

Decision No. 20662

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of HUBERT G. MILLS, for a certificate of public convenience and necessity authorizing the operation of an automobile stage line as a common carrier of passengers, baggage and express between San Diego, and Hi-Pass via Spring Valley, Jamul, Dulzura, Potrero and Campo.

ORIGINAL

Application No. 15223.

In the Matter of the Application of PICKWICK STAGES SYSTEM, a corporation, for permission to abandon service between San Diego and Hi-Pass, via Spring Valley, Jamul, Dulzura, Potrero and Campo.

Application No. 15224.

Libby & Sherwin, by Geo. F. Wasson,
for Pickwick Stages System,
and for
Hubert G. Mills.

BY THE COMMISSION:

O P I N I O N

In the above-entitled proceedings Pickwick Stages System asks for an order of the Railroad Commission authorizing it to discontinue operation of its automotive passenger stage service between San Diego and Hi-Pass via what is described as the Campo route, and Hubert G. Mills asks for an order of the Commission declaring that public convenience and necessity require the operation by him of an automotive service for the transportation of passengers, baggage and express between San Diego and Hi-Pass and intermediate points via

Campo.

A public hearing was conducted by Examiner Cannon at San Diego. At the hearing applicant Mills was authorized to amend his application by the filing of express tariffs identical with express tariffs covering service between San Diego and Hi-Pass now on file with the Railroad Commission in the name of Pickwick Stages System. The passenger rates proposed to be charged by Mills are practically the same as those charged by Pickwick. Both matters were then consolidated for hearing.

Howard E. Morgan, Traffic Manager of Pickwick Stages System, testified that his company was giving a service of one round trip a day over the Campo road to Hi-Pass, where connection was made with the company's through line between San Diego and Imperial Valley points operated over what he described as the Descanso route. The Campo territory he described as mountainous and sparsely settled, traversed by a road with many curves and grades not suitable for the type of equipment operated by Pickwick. At times, following storms, the road is impassable. He testified further that the operation was not profitable, but said he was of the opinion it could be made profitable through the operation of a purely local service, such as is proposed by Mills, entailing the use of smaller equipment of the touring car type and a reversal of the operation, viz.: a morning schedule out of Hi-Pass to San Diego which would enable residents of the territory to reach San Diego in time to transact their business with banks and other business houses without having to spend the night in San Diego, as is now the case. This view was also stressed by applicant Mills and other witnesses living at Dulzura, Campo, Barrett and other points along the road. The distance between San Diego and Campo is 52 miles, Hi-Pass being approximately 14 miles

farther.

Testimony corroborative in nature was given by Harold U. Porter, District Passenger Agent of Pickwick Stages System, and by applicant Mills, L. U. Smith, William E. Smith and C. Nelson. The last named who, at a previous hearing of application by Pickwick to abandon service over the Campo road, had appeared in opposition to the granting of such request, said he did not desire to protest Pickwick's present application to abandon because the service proposed by Mills as a substitute was more suitable to the needs of the territory than the present operation. At the previous hearing no substitute service was offered.

All of the witnesses were in accord in their statements regarding their belief in Mills' fitness to undertake the service and his ability to finance the proposed operation. They also expressed the belief that it could be made a profitable operation.

Mills is already operating over part of the road he proposes to serve in the instant proceeding. Under authority of the Railroad Commission he is operating an automotive service for the transportation of passengers and freight between San Diego and Tecate and intermediate points. Applicant proposes to maintain the San Diego-Tecate operation as a separate service, it being primarily a freight service with limited passenger carrying facilities.

Giving full consideration to all the evidence, we are of the opinion and hereby find as a fact that Pickwick Stages System should be permitted to abandon service between San Diego and Hi-Pass via Campo, and that Hubert C. Mills should be authorized to operate an automotive service for the transportation of passengers, baggage and express between

San Diego and Hi-Pass and intermediate points via Campo, Delzura, Barrett and Potrero.

H. G. Mills 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 in the above entitled matters, the proceedings having been consolidated for the purpose of hearing, the matters being submitted, and the Commission now being fully advised, and basing its order on the findings of fact contained in the opinion preceding this order,

IT IS HEREBY ORDERED that Pickwick Stages System be and it is hereby authorized to discontinue operation of its automotive passenger stage service between San Diego and Hi-Pass via Campo, provided that said Pickwick Stages System shall file supplements to its tariffs and time schedules cancelling rates and schedules covering service to points on the route herein authorized to be discontinued, which cancellation shall be made effective as of an even date with tariffs and time schedules to be filed by H.G.Mills covering the establishment of service between the same points.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by H. G. Mills of an automotive service for the transportation of passengers, baggage and express between

San Diego and Hi-Pass or White Star and intermediate points, including the communities of Jamul, Dalzura, Potrero, Campo and Warren's Ranch, 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 Hubert G. Mills, 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 and time schedules, such tariffs of passenger rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, the express rates to be identical with the tariffs covering service between San Diego and Hi-Pass, via Campo, now on file with the Railroad Commission in the name of Pickwick Stages System.
- 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 9th day of January 1929.

Leon C. White
W. H. C. C.
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W. H. C. C.
Commissioners.