

ORIGINAL

Decision No. 10026

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 E. V. HALE for certificate of public )  
 convenience and necessity to operate ) Application  
 express and baggage service as a common ) No. 14522  
 carrier between Bakersfield, Tupman, )  
 Taft, Fellows and Maricopa. )

Plen Aldrich, for Applicant.  
 Edward Stern, for American Railway Express  
 Company, Protestant.  
 L. W. Smith, for California Transit Company,  
 Protestant.  
 Earl C. Cook, for Kern County Transportation  
 Company and Boyd & Mattley, Stage Line,  
 Protestants.  
 C. C. Haworth, for Home Stage Line, Protestant.

BY THE COMMISSION -

O P I N I O N

E. V. Hale has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by him of an automobile truck service as a common carrier of baggage and express between Bakersfield and Tupman, Fellows, Taft and Maricopa.

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

Applicant proposes to charge rates in accordance with a schedule marked "Exhibit A" as filed with the application; to operate three round trips daily; and to use as equipment three Graham trucks, one of 3/4 ton, one of 1-ton, and one of 1-1/2 tons capacity.

Applicant relies as justification for the granting of the application on the following alleged facts: (a) that the railroad operates but one trip daily, leaving Bakersfield about noon; (b) that truck companies do not make regular trips to Maricopa and

Fellows; (c) that no early deliveries from Bakersfield are now possible; and (d) that there is no public transportation service available to Tupman.

E. V. Hale, applicant herein, testified that he now operated over the route herein proposed by reason of a mail contract, three round trips daily being the schedule of operation. Witness requires two trucks to perform the mail service and has a reserve truck for break-downs or emergency loads. He is now hauling newspapers from the Atchison, Topeka & Santa Fe Railway station in Bakersfield, such papers arriving from San Francisco on train No.2 at 7:45 A.M. and being transported on witness' 8:00 A.M. trip to points on his route. Bread and bakery products are also hauled to Tupman, Maricopa and Fellows. This hauling has been performed for the past two years. Witness states that the mail contract is not productive of sufficient revenue to defray the expense of operation unless additional revenue is secured from the handling of newspapers and express shipments. Witness knows of the service between Bakersfield and Taft as operated by the Kern County Transportation Company and considers it adequate. He had no knowledge of the number of trips made by Home Stage Line between Taft, Fellows and Mc Kittrick.

R. V. Lammiman, residing in Bakersfield and dealing in perishable products for the grocery trade, testified in behalf of applicant.. This witness ships cakes, cookies and potato chips, all of which require prompt delivery from Bakersfield to Tupman, Maricopa, Taft and Fellows. Witness has used the service of applicant and had no knowledge of any other service which would satisfactorily meet his requirements for prompt transportation. The volume of this movement is not great, shipments averaging once each week to Taft and Fellows.

L. W. Raley, engaged in the grocery business at Bakersfield, with the Safeway Stores, testified as to his use of applicant's

trucks in the shipment of bread to his branch stores at Fellows and Maricopa, such service having been patronized for the past two years. Shipments to Taft are cared for by witness' own equipment. Approximately 110 pounds of bread are forwarded, daily except Sunday, to each Fellows and Maricopa. Witness knows of no other carrier that can give the early morning delivery from Bakersfield which his product requires.

E. Mc Aree, a newspaper distributor of Bakersfield, handling the San Francisco Examiner in the territory between Fresno and Bakersfield, including the West Side Oil Fields, testified he had used the service of applicant in the distribution of papers arriving from San Francisco at about 8:00 A.M. on Train No.2 of the Santa Fe. Witness was of the opinion that stage service would be too irregular as frequently the papers arrived later in Bakersfield but were immediately handled by applicant.

The granting of the application is protested by American Railway Express Company; Kern County Transportation Company, Boyd & Mattley Stage Co.; and California Transportation Co. as lessor to Boyd & Mattley Stage Co., and Kern County Transportation Company.

The stage companies protested principally on the ground that any diversion of business will have a serious effect on their revenues, already diminishing because of a lessening activity in the West Side Oil Fields, with business conditions showing no immediate prospect of improvement.

We have fully considered the evidence herein and the tariffs and time schedules of the protesting carriers. We conclude therefrom that the service now rendered by applicant in the carriage of newspapers, bread and bakery goods should be authorized but find no necessity for the authorization of the carriage of baggage, parcels or other express shipments. A certificate with such limitations should be granted.

E. V. Hale is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

O R D E R

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

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by E. V. Hale of an automobile truck service as a common carrier of newspapers, bread and bakery products, between Bakersfield, Tupman, Taft, Fellows and Maricopa, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same hereby is granted to E. V. Hale for the operation of an automobile truck line as a common carrier of newspapers, bread and bakery products between Bakersfield, Tupman, Taft, Fellows and Maricopa, subject to the following conditions:

1- No authority is hereby conveyed for the transportation of any parcels, packages, baggage, express or any other property other than newspapers, bread and bakery products as herein authorized.

2- Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.

3- Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed thirty (30) days from the date hereof.

4- The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

5- No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all purposes, other than hereinabove stated, the effective date of this order is hereby fixed as twenty (20) days from the date hereof.

Dated at San Francisco, California, this 26<sup>th</sup> day of

June, 1928.

Leon A. White

Al Shoney

Ernest A. ...

David L. ...

W. J. ...  
COMMISSIONERS.