

ORIGINAL

Decision No. 34820.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of
 A. J. MASON and CARRIE E. SPOON, ad-
 ministratrix of the Estate of W. E.
 Spoon to sell, and of JOSEPH MILLER
 to buy operating rights and property
 of BAY RAPID TRANSIT COMPANY operat-
 ing between Monterey and Pacific Grove,
 and between Monterey and Highlands
 Inn, via Carmel-by-the Sea, and for
 certain amendments and consolidations
 of such certificates.

Application No. 17738.

Earl A. Bagby for Applicant.
 John Thompson, for the Estate of W. E. Spoon,
 Applicant.
 Argyll Campbell, City Attorney, and
 William Fiddas, for the City of Pacific Grove.

BY THE COMMISSION:

O P I N I O N

A. J. Mason and Carrie E. Spoon, administratrix of the estate of W. E. Spoon, have made application to the Railroad Commission for authority to sell and transfer the operating rights and property of Bay Rapid Transit Company, operating between Monterey and Pacific Grove and Carmel and Highlands Inn via Carmel-by-the-Sea to Joseph Miller, who joins in the application seeking authority to purchase; applicant also seeks certain amendments to the rights and rates, the consolidation of all rights and the issuance of an in lieu certificate.

A public hearing was conducted by Examiner Johnson at Pacific Grove November 24, 1931 at which time the matter was submitted as of December 4th for the purpose of giving protestant City of Pacific Grove further time in which to decide whether

or not to oppose the transfer and also an opportunity for the adjoining cities of Monterey and Carmel to be heard if they so desired.

Mason and Spoon as a partnership conducted operations under certificate of this Commission for the transportation of passengers and baggage between Monterey and Pacific Grove, for passengers and freight between Monterey and Carmel and for passengers and baggage between Monterey and Highlands Inn. One-half partnership interest was held by W. E. Spoon until his death in December, 1930. Since that time the operations have been conducted by Mason and by Carrie E. Spoon as Administratrix of the Estate of W. E. Spoon. According to the testimony of John Thompson, attorney for the estate, the Superior Court in and for the County of Monterey has authorized the execution of the contract with applicant Miller and will approve the sale when completed upon the terms of the contract attached to the application as Exhibit "B". Applicant Miller on the witness stand said that he is to pay \$60,000. for all the properties and rights of the partnership to be delivered to him free of all encumbrances and that he is to pay within five days after the approval by this Commission the sum of \$50,000. in cash and a note of \$10,000. payable one year from date. He also testified that he expects to retire some of the equipment now in use, which he deems obsolete, and purchase new equipment and to give the operation his personal management. Miller has operated several services under the authority of this Commission since May 1, 1917, some of which were established as early as 1913. His financial resources and capability were not questioned, but praised by both applicants and protestants.

Purchaser proposes to adopt the routings, time schedules and tariffs as now established with some changes. At present the partnership operates one line - Route No.3, Exhibit "C", attached

to the application - whose termini are wholly within the City of Monterey. For some time, under informal authority of this Commission, transfers to and from this line have been issued and applicant desires to continue this arrangement, and asks that the in lieu certificate sought include this service as a part of the interurban rights. During its entire operation this city line has been treated by applicant as a part of the certificated service by reports of revenue, payment of state tax, etc. It is well settled that where the operations of a stage or truck system are partly within and partly without the limits of a municipality, the entire operations are subject to the jurisdiction of the Commission. This is true under Statutes 1917, Chapter 213, as amended, and under Sections 2½ and 50½ of the Public Utilities Act. (Pacific States Express, 21 C.R.C. 250; California Transit Co. 22 C.R.C. 960; Hodge Transportation System v. Ashton Truck Co., 24 C.R.C. 116; Pacific Electric Ry. Co., 28 C.R.C. 612).

