

Decision No. 20326

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 WALTER BOYD for certificate of public
 convenience and necessity to operate
 package and express service between
 Bakersfield, Taft and intermediate
 points.)
)
) Application
) No.15069
)
)

BY THE COMMISSION -

OPINION and ORDER

Walter Boyd, owner and operator of the Boyd Stage Company which, under authority of the Railroad Commission is engaged in the business of transporting passengers between Bakersfield and Taft and intermediate points, has applied to the Commission for an order declaring that public convenience and necessity require the transportation by him of express matter between the points served by the passenger line.

Applicant proposes to charge rates identical with those filed with the Railroad Commission by applicant's predecessor in interest and designated as C.R.C. 1 of Boyd & Mattly Stage Co.

The operating right under which applicant Boyd is now operating was established by operation prior to May 1, 1917. The original tariff established service for the transportation of passengers and baggage, express rates not being shown. Nor were they shown until December 29, 1921, when after the filing of affidavits showing that the express service had always been performed, a supplement to the original tariff was filed showing express rates.

In Decision No.19988 issued on Application No.14835, the Commission, referring to the Boyd right says:

"The Commission has repeatedly held that operating rights cannot be enlarged by tariff filing, a formal proceeding being necessary. Accordingly the operating right, a one-quarter interest in which is herein proposed to be transferred, must be considered as a right authorizing only the transportation of passengers and baggage, neither Boyd & Mattly nor any of their predecessors having been authorized to transport express."

The instant application, then, is for an order legalizing an operation performed, but not willfully, without authority. American Railway Express has advised that it will not oppose the granting of this application.

We are of the opinion, in view of the circumstances as outlined herein, all of which are verified by the records of the Commission, that this is a matter in which a public hearing is not necessary and that the application should be granted.

Walter Boyd 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.

The Railroad Commission hereby declares that public convenience and necessity require the operation by Walter Boyd of an automotive service for the transportation of express matter between Bakersfield and Taft and intermediate points, not as a separate and distinct operation but in conjunction with and as part of the automotive passenger stage service now conducted by Boyd between Bakersfield and Taft and intermediate points, the express to be limited to such property as may be transported on applicant's passenger stages, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such a service be and the same is hereby granted to Walter Boyd, subject to the following conditions:

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

2- Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from the date hereof, tariff of rates, such tariff of rates to be identical with those heretofore filed with the Railroad Commission by the Boyd & Mattly Stage Company and designated as C.R.C. No.1 of Boyd & Mattly Stage Co., or rates satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed twenty (20) days from the date hereof.

3- 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.

4- 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 other purposes the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 15th day of October, 1928.

Leon Whittell

C. S. Sweeney

Thos. S. Dwyer

M. J. Cunn

COMMISSIONERS.