

Decision No. 25425

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of GEORGE CAVAGNARO, doing business under the fictitious name and style of GEORGE CAVAGNARO AND SON, for certificate of public convenience and necessity to operate an auto truck service for the transportation of freight, goods and merchandise as a common carrier between Mountain View and San Francisco.) Application No. 18527

James A. Toner and Harold C. Brown, for applicant.

R. S. Myers, E. W. Hobbs, Edward Stern and G. S. Reed, for Railway Express Agency, Inc., Pacific Motor Transport Co., and Southern Pacific Company, protestants.

C. S. Mc Lenegan, for Interurban Motor Transportation Association, protestant.

H. C. Lucas, Orla St. Clair and H. T. Richards, for Pacific Greyhound Lines, protestant.

CARR, Commissioner -

O P I N I O N

George Cavagnaro, operating a small truck transportation personal service business between Mountain View and San Francisco of a type the exact like of which has not hitherto been before this Commission and from the conduct of which he was directed to cease and desist by Decision No.25356, of date November 14, 1932, (1) here seeks a certificate of public convenience and necessity sanctioning its continuance.

1. The business in question, together with its history, is described in this order as follows:

"The business he performs is in part 'shopping' in San Francisco for Mountain View merchants and business houses and in part a common carriage trucking operation. * * * The business conducted by Cavagnaro had its origin about 1900, when Tom Rose started making shopping trips to San Francisco for Mountain View merchants. He traveled by the railroad. Rose was succeeded by Robert O'Neal, who carried on the business until 1922, when E. E. Mylrea purchased it. O'Neal started

The cease and desist order referred to is not yet in effect and Cavagnaro is here promptly seeking a certificate before that order does become effective and terminates the business he is operating.

A public hearing on the application was had at Mountain View on November 25, 1932, and the matter was submitted.

The record leaves no doubt that the business conducted by Cavagnaro and which he desires to have certificated is a real convenience to the merchants of Mountain View, nearly all of whom are numbered among Cavagnaro's patrons, and a large number of whom appeared at the hearing and testified to the convenience and necessity of the service. The real question here is whether or not this service is such a necessity as to justify its certification. Just where convenience merges into necessity is always a nice question and one difficult of determination. A too rigid delimitation of what constitutes necessity would, of course, stop any progress in the development of means of transportation. What at first is a convenience, in time becomes a necessity. Business methods gradually build up about a convenient service and acquire a fixity, so that its continuance becomes in effect a necessity.

Cavagnaro's business now grosses annually about \$2200. The evidence indicates that it has about reached its limit of growth. At most, it means a very modest livelihood for Cavagnaro and his family, it appearing that his son helps him with the business and sometimes drives his truck. The personal service feature is not of sufficient volume or extent to justify the time of a man like Cavagnaro. The same is true of the transportation feature. Combined, they do. While some of the protesting carriers claimed they were giving, in part, the personal service rendered by Cavagnaro, their offers of such service do not seem to have met a favorable response among the merchants who testified that they

using a truck about 1919. F.C. Tompkins took over the business in 1925 and continued it until October 1930, when Cavagnaro bought him out. That Cavagnaro's operations are a convenience to Mountain View merchants can hardly be questioned. As to some, the shopping he does for them in San Francisco is the chief value. As to others, an evening delivery of orders made as late as 2 P.M. is the important consideration."

were unable to duplicate from any of the carriers the kind of service they received from Cavagnaro.

From the record as developed it is reasonable to conclude that the service here in question has in fact become a necessity to the merchants of Mountain View and that its continuance should be authorized. In the application Cavagnaro suggests rates, rules and regulations which he proposes to observe which reflect the methods and charges which have prevailed in his business. They are not entirely adequate to cover a certificated operation, and in the order applicant will be required to file a tariff which will conform with the Commission's requirements relating to tariff construction as set forth in General Order No. 80.

George Cavagnaro 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.

The following form of order is recommended:

O R D E R

A public hearing having been held in the above entitled proceeding and the matter being now ready for decision,

IT IS HEREBY FOUND AS A FACT that public convenience and necessity require the operation of an automotive service for the transportation of small consignments of freight, weighing not in excess of 100 pounds per package (a) from San Francisco to Mountain View, (b) ^{returned} from Mountain View to San Francisco after having been transported by applicant from San Francisco to Mountain View, and (c) from Mountain View to San Francisco where such transportation

is necessary to match articles to be transported from San Francisco to Mountain View.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such a service be, and the same hereby is granted to George Cavagnaro, subject to the following conditions:

1. The authority herein granted does not authorize service from, to or between points intermediate between San Francisco and Mountain View.
2. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed five (5) days from date hereof.
3. Applicant shall file, in triplicate, and make effective on or before December 14, 1932, on not less than one day's 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 shall be reasonable and otherwise lawful.
4. Applicant shall file, in duplicate, and make effective on or before December 14, 1932, on not less than one day's notice to the Commission and the public, time schedules covering the service herein authorized, in a form satisfactory to the Railroad Commission.
5. 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.
6. 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 December 14, 1932.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15 day of December, 1932.

C. S. Seaver
Leon Caldwell
M. J. Carr
W. B. Hays
Fred G. Stewart
Commissioners.