

Decision No. 25806

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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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 PACIFIC BLUE LINES OF CALIFORNIA, LTD., a corporation, MAXWELL C. MARTIN, MRS. MARIE MARTIN, JOHN R. DAVIS, MRS. DOROTHY DAVIS, 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. 3329
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Orla St. Clair for F. A. Savage, Pacific Greyhound Lines, and Motor Carriers Association

Maxwell C. Martin in propria persona

BY THE COMMISSION:

OPINION, FINDINGS, AND JUDGMENT

Decision 25164, dated September 8, 1932, found as a fact that Pacific Blue Lines of California, Ltd., a corporation, Maxwell C. Martin, and John R. Davis were engaged as passenger stage corporations between San Francisco and Los Angeles, without having obtained certificates of public convenience and necessity as required by Public Utilities Act, section 50½; and were also acting as motor carrier transportation agents within the meaning of Statutes 1931, chapter 638, without first obtaining licenses. They were ordered to cease and desist until

(1)
certificates and/or licenses should have been obtained.

On February 23, 1933 two affidavits of F. A. Savage were filed. The first relates to passenger stage operation and the second to activities as motor carrier transportation agent, by Maxwell C. Martin. Both recite the institution of the prior investigation, hearings thereon, issuance of the desist order, service thereof, and ability to comply therewith. The "transportation agent" affidavit alleges further that notwithstanding the desist order, with full knowledge of and subsequent to its effective date, Maxwell C. Martin has continued to act as a motor carrier transportation agent, holding himself out to sell, furnish, or provide transportation over the public highways, and particularly between San Francisco and Los Angeles. It alleges advertising in three San Francisco newspapers on numerous specified dates in September, October, November, and December, 1932; advertising by radio broadcast over Station KCCC, San Francisco, tri-weekly from November 15 to 30, 1932, excluding Sundays. Specific acts of selling, furnishing, and/or providing transportation between San Francisco and Los Angeles are alleged to have occurred on September 30, October 10, November 11, December 15 and 27, 1932.

On March 8, 1933, the Commission issued its order directing Maxwell C. Martin to appear before Commissioner Harris on March 23, 1933 and show cause why he should not be punished for contempt.
(2)

(1) Decision 25164 was personally served upon Maxwell C. Martin on September 9, 1932 (Exhibit 2) and by its terms became effective twenty days thereafter (September 29, 1932.)

(2) The Order to Show Cause, together with the affidavits, was personally served upon respondent on March 9, 1933. (Exhibit 3.)

No return or answer was filed by respondent.

F. A. Savage testified that respondent has a place of business and a desk located in the rear of the lobby of the Tynan Hotel, 62 Turk Street, San Francisco. A colored glass sign in the window of the hotel is to the effect that there is service to Los Angeles twice daily, and the price, varying in amount from time to time, is on the corner of the sign. The witness has observed pamphlets and small advertising signs upon the desk indicating a travel bureau, and has seen a sign reading "Travel information only-No gratuities accepted." During the course of a conversation with respondent on October 31, 1932⁽³⁾ at the Hall of Justice, respondent remarked to the witness "that they were not going to get him again, because he wasn't going to take the money."

Having received information as to advertising over radio station KGGC, Witness Savage, together with Witness F. J. Mooney, on November 29 or 30, 1932, listened to the broadcast of that station between 5 and 6 p. m. On a program known as the "Observer" was an advertisement of Max's Travel Bureau,⁽⁴⁾ operating sedan service, careful drivers, between San Francisco and Los Angeles, giving the location as 62 Turk Street, Tynan Hotel.

Exhibit 4 (Witness F. J. Paquette) consists of 82 sheets to which are attached clippings from the classified advertisements

(3) The desist order became effective on September 29, 1932.

(4) The affidavit describes respondent as doing business under the names and styles of Max's Travel Bureau, Max Martin's Travel Service, and Max Martin, and Witness Savage has seen the words "Travel Bureau" at 62 Turk Street designated under those various names.

(5)

of three San Francisco newspapers.

(5) In the San Francisco Call-Bulletin for September 30, 1932, appeared the following advertisement:

"L. A. DAILY \$3.00
Portland, Seattle, Salt Lake, Denver, Chi-
cago \$20, N. Y. \$30. Martin, 62 Turk St."

The above advertisement, omitting price, also appeared on October 5, 6, 7, 11, 12, 15, 17, 18, 19, 20, 21, 24, 25, 26, 28, 29, 31, November 2, 3, 4, 5, 8, 9, 10, 11, 12, 14, 15, 16, 17 and 18, 1932. On November 19 and 21, 1932 the following appeared:

"L. A. DAILY
Portland, Seattle, Salt Lake, Denver, Chi-
cago, New York. Martin, Maryland Hotel,
Geary and Taylor. ORdway 8838."

