

Decision No. 10616

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

J. E. PRICE,

Complainant,

-vs-

PICKWICK STAGES, NORTHERN
DIVISION, a corporation,

Defendant.

ORIGINAL

Case No. 1322.

S. V. Wright, for Complainant.

N. C. Folsom, for Defendant.

BY THE COMMISSION:

OPINION AND ORDER ON REHEARING.

This proceeding was initiated by the complaint of J. E. Price, operating auto stages as a transportation company between the cities of San Luis Obispo and Paso Robles, alleging in effect, that the Pickwick Stages, Northern Division, a corporation, operating between Los Angeles and San Francisco, had commenced the operation of local stages in competition with the plaintiff, without first having secured the authorization of the Commission by a certificate of public convenience and necessity, declaring that such local operation was required. The Commission, by its order of April 30, 1920, Decision No. 7500, dismissed the complaint. Application for rehearing was filed by the complainant on May 10, 1920, and rehearing granted by an order made herein on November 26, 1921. The rehearing was had on December 19, 1921, before Commissioner Benedict. New evidence was

introduced, the matter was argued and now stands submitted upon the entire record.

The facts as presented by the record which are essential to the determination of the issues herein presented, may be briefly summarized as follows:

Pickwick Stages, Northern Division, a copartnership, the predecessor in interest of the defendant corporation of the same name, was operating in good faith on and prior to May 1, 1917, between Los Angeles and Atascadero and intermediate points, including both through and local service. Between Atascadero and San Francisco and intermediate points, a transportation company, known as the Western Auto Stage Company, was also operating both a local and through service on and prior to May 1, 1917. In the year 1917 and subsequent to May first of that year, Pickwick Stages, Northern Division, a copartnership, arranged to take over the operations formerly conducted by the Western Auto Stage Company, and on December 31, 1917, applied for a certificate of public convenience and necessity to operate passenger and express service between Atascadero and San Francisco and intermediate points. This application was filed to protect Pickwick Stages in its right to carry on the service in question, no provision being made in Chapter 213, Statutes of 1917, for the transfer of operative rights of stage companies. Thereafter, on January 30, 1918, Pickwick Stages, the copartnership, filed a request for dismissal of its application, and at the same time there was filed in lieu of the application thus withdrawn, an application by Pickwick Stages, Northern Division, a corporation, the defendant herein, for a certificate of public convenience and necessity covering operations over the entire service from Los Angeles to San Francisco as previously operated by the copartnership and the Western Auto Stage Company. This application, No. 3421,

stated that the certificate was sought for the purpose of continuing the service heretofore rendered as above outlined, and asked that the certificate be issued to authorize transportation "between Los Angeles and San Francisco and intermediate points." In its decision on this application (Decision No. 5107), the Commission granted a certificate of public convenience and necessity for operation "between Los Angeles and San Francisco" without expressly referring to service between intermediate points.

The defendant has, from the beginning, operated a through service between Los Angeles and San Francisco. Its right to do so is not questioned. However, in addition to through business, it has carried local passengers between intermediate points on its line, both on through stages and on local stages operating over only a portion of the route. Shortly prior to the filing of the complaint in this proceeding defendant began the operation of such local stages between Paso Robles and San Luis Obispo, thus coming into sharp competition with the complainant, as a result of which this case was instituted.

The issue here presented is whether or not the defendant has the right, either by virtue of prior operations of its predecessors or by the terms of the certificate granted to defendant itself in Decision No. 5107, to operate its stages for the transportation of local passengers between the intermediate points in question on its through route from Los Angeles to San Francisco.

During the pendency of this case a proceeding was initiated on the Commission's own motion to consider the modification of the order contained in Decision No. 5107. By our Decision No. 10,615 rendered today, we have modified the terms of the certificate as originally granted in Decision No. 5107, to

authorize certain of defendant's local operations. Such modification of the certificate may have the effect of determining the controversy in this case. Notwithstanding this fact, however, we believe it desirable, in view of the importance of the questions herein presented and of the doubt which has apparently existed heretofore concerning the right of a transportation company to carry on local operations as an incident to operative rights over a through route, to clearly set forth our conclusions on this point.

