



(1) Decision 6129, Application 4351 (decided 1919, not reported)

By the above application Baughman and Lycke requested a certificate between the termini of Vallejo and Sacramento and intermediate points. The proposed fare schedule submitted with the application set forth rates between certain specified intermediate points (Davis, Dixon, Vacaville, Fairfield, Cordelia.) A note to the proposed tariff provided for a minimum fare of twenty-five (25) cents and over five miles between stations full fare.

The opinion portion of the decision recites that applicants proposed to charge fares in accordance with the schedule heretofore mentioned, "serving the intermediate communities of Davis, Dixon, Vacaville, Fairfield-Suisun and Cordelia". The Commission was of the opinion "that the application should be granted", and that by the granting thereof adequate and satisfactory service would be afforded "between the termini and along the proposed route". The order portion of the decision declares that public convenience and necessity require operation "between Sacramento and Vallejo". The proposed schedule attached to the application was later filed with the Commission as Local Passenger Tariff No. 1, C.R.C. No. 1, issued June 1, 1919, effective June 6, 1919.

Strictly interpreted, the order does not authorize service to any intermediate points. The decisions of this Commission should, however, receive a reasonable interpretation, and so construed, it is apparent that the intent was to grant the application as prayed for. Applicants sought authorization to serve intermediate points. No restrictions appear in the certificate granted, and the proposed tariff which was subsequently filed, provided for such intermediate service. Considering all the circumstances, I am of the opinion that Decision No. 6129 authorized Baughman and Lycke to operate between Vallejo

and Sacramento, serving all intermediate points. Sacramento

Junction is a point intermediate between Vallejo and Sacramento.

(2) Decision 6258, Application 4351 (decided 1919, not reported).

Baughman and Lycke being unable to secure a permit to operate within the city limits of Vacaville, <sup>(1)</sup> a supplemental order was issued, "said route being amended as regards intermediate communities to be served as set forth in Decision No. 6129 \* \* \* by excluding the town of Vacaville".

There may be some basis for the contention that by authorizing the exclusion of service to a particular intermediate point, it was recognized that the original certificate limited service to the specifically named intermediate points. However, the supplemental order in reality merely authorized a re-routing of service so that operations would not be conducted within the Town of Vacaville. The operators still received and discharged passengers just outside the city limits. That the Commission did not regard this practice as a violation of the certificate will subsequently appear.

(3) Decision 6481, Application 4685 (decided 1919, not reported).

This decision granted Baughman and Lycke a certificate to operate "between the City of Napa and a point on the highway between Sacramento and Vallejo known as Sacramento Junction", with the proviso that "applicants shall transact no local business between Napa and Vallejo or intermediate points, the certificate hereby granted being intended to care only for

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(1) Such permit was originally required by Section 3 of the Auto Stage and Truck Transportation Act (Stats. 1917, Ch. 213, p. 330). In 1919 the Legislature repealed this Section of the Act (Stats. 1919, Ch. 280, p. 457, Sec. 5)

transportation of through business between Napa and Sacramento, which through business is that sought by the applicants".

The intent of this certificate was to aid in the transportation of those desiring to travel from Napa to Sacramento. The right granted not being consolidated with the existing right Vallejo to Sacramento, the two rights were separate and distinct and through stages could not be operated between Napa and Sacramento. All passengers were to be discharged at Sacramento Junction and there board the stage from Vallejo if they intended to go to Sacramento.

Baughman and Lycke then filed Local Passenger Tariff No. 2, C.R.C. No. 2, cancelling C.R.C. No. 1 (issued August 8, 1919, effective August 15, 1919), naming passenger fares between Vallejo and Sacramento. In this tariff "Vacaville (limits)" was substituted for "Vacavillo" (See Decision 6258, supra) and the additional intermediate fare point of "Creston" was named. The provision as to minimum fare, over five miles between stations full fare, continued in effect. Baughman and Lycke also filed Local Passenger Tariff No. 3, C.R.C. No. 3 (issued and made effective August 8, 1919), providing for a fare of twenty-five (25) cents between Napa and Sacramento Junction.

As of August 8, 1919, therefore, Baughman and Lycke had been granted two separate operative rights, (a) between Vallejo and Sacramento, serving intermediate points (Decision 6129); (b) between Napa and Sacramento Junction (Decision 6481).

(4) Decision 6661, Application 4771 (decided 1919, not reported).

The ex parte order in this application authorized Baughman and Lycke to operate through the Town of Vacaville (see footnote 1, supra), and did not amend the Vallejo-Sacramento right in any other manner, although the language descriptive

of the existing rights is somewhat inaccurate.

(5) Decision 6837, Application 5113 (decided 1919, not reported).

On November 17, 1919 Baughman and Lycke were authorized to transfer their operative rights to W. A. Gentry. Gentry filed Supplement No. 1 to Local Passenger Tariff No. 2, C. R. C. No. 2 of Baughman and Lycke (between Vallejo and Sacramento and intermediate points), which supplement was an adoption notice issued November 25, 1919, effective November 30, 1919. A similar adoption notice was filed covering operation between Napa and Sacramento Junction. (Supplement No. 1 to Local Passenger Tariff No. 3 C.R.C. No. 3 of Baughman and Lycke, issued November 25, 1919, effective November 30, 1919).

