOURS CONTINENTAL CLUB, AUTO TOURISTS
COOPERATIVE CLUB, PACIFIC AUTO TRAVEL CLUB,
NATIONAL AUTO TRAVEL CLUB, R. MILLER,
MISS RUTH HOGUE, W. C. WALLS, E. HULSCH,
WALTER THAYER, E. J. GUNN, D. T. SOADY,
ALLEN JACKSON, JOHN HENRY, JACK O'NEILL,
J. O. BRUCHFIELD, JOHN DOE WYCOFF,
JOHN DOE KING, JOHN DOE HUNT and
JOHN DOE SHELLY,

Defendants.

ORIGINAL

Case No. 2425

L. G. Merkel, for Complainant.
B. E. Kragen for A. H. Wycoff and Auto Tourists
Cooperative Club, Defendants.
V. J. Etzkorn, for Southern Pacific Company.

BY THE COMMISSION -

O P I N I O N

California Transit Co., a corporation, has filed a complaint against Auto Tours Continental Club, Auto Tourists Cooperative Club, Pacific Auto Travel Club, National Auto Travel Club, R. Miller, Miss Ruth Hogue, W. C. Walls, E. Huisch, Walter Thayer, E. J. Gunn, D. T. Soady, Allen Jackson, John Henry, Jack O'Neill, J.O.Bruchfield, John Doe Wycoff, John Doe King, John Doe Hunt, and John Doe Shelly. The complaint alleges (1) that defendants, and each of them, have been and now are engaged in transporting passengers for compensation as passenger stage corporations over regular routes within the State of California and over the public highways thereof, without first having obtained from the Railroad Commission a certificate declaring that public convenience and necessity require such operation, or any other certificate, order or permit so to do, contrary

to the provisions of the Public Utilities Act of the State of California; (2) that none of the defendants nor any of their predecessors in interest were actually operating in good faith or at all prior to May 1, 1917, or prior to the effective date of Chapter 213 of Statutes of 1917 of the State of California approved May 10, 1917, and that the operations of defendants and each of them are in violation of the Public Utilities Act of the State of California; (3) that the regular routes over which defendants and each of them have been and are now transporting passengers as passenger stage corporations for compensation are between San Francisco and Los Angeles via Tracy, Modesto, Fresno, Tulare and Bakersfield, known as the Valley Route, serving all intermediate points, and also between San Francisco and Los Angeles via San Jose and Salinas, known as the Coast Route, serving all intermediate points; (4) that defendants and each of them have been and are now operating between fixed termini over the state highways as passenger stage corporations between San Francisco and Oakland on the one hand, and all points in the State of California for which passengers can be secured on the other hand, and in so doing defendants, and each of them, charged, demanded and collected fares from passengers so transported upon an individual fare basis; and (5) that complainant is now operating over the routes between San Francisco and Los Angeles via Tracy, Modesto, Fresno and Bakersfield, serving all intermediate points, under and by virtue of authority granted by the Railroad Commission and the alleged unlawful operation of defendants, and each of them, has resulted in injury to complainant, seriously injuring its business and being detrimental to the public and to the public service offered and furnished by complainant.

Complainant prays for an order of this Commission finding defendants, and each of them, guilty of violating the provisions of the Public Utilities Act and imposing penalties therefor; requiring defendants, and each of them, to cease and desist all transportation of passengers for compensation under operation either as

a passenger stage corporation or common carrier, or as a carrier of passengers between fixed termini or over a regular route or routes upon the public highways in the State of California and particularly between San Francisco, Oakland and Los Angeles via the Valley or Coast Routes.

Defendants Auto Tourists Cooperative Club and A. H. Wycoff (herein complained of as John Doe Wycoff), duly filed their answer herein, said answer denying the material allegations of the complaint.

A public hearing on this complaint was conducted by Examiner Handford at San Francisco, the matter was duly submitted and is now ready for decision.

Chas. H. Wilkinson, employed as an investigator for complainant, testified regarding trips between San Francisco and Ventura, Fresno and Modesto, and between Oakland and Fresno in which the service of some of the defendants was used. On August 4, 1927, this witness upon making inquiry at the Dale-Tallac Hotel, 140 Ellis Street, San Francisco, for transportation to Ventura was advised by defendant A. H. Wycoff that the rate would be \$8.50, that a deposit of \$1.50 would be required. Upon payment of the \$1.50 witness was furnished a certificate of membership, No.422, in the Auto Tourist Cooperative Club, (Exhibit No.2). The same day witness was transported from San Francisco to Ventura by R. Miller, defendant herein, paying a fare of \$7.00, payment being made at Salinas and receipt therefor being given by said R. Miller (Exhibit No.3). Witness returned from Ventura to San Francisco on August 8, 1927, using the service of defendant R. Miller and paying as fare the sum of \$7.50 for which receipt was given. (Exhibit No.4). Witness inquired of defendant R. Miller as to the frequency of his trips out of San Francisco and was told that they averaged two trips per week.

