

Decision No. 24504

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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ORIGINAL

In the Matter of the Application of INTERSTATE TRANSIT LINES, a corporation, for a Motor Carrier's Transportation Agent's License.)
Application No. 17796)

In the Matter of the Application of E. W. THOMPSON for a Motor Carrier's Transportation Agent's License.)
Application No. 17797)

In the Matter of the Application of GEORGE G. HAMILTON, for a Motor Carrier's Transportation Agent's License.)
Application No. 17798)

- E. E. Bennett, for all applicants
- H. C. Lucas, for Pacific Greyhound Lines, interested party.
- Libby & Sherwin, by Wm. A. Sherwin, for Pickwick Greyhound Lines, interested party.
- A. S. Grocoz, for Board of Public Utilities and Transportation of the City of Los Angeles, interested party.

WHITSELL, Commissioner:

O P I N I O N

The above applications were heard together and will be disposed of in one decision. Interstate Transit Lines (Application 17796), a Nebraska corporation, is engaged in the business of motor bus transportation between points in California and Chicago, St. Louis, Portland and Salt Lake. It is not an

intrastate operator in California. A license is requested to act as a "motor carrier transportation agent" under the provisions of Statutes 1931, chapter 638, page 1362.

The principal place of business and main depot of Interstate Transit Lines is at 451 South Main Street, Los Angeles, at which point tickets over its own lines and those of Pacific Greyhound Lines will be sold. This office is in charge of salaried employees of applicant. Interstate Transit Lines appears to be a fit and proper applicant to receive a license and I recommend that this application be granted as to its main office at 451 South Main Street, Los Angeles.

In its application Interstate Transit Lines states that it also maintains certain branch offices at various points, some of which branch offices handle tickets for applicant exclusively, and others sell tickets for applicant and for other bus companies. The application (as amended at the hearing) lists thirty nine (39) offices where tickets of Interstate Transit Lines only are handled. At twenty seven (27) additional offices tickets are sold for applicant and for other bus companies. The application sets forth, in each instance, the name of the person "in charge" of such office, the address, and city where located. Interstate Transit Lines ask that a license be issued for each of the locations listed as a branch office.

The sixty six (66) "branch offices" are maintained by the individuals listed and not by the applicant. Most, if not all, of these individuals are engaged in some other business, and incidentally sell transportation on a commission basis. These agencies are located in hotels, coffee shops, cafes, drug stores, confectionery stores, banks, etc.

Applicant Interstate Transit Lines, as well as counsel for Pacific Greyhound Lines, take the position that offices of the character described are to be considered as branch offices of applicant for the purpose of selling transportation. It is urged that as the transportation company selects its agents, it is responsible and liable, whether agents are paid a flat salary or are on a commission basis; that the transportation company should be the one licensed to maintain such branch offices; and that but one bond should be filed. Counsel contend that if the company is responsible the contract of transportation will be fulfilled, and that there is no ground for a legal distinction as to whether the agent, acting for or on behalf of a corporation, receives his compensation by way of a fixed salary or by commissions upon the amount of business he is able to secure.

One instance is cited of a commission agent who sold \$10.80 of tickets in eighteen months, and Pacific Greyhound Lines points out that it has approximately nine hundred (900) commission agents within the state.

Two decisions in connection with chapter 638 have been issued by the Commission. In re Independent Stage Co., 36 C.R.C. 660 (Dec. 24098, App. 17621) it was held that application for a license should be granted

"save as to the proposed branch office at Sacramento. As to that office the testimony of witness Yahne indicated that the company's agent in that city is River Auto Stages, a certificated carrier, maintaining a depot for the sale of its own transportation, and selling transportation on a commission basis for applicant herein. The applicant will not therefore be maintaining or conducting a branch office at Sacramento. River Auto Stages, if such an arrangement is to be continued, should obtain a transportation agent's license."

In re Pacific Electric Railway Company, 37 C.R.C. _____,
(Dec. 24371, Apps. 17718, 17719), the Commission stated:

"Both of the applicants have declared their willingness to file such bond, contending, however, that they should not be required to file a bond for each of their employees, pointing out that all of their agents at the branch offices named are under salary, and do not receive any compensation other than said salary for the sale of the transportation for which a license is sought and that, therefore, a single bond filed by each of the corporate applicants, who, admittedly, sell for compensation, should suffice. With this view we are in accord, as it is apparent that an employee of a licensed agent, under such circumstances, is not" a motor carrier transportation agent "within the meaning of Section 1 of Chapter 638."