On November 22 and 23, 1932, this was changed to read

"L. A. DAILY \$5
Portland, Seattle, Salt Lake, Denver, Chi-
cago, New York. Martin, Tynan Hotel, 62
Turk St. ORdway 8838."

On November 25, 26, 28, 29, 30, December 1, 2, 3, 6, 7, 8, 9, and 10, 1932, the advertisement read

"LOS ANGELES \$5.00
3 times daily Portland, Seattle, Salt Lake,
Denver; Chicago, \$25; New York, \$35.
Martin, Tynan Hotel, 62 Turk, GR. 6616."

In the San Francisco Chronicle for October 1, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, 1932, the following advertisement appeared:

"LOS ANG., twice daily, share expense.
Martin, 62 Turk st. PROS. 0660."

The same advertisement, with the telephone number changed to "GRAY. 6616" appeared on October 31, November 1, 2, 3, 4, 5, 6, and 7, 1932.

In the San Francisco Examiner the following advertisement

"L. A., 3 times daily: CHICAGO, \$20:
N. Y., \$30 MARTIN, 62 Turk st.
PROS. 0660. Cheapest and best."

appeared on October 1, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23, 1932. The same advertisement, with the Chicago price as \$15, and N. Y. as \$25, appeared on October 24, 25, and 26, 1932; and, with prices omitted, and telephone number as "GRAY. 6616", on October 27 and 28, 1932. The words "Port. \$7. Seattle \$8.50" were added on October 29, 30, 31, November 1, 2, 3, and 4, 1932.

Witness F. J. Mooney, on October 10, 1932, about 4 p.m., went to the Tynan Hotel, to the desk at the rear of the lobby, in order to arrange for transportation to Los Angeles. He inquired of respondent if there was a car going to Los Angeles and was informed by respondent that there were two cars going out that afternoon. He asked about the fare and respondent stated that it would be \$5.00. The witness paid \$5.00 to the driver of the automobile (Cadillac sedan, 1932 license, No. 7-J-7544) in front of the Tynan Hotel, and was carried to Los Angeles, together with several other passengers, all of whom paid their fare to the driver at the Tynan Hotel.

On September 30, 1932, Mrs. Ida Dickman telephoned to the Tynan Hotel, asked for Mr. Martin, and a gentleman claiming to be Mr. Martin answered the telephone. Mrs. Dickman asked

(5) Cont'd.

The following:

"DO YOU WANT TO TRAVEL
SAFE, SANE AND CHEAP.
L. A. 3 TIMES DAILY

PORTLAND, \$7. SEATTLE, \$8.50.
Salt Lake, Chicago, New York. The
oldest travel bureau in S.F.
BUS OR PLANE TICKETS.
Share expense cars. Insurance
MARTIN, 62 Turk St. GRAY. 6616.",

appeared on November 5, 1932. "Free travel info." was added to the above on November 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, 1932.

The following advertisement

"LEAVE for L.A. this afternoon:

take 2. PRos. 0660. MAX.",

appeared on October 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14, 1932.

how much he charged for transportation to Los Angeles. She was told that the fare was \$5.00, that a car would be going out at 5 o'clock, and that a driver would be sent to the Odeon Hotel for her. A Pierce-Arrow sedan, license No. PC J-470, then containing four passengers, driver Bill Wilkins, called at the Odeon Hotel. The witness asked Wilkins if he was Mr. Martin and he replied that he was Mr. Martin's driver. The car then went to the Tynan Hotel, where the driver got out and went into the hotel and where a passenger was picked up. An additional passenger was picked up at another hotel and the car went across the ferry to Oakland (another passenger being picked up at 69th Street, Oakland) and proceeded to Los Angeles. While on the ferry the passengers each paid the driver \$5.00.

On November 11, 1932, Witness J.M. Sullivan, accompanied by Witness G.A. Olin, went to the Tynan Hotel about 11 a.m. They saw respondent at his desk and inquired as to transportation to Los Angeles. Mr. Martin stated that it could be arranged, and that the fare would be \$5.00. "I asked him if I should pay him, and he said no. Then I asked what time the bus left, and he said at 5 o'clock. I said I would be back later and let him know definitely whether I was going or not." (Tr., p. 21.) Sullivan and Olin returned about 3 p.m. and again saw respondent. "I said I had decided to make the trip, and wanted to know if I paid them and he said no, 'Take care of that with the driver; pick up your baggage at the ferry building'." (Witness Sullivan, tr., p. 21.) These witnesses returned again at 4:30 p.m. and waited until shortly after five, when a man said "All right, Los Angeles passengers; let's go." They then walked out of the Tynan Hotel, up Turk Street to Taylor and to an auto park, where six passengers, including

Sullivan and Olin, were loaded into a seven passenger Packard sedan, which had no license plate but had an emergency permit. The passengers, while in the parking lot, paid their fares to the man who had walked there with them from the hotel. They then proceeded to Los Angeles.