(6) Decision 7111, Application 5144 (decided 1920, 17 C.R.C. 778).

This decision authorized the transfer of property and operative rights to the Western Motor Transport Company. Supplement No. 1 to C.R.C. No. 2, cancelling C.R.C. Nos. 2 and 3 of Baughman and Lycke, adopted by W. A. Gentry, was issued by Western Motor Transport Company February 8, 1920, effective February 20, 1920.

In the rules and regulations under the heading "application of fares" we find the following:

"the fares named in this supplement between Sacramento, Napa, Vallejo and intermediate points apply to and from directly intermediate points not specifically named, except that for the distance of five (5) miles or less a fare of twenty-five (25) cents will be charged".

Under the schedule of local one way fares a fare of twenty-five cents appears Vallejo to Sacramento Junction.

(7) Decision 8466, Application 5758 (decided 1920, not reported).

Western Motor Transport Company was authorized by Decision 8466 to operate

"a through auto stage service as a common carrier of passengers and baggage between Oakland and Healdsburg via Napa, Sonoma, and Santa Rosa, but it shall not carry local passengers between North Vallejo and Napa and intermediate points \*\*\*\*, but it may carry passengers traveling through from one to another of said portions of said through route and between any such points and points on its Sacramento line east of Sacramento Junction".

Thus, in addition to the two operative rights acquired from W. A. Gentry, Western Motor Transport Company was granted a third operative right. Under this certificate it could operate between Oakland and Healdsburg, but was prohibited from carrying local passengers "between North Vallejo and Napa and intermediate points". The result was the creation of two paralleling rights in so far as the territory Vallejo to Sacramento Junction is concerned. Under the new right the operator could not perform a local service between these two points, but could perform such a local service under the old Baughman and Lycke right (Decision 6129).

(8) Decision 18820, Applications 5758 and 6775 (decided 1927, 30 C.R.C. 389).

On January 30, 1922 Application 5758 was reopened. The order of reopening stated that by the decision just reviewed above Western Motor Transport Company was authorized to operate a through service between Oakland and Healdsburg with certain restrictions as to intermediate points; that subsequently Western Motor Transport Company was authorized by ex parte Decision 8994 in Application 6775 to transfer that portion of the operative right granted by Decision 8466 (the decision last reviewed above) from Napa to Santa Rosa to A. Dunham, and

that portion from Santa Rosa to Healdsburg to J.F. Birch.

The order of reopening then states that the certificate granted by Decision 8466 (Oakland-Healdsburg) was issued upon a showing for through service; that subsequently Western Motor Transport Company was authorized to transfer two certain portions of this individual certificate; and that, as after the transfer Western Motor Transport Company was unable to perform the through service for which the certificate was originally granted, the proceedings should be reopened.

Decision 18, 820 was issued September 19, 1927, and finds that no authority was granted for other than a through service between Oakland and Healdsburg by Decision 8466, with the exception of the transportation of passengers locally from one to another portion of said route.

The order directs California Transit Company as successor to Western Motor Transport Company to

"discontinue the transportation of passengers locally between Vallejo (formerly North Vallejo) and Napa and the intermediate points of Flosda (or Flosden), Napa Junction, Soscol and Napa Hospital or Napa State Hospital, and between any such intermediate points",

and to cancel all tariffs and time schedules between said points.

It will be observed that Decision 18, 820 in no wise affects either of the following operative rights (a) between Vallejo and Sacramento, serving intermediate points (Decisions 6129 and 6256) (b) between Napa and Sacramento Junction (Decision 6481).

(9) Decision 10,073 Application 7340 (decided 1922, 21 C.R.C. 211).

This decision authorized the transfer of "the operative rights at present legally held by Western Motor Transport Company" to California Transit Company.

(10) Decision 18,107 (29 C.R.C. 473) and Supplemental Decision 18,249 (29 C.R.C. 673), Application 11,005 (decided 1927).

In this proceeding California Transit Company sought a consolidation of operative rights. Supplemental Decision No. 18,249 was issued for the reason that Decision 18,107 "is ambiguous in so far as it refers to the intermediate points to be served" and as to certain other matters. A new order was then substituted providing in part that public convenience and necessity required consolidation and unification along the following routes:

"(1) Between Oakland and Sacramento serving as intermediate points the communities of West Berkeley \*\*\*, South Vallejo, North Vallejo (Vallejo), Flodden, Napa Junction, Sacramento Junction, Creston, Cordelia \*\*\*\* etc."

Thus applicant was specifically given the right to serve Sacramento Junction as an intermediate point under its Oakland-Sacramento right in addition to the existing Baughman and Lycke right to serve that particular point.