On August 26, 1927, witness saw defendant A. H. Wycoff at the Bale-Tallac Hotel, 140 Ellis St., San Francisco, and asked for transportation from San Francisco to Fresno. Witness was advised by defendant Wycoff that service was available every day and that it would be necessary to purchase another card. An amount of \$1.50 was paid by witness to defendant A. H. Wycoff for which he received membership card No.232 in the Auto Tourist Cooperative Club, dated August 26, 1927. (Exhibit No.5). Witness at the time he paid for membership certificate No.232 on August 26, 1927, was furnished a receipt in amount \$3.00 covering the purchase of membership certificate No.232 and also membership certificate No.422 which had previously been purchased on August 4, 1927, receipt being signed I. Brown by defendant A. H. Wycoff. (Exhibit No.6). Witness was told by defendant A. H. Wycoff at the time he paid the \$1.50 for membership certificate No.232 that the fare from San Francisco to Fresno would be \$7.00 and that the car would depart at noon on that day. At noon witness was directed by defendant A. H. Wycoff to Peerless Sedan Automobile No.1-486-671, 1927 Calif. license, driven by defendant Walter Thayer and was transported to Fresno via Oakland, Livermore, Tracy to Fresno, the balance of the fare being paid to the driver, defendant Walter Thayer, at Fresno, an amount of \$4.50 being paid for which receipt was given. (Exhibit No.7). During the trips to Fresno witness was informed by defendant Walter Thayer that defendant averaged two and sometimes three trips per week.

On August 29, 1927, witness called at the office of the Auto Tourist Continental Club, No.1202 Franklin St., Oakland, and made inquiry regarding transportation from Oakland to Fresno. He was informed by defendant D. T. Soady that cars left for Fresno twice daily, that the fare was \$6.00 and that "you will have to take out a card and pay \$1.50 deposit." Witness paid defendant D.T.Soady the sum of \$1.50 for which he received Certificate of Membership No.296 in the Auto Tourist Continental Club, dated August 29, 1927. (Exhibit No.8). A receipt signed by defendant D.T.Soady was

given to witness covering the payment of the \$1.50 (Exhibit No.9). Witness was transported to Fresno from the office of the Auto Tourist Continental Club, 1202 Franklin St., Oakland, leaving at 7:45 P.M. on August 29, 1927, paying the driver, defendant John Henry, the sum of \$4.50 and receiving a receipt therefor (Exhibit No.10). During the trip witness discussed with the driver, defendant John Henry, the frequency of this defendant's trips between Oakland and Fresno and was advised defendant made as many trips as he could.

On September 1, 1927, witness called at the office of the Auto Tourist Cooperative Club at 57 Taylor St., San Francisco, and made inquiries regarding a trip by motor stage from San Francisco to Fresno. Witness was advised that the fare would be \$6.00 and that he would have to take out a card, for which he would have to pay \$1.50. Witness paid \$1.50 for certificate of membership No.432 in Auto Tourist Continental Club dated September 1, 1927. (Exhibit No.11). Witness also procured a receipt for the payment of the \$1.50 under date September 1, 1927, signed by defendant W. C. Walls. (Exhibit No.12). Witness was directed by defendant W. C. Walls to the automobile in which the journey was to be made and was transported from San Francisco to Fresno by defendant E. Huisch, paying said defendant the sum of \$4.50 for which witness was furnished receipt dated September 1, 1927, in amount \$4.50 signed by defendant E. Huisch. (Exhibit No.13). The trip to Fresno was made via Oakland, nine passengers having been transported from Oakland to Fresno in a Hudson Sedan of 7 passenger capacity, all the passengers, excepting witness, being destined to Los Angeles.

On September 3, 1927, witness went to the Auto Tourist Continental Club at 57 Taylor St., San Francisco, and made inquiries regarding transportation San Francisco to Modesto, being advised by defendant W. C. Walls that it would be necessary to take out another card and that the complete fare would be \$3.75. Witness paid

defendant W. C. Walls the sum of \$1.50, receiving therefor certificate of membership No.512 in the Auto Tourist Continental Club, dated September 3, 1927. (Exhibit No.15), and receipt signed by W. C. Walls, dated September 3, 1927, in an amount \$1.50 (Exhibit No.16). Witness traveled to Modesto via Oakland where passengers were picked up at No.1202 Franklin Street, Oakland, Tracy to Modesto, paying driver of the car \$2.25 for which he received receipt dated September 3, 1927, signed by Allen (Exhibit No.17).

