

Decision No. 33634.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion into the practices, operations, regulations, rates, rules, charges, and classifications, or any of them, of GROVE TRANSPORTATION COMPANY, HAROLD HAMANN, FIRST DOE, SECOND DOE, THIRD DOE, JANE DOE, JOHN DOE AND RICHARD ROE, a copartnership, and JOHN DOE COMPANY, operating as "passenger stage corporations" and/or as "motor carrier transportation agents."

Case No. 3367

In the Matter of the Investigation on the Commission's own motion into the practices, operations, regulations, rates, rules, charges, and classifications, or any of them, of WILLIAM FINN, MRS. WILLIAM FINN, W.J. VICTOR, JAMES MOORE, FIRST DOE, SECOND DOE, THIRD DOE, JANE DOE, JOHN DOE AND RICHARD ROE, a copartnership, and JOHN DOE COMPANY, operating as "passenger stage corporations" and/or as "motor carrier transportation agents."

Case No. 3368

In the Matter of the Investigation on the Commission's own motion into the practices, operations, regulations, rates, rules, charges, and classifications, or any of them, of PATRICK JOSEPH KELLY, JANE DOE KELLY, FIRST DOE, SECOND DOE, THIRD DOE, JANE DOE, JOHN DOE and RICHARD ROE, a copartnership, and JOHN DOE COMPANY, operating as "passenger stage corporations" and/or as "motor carrier transportation agents."

Case No. 3369

In the Matter of the Investigation on the Commission's own motion into the practices, operations, regulations, rates, rules, charges, and classifications, or any of them, of MRS. E.L. PURDY, HAROLD PURDY, FIRST DOE, SECOND DOE, THIRD DOE, JANE DOE, JOHN DOE AND RICHARD ROE, a copartnership, and JOHN DOE COMPANY, operating as "passenger stage corporations" and/or as "motor carrier transportation agents."

Case No. 3370

In the Matter of the Investigation on the Commission's own motion into the practices, operations, regulations, rates, rules, charges, and classifications, or any of them, of JOE GALIK, doing business as ACME TRAVEL ASSOCIATION, FIRST DOE, SECOND DOE, THIRD DOE, JANE DOE, JOHN DOE AND RICHARD ROE, a copartnership, and JOHN DOE COMPANY, operating as "passenger stage corporations" and/or as "motor carrier transportation agents." )  
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 ) Case No. 3371  
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Herbert N. Dewolf for respondent in Case 3367.

T.T. Califro for respondent W.J. Victor in Case 3368.

Joe Galik respondent in Case 3371 in propria persona.

Patrick Joseph Kelly respondent in Case 3369 in propria persona.

H.W. Hobbs for Southern Pacific Company, interested party.

R.F. Brennan and W.F. Brooks for Atchison, Topeka and Santa Fe Railway, interested party.

Orla St. Clair for Pacific Greyhound Lines, Inc. and Motor Carriers Association, interested parties.

HARRIS, Commissioner:

O P I N I O N

The above numbered proceedings are instituted by the Commission to inquire into the practices, operations, etc. of each of the respondents, particularly as to their operations alleged to be those of "passenger stage corporations" as regulated by Sections 2½ and 50½ of the Public Utilities Act (Statutes 1915, p. 115, as amended) and/or as "Motor Carrier Transportation Agents" by Chapter 638, Statutes of 1931. Each respondent was cited to appear and show cause why the Commission should not order them to cease and desist such practices, operations, etc. until certificates therefor or licenses shall have been issued by the Commission.

Public hearings thereon were held at San Francisco, October 21 and 29, 1932, at which time each of the matters was submitted for decision. For convenience the matters will be disposed of in their numerical order. It was stipulated that each of the respondents appearing, except Grove Transportation Company, does not possess a certificate of public convenience and necessity, as required by the Public Utilities Act, nor Motor Carrier Transportation Agent's License as required by Chapter 638, Statutes of 1931.

