

Decision No. 23010

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 BEVERLY GIBSON)
 to sell and transfer to Pickwick)
 Stages System the right to operate)
 an auto stage line for the trans-)
 portation of passengers, baggage)
 and packages as a common carrier)
 for compensation between Sacramento)
 and Winters, California, and inter-)
 mediate points, together with cer-)
 tain property used in connection)
 with the operation and maintenance)
 of said auto stage line.)

Application No. 16564

Sandborn, Roehl, Brookman and Smith, by
 Arthur B. Roehl, for applicant
 Beverly Gibson.

Earl A. Bagby, for Pickwick Stages System
 and the Pacific Greyhound Lines, Inc.,
 protestants.

BY THE COMMISSION:

OPINION

Beverly Gibson asks permission to sell his auto stage line between Sacramento and Winters, including four stages, to the Pickwick Stages System for the sum of \$40,000.00, and further asks that the transfer of the properties of Pickwick Stages System to Pacific Greyhound Lines, Inc., requested in Application No. 16490, be expressly conditioned upon the inclusion of the purchase price in the liabilities of Pickwick Stages System assumed by Pacific Greyhound Lines, Inc., and further, upon condition that Pacific Greyhound Lines, Inc. assume the obligation of the contract between applicant and Pickwick Stages System, to which reference will hereafter be made.

Applicant filed a petition of intervention in Application No. 16490, which was denied by the Commission in Decision No. 22469, dated May 23, 1930. The petition for intervention was denied for the reason, among others, that Mr. Bagby, counsel for applicants in Application No. 16490, stated that it was the intention of the Pacific Greyhound Lines, Inc. to assume all liabilities of the selling companies, whether existing or contingent, and all liabilities and obligations of the selling companies that may develop in the future. He stipulated that any claim that Beverly Gibson may have against the Pickwick Stages System will not be affected in any manner by any decision that may be rendered in Application No. 16490 and that such decision will not be used in derogation of any rights that said Beverly Gibson may have against the Pickwick Stages System.

It is of record that Beverly Gibson and the Pickwick Stages System under date of August 29, 1927 entered into the following agreement:

"It has been agreed between Pickwick Stages System and Beverly Gibson, owner of River Augo Stages, that the Pickwick Stages System will buy and Beverly Gibson will sell the Auto Stage line between Sacramento and Winters, Calif., together with one model Z Pierce Arrow Stage, one 26-passenger Fageol stage, one 18-passenger White stage, one 14-passenger White stage, for the sum of Forty Thousand Dollars, payable as follows:

Fifteen Thousand Dollars upon taking over the operation of the line which shall not be later than fifteen days following the authorization of the transfer by the Railroad Commission of Calif.

Balance at the rate of One Thousand Dollars per month with 6% interest annually on the unpaid balances from date of transfer.

Application for such transfer to be made to the Railroad Commission at such time as said Beverly Gibson shall secure from Railroad Commission the authority to establish a tariff point on said Sacramento Winters line at the point known as Davis Junction.

Pickwick Stages System and River Auto Stages to establish complete system of joint rates between all points on the lines of each other, sell joint tickets, and allow to each other a commission of ten percent.

(Signed) Pickwick Stages System
By Chas. F. Wren

(Signed) Beverly Gibson
Owner of River Auto Stages

Interest unpaid balance to
be paid monthly. Chas. F. Wren."

Neither the Pickwick Stages System nor its successor, Pacific Greyhound Lines, Inc., joins in this application. They entered an appearance protesting the granting of the application and took the position that Beverly Gibson had not secured from the Railroad Commission authority to establish a tariff point on the Sacramento Winters line at the point known as Davis Junction and that therefore the application is premature and cannot be entertained by the Commission. Counsel for applicant, on the other hand, maintains that applicant has always had the right to serve intermediate points including Davis Junction.

The operative rights which are the subject matter of this application were recognized or established and transferred from time to time by the following decisions of the Railroad Commission:

Decision No. 7179, dated February 27, 1920,
in Application No. 4632;
Decision No. 14739, dated April 4, 1925, in
Application No. 10960;
Decision No. 17342, dated September 17, 1926,
in Application No. 13134.

In order to properly dispose of this application, it is not necessary to define the rights now possessed by applicant in his operation of said Sacramento-Winters line, nor is it necessary or proper to determine the legal rights of the parties under the contract.

While the Supreme Court of California in *Henlon vs. Eshleman et al*, 169 Cal. 200 says that application for authority to

sell and transfer public utility properties "should be made by the owner of the public utility property because the authority must run to the owner", the court also says in the same decision that-

"The Commission's power is to be exercised for the protection of the rights of the public interested in the service, and to that end alone****All that the Commission is concerned with, therefore is whether a proposed transfer will be injurious to the rights of the public. If not, the owner may be authorized to make the transfer. With the rights of an intending purchaser, the Commission has nothing to do. Nor has it power to determine whether a valid contract of sale exists, or whether either party has a legal claim against the other under such contract. These are questions for the courts, and not for the Railroad Commission, which is merely authorized to prevent an owner of a public utility from disposing of it where such disposition would not safeguard the interests of the public."

In order to safeguard the rights of the public, the authority herein granted for the transfer of the operative right and properties in question should be conditioned in several respects. These conditions are set forth in the following order.

ORDER

The Commission having considered the record in this proceeding and being of the opinion that this application should be granted, subject to the provisions of this order and not otherwise,

IT IS HEREBY ORDERED that Beverly Gibson be, and he is hereby, authorized to sell and transfer after the effective date hereof and on or before March 1, 1931, to Pacific Greyhound Lines, Inc. the operative rights which he acquired under the authority granted by Decision No. 17342, dated September 17, 1926, in Application No. 13134, and the stage equipment referred to in the foregoing opinion.

IT IS HEREBY FURTHER ORDERED that the authority herein granted to Beverly Gibson to sell and transfer the aforesaid properties will become effective when Pacific Greyhound Lines, Inc.

has filed with the Commission a stipulation duly authorized by its Board of Directors agreeing to take title to and operate the aforesaid properties and agreeing to comply with the following terms and conditions:

(1) Beverly Gibson and Pacific Greyhound Lines, Inc. shall join in common supplement to the tariffs on file with the Commission, Beverly Gibson on the one hand withdrawing and establishing such tariffs and all effective supplements thereto insofar as such tariffs are in conformity with the Commission's decision.

(2) Beverly Gibson shall withdraw time schedules filed in his name with the Railroad Commission and Pacific Greyhound Lines, Inc. shall file, in duplicate, in its own name time schedules covering service heretofore authorized to be given by Beverly Gibson, which time schedules shall be identical with those now on file in the name of Beverly Gibson, or time schedules satisfactory to the Commission.

(3) The rights and privileges herein authorized to be transferred may not hereafter be sold, leased, transferred nor assigned, nor service thereunder discontinued, by Pacific Greyhound Lines, Inc., unless written consent of the Railroad Commission has first been secured.

(4) No vehicle may be operated by Pacific Greyhound Lines, Inc. under the authority herein granted unless such vehicle is owned by Pacific Greyhound Lines, Inc., or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

(5) Pacific Greyhound Lines, Inc. will charge to plant and equipment accounts only such amount of the price which it may

psy for the aforesaid properties as may hereafter be determined by the Commission, such determination to be made in accordance with the Uniform System of Accounts prescribed by the Commission for Class "A" automotive transportation companies.

DATED at San Francisco, California, this 27th day of October, 1930.

Al Sweeney
Edmund B. Smith
Leon A. Whelan
Thos. J. Lewis

Commissioners.