Section 1 of chapter 638 provides in part that a "motor carrier transportation agent within the meaning of this act is a person, firm or corporation who, for compensation, sells or offers for sale, or negotiates for, and/or holds himself out as one who sells, furnishes or provides as principal or agent, transportation for persons over the public highways of this state," etc.

The proper construction of the term "principal or agent" is apt to be confused because of the use by the legislature of the term "agent" in describing the seller of transportation who must obtain a license. I am of the opinion that before one operating a service of the nature set forth in section 1 may sell transportation over his own line it is necessary for him to obtain a license. Moreover, one who is not engaged in the actual operation of such a service but who wishes to sell transportation thereover must also obtain a license. In the former situation it may be said that the actual seller or vendor of transportation is acting as "principal"; in the latter situation as "agent". In both instances a license must be obtained in order to engage in such activity. The act does not purport to regulate the actual carriage of passengers but does set forth certain requirements for those engaged in the sale of transportation.

The phrase "for compensation" contained in the first sentence of section 1 relates to the selling, furnishing, or providing of transportation "for compensation", for the legislature has specifically provided that "This act shall not apply to movements of person when no compensation is paid by or on behalf of the person or persons so transported * * *." The word "compensation" does not relate to the compensation retained or received by the seller of tickets for his services.

In the present application the corporation conducting the transportation service desires to sell its own tickets and those of Pacific Greyhound Lines. In addition there are thirty-nine (39) persons who are engaged in the business of selling tickets exclusively for Interstate Transit Lines and twenty-seven (27) engaged in the sale of tickets of applicant and of other transportation companies.

Section 6 provides that

"No license shall give authority to do any act for which the license is issued to any person, firm or corporation other than the licensee mentioned in the license * * *".

As to corporations, section 6 provides further that

"when a license is issued to a firm or corporation, the officers thereof, except the president of the corporation, shall each be required to obtain a separate license before personally doing or committing any act as a motor carrier transportation agent."

The legislature has thus provided that a license issued to a corporation does not authorize any of its officers, except the president, to personally act as a transportation agent, and the officers must apply for and obtain licenses separate from that of the corporation. Under section 5 a license may not be issued "unless the applicant shall first provide a good and sufficient bond, policy of insurance or indemnity * * * which * * *

shall assure faithful performance of any contract or agreement of transportation negotiated by or entered into by the licensee."

Section 7 provides in part that

"Where the applicant for a motor carrier transportation agent's license maintains more than one place of business within the state he shall be required to apply for and procure a license for each branch office maintained by him, such additional license to be issued without additional charge."

Several cases are cited in support of applicant's position that the offices referred to are to be considered as branch offices of the corporation. Town of Dothan v. Hornsby (1907) 150 Ala. 498, 43 So. 714, involved a prosecution for insurance solicitation without a license in violation of an ordinance providing in part that "every person, firm, or corporation, who solicits, negotiates, sells, writes or receives an application, for himself or itself, or as the agent for any person, firm or corporation, life, fire or accident, insurance in the town of Dothan, before engaging in said business in said town, shall take out and pay for a license annually * * * ." Defendant was agent for three foreign insurance corporations, each of which had taken out a license, and received a commission upon premiums as his compensation. In affirming a judgment of acquittal the court stated that defendant did not solicit insurance in the town for himself, and did it alone as the agent of the three companies which he represented, and further, that he did not receive applications for insurance for himself or as agent, but solicited and received applications to the companies, which received and passed upon them. The court pointed out that

corporations can do business only by and through agents, and stated that

"It is a conclusion fairly drawn from the ordinance quoted that it was not the purpose of the town authorities to require a license from these companies, and also to require a license from the agent by and through whom their business was done."

So to do the court held would be a discrimination against a corporation, as a private individual could do business and pay but one license fee, while a corporation would have to obtain two licenses for doing identically the same thing.

In Long v. State (1855) 27 Ala. 32, it was held that where a license to retail liquor has been granted to an individual he may exercise the privilege it confers by his clerk or agent, their acts being in law his own. In that case a licensed individual had subsequently entered into a partnership and the license did not show authority to retail in the new partner or in the partnership, and a partner not being a clerk or agent, a conviction of the partner for selling without a license was sustained.

A Texas occupation tax law requiring licenses for the peddling of cooking ranges was involved in In Re Butin (1889) 13 S.W. 10. There a corporation had paid the required tax and obtained a license, and it was held that the superintendent and drivers of wagons employed and paid wages by the corporation need not obtain separate licenses.