In Case 3367 service was made upon Grove Transportation Company, upon Harold Hamann, W. Weaver as First Doe, M.D. Williams as Second Doe and Maxwell C. Martin as Third Doe. All the parties were represented by counsel at the hearing. In substance the testimony shows that Grove Transportation Company maintains an office at the Seneca Hotel, 34 Sixth Street, San Francisco, where tickets are sold for transportation between San Francisco and Portland by proper authority of a Motor Carrier Transportation Agent's License. It also appears that the entrance to the ticket office bears a sign indicating the sale of tickets to Los Angeles. Mrs. Evelyn Henry testified that she visited this agency on September 23 and was assured by defendant Hamann that she could travel to Los Angeles by private car and that the fare would be \$5.00; that she paid Hamann \$5.00. At 5:10PM Hamann directed her to a sedan which she entered. At another Hotel the driver picked up two more passengers and left over the ferry for Oakland. Mrs. Henry proceeded with the car until it reached East Oakland where she alighted. Mrs. Henry was employed by the Motor Carriers Association to ascertain if such transportation could be procured at the Seneca Hotel office.

F.C. O'Neil testified that on September 22 he visited the office of Harry Stelling, 768 Howard Street, San Francisco, and inquired if he could get transportation to Los Angeles and was

informed that a bus would be leaving in a few minutes. Stelling is an authorized branch agency of Grove Transportation Company. He told the witness that the driver would call at his home, 77 Webster Street in about 20 minutes. The driver did call at the witness' home but recognizing him as a police officer, drove away saying "You don't want to go to Los Angeles". E.D. Grove testified that he knew nothing of the transactions conducted by his representatives Hamann or Stelling but admitted that passengers destined to Portland had boarded his vehicles at both Royal and St. Mark Hotels in Oakland. Respondents introduced no testimony on their own behalf.

From the record presented it is apparent that transportation between San Francisco and Los Angeles was furnished and sold to Mrs. Henry and that she made a portion of the trip in consideration of the amount paid by her to Hamann. Grove at the time was not about the Hotel and testified that he knew nothing of the sales of any transportation except over his own lines and had not authorized his agency to conduct other business. However, it appears that the sale of tickets by Hamann for the Grove Company is incidental to other business which he does in the way of selling transportation to various points. The fact is clear, however, that Hamann did furnish and provide transportation for Mrs. Henry in violation of the Motor Carrier Transportation Agent's act and the Public Utilities Act. An order therefore to cease and desist from such unlawful act should be issued against Hamann.

In Case 3368 service was made upon W.J. Victor, King Edward Hotel, 5th and Los Angeles Streets, Los Angeles, and also upon Mrs. Evelyn Marshall, 114 Powell Street, San Francisco as First Doe. Defendants William Finn, Mrs. William Finn and James Moore were not served; nor were any of the other fictitious defendants named as Does hence they were not before the court in

this proceeding and as to them the citation, of course, should be dismissed. As there was no direct testimony of any act by Mrs. Marshall the citation should be dismissed as to her.

According to the testimony of Marie Cisneros, she procured transportation at 38 Sycamore Street, San Francisco, to Los Angeles from a woman whom she ascertained was Mrs. William Finn. She was transported via Coast Highway to Los Angeles, having paid \$3.50 for the passage and being assured she would be returned for an additional \$5.00. No tickets were received by her nor was a receipt given for the money. After she reached Los Angeles, she went to the office of defendant W.J. Victor at the King Edward Hotel and there paid \$5.00 for the return journey. The circumstances of her purchasing transportation both at San Francisco and Los Angeles and the details of the trip indicate the clandestine nature of the business and the provisions to avoid police surveillance. In addition J.J. Hanlon, an officer of the State Highway Patrol witnessed Mrs. Cisneros pay for her transportation and he also bought transportation for himself and another officer on the same stage. These purchases were made at the Sycamore Street address. When the police reached Redwood City they ordered the car stopped and arrested the driver; incidentally, Hanlon testified, he discovered the car had no brakes. A.F. Groocox, inspector for the Board of Public Utilities and Transportation of Los Angeles, testified that he knew W.J. Victor and that Victor had his main office at the King Edward Hotel and that Victor operated with William Finn in the solicitation of transportation and sale at the King Edward Hotel office. The witness identified a clipping of the Los Angeles Daily News, October 19, 1932 advertising private sedan service, Los Angeles to San Francisco, at a rate of \$5.00 by the Victor Travel Service, Bonnie Briar Hotel,