On September 8, 1927, witness made inquiry at 1202 Franklin St., Oakland, for transportation Oakland to Fresno and was advised he would have to pay \$5.00 and to take out another ticket. Witness purchased certificate of membership in the Auto Tourist Continental Club, No.260, dated September 8, 1927, (Exhibit No.18), paying therefor the sum of \$1.50 for which he was furnished a receipt dated September 8, 1927, signed by defendant D. T. Soady (Exhibit No.19). The trip to Modesto was made on the evening of September 8, 1927, leaving from No.1202 Franklin St., Oakland, witness being directed to the car by defendant E. J. Gunn, and the route followed being via Livermore, Tracy, Modesto and the car continuing to Fresno. Witness paid the driver \$3.50 in Modesto and received a receipt therefor under date September 8, 1927, signed by defendant E.Huisch, (Exhibit No.20). During the trip witness discussed with the driver the frequency of the trips made over the route and was advised that as many trips as possible were made, the method of operation being that the various clubs would call him up when they had a load of passengers and that he would then depart.

A. E. Wycoff, defendant herein, testified that he operated a travel club, formerly at No.140 Ellis Street and at present at No.34 Turk Street, San Francisco; that the club was operated under the fictitious name of Auto Tourist Cooperative Club; and that in connection with the operation of the club he neither owned or had any interest in automobiles, control or management of drivers or control

over fares which were charged for transportation.

In the conduct of the club witness placed advertisements in the newspapers to attract persons who contemplated automobile trips and also made arrangements with owners of cars who were seeking to transport passengers to destinations in the State of California and to outside points. A fee of \$1.50 was exacted from all prospective passengers and from the owners or operators of the automobiles in which the passengers were transported. This fee entitled the purchaser to a certificate of membership in the Auto Tourist Cooperative Club, same good for a period of thirty days from its date of issuance and witness states that the fee as paid for the certificate of membership does not cover any portion of the transportation charge but merely his compensation for bringing the prospective passenger and car operator together; that if satisfactory arrangements cannot be made between the passenger and the car operator he would, upon request, refund the amount paid for the certificate of membership. Car operators were charged the same fee for membership certificates as were prospective passengers, receiving a similar certificate good for a period of thirty days from the date of issuance. Witness has also issued certificates of membership for which a fee in excess of \$1.50 has been assessed, such certificates, however, covering arrangements for transportation to points beyond the State of California and insofar as such certificates have to do with arrangements for interstate journeys they will not be further referred to. Witness has no connection with any other travel bureau or club.

The record shows that by reason of the sale of membership certificates in the various travel clubs passengers were secured who were thereafter transported by certain of the defendants; that the membership certificates were paid for as a portion of the fare quoted by the defendants operating travel clubs; that if the journey was not made after the purchase of the membership certificate the amount paid for the certificate would be refunded upon request. It is obvious that the practice of selling membership tickets in the

travel clubs constitutes a violation by certain of the defendants of Section 79 of the Public Utilities Act in that aid and assistance is thereby rendered other defendants unlawfully operating automobile stages as common carriers of passengers between fixed termini or over regular routes, for compensation, over the public highways of the State of California in violation of the provisions of Section No. 50½ of the Public Utilities Act.

After full consideration of the testimony and exhibits herein we are of the opinion and hereby find the following facts:

I. That the defendant R. Miller has operated auto stages as a common carrier for compensation between the fixed termini of San Francisco and Ventura and over a regular route between said termini, without having first secured from this Commission a certificate of public convenience and necessity authorizing said defendant so to do, in violation of the provisions of Sec. 50½ of the Public Utilities Act (Chap. 91, Statutes of 1915, and effective amendments thereto);

II. That the defendant E. Huisch has operated auto stages as a common carrier for compensation between the fixed termini of San Francisco and Oakland on the one hand and Fresno on the other hand and over a regular route between such termini, in violation of the provisions of Section 50½ of the Public Utilities Act;

III. That the defendant John Henry has operated an auto stage as a common carrier, for compensation, between the fixed termini of San Francisco and Fresno and over a regular route between said termini, in violation of the provisions of Section 50½ of the Public Utilities Act.

IV. That the defendant Walter Thayer has operated an auto stage as a common carrier, for compensation, between the fixed termini of San Francisco and Fresno and over a regular route between said termini, in violation of the provisions of Section 50½ of the Public Utilities Act.

V. That the defendant A. H. Wycoff, doing business under the fictitious name of Auto Tourist Cooperative Club, has by the conduct of said Auto Tourist Cooperative Club aided and abetted

defendants R. Miller and E. Huisch in the violation of the provisions of Section 50 $\frac{1}{2}$ of the Public Utilities Act.