Applicant also seeks to establish rates and regulations for express service over all its lines, and freight service between Monterey and Carmel. No grant of such rights has previously been made except as to freight between Monterey and Carmel to C. O. Gould by Decision No. 7382 on Application No. 4526, on April 8, 1920, his right having been acquired by applicant partnership in 1927 (Decision No. 18244). It appears, however, that this "freight" right has not been exercised except by carrying property as "express" on stages between Monterey and Carmel at the "freight" rate filed in 1920, or occasional spasmodic trips by a truck now obsolete. No separate schedule was filed. A. J. Mason testified that at least 95 per cent of the "freight" was carried on the stages, any other vehicle being seldom used. The annual reports of this carrier to this Commission state "all freight carried on passenger stages". The partnership possesses only one truck,

a 1921 model valued at only \$100. and admitted by Mason not to have been used to any extent. These facts, we believe, do not justify the granting of both express and freight rights by an in lieu certificate, but do show that public convenience and necessity require the transportation of property as express to the limit of 100 pounds per package as is usual with interurban express carriers. The order will so provide.

Rates offered by applicant for express are 1 cent per pound with a minimum of 25 cents, all shipments to be delivered to or from offices or stages of the carrier. Originally the "freight" rate, under which property has been moved on stages, was 25 cents per 100 pounds up to 500 pounds. The testimony of Mr. Mason was that this was the rate per package as very few shipments exceeded 100 pounds and the average shipment did not exceed 25 pounds. While the proposed rate appears high in comparison it is not inconsistent with similar rates of other carriers of express. Attorney Bagby, for the applicant, stated that arrangements with Pacific Greyhound Lines, whose rates are the same, are to be made for through service.

The rates for passenger service, although unchanged in other respects, provide for the transportation of baggage. The rules provide for the free transportation of hand baggage carried by the passenger. Excess baggage will be transported at a rate of 50 cents per 100 pounds, minimum 25 cents. Transfers are issued on all fares except on token commutation.

The rights herein proposed to be transferred were created by Decision No. 10045 on Application No. 5776, dated February 2, 1922, wherein Mason, Linebaugh and White were granted a certificate for the transportation of passengers between Monterey and

Pacific Grove. By Decisions Nos.10091 and 10562 proprietary interest was acquired by Mason solely. By Decision No.17332 on Application No.13090, dated September 10, 1926, Mason was authorized to sell a half interest to W. E. Spoon. By Decision No.18244 on Application No.13693, dated April 15, 1927, the partnership acquired the operating rights of C. O. Coold granted by Decision No.7382 on Application No.4526, April 10, 1920, to operate a "passenger and freight automobile service between Monterey and Carmel-by-the-Sea." Consolidation of this right with the one between Monterey and Pacific Grove was forbidden.

After careful review of the testimony we are of the opinion that the application should be granted, as prayed for, with the exception of freight transportation which appears to have been abandoned by applicants or operated as an express business on their stages only. While the right to transport freight was granted in 1922 no separate time schedule was ever filed with the Commission except by reference to passenger schedules. During the time intervening, and previously, F. A. Wermuth had established and still operates a freight service (Decision 7382 on Application 4689, dated March 8, 1920) between Carmel and Monterey, and there is nothing in the record to show that this service has not been adequate and efficient. An order accordingly will be entered.

Joseph Miller is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which

is not in any respect limited to the number of rights which may be given.

O R D E R

A. J. Mason and Carrie E. Spoon, Administratrix of the Estate of W. E. Spoon, having made application to sell certain automotive operating rights and properties to Joseph Miller, who also makes application to purchase said rights and properties, to consolidate same, to amend and adjust rules, rates and schedules thereof, to establish freight, express and baggage service, and for an in lieu certificate of public convenience and necessity therefor, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

IT IS HEREBY ORDERED that A. J. Mason and Carrie E. Spoon, Administratrix of the Estate of W. E. Spoon, operating under the fictitious name of Bay Rapid Transit Company, be, and they are hereby, authorized to sell and transfer to Joseph Miller all operating rights as set forth in Exhibit "A" attached to the application, and Joseph Miller be, and he is hereby authorized, to purchase and acquire said operative rights and properties according to the terms of an agreement marked Exhibit "B" attached to the application, and

Joseph Miller having made further application to surrender and cancel such operative rights and for a new certificate in lieu thereof,