Furthermore, in Hughes v. Los Angeles (1914) 168 Cal. 764, the California Supreme Court stated

"* * *if this privilege tax were imposed upon the insurance companies themselves it would be invalid. The distinction sought to be drawn in this case is that this particular license fee is not imposed upon the companies but upon the agents of the companies. This is true, but upon the other hand it is equally true that every insurance corporation must act through agents, and can act only through agents, and that, therefore, in a direct and immediate sense a tax upon such agents for the right to do business is a tax upon the corporation's right to do business."

I am of the opinion that, under section 7 of chapter 638, an agent receiving a commission upon tickets sold and maintaining a branch office for a corporation licensed to act as agent, need not obtain a separate license nor file a separate bond. However, as to such branch offices as may engage in the sale of tickets over lines other than those of Interstate Transit Lines it should be noted by applicant that any license that may be issued pursuant to this decision does not authorize the handling of any tickets at such branch offices other than those of Interstate Transit Lines and Pacific Greyhound Lines.

In Application 17797 an individual acting as ticket agent on commission for several companies asks that a license be issued to him, and Application 17798 is a similar application by an individual selling tickets of Interstate Transit Lines only. In view of the conclusions reached above, it will not be necessary to pass upon these applications. Should applicant in Application 17797 desire a separate license authorizing him as an individual to sell tickets for various lines which have not obtained licenses themselves, further consideration will be given to this application upon request of applicant.

ORDER

Good cause appearing, IT IS HEREBY ORDERED that, upon compliance with the several conditions hereinafter set forth, the Secretary of the Railroad Commission of the State of California issue to Interstate Transit Lines, a corporation, a license to engage in the business of "motor carrier transportation agent", as such is defined by Statutes 1931, chapter 638,

page 1362, at

451 South Main Street,
Los Angeles, California,

and to maintain branch offices at each of the following locations:

Branch No.	Address	City	County
1	Valley and Garfield Avenues	Alhambra	Los Angeles
2	5653 Whittier Boulevard	Belvedere Gar- dens	Los Angeles
3	4836 Whittier Boulevard	Belvedere Gar- dens	Los Angeles
4	Baker, California		San Bernardino
5	Melrose Hotel	Barstow	San Bernardino
6	164 N. Angeleno Avenue	Burbank	Los Angeles
7	Colton Coffee Shop	Colton	San Bernardino
8	Daggett, California		San Bernardino
9	Ewing & Cramer Drug Co. 302 Main Street	El Monte	Los Angeles
10	5071 Eagle Rock Boulevard	Eagle Rock	Los Angeles
11	California Hotel	Fullerton	Orange
12	1041 McCadden Place	Hollywood	Los Angeles
13	100 E. Central Avenue	La Habra	Orange
14	Green Lantern Cafe	Lenwood	San Bernardino
15	198 S. Coast Boulevard	Laguna Beach	Orange
16	407 S. Myrtle	Monrovia	Los Angeles
17	Mt. Pass, California		
18	Ontario Drug Co.	Ontario	San Bernardino
19	223 N. Hill Street	Oceanside	San Diego
20	372 E. Colo. St.	Pasadena	Los Angeles
21	201 E. 2nd Street	Pomona	Los Angeles
22	Main and Glendora	Puente	Los Angeles
23	3807 W. 7th Street	Riverside	Riverside
24	N. E. Corner 4th & E. Streets	San Bernardino	San Bernardino
25	Summit Cajon Pass	Cajon Pass	San Bernardino
26	6th & Main - 2nd & Broadway	Santa Ana	Orange
27	53 Fifth Street	San Francisco	San Francisco
28	Ft. McDowell, California	San Francisco	San Francisco
29	Greenwich and Lyon Street	San Francisco	San Francisco
30	804 So. Grand Avenue	Los Angeles	Los Angeles
31	Roslyn Hotel	Los Angeles	Los Angeles
32	Wm. Penn Hotel	San Francisco	San Francisco
33	Vallejo, California		Solano
34	27 N. Baldwin	Sierra Madra	Los Angeles
35	Torrance Confectionery	Torrance	Los Angeles
36	South Hotel	Victorville	San Bernardino
37	123 E. Phila Street	Whittier	Los Angeles

