

Decision No. 20806

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Fred A. Sutherland,  
Complainant.

vs.

DeLuxe Limousine Service, also d.b.a.  
DeLuxe Sightseeing Tours, also d.b.a.  
DeLuxe Cab Co.

**ORIGINAL**

Case No. 2581

E. P. Sample, for Complainant

John Coker, for Defendants

BY THE COMMISSION:

O P I N I O N

Fred A. Sutherland, complainant herein, alleges that defendants, DeLuxe Limousine Service, et al, are conducting sight-seeing tours from the City of San Diego to Point Loma and to the American border at Tia Juana, Mexico, without having first received a certificate of public convenience and necessity, as required by section 50½ of the Public Utilities Act, as amended, and seeks relief by an order against defendants requiring them to cease and desist such operations until and when proper certificate has been procured. Defendants herein, answering the complaint, deny any unlawful operation, and further pleaded as a defense that their operations to Tia Juana, Mexico, were not under the jurisdiction of the Commission, as the transportation was international and not to

points within the State of California.

Upon the issues thus joined, public hearings herein were conducted by Examiner Williams at San Diego, and the matter was duly submitted for decision.

The testimony in the record shows that defendants herein, DeLuxe Limousine Service, DeLuxe Sight-Seeing Service and DeLuxe Cab Co., are fictitious names for a service maintained by Harry Saville, W. Saville and G. W. McCrary, and that the greater bulk of their business is taxi-cab service and special trips by special employment within the City of San Diego and to other points. It was not disputed by defendants that they did, about May 1928, establish a sight-seeing trip to Point Loma, and that they did sell tickets therefor and did carry passengers to the old Spanish lighthouse at the western end of the United States Military Reservation at Point Loma. It was further testified that these trips had been discontinued after complaint herein had been filed, so far as entering the Military Reservation was concerned; that all trips now stop at the city limits, which is the east line of the Military Reservation. Defendants held that this cessation of service into the Reservation was not caused by any doubt of legal right, but because of bad road conditions through the Reservation. It also appears from the record that all of this transportation was conducted within the City of San Diego, except that portion west of the city limits which passed over the roads in the Reservation.

As defendants have willingly desisted from any service outside of the City of San Diego, and express no intention of expanding the same beyond the city limits, it is obvious that the Commission has no authority to make the order sought by the complainant herein as to this portion, and it is equally unnecessary to pass upon the question raised as to whether an operation through the Reservation to the lighthouse would come under the jurisdiction of the Commission.

The other operation complained of is the transportation of passengers between San Diego and Tia Juana, Mexico. According to the testimony of Harry Saville, this trip is routed by way of Coronado, Coronado Beach, Silver Strand Highway through Imperial Beach, and joins the main route to Tia Juana at Palm City. The return trip is made directly over the main highway through Chula Vista into San Diego. The tickets sold call for a round trip to Tia Juana and return, and have been sold at hotels and at the office of the defendants.

The facts in reference to this service were not disputed. There was no proof, however, that defendants in the operation of this sight-seeing trip made stops at any of the points intermediate to San Diego and the international border between California and Mexico. Saville testified that all such trips were conducted across the border into Mexico; that the vehicle was parked on the Mexican side, and that the passengers were transferred to Mexican vehicles and transported to the old town of Tia Juana; that the vehicle remained on Mexican soil until the

passengers were reassembled and the return trip started.

The complainant sought to show by the testimony of C. W. Halmes and Gordon Miller, hotel clerks, that defendants solicited the business for trips to Point Loma and Tia Juana at the hotels, and that tickets were sold calling for trips on both tours. Tickets thus sold were introduced in evidence and their authenticity admitted by the defendants.

Complainant further sought to show by the testimony of J. O. Stewart, dispatcher for Sutherland at Tia Juana, (California side) that he had witnessed many vehicles of defendants parked on the American side and the passengers walking across the border. Another witness produced by complainant, I. Hollingsworth, testified that he had seen vehicles of defendants parked on the American side, but on cross-examination testified he had also seen vehicles on the Mexican side.

Edwin F. Forbes, sergeant of the San Diego police, assigned to license detail, testified that defendants had not taken out a license for sight-seeing business, but only for "For Hire" vehicles. City Ordinance No. 7983 of the City of San Diego, section 104, does not classify the use of vehicles for sight-seeing purposes, and it appears from the record that the permits acquired by defendants were, under this ordinance, suitable for the kind of business being conducted.

The record herein does not affirmatively show that defendants herein conducted a sight-seeing trip exclusively within California territory. The testimony of defendants is that all such passengers were driven across the line and dis-

charged. The testimony of complainant is not certain, except that vehicles of defendant were parked on the American side, and that passengers did walk across the line, but this was explained by defendants to be passengers who rented a vehicle by the hour and made the journey and return trip on that basis. Defendants also testified that they had authority for their commercial vehicles to cross the international line and park, by an arrangement with the police authorities in Mexico, the consideration being that the local Mexican busses would have the transportation from the border to the old town of Tia Juana, and complainant did not show that such authority had not been granted.

While the facts presented by the record come perilously near a subterfuge, in the fact that the routing of defendants also includes intermediate points of sight-seeing interest and value, we do not believe the record sufficient for the Commission to grant the complainant the relief sought by an order for defendants to cease and desist their services to Tia Juana. Complainant herein does not cross the line with any of his commercial vehicles, and his assertion that no such vehicles may cross is not sustained by the proof.

Consideration of the record herein shows the situation to be analogous to the case of Woollet v. Compania de Transportes de la Baja California, S.A., determined by this Commission, Decision No. 18247 on Case No. 2220 (29 C.R.C. 669) wherein it was held that the Commission has no jurisdiction over commerce with foreign nations.

It is our opinion, therefore, that the complaint herein

should be dismissed. An order will be entered accordingly.

O R D E R

Fred A. Sutherland having made complaint against DeLuxe Limousine Service, DeLuxe Sightseeing Tours, DeLuxe Cab Co., William and Harry Saville and G. W. McCrary, a public hearing having been held thereon, the matter having been duly submitted, and now being ready for decision,

IT IS HEREBY ORDERED that the complaint herein be and the same hereby is dismissed for want of jurisdiction.

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 20<sup>th</sup> day of February, 1929.

Thos. S. Lott

Chas. J. Linn

Leon W. Bell

W. J. Linn

Commissioners.