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity, in lieu of all existing rights

acquired herein, be granted said Joseph Miller for the following operation:

For the operation as a unified consolidated system of automotive transportation service as a common carrier of passengers, express and baggage between Monterey, Pacific Grove, Carmel and Highlands Inn and intermediate points, and in the City of Monterey, provided that express be limited to packages weighing 100 pounds or less, over and along the following routes:

ROUTE 1. MONTEREY-PACIFIC GROVE, via main highway. Commencing at the intersection of Alvarado St. and Pearl St. in Monterey, thence on Alvarado St. to Decatur St. to Pacific St. to Lighthouse Road through the Presidio to Lighthouse Avenue; thence on Lighthouse Avenue to David Avenue to Lower Lighthouse Avenue in Pacific Grove; thence on Lower Lighthouse Avenue to intersection of Lower Lighthouse Avenue and Pacific Avenue which is the Pacific Grove Terminus. Return the same route except when on Lower Lighthouse Avenue, turn onto Eardley Avenue, thence on Eardley Avenue to Lighthouse, thence follow going route.

ROUTE 2. MONTEREY-PACIFIC GROVE, via the Hill route. Commencing at the intersection of Alvarado Street and Franklin Street in Monterey, thence on Franklin Street to High Street through Presidio to Pine Street to Eardley Avenue to Junipero Avenue to Willow Street; thence on Willow Street to Junction of Lighthouse Avenue and Pacific Avenue which is the Pacific Grove terminus. Return the same route except at Monterey Terminus continue on Franklin Street to Tyler Street to Del Monte Avenue to Washington Street to Franklin Street to starting point.

ROUTE 3. MONTEREY CITY LIMITS, via Del Monte Avenue. Commencing at the intersection of Alvarado Street and Franklin Street in Monterey, thence on Franklin Street to Tyler Street to Del Monte Avenue to Ocean Avenue to Eighth Street to County Road; thence on County Road to Seventh Street which is the terminus; thence on Seventh Street to Ocean Avenue to Del Monte Avenue to Alvarado Street to point of starting.

ROUTE 4. MONTEREY-CARMEL. Commencing at Stage Depot at intersection of Del Monte Street and Tyler Street in Monterey, thence on Tyler Street to Munras Street to Coast Highway to Carpenter Street in Carmel; thence on Carpenter Street to Ocean Avenue to Company's Station on Ocean Avenue between Mission Street and San Carlos Street. Return the same route.

ROUTE 5. CARMEL-HIGHLANDS INN. Commencing at Carmel Station on Ocean Avenue, thence on Ocean Avenue to San Carlos Street to Mission Road to State Highway to Highlands Inn. Return same route.

subject to the following conditions:

1. The consideration to be paid for the operating rights and property herein authorized to be transferred shall never be urged before this Commission or any other rate fixing body as a measure of value of said property for rate fixing, or any purpose other than the transfer herein authorized.
2. Applicants A. J. Mason and Carrie E. Spoon, administratrix of the Estate of W. E. Spoon shall immediately file separate supplements to their tariffs and time schedules now on file with this Commission covering all service given under rights herein authorized to be transferred, withdrawing and canceling same.
3. Applicant Joseph Miller shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
4. Applicant Joseph Miller shall file in duplicate and make effective within a period of not to exceed thirty (30) days from the date hereof a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application insofar as they conform to the certificate herein granted.
5. Applicant Joseph Miller shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from the date hereof time schedules, covering the service herein authorized, in a form satisfactory to the Railroad Commission.
6. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
7. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that all operative rights heretofore granted by Decision No. 10045 on Application No. 5776, Decision No. 10091 on Application No. 5776, Decision No. 10562 on Application No. 7920, Decision No. 13365 on Application No. 10029, Decision No. 17332 on Application 13090 and Decision No. 18244 on Application No. 13693 be, and each of them is hereby revoked and annulled.

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 21st day of December, 1931.

Clarence
Leon
M. A. G.
M. B. H.
Fred G. Stewart.
Commissioners.