

Decision No. 25204

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of )  
 F. A. DAVIS for a certificate of pub- )  
 lic convenience and necessity to op- )  
 erate an auto stage line for the trans- )  
 portation of passengers and baggage, )  
 for compensation, and as a common car- )  
 rier between Oakland and West Lafayette )  
 via the Tunnel Road, Town of Orinda, )  
 and intermediate points. )

Application  
 No. 17982.

ORIGINAL

Paul S. Jordan for Applicant,

L. N. Bradshaw, for Sacramento  
 Northern Railway, Protestant.

BY THE COMMISSION:

OPINION

F. A. Davis, under the fictitious name of Tunnel Road Transit Company, has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by him of an automobile stage line as a common carrier for the transportation of passengers and baggage between Oakland at Claremont and College Avenue and West Lafayette via the Tunnel Road and the Town of Orinda and intermediate points, provided however that applicant shall render no local service between Temescal and the proposed Oakland terminal.

Public hearings on this application were conducted before Examiner Satterwhite at Orinda and San Francisco, the matter was submitted and is now ready for decision.

Applicant proposes to charge rates and to operate under a time schedule in accordance with Exhibits "A" and "B" attached to said application and to operate along the route set forth upon the map marked "Exhibit D" attached to said application.

The Sacramento Northern Railway protested the granting of the application as to the proposed transportation of passengers and baggage between Oakland and the territory lying east of a point known as Orinda Junction to and including Lafayette.

The testimony of a considerable number of witnesses called by applicant indicates clearly a public need for that portion of the proposed bus service between Oakland and the Town of Orinda and way points, and it will therefore only be necessary to review in some detail the evidence as to the need of the proposed service to Lafayette and the area between Lafayette and Orinda Junction.

Lafayette is an unincorporated community with a population of about 600 people and has been served for many years by the protestant's electric rail line. The two railway stations of the protestant at Lafayette are about a half mile from the business center of the community. The residential part of this community radiates about a half mile in all directions from the business center. Applicant proposes to establish his bus station at Morrison's Garage in Lafayette just one-half mile westerly from the business center. It is, therefore, obvious that this proposed bus service, if authorized, would at once become a competitive service with the protestant's rail service and applicant would be placed in a favorable position to take from the present carrier many residents or prospective patrons residing nearer the proposed bus station. Moreover, applicant

by his proposed charge of 35 cents as a one-way fare between Lafayette and Oakland, as compared with the present one-way fare of 70 cents of protestant, would without doubt divert from protestant's electric line some of its one-way business.

Applicant introduced little or no evidence showing the service of protestant is or ever has been inadequate or unsatisfactory in meeting the transportation needs of Lafayette. On the contrary, the protestant offered both oral and documentary evidence indicating that it has always rendered an adequate service to this community. The record shows that protestant operates seven east-bound trains from Oakland to Lafayette daily, except Saturday and Sunday, on which days six trains are operated. Eight trains are operated daily in the opposite direction, except Sunday, and six trains on Sundays. On week days three trains are operated in the morning and three in the afternoons, especially for commuters residing in Contra Costa County as far east as Concord. Protestant's Exhibit 7 shows that 78.1% of the passengers carried in the month of April, 1932, on the commutation trains so-called are commuters. The evidence indicates that protestant has always carefully arranged its schedules to meet the varying needs of persons commencing work in San Francisco and Oakland at different hours of the morning and leaving their work at various hours during the afternoon. H. A. Mitchell, President of the Sacramento Northern Railway, testified that the passenger revenues of the protestant have been steadily going downward since 1920 and that its trains operated between Oakland and Lafayette and other points in Contra Costa County, particularly for commutation travel, failed to earn operating

expenses in the year 1931 by \$7,140. It was shown that the one-way and round-trip passengers have largely disappeared. In this connection, Mr. Mitchell testified in part as follows:

"The railroads have lost the remunerative passenger traffic they had and have left this commutation service that is costing them money. I might add that when I say low commutation rates, I mean just that, as far as the Sacramento Northern is concerned, as our rates are as low as 6 mills a mile into Lafayette on a ticket to San Francisco, commutation ticket, we are getting 6 mills a mile for that ride; the applicant here, with his generous commutation rates, went up as high as 13 cents a mile. Now, the railroads can not continue--our road or any other road--to carry commuters if any competition is going to come in and carry the one-way business or the round trip rates. There is not enough of that left to be divided between two of us."

With reference to that portion of applicant's proposed service along the Tunnel Road between Orinda Junction and the town limits of Lafayette, the evidence shows, without contradiction, that it is a very sparsely settled area; that between Orinda Junction and Lafayette there are only 13 families located on the Tunnel Road, 9 families on the Happy Valley road and 7 families on the road opposite the Happy Valley road, a distance of about one and a half miles from Orinda Junction. All of these families own, with two or three exceptions, their private automobiles and there is nothing in the record to indicate to what extent any of these families would use the proposed bus service. In any event, the probable available passenger traffic along this portion of the Tunnel Road is so very limited that we are satisfied that the proposed service of applicant in this territory would be unprofitable.

We have carefully considered all the evidence in this proceeding and are of the opinion that the granting of the proposed bus service is not justified as applied for.

There was no showing on behalf of applicant that the train service of protestant company between Oakland and Lafayette was not fully adequate to care for all reasonable demands of the public. We are of the opinion, however, that the public convenience and necessity require: the proposed bus service of applicant between Oakland at Claremont and College Avenue and the Town of Orinda via the Tunnel Road and intermediate points.

F. A. Davis 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

Public hearings having been held in the above entitled proceeding, the matter having been submitted, and being now ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA  
HEREBY DECLARES that public convenience and necessity require the operation by F. A. Davis, under the fictitious name of Tunnel Road Transit Company, as a common carrier of passengers and baggage between Oakland at Claremont and College Avenue and the Town of Orinda via the Tunnel Road and intermediate points, provided however that no local service shall be rendered between Temescal and the aforesaid Oakland Terminal, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to said F. A. Davis for the operation of the service hereinabove described and subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from the date hereof.

2. Applicant shall file in triplicate and make effective within a period of not to exceed thirty days from the date hereof, on not less than ten days' notice to the Commission and the public 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 in so far as they conform to the certificate herein granted.

3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from date hereof, on not less than five (5) days' notice to the Commission and the public, time schedules, according to form provided in General Order No. 83, covering the service herein authorized, in a form satisfactory to the Railroad Commission.

4. 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.

5. 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.

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 26 day of September, 1932.

C. S. Scavely  
Leon Whiteley  
W. A. Linn  
W. B. Harper  
Jos. G. Stewart  
Commissioners.