

Decision No. 23434.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of E. G. SEARS, an individual doing business under the name and style of "JENNER-SAN FRANCISCO TRANSPORTATION COMPANY", for a certificate of public convenience and necessity to operate a motor boat service as a common carrier of passengers and freight between Jenner, Sonoma County, California, and the City and County of San Francisco, State of California.

ORIGINAL

Application No. 17196.

BY THE COMMISSION:

O P I N I O N

This is an application under Section 50(d) of the Public Utilities Act filed by E. G. Sears, doing business under the firm name and style of Jenner-San Francisco Transportation Company, for a certificate of public convenience and necessity to operate vessels for the transportation of freight and passengers between San Francisco and Jenner, Sonoma County.

The transportation of freight and passengers by vessel between San Francisco and Jenner necessitates operation on the Pacific Ocean, thereby traversing the high seas. Section 2 (1) of the Public Utilities Act in its definition of a common carrier includes certain water transportation companies as follows:

"The term 'common carrier' when used in this act, includes * * * every corporation or person * * * operating or managing any vessel engaged in the transportation of persons or property for compensation between points upon the inland waters of this state, or regularly engaged in the transportation of persons or property for compensation upon the high seas on regular routes between points in this state."

In Section 2(1) it is also provided that inland waters, as used in that section, "includes all navigable waters within the State of California other than the high seas."

The material part of Section 50(d) effective August 16, 1923, reads as follows:

"No corporation or person * * * shall hereafter begin to operate or cause to be operated any vessel for the transportation of persons or property, for compensation, between points exclusively on the inland waters of this state, without first having obtained from the railroad commission a certificate. * * *"

Sub-section (d) of Section 50 requiring the certification of those carriers operating "between points exclusively on the inland waters of this state", was enacted subsequent to that portion of Section 2 quoted above.

In Applications Nos. 14772 and 14814, our Decision No. 20500 dated November 16, 1928 (32 C.R.C. 433), De Luxe Water Taxi Association and H - 10 Water Taxi Company, for certificates of public convenience and necessity to operate vessels for transportation of passengers for compensation between San Pedro and Long Beach, a situation similar to the one herein, said at page 435:

"The question presented then, is whether the legislature intended in enacting subsection (d) of Section 50 of the Public Utilities Act to require the certification of those water carriers which operate between points in this state when traversing the open ocean within a line drawn three miles or at any other certain distance from shore, and not to require the certification of those which go beyond that certain limit. We believe that the legislature did not intend to make such a distinction, and that it must have had in mind an entirely different class of carriers when in Section 50 it referred to those operating 'between points exclusively on the inland waters of this state'.

"If the term 'inland waters' was intended to include those waters only which have been recognized by the admiralty courts as such, which are the canals, lakes, streams, rivers, water courses, inlets, bays and arms of the sea between projections of land or other aids to navigation, there would have been a reasonable ground for requiring that vessels operating exclusively in such waters obtain a certificate while not imposing the same burden upon those engaged in coastwise trade. The courts have never

recognized a line three miles from shore as distinguishing 'high seas' from 'inland waters'. The high sea has been generally defined as that portion of the sea which washes the open coast. Inland waters, on the other hand, are those within the body of the country. (1 Corpus Juris, 1255, Sec. 32, Kaiser Wilhelm Der Grosse, 175 Fed. 215.)"

After consideration of all the facts of record we must conclude that the transportation service proposed by the applicant, not being between points exclusively on the inland waters of this state, does not require a certificate of public convenience and necessity from this Commission under the provisions of Section 50(d) of the Public Utilities Act. The application will therefore be dismissed.

O R D E R

E. G. Sears, doing business under the name and style of Jenner-San Francisco Transportation Company", having made application to the Railroad Commission for a certificate of public convenience and necessity to operate vessels between San Francisco and Jenner, Sonoma County, California, and full investigation of the matters involved having been had, and basing this order on the conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that the above entitled application be and the same is hereby dismissed for lack of jurisdiction.

Dated at San Francisco, California, this 24th day of February, 1931.

C. J. [Signature]
Leon [Signature]
[Signature]
M. B. [Signature]
Jos. G. [Signature]
Commissioners.