6806 Hollywood Boulevard, Los Angeles, which witness testified was another office of W.J. Victor. Other testimony concerning material details in connection with the transactions was also introduced. No testimony was introduced in behalf of defendant Victor.

In Case 3369 no party named in citation was served except Patrick Joseph Kelly, who appeared without counsel. E.J. Diaz, a member of the California State Highway Patrol testified that he negotiated for transportation with Kelly at the Tynan Hotel in San Francisco on June 22 and that Kelly drove the car which conveyed the witness and others in picking up other passengers in San Francisco and Oakland. No money was collected from any passenger although Kelly had agreed to transport them to Los Angeles via the Valley route for \$5.00 per person. When the car reached San Leandro, Officer Diaz signaled Inspector Ford of the Highway Patrol and Kelly was detained at the Police Station. Another passenger Mrs. Marion E. Forsee on August 5 arranged for transportation with a woman who called herself Mrs. Kelly. She made arrangements for transportation to Los Angeles via the Valley route agreeing to pay \$6.00. In response to these arrangements respondent Kelly called at the Y.W.C.A. and took witness' hand baggage to a sedan where two other passengers were already on board. Two others were picked up at the State Building and another passenger at Brisbane-on-the-Bay. The trip was made via San Mateo Bridge and at Merced the passengers were requested to pay their fares. Another passenger was A.V. Brusco who was a companion of the witness and he saw him pay \$12.00 fare to Kelly for their transportation.

In Case 3370 the only respondent named in the citation who was served was Harold Purdy. James L. Gill, an investigator

testified that he visited Purdy at the Grand Hotel, 57 Taylor Street, San Francisco and arranged with him to be picked up at the St. Mark Hotel in Oakland for transportation to Los Angeles. He paid \$4.00. L.W. Grenfell another investigator who was with witness Gill gave similar testimony. Mrs. Kathryn Benedict testified that she made arrangements for transportation to Los Angeles with Mrs. Purdy, who told her Purdy would drive the car, and received a receipt therefor, which receipt was as follows:

#### OPTION

No.#2 This receipt entitles the bearer whose signature is signed below to an option on car, Make I Motor No. x at the Selling Price of \$      Option price To exercise this option, the claim must be in writing and filed with owner within twenty-four hours of time of purchase of option, with full selling price and car will be delivered to first presenter of option claim with purchase price.

CAR OWNER Mr. T.L. Purdy

OPTION PURCHASER Mrs. Arnold

BROKER Mrs. E.L. Purdy

Subsequently Mr. Purdy appeared and took the passengers to a parking lot on Taylor Street where the passengers were placed in a sedan. Witness rode in the sedan with Purdy and the other passengers along the coast route as far as Pismo Beach where she gave up the journey. In these transactions the Purdys collected the full price \$5.00 for the journey, or \$1.00 as their commission and the remaining portion was paid to the driver (Purdy) of the stage.