M. O. Rogers, on December 15, 1932, went to the Tynan Hotel and made arrangements with respondent for transportation to Los Angeles.⁽⁶⁾ The witness and one other passenger boarded a Cadillac automobile, license No. 3-M-986, in front of the Tynan Hotel, and paid \$5.00 to a man whom the witness had seen at the travel desk. The driver then went to one or two other places and picked up additional passengers, all of whom paid fares to the same man, who at times was in the car and at times on the running board while passengers were being picked up. The car returned to the Tynan Hotel and the collector went inside. The car then proceeded south until the driver was arrested at Redwood City.

Mr. and Mrs. C. T. Belser went to the Tynan Hotel on December 27, 1932, at about 10 a.m., proceeded to the desk at the rear of the lobby and talked to a Mr. Wolf, who was at the desk.

(6) "A. Mr. Martin was sitting at the desk.

Q. Anyone there besides yourself and Mr. Martin?

A. Yes, sir, some lady sat in front or the right of the desk a little bit, whom I took to be Mrs. Martin.

Q. Did she enter into the conversation at all? A. Yes.

Q. And what happened that first time you went there?

A. The evening before I had asked the same lady, who was sitting at the desk at that time, if I had to make reservation for a trip to Los Angeles, and if that was the place where I was to make my reservation and she told me yes. I told her I would probably want to go next morning. She told me to be there a little before leaving time. So about 9:15, 9:15 or 9:30, I went towards the desk, and she was sitting out in front. She asked me if I had made up my mind to go, and I said I had. I turned to Mr. Martin and asked him if he was the one to make arrangements with. He said yes. He took my name on a little slip of paper. I asked him what the fare would be, and he said \$5. I asked if I paid him, and he said no, pay the driver." (Tr., p. 24.)

"I asked this gentleman, I told him I understood he run a sedan service to Los Angeles, and myself and wife would like to go down. He said yes. I said 'What is the fare?' He says '\$5 each'. I said 'Do I pay you now?' He says 'No, you pay the driver when the sedan is ready.'" (Tr., p. 27.) The witness and Mrs. Belser waited in the lobby for some twenty minutes. A number of other people were there and three or four drivers came in and carried baggage to a sedan across the street. After the other people had left the hotel the witness asked Mr. Wolf " * * * if that was my car, and he says 'No', he says 'Yours will be ready in about 20 minutes. We are going to run two cars today.'" (Tr., p. 28.) At 11:00 a.m. the witness and his wife were placed in a 5 passenger Peerless sedan (License No. 9C 3140), which was across the street directly in front of the hotel. There were three other passengers and fares were collected by a Mr. Bernard Blethen. The car then proceeded to Los Angeles.

Witness E. Schwartz is manager of the Tynan Hotel. The respondent lives at the hotel and "has a travel desk there in the hall, in back of the lobby." (Tr., p. 32.) Mr. Bernard Blethen resides at the hotel and is there every day. The witness has also seen Mr. Wolf at the hotel. There is no travel bureau in the hotel other than that of Mr. Martin.

F.A. Savage has seen Mr. Wolf at respondent's desk a number of times and has seen and heard him answer the telephone and give information regarding travel, answer questions and stipulate prices to prospective travelers at the desk. The witness has seen Mr. Blethen around the hotel continually, loading baggage on cars leaving there.

The record shows that neither respondent Martin nor the

owners of the cars the license numbers of which appear above have certificates of public convenience and necessity to operate as "passenger stage corporations" or licenses under Statutes 1931, chapter 638, to act as motor carrier transportation agents. The record does not show that any of the witnesses paid money directly to Mr. Martin.

Section 1 of the Motor Carrier Transportation Agent Act (Statutes 1931, ch. 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, when such transportation is furnished, or is offered or proposed to be furnished by other than a carrier holding a valid certificate of public convenience and necessity issued by the railroad commission of the State of California permitting of such carrier transporting persons over such highways or any of them and between the points for which such transportation is sold,
* * *." (7)

In Re Interstate Transit Lines (February 23, 1932)

Decision 24504, App. 17796, it was held that

"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."