VI. That the defendant W. C. Walls in the conduct of the business of the Auto Tourist Continental Club has aided and abetted defendant E. Huisch in the violation of the provisions of Section 50 $\frac{1}{2}$ of the Public Utilities Act.

VII. That the defendant D. T. Soady in the conduct of the business of the Auto Tourist Continental Club has aided and abetted defendants John Henry and E. Huisch in the violation of the provisions of Section 50 $\frac{1}{2}$ of the Public Utilities Act.

VIII. No evidence having been presented as to defendants Pacific Auto Travel Club, National Auto Travel Club, Miss Ruth Hogue, E. J. Gunn, Allen Jackson, Jack O'Neill, J. O. Bruchfield, John Doe King, John Doe Hunt and John Doe Shelly, the complaint as to such defendants should be dismissed.

O R D E R

A public hearing having been held on the above entitled complaint, the matter having been duly submitted, the Commission being now fully advised and basing its order on the conclusions and findings of fact as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED

I. That defendant E. Huisch immediately cease and desist from all operation of automobile stages as a common carrier for compensation between fixed termini or over regular routes over the public highways of the State of California and particularly between the fixed termini of San Francisco and Oakland on the one hand and Fresno or Los Angeles on the other hand, and not resume such operation until said E. Huisch shall have secured from this Commission a certificate declaring that public convenience and necessity require

such operation in accordance with the provisions of Section 50½ of the Public Utilities Act.

II. That defendant R. Miller immediately cease and desist from all operation of automobile stages as a common carrier for compensation between fixed termini or over regular routes over the public highways of the State of California, and particularly between the fixed termini of San Francisco and Ventura or Los Angeles via the Coast Route, and not resume such operation until said R. Miller shall have secured from this Commission a certificate declaring that public convenience and necessity require such operation in accordance with the provisions of Section 50½ of the Public Utilities Act.

III. That defendant John Henry immediately cease and desist from all operation of automobile stages as a common carrier for compensation between fixed termini or over a regular route over the public highways of the State of California and particularly between the fixed termini of San Francisco and Fresno and over a regular route between such termini, and not resume such operation until said John Henry shall have secured from this Commission a certificate declaring that public convenience and necessity require such operation in accordance with the provisions of Section 50½ of the Public Utilities Act.

IV. That defendant Walter Thayer immediately cease and desist from all operation of automobile stages as a common carrier for compensation between fixed termini or over regular routes over the public highways of the State of California, and particularly between the fixed termini of San Francisco and Fresno and over regular routes between such termini, and not re-

sume such operation until said Walter Thayer shall have secured from the Railroad Commission a certificate declaring that public convenience and necessity require such operation in accordance with the provisions of Section 50½ of the Public Utilities Act.

V. That defendant A. H. Wycoff, doing business under the fictitious name of Auto-Tourist Cooperative Club, immediately cease and desist from aiding or abetting in the violation of the provisions of Section 50½ of the Public Utilities Act by the sale of membership certificates in the Auto Tourist Cooperative Club or in any other manner in violation of said Public Utilities Act.

VI. That defendant W. C. Walls, doing business under the fictitious name of Auto Tourist Continental Club, immediately cease and desist from aiding or abetting in the violation of the provisions of Section 50½ of the Public Utilities Act by the sale of membership certificates in the Auto Tourist Continental Club or in any other manner in violation of said Public Utilities Act.

VII. That defendant D. T. Soady immediately cease and desist from aiding or abetting in the violation of the provisions of Section 50½ of the Public Utilities Act by the sale of membership certificates in the Auto Tourists Continental Club or in any other manner in violation of said Public Utilities Act.

IT IS HEREBY FURTHER ORDERED that this complaint insofar as it refers to defendants Pacific Auto Travel Club, National Auto Travel Club, Miss Ruth Hogue, E. J. Gunn, Allen Jackson, Jack O'Neill, J.O. Bruchfield, John Doe King, John Doe Hunt, and

John Doe Shelly, be and the same hereby is dismissed.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission serve a certified copy of this order upon the District Attorneys of the Counties of Alameda, San Joaquin, Fresno, Stanislaus, Madera, Merced, Tulare, Kern, Santa Clara, Monterey, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, City and County of San Francisco, and the Board of Public Utilities and Transportation of the City of Los Angeles.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission personally serve or cause to be personally served upon each of the following defendants, to-wit, - E. Huisch, R. Miller, John Henry, Walter Thayer, A. H. Wycoff, W. C. Walls, and D. T. Soady a copy of this Order.

The effective date of this Order is hereby fixed as twenty (20) days from the date hereof.

Dated at San Francisco, California, this 6th day of February, 1928.

Leon Whiskey
Chase
Ernest Pitt
Thos. J. Lott
M. J. Lott
Commissioners