In Case 3371 Joe Galik, operating as the Acme Travel Association was the only respondent served. Service was also made on Robert Johnson as the First Doe named in the complaint but he appears simply to have been a hotel guest at the Acme Hotel, 939 Mission Street, San Francisco, who undertook to answer some

questions in behalf of the Acme Travel Association. His participation is so slight and evidently without any relationship to the business that the proceeding may be dismissed as to him. Testimony of F.A. Savage showed that on August 4, he and Ed Sully arranged with Galik for transportation between San Francisco and Los Angeles paying \$4.50 each for such transportation and that they were transported one to Santa Maria and the other to Pismo Beach. The car was driven by a man named Warren. A receipt signed by Galik was introduced as Exhibit No. 2 in the case. Galik testified in his own behalf, denied that he was operating the Acme Travel Association but admitted that he had been transporting passengers from San Francisco to various points and defended it upon the ground that the people he was transporting were merely "charity patrons" in view of the fact that they could not pay the price of legitimate carriers.

An order of this Commission finding an operation to be unlawful and directing that it be discontinued is in its effect not unlike an injunction issued by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a party is adjudged guilty of contempt, a fine may be imposed in the amount of \$500.00, or he may be imprisoned for five (5) days, or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 56 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 79 of the Public Utilities Act a person who violates an order of this Commission or who procures, aids or abets any utility in its violation of the act, or in its failure to comply with any order of the Commission, is guilty of a misdemeanor and is punishable by a fine not exceeding



\$1,000.00, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

Section 15 of the Motor Carrier Transportation Agent Act (Statutes 1931, chapter 638) provides that any person, firm, or corporation acting as an agent without a license, shall, upon conviction thereof, if a person, be punished by a fine not exceeding \$1,000.00, or by imprisonment in the county jail, or state prison, for a term not to exceed one year, or by both such fine and imprisonment; or if a corporation, may be punished by a fine of not to exceed \$2,500.00.

The following form of order is recommended:

O R D E R

Public hearing having been held and the matter having been duly submitted,

IT IS HEREBY FOUND AS A FACT that Harold Hamann has been acting as Motor Carrier Transportation Agent within the meaning of Statutes 1931, chapter 638, section 1, without first obtaining licenses therefor.

IT IS HEREBY ORDERED that the above named Harold Hamann shall immediately cease and desist such operations as motor carrier transportation agent, unless and until proper license shall have been obtained, and notice is hereby given that such operation shall not be conducted by the above named respondent either directly or indirectly or by his agents, employees, representatives or assignees.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission cause personal service of a certified copy of this opinion and order to be made upon Harold Hamann and that copies thereof be mailed to the District Attorney of the City and County of San Francisco and to the Department of Public Works, Division of Highways at Sacramento.

IT IS HEREBY FURTHER ORDERED that this investigation is hereby dismissed as to Grove Transportation Company, E.D. Grove and all other respondents named herein in Case 3567.

This order shall become effective twenty (20) days after personal service as hereinabove directed.

IT IS HEREBY FOUND AS A FACT that W.J. Victor has been acting as Motor Carrier Transportation Agent within the meaning of Statutes 1931, chapter 638, section 1, without first obtaining licenses therefor.

IT IS HEREBY ORDERED that the above named W.J. Victor shall immediately cease and desist such operations as motor carrier transportation agent, unless and until proper license shall have been obtained, and notice is hereby given that such operations shall not be conducted by the above named respondent either directly or indirectly or by his agents, employees, representatives or assignees.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission cause personal service of a certified copy of this opinion and order to be made upon W.J. Victor and that copies thereof shall be mailed to the District Attorney of Los Angeles County, to the Board of Public Utilities and Transportation of the City of Los Angeles and to the Department of Public Works, Division of Highways at Sacramento.

IT IS HEREBY FURTHER ORDERED that this investigation is hereby dismissed as to William Finn, Mrs. William Finn, James Moore and all other respondents cited herein in Case 3568.

This order shall become effective twenty (20) days after personal service as hereinabove directed.