The witnesses in this proceeding who traveled between San Francisco and Los Angeles each paid compensation for such

(7) Under section 2 it is unlawful for any one "to engage in the business, or act in the capacity of a motor carrier transportation agent" without first obtaining a license from the Railroad Commission.

transportation. It is clear that respondent Martin, by advertising and otherwise, held himself out to furnish or provide transportation "for compensation" and did furnish and provide prospective travelers with such transportation. The witnesses were not transported over the line of a certificated passenger stage corporation between those points.

As to the affidavit alleging operation by respondent as a passenger stage corporation the record is not sufficient to support a finding in that respect.

Upon a careful review of the record in this proceeding the Commission makes the following findings of fact:

FINDINGS

1. On September 8, 1932, the Railroad Commission, in its Decision 25164, found as a fact that Maxwell C. Martin was acting as a motor carrier transportation agent within the meaning of Statutes 1931, chapter 636, without first obtaining a license therefor, and ordered said respondent to cease and desist from so acting. Said order has never been revoked, annulled, or stayed, and is now in full force and effect.

2. A certified copy of said Decision 25164 was personally served upon Maxwell C. Martin on September 9, 1932, said respondent had personal knowledge and notice of said decision and the contents thereof on and prior to September 29, 1932, the effective date of said decision, and was able at all times thereafter to comply with said order.

3. On February 23, 1933, there was filed with the Railroad Commission the affidavit of F. A. Savage, in which it was alleged in substance that Maxwell C. Martin, notwithstanding the order contained in Decision 25164, with full knowledge of its contents, and subsequent to its effective date, had failed and re-

fused to comply with said order in that he was continuing to act as a motor carrier transportation agent.

4. Upon said affidavit being received and filed the Railroad Commission, on March 8, 1933, issued its order directing Maxwell C. Martin to appear on March 23, 1933, and show cause why he should not be punished for contempt for his failure and refusal to comply with the order of the Railroad Commission. Said order to show cause, together with the affidavits upon which based, was personally served upon Maxwell C. Martin on March 9, 1933. Hearing was had on March 23, 1933, and the matter submitted.

5. Notwithstanding the order of the Railroad Commission contained in its Decision 25164 and subsequent to the effective date thereof, the said Maxwell C. Martin failed and refused to comply therewith, and continued to act as a motor carrier transportation agent, without first obtaining a license, by negotiating for and holding himself out to furnish and provide transportation for persons, for compensation over the public highways of this state between San Francisco and Los Angeles by other than a carrier holding a valid certificate of public convenience and necessity; and by furnishing and providing such transportation on October 10, September 30, November 11, December 15 and 27, 1932.

6. The said failure of Maxwell C. Martin to comply with said order of the Railroad Commission and his continuance to act as a motor carrier transportation agent was and is in contempt of the Railroad Commission of the State of California and its order, and in violation of Statutes 1931, chapter 638.

JUDGMENT

IT IS HEREBY ORDERED AND ADJUDGED that Maxwell C. Martin

has been and is guilty of contempt of the Railroad Commission in disobeying its order made on September 8, 1932, in its Decision 25164, by having failed and refused to desist from acting as a motor carrier transportation agent; and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that for his said contempt of the Railroad Commission and its order, said Maxwell C. Martin be punished by a fine of Five Hundred dollars (\$ 500.00) and by Five days' imprisonment in the county jail of the City and County of San Francisco; said fine to be paid to the Secretary of the Railroad Commission within five (5) days after the effective date of this opinion, findings and judgment; and that in default of payment of the aforesaid fine, said Maxwell C. Martin be committed to the county jail of the City and County of San Francisco until such fine be paid or satisfied in the proportion of one day's imprisonment for each five dollars thereof that shall so remain unpaid.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission, upon this order becoming effective, prepare an appropriate order of arrest and commitment to which shall be attached and made a part thereof a certified copy of this opinion, findings and judgment, directed to the Sheriff of the City and County of San Francisco, and providing for the incarceration of said Maxwell C. Martin for a period of Five days.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission, if said fine is not paid within the time specified above, prepare an appropriate order of arrest and com-

mitment in the name of the Railroad Commission of the State of California, to which shall be attached and made a part thereof a certified copy of this opinion, findings, and judgment.

IT IS HEREBY FURTHER ORDERED that this opinion, findings and judgment shall become effective twenty (20) days after personal service of a certified copy thereof upon Maxwell C. Martin.

Dated at San Francisco, California, this 10th day of April, 1933.

C. S. ...
Leon ...
W. J. ...
M. B. ...
...
Commissioners.