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Decision No. 22167

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of

PAUL RICCI

for certificate of public convenience  
and necessity to operate freight and  
passenger service between Georgetown  
and Auburn, California.

ORIGINAL

Application No. 16157

Inman & West, by P. G. West, for  
Applicant.  
Gwyn H. Baker, for C. W. Ganow,  
Protestant.

BY THE COMMISSION:

O P I N I O N

Applicant herein seeks a certificate of public convenience and necessity authorizing the transportation of freight and passenger service between Georgetown and Auburn.

A public hearing herein was conducted by Examiner Williams at Auburn.

Applicant conducts a general store at Greenwood, a hamlet almost midway between termini. He possesses a truck which he uses in performing so-called contract hauls under various employments, particularly under specific contract with J. C. Ackley, general store-keeper at Georgetown. Applicant is also contractor for the transportation of the United States mail between termini and intermediate points. The distance between Auburn and Georgetown is slightly less

than 20 miles and the road is not an improved highway. The population between termini is rather meager (estimated at 1,000), and the testimony shows that there has been a gradual decline in industrial activity and the population for several years past.

The terminals and intermediates now are served by C. W. Ganow, who has been conducting the operations for years under proper authority of this Commission. According to Mr. Ganow's testimony, the freight traffic is less than half now than what it was three years ago, and the passenger traffic has dwindled to two or three passengers a week, with seldom more than two passengers in any one day. Nevertheless, Ganow has maintained scheduled service throughout for passengers and freight. He uses a 6-cylinder touring car in the present conduct of his business, but also has a truck for quantities which the touring car cannot handle. As to the regularity of his operations and its efficiency, we think the record is clear, though applicant attempted to criticize some of the acts of Ganow in handling both passengers and freight. These criticisms, however, were of unimportant character. Ganow protested the granting of the application on the ground of adequate service now maintained by him.

Ricci predicated his application on the fact that he has the mail contract; that he has conducted contract hauling for Aokley, and, incidentally, for a number of others. The character of Ricci's operations is now practically the same as that described in our Decision No. 20376, Ganow v. Ricci, Case No. 2570, decided October 24, 1928.

We believe it unnecessary to go into the details of the facts produced by various witnesses, as they do not differentiate his status from that described in the before mentioned decision except that possibly applicant's activity has

become greater and his volume larger. We are impressed by the fact, however, that the applicant, by his operations, is perilously near the status of a common carrier operating without proper authority. Witnesses and applicant testified to many matters of transportation which, in the aggregate, are evidence that the applicant has been willing to accept service from all who would employ him between the termini and over the route for which protestant, Ganow, has a certificate, but, as in the previous record, there is failure to show compensation for service thus performed. The only showing of compensation is on the part of Ackley, who declined to testify how much he paid under his "contract" with Ricci, and the further testimony of Fred C. Burks that he pays applicant \$5.00 a month to transport his child to and from school because Burks thought Ganow's stage traveled too rapidly.

There is further testimony of W. H. Harrison, freight clerk at the Southern Pacific station at Auburn, that both Ganow and Ricci called every day for freight and received various shipments destined to a dozen or more receivers east of Auburn. But, as in the previous record, the absence of proof that compensation is paid for either the persons or the property transported except in the two instances noted, results only in the conclusion that applicant is and has been dangerously near the status of a common carrier.

In the instant application, applicant seeks to convince this Commission that public necessity requires a certificate for additional service, as proposed. As the distance between termini is only 20 miles, as the carrier now authorized to perform passenger and freight service has been operating more than seven years, has several thousand dollars invested

in equipment, and has maintained the service for the past three years at a considerable loss (which the record clearly shows), it is difficult to find a reason justifying the addition of another carrier. The record shows that if Ganow's business is not prosperous, the present applicant is, to some extent, responsible, as a large portion of the so-called "contract" hauls he conducts has been gained from Ganow's patrons. The record herein does not disclose any necessity for another carrier between termini or over this route; there is not enough traffic, apparently, to support one carrier, and until such time as Ganow is unable or unwilling to handle all of the business offered him, or until his service becomes inadequate, public interest will not justify competition. We therefore conclude that an order should be entered denying the application.

#### ORDER

PAUL RICCI having made application to the Railroad Commission of the State of California for a certificate of public convenience and necessity to operate a freight and passenger service between Georgetown and Auburn and intermediates; a public hearing having been held; the matter having been duly submitted, and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity do not require the service as proposed by applicant herein; and

IT IS HEREBY ORDERED that the application of Paul Ricci  
herein be, and the same hereby is, denied.

Dated at San Francisco, California, this 27th day of  
February, 1930.

P. Kearney

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Thos. J. Lott

M. H. ...  
Commissioners.