IT IS HEREBY FOUND AS A FACT that Patrick Joseph Kelly is engaged as a passenger stage corporation, and as a common carrier of passengers, for compensation, over the public highways, between San Francisco and Los Angeles without first having obtained a certificate of public convenience and necessity therefor as required by the Public Utilities Act; and

IT IS HEREBY FURTHER FOUND AS A FACT that the above named respondent shall immediately cease and desist such operations as a passenger stage corporation, unless and until proper certificate of public convenience and necessity therefor shall have been obtained, and notice is hereby given that such operation shall not be conducted by the above named respondent either directly or indirectly or by his agents, employees, representatives or assignees.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission cause personal service of a certified copy of this opinion and order to be made upon Patrick Joseph Kelly and that copies thereof be mailed to the District Attorney of the City and County of San Francisco, to the District Attorneys of the Counties of Alameda, Stanislaus, Merced, Fresno, Kern and Los Angeles and to the Board of Public Utilities and Transportation of the City of Los Angeles and the Department of Public Works, Division of Highways at Sacramento.

IT IS HEREBY FURTHER ORDERED that this investigation be dismissed as to Jane Doe Kelly and all other respondents cited herein in Case 3569.

This order shall become effective twenty (20) days after personal service as hereinabove directed.

IT IS HEREBY FOUND AS A FACT that Harold Purdy is engaged as a passenger stage corporation, and as a common carrier of passengers, for compensation, over the public highways, between San Francisco and Los Angeles without first having obtained a certificate of public convenience and necessity therefor as required by the Public Utilities Act; and

IT IS HEREBY FOUND AS A FURTHER FACT that Harold Purdy has been acting as motor carrier transportation agent within the meaning of Statutes 1931, chapter 638, section 1, without first obtaining licenses therefor.

IT IS HEREBY ORDERED that the above named respondent shall immediately cease and desist such operations as passenger stage corporation and as motor carrier transportation agent, unless and until proper certificate of public convenience and necessity and license shall have been obtained, and notice is hereby given that such operations shall not be conducted by the above named respondent either directly or indirectly or by his agents, employees, representatives or assignees.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission cause personal service of a certified copy of this opinion and order to be made upon Harold Purdy and that copies hereof be mailed to the District Attorney of the City and County of San Francisco, to the District Attorneys of the Counties of San Mateo, Santa Clara, Santa Cruz, Monterey, Kings, San Luis Obispo, Santa Barbara, Ventura and Los Angeles, to the Board of Public Utilities and Transportation of the City of Los Angeles, and the Department of Public Works, Division of Highways at Sacramento.

IT IS HEREBY FURTHER ORDERED that this investigation is hereby dismissed as to Mrs. E.L. Purdy and all other respondents cited herein in Case 3370.

This order shall become effective twenty (20) days after personal service as hereinabove directed.

IT IS HEREBY FOUND AS A FACT that Joe Galik is engaged as a passenger stage corporation, and as a common carrier of passengers, for compensation, over the public highways, between San Francisco and Los Angeles without first having obtained a certificate of public convenience and necessity therefor as required by the Public Utilities Act; and

IT IS HEREBY ORDERED that the above named respondent shall immediately cease and desist such operation as a passenger

stage corporation, unless and until proper certificate of public convenience and necessity shall have been obtained, and notice is hereby given that such operation shall not be conducted by the above named respondent either directly or indirectly or by his agents, employees, representatives or assignees.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission cause personal service of a certified copy of this opinion and order to be made upon Joe Galik and that copies hereof be mailed to the District Attorney of the City and County of San Francisco, to the District Attorneys of the Counties of Alameda, Stanislaus, Merced, Fresno, Kern and Los Angeles, to the Board of Public Utilities and Transportation of the City of Los Angeles and the Department of Public Works, Division of Highways at Sacramento.

IT IS HEREBY FURTHER ORDERED that this investigation is hereby dismissed as to Acme Travel Association and all other respondents cited herein in Case 3371.

This order shall become effective twenty (20) days after personal service as hereinabove directed.

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 10th day of December 1932.

W. A. C.  
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W. B. Harris  
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Fred G. Stewart  
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COMMISSIONERS.