

Decision No. 20590

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of  
DELUKE WATER TAXI ASSOCIATION for a  
certificate of public convenience  
and necessity to operate motor ves-  
sels for the transportation of pas-  
sengers for compensation between  
points upon the inland waters of the  
State of California.

Application No. 14772.

In the Matter of the Application of H-10  
Water Taxi Company, a corporation, for  
certificate of public convenience and  
necessity to operate motor boats and  
vessels for the transportation of pas-  
sengers for compensation between points  
upon the inland waters of the State of  
California.

Application No. 14814.

**ORIGINAL**

N. M. Todd for De Luxe Water Taxi Association,  
John W. Carrigan for H-10 Water Taxi Company,  
S. C. Hall for San Pedro Transportation Co., Protestant,  
Charles A. Bland for Long Beach Chamber of Commerce and  
Long Beach Harbor Commission,  
John K. Hull for the City of Long Beach.

BY THE COMMISSION:

O P I N I O N

These applicants request the Commission to grant them cer-  
tificates of public convenience and necessity to operate vessels  
for the transportation of passengers between the Fifth Street  
Ferry Landing at San Pedro Harbor and the Pine Avenue Pier at  
Long Beach by way of "Battleship Row," the designation given  
to the customary anchoring ground of the United States fleet  
when in those waters.

The applicants state that they will operate vessels on the inland waters of the State of California, and they assume that a certificate from this Commission for such operation is required under the provisions of Section 50 (d) of the Public Utilities Act. The material part of that section reads as follows:

"(d) No corporation or person \* \* \* \* \* shall hereafter begin to operate or cause to be operated any vessel for the transportation of persons or property, for compensation, between points exclusively on the inland waters of this state, without first having obtained from the railroad commission a certificate.\* \* \* \* \*

To discover the intent of the Legislature in enacting Section 50 (d) and the meaning of the words "inland waters" we may look at other sections of the Public Utilities Act. In Section 1 (1) it is provided that inland waters, as used in that section, "includes all navigable waters within the State of California other than the high seas." That provision merely differentiates such waters from "high seas," so we are compelled then to look to the decisions of the courts to ascertain the meaning of both terms. Before doing so, we will consider further the language of Section 1 (1), of the Public Utilities Act, which, in its definition of common carriers, includes certain water transportation companies. Quoting that section:

"The term 'common carrier' when used in this act, includes \* \* \* every corporation or person \* \* \* operating or managing any vessel engaged in the transportation of persons or property for compensation between points upon the inland waters of this state, or regularly engaged in the transportation of persons or property for compensation upon the high seas on regular routes between points in this state."

The Legislature seems here to have had in mind two types of water carriers, both of which are made common carriers; first:

those operating "between points on the inland waters of this state," and second; those operating "upon the high seas on regular routes between points in this state." It should be noted that subsection (d) of Section 50, requiring certification of those carriers operating "between points exclusively on the inland waters of this state," was enacted subsequent to that portion of Section 1 above quoted. It is apparent that the Legislature deemed it necessary to require the certification of only the first class of water carriers mentioned in Section 1, namely those operating between points upon the inland waters, as distinguished from those operating on the high seas. It should be noted, too, that in Section 50 the word "exclusively" is added to the phraseology of Section 1.

It is proper to inquire what reasonable distinction the Legislature may have had in mind when differentiating between the two classes of water carriers. In the Wilmington Transportation Company cases, (166 Cal. 741 and 263 U.S. 151) it was held that a state may regulate the rates for the transportation of passengers and property wholly by water between two ports in the same state, even over a course which traverses the high seas. Water transportation of that class, usually termed a coastwise operation, is undoubtedly what the Legislature had in mind when referring to the operation of vessels "upon the high seas on regular routes between points in this state". It did not see fit, when subsequently it enacted subsection (d) of Section 50, to require a certificate from such carriers.

It is clear that the class of water carriers which the legislature proposed to certificate was a class distinct from those engaged in a coastwise operation on the high seas. The proposed operations of these two applicants are between two distinct ports of this state and upon the high seas, unless

the term "high seas" should be held to mean those waters only which are beyond the outermost point to which the vessels of applicants navigate. The actual position at which the fleet now anchors is roughly from one to three miles from shore, but this position is subject to change at any time by the Navy Department. Applicants state merely that the fleet is a point which they will serve, but do not limit their operations to any given distance from shore.

The question presented, then, is whether the legislature intended, in enacting subsection (d) of Section 50 of Public Utilities Act, to require the certification of those water carriers which operate between points in this state when traversing the open ocean within a line drawn three miles or at any other certain distance from shore, and not to require the certification of those which go beyond that certain limit. We believe that the legislature did not intend to make such a distinction, and that it must have had in mind an entirely different class of carriers when in Section 50 it referred to those operating "between points exclusively on the inland waters of this state."

The Constitution of the State of California (Article XXI) provides that the territorial boundaries of this state shall extend three English miles from shore line. However, we do not believe that the territorial boundaries of the state are determinative of the question here involved. From what we have said above, it seems clear that the legislature must have intended some other line to mark the distinction between "inland waters" and the "high seas." If the term "inland waters" was intended to include those waters only which have been recognized by the admiralty courts as such, which are

the canals, lakes, streams, rivers, water courses, inlets, bays and arms of the sea between projections of land or other aids to navigation, there would have been a reasonable ground for requiring that vessels operating exclusively in such waters obtain a certificate while not imposing the same burden upon those engaged in coastwise trade. The courts have never recognized a line three miles from shore as distinguishing "high seas" from "inland waters."

The high sea has been generally defined as that portion of the sea which washes the open coast. Inland waters, on the other hand, are those within the body of the country. (1 Corpus Juris, 1255, Sec. 32, Kaiser Wilhelm Der Grosse, 175 Fed. 215.)

The services proposed by both applicants are not exclusively between points within a harbor line or other line which has been drawn by any authority having jurisdiction so to do setting out the boundaries between the high seas and the inland waters of the ports of Los Angeles and Long Beach. We must conclude that the transportation services proposed by the two applicants, not being between points exclusively on the inland waters of this state, do not come within the jurisdiction of this Commission in so far as certification is required under section 50(d) of the Public Utilities Act.

O R D E R

The above-entitled applications having been filed, a public hearing having been held, briefs having been filed, and the matters duly submitted,--

IT IS HEREBY ORDERED that the above-entitled applications be, and the same are hereby, dismissed for lack of jurisdiction.

Dated at San Francisco, California, this 16<sup>th</sup> day of November, 1928.

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*C. Seavey*  
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*Thos. D. Lovett*  
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*M. J. Quinn*  
\_\_\_\_\_ Commissioners.