Branch No.	Address	City	County
38	Yuco Grove		
39	Yermo		San Bernardino
40	Wheaton Springs		San Bernardino
41	205 Santa Monica Boulevard	Santa Monica	Los Angeles
42	213 E. Queen Street	Inglewood	Los Angeles
43	1601 E. Valley Boulevard	Rosemead	Los Angeles
44	Com. Nat'l Bank	Santa Ana	Orange
45	101 Broadway	Santa Monica	Los Angeles
46	310 W. 7th Street	San Pedro	Los Angeles
47	214 Broadway	San Diego	San Diego
48	Sec. Trust & Savings Bank	San Diego	San Diego
49	609 W. 7th Street	Los Angeles	Los Angeles
50	Bullock's Dept. Store	Los Angeles	Los Angeles
51	116 W. Ocean Avenue	Long Beach	Los Angeles
52	407 So. Myrtle Avenue	Monrovia	Los Angeles
53	623 So. Grand Avenue	Los Angeles	Los Angeles
54	1043 So. Broadway	Los Angeles	Los Angeles
55	16 W. Colo Street	Pasadena	Los Angeles
56	W. R. Gray Alex Hotel	Los Angeles	Los Angeles
57	541 So. Spring	Los Angeles	Los Angeles
58	439 S. Harbor Boulevard	San Pedro	Los Angeles
59	123 E. 5th Street	Los Angeles	Los Angeles
60	Hayward Hotel	Los Angeles	Los Angeles
61	35 Locust Avenue	Long Beach	Los Angeles
62	440 1/2 So. Hill Street	Los Angeles	Los Angeles
63	414 N. Main Street	Los Angeles	Los Angeles
64	6407 Hollywood Boulevard	Hollywood	Los Angeles
65	116 E. 5th Street	Los Angeles	Los Angeles
66	1st Nat'l Bank Building	Beverly Hills	Los Angeles

provided, that Interstate Transit Lines shall first "provide a good and sufficient bond, policy of insurance or indemnity in favor of the people of the State of California which * * * shall assure faithful performance of any contract or agreement of transportation negotiated by or entered into by the licensee", the form and substance of said bond to be as follows:

"KNOW ALL MEN BY THESE PRESENTS: That _____, as Obligor, and _____, surety company authorized to do business in the State of California, as Surety, are held and firmly bound unto the people of the State of California, in the sum of ten thousand dollars (\$10,000), lawful money of the United States, for the payment of which well and truly made, we hereby bind ourselves, our heirs, executors, successors and assigns jointly and severally firmly by these presents:

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS the above named Obligor has applied for a license as a Motor Carrier Transportation Agent, under and in pursuance of the provisions of Chapter 638, Statutes 1931, of the State of California, being 'An Act to define Motor Carrier Transportation Agent; to provide for the regulation, supervision and licensing thereof, and to provide for the enforcement of said Act, and penalties for violation thereof.' (Approved June 5, 1931), and under said Act said Obligor is required to give a bond as in said Act prescribed:

NOW, THEREFORE, if the above bounden Obligor shall faithfully perform each, any and all contracts or agreements of transportation negotiated by or entered into by the Obligor as licensee, then his obligation to be void, otherwise to remain in full force and effect.

The Surety shall have the right to cancel this bond at any time by giving fifteen days written notice of its desire so to do by registered mail, addressed to the Railroad Commission of the State of California at its office; and the Surety shall not be liable for any acts committed by the Obligor after the expiration date of such cancellation notice, but such cancellation shall in no respect affect its liability for acts committed prior thereto.

The aggregate liability of the Surety under this bond shall in no event exceed the penalty of this bond.

IN WITNESS WHEREOF, the Obligor has signed and his Surety has caused its name and corporate seal to be affixed by its duly authorized representative this _____ day of _____, 1932.

Obligor

Surety . "

and, provided, further, that said Interstate Transit Lines shall first pay to the Secretary of the Railroad Commission of the State of California the sum of two dollars and fifty cents (\$2.50), balance due as a fee for a license covering an entire year.

IT IS HEREBY FURTHER ORDERED that under the license hereby ordered issued to Interstate Transit Lines transportation

may be sold only over the following lines

Interstate Transit Lines
Pacific Greyhound Lines, Inc.

IT IS HEREBY FURTHER ORDERED that Applications 17797
and 17798 are hereby denied without prejudice.

The foregoing Opinion and Order are hereby approved
and ordered filed as the Opinion and Order of the Railroad Com-
mission of the State of California.

Dated at San Francisco, California, this 23rd
day of February, 1932.

C. J. Scamney
Tom O'Connell
W. A. Cox
M. B. Hayes
Fred G. Stebbins
Commissioners