"(3) Between Oakland and Napa serving as intermediate points the communities of West Berkeley\*\*\*\*\*, South Vallejo, North Vallejo (Vallejo), Flodden, Napa Junction, Sacramento Junction, Socol, and Napa Hospital, excepting service locally between North Vallejo and Napa and intermediate points."

Under the Oakland-Napa right applicant was prohibited from serving Vallejo to Sacramento Junction.

"(4) Between Napa and Sacramento serving as intermediate points the communities of Napa Hospital, Socol, Sacramento Junction, Creston," etc.

Here specific authorization was given to serve Napa and Sacramento Junction, in addition to the old Baughman and Lycke right

"Provided, however, (1) that the consolidation of the route between Oakland and Napa shall be without prejudice to the determination of pending proceedings affecting said operative right."



A rehearing was granted on July 13, 1927. Decision 19,691 (51<sup>1</sup> C.R.C. 690) affirms the supplemental decision. Rehearing was denied by Decision 19,900.

A supplemental application filed June 1, 1929, states that the supplemental decision was, in some respects indefinite as to the routes and services authorized, and requested a further order defining and setting forth certain routes. Decision 21,318 (not reported) complies with this request, but does not affect the rights now being reviewed.

(11) Decision 18,483, Case 1626 (decided 1927, 30 C.R.C. 8)

This was a complaint filed by San Francisco, Napa and Calistoga Railway against Western Motor Transport Company in 1921. It was alleged that defendant had been granted the right to operate between Oakland and Healdsburg by Decision 8466, but could not carry local passengers between Vallejo and Napa and intermediate points. It was further alleged, inaccurately, that prior to Decision 8466 defendant had been granted the right to operate between Vallejo and Sacramento and between Napa and Sacramento Junction, upon a like condition prohibiting any local business between Napa and Vallejo or any intermediate points.

Decision 18,483 states the complaint to be that the provisions of Decision 8466 had not been complied with. The decision finds as facts that no authorization had ever been given by certificates of public convenience and necessity for the transportation of passengers between Vallejo and Napa and intermediate points, and that the establishment of the station of Sacramento Junction was unauthorized. These findings are incorrect in that the Baughman and Lycke rights were apparently overlooked.

### CONCLUSIONS

As to the territory between Vallejo and Sacramento Junction, prior to consolidation, there were two paralleling operative rights owned by California Transit Company. The Baughman and Lycke right covered operations between Vallejo and Sacramento, serving intermediate points, one of which was Sacramento Junction. The Western Motor Transport Company right covered operations between Oakland and Healdsburg, prohibiting local service between Vallejo and Napa.

The question naturally suggests itself as to whether or not restrictions imposed on the one right are carried over into the right existing after consolidation. To carry over such restrictions would be to interpret the consolidation order as not only authorizing, but requiring the operator to render a lesser service than that rendered prior to consolidation, in so far as the territory between Vallejo and Sacramento Junction is concerned. Such is not the purpose of consolidation.

Decisions 16, 107 and 18, 249 both contain the proviso

"That the Consolidation of the route between Oakland and Napa shall be without prejudice to the determination of pending proceedings affecting said operative right."

The only proceeding then pending affecting operative rights between Vallejo and Sacramento Junction was the complaint of San Francisco, Napa & Colusa Railway against Western Motor Transport Company, Case 1626. The decision in that case found that the provisions of Decision 9466 (Oakland-Healdsburg certificate) had not been complied with. This matter did not relate to either of the old Baughman-Lycke rights.

It definitely appears from the decisions reviewed that California Transit Company now possesses certain operative rights between Vallejo and Napa. It may operate between Napa

and Sacramento, serving as intermediate points Napa Hospital, Socol, and Sacramento Junction. The three points named are the only points between Napa and Vallejo which respondent may lawfully serve as a part of its Napa-Sacramento right.

California Transit Company may also operate between Vallejo and Sacramento Junction, serving all points intermediate between Vallejo and Sacramento Junction. However, no through service may be rendered between Vallejo and Napa, nor may service be rendered between points intermediate between Vallejo and Sacramento Junction, and Napa.

In recommending that the Attorney for the Commission cause a dismissal of the action now pending in the Superior Court, I suggest the following form of order.

ORDER ON REHEARING

The above entitled matter having been submitted on rehearing, the Commission having carefully considered the matters involved therein, and basing its order on the conclusions and findings of fact as set forth in the preceding opinion,

IT IS HEREBY ORDERED that the Attorney for the Railroad Commission of the State of California cause a dismissal of that certain action now pending in the Superior Court of the State of California, in and for the County of Alameda, entitled "The People of the State of California, Plaintiff vs. California Transit Company, a Corporation, Defendant", and being numbered 106175, and

IT IS HEREBY FURTHER ORDERED that Decision 20,610 in Case No. 2478 be and the same is hereby set aside and

annulled and said case dismissed.

The preceding Opinion and Order on Rehearing is hereby adopted and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 27th day of September, 1929.

Thomas R. Butler

Al. S. Sweeney

Edward J. ...

Leon Whitely

W. J. ...

Commissioners.