We believe it is clear that the defendant has no valid claim to operative rights by reason of any prior operations of its predecessors, carried on in good faith on or before May 1, 1917. At the time defendant took over the operations of its predecessors (the co-partnership and the Western Auto Stage Company), no provision had been made in the regulatory statute (Chapter 213, Statutes 1917) for the transfer of operative rights. The law then provided, in effect, that no person or corporation should begin the operation of auto stages as a transportation company without first obtaining a certificate of public convenience and necessity. Defendant had no right to take over the prior operations and in its own name begin operations except as and to the extent authorized by such certificate. "It is settled law that a transfer of property used in a public service from one corporation to another although made by a corporation having power to convey, is invalid unless the transferee has the power to accept the property and continue the use to which it has been devoted." (So. Pasadena v. Pasadena Land etc. Co., 152 Cal. 579, 588.)

As above stated, the application filed by the defendant in the proceeding upon which this certificate was issued sought the right to operate "between Los Angeles and San Francisco and intermediate points." The order of the Commission, made after

hearing and the submission of evidence, granted a certificate for operation between Los Angeles and San Francisco, but made no reference to intermediate points. The defendant was not authorized under the terms of this certificate to initiate the local service between San Luis Obispo and Paso Robles, herein complained of. Section 5 of Chapter 213, Statutes 1917, under which certificates of this character are granted, contains the following provision:

"The Railroad Commission shall have power with or without hearing to issue said certificate as prayed for, or to refuse to issue same, or to issue it for the partial exercise only of the privilege sought * *."

The order granting the certificate omitting, as it did, any reference to intermediate points, must be construed as authorizing a through service only between the termini of Los Angeles and San Francisco. It is to be presumed that the Commission, in granting the certificate for operation between Los Angeles and San Francisco, without reference to intermediate points, acted in accordance with the provision of the statute above quoted in the issuance of a certificate "for the partial exercise only of the privilege sought."

The right to operate a through service between fixed termini, whether this right is derived from operations in good faith on May 1, 1917--and hence, based upon a voluntary undertaking of a particular character of service, or is based upon a certificate of public convenience and necessity issued by the Commission subsequent to that date, does not necessarily carry with it the right to operate a local service between intermediate points along the route traversed. The right to operate such a local service depends, in the first instance, upon the character of operations actually being carried on in good faith on May 1, 1917, as evidencing the intention of the stage company to operate locally, and in the second instance, upon the lang-

usage of the certificate issued by this Commission, showing that the local operation was authorized in addition to the through service. We do not deem it essential that a certificate, to include authorization of intermediate local service, must name each and every stopping point along the route traversed to the exclusion of all other possible intermediate stops. The method most commonly used by this Commission to authorize an intermediate local service is to include in its certificate, declaring that public convenience and necessity require the operations between named termini, the qualifying phrase "and intermediate points." Such a certificate clearly authorizes the holder thereof to operate both the through service and such intermediate service as may be necessary to properly serve the traveling public. In connection with operations so authorized, the carrier may, from time to time, initiate, or the Commission, in the exercise of its regulatory power, may require changes in time schedules, new or different service to intermediate points and the use of additional cars for either local or through service in order to render adequate and efficient service.

In the present case, the certificate granted to Pickwick Stages on its Application No. 3421, Decision No. 5107, contained no qualifying language to show that any other than a through service between termini, was authorized. This being so, we conclude that our prior order herein, Decision No. 7500, dismissing the complaint, should be reversed.

It becomes unnecessary, in view of the above stated reasons for our conclusion, to discuss the other points raised by the complaint and referred to in our former opinion. We deem it proper to add that the statements contained herein are not to be deemed as a modification in any respect of our Decision No. 10,615, rendered this day, amending the certificate of public

convenience and necessity granted to defendant under Decision No. 5107, nor as a modification in any respect of such operative rights as the defendant may have acquired otherwise than by the certificate granted by said Decision No. 5107 as now modified.

O R D E R

A rehearing having been granted herein pursuant to application therefor by complainant, filed May 10, 1921, a further hearing having been held, additional evidence received and the matter submitted--

IT IS HEREBY ORDERED that the order heretofore made herein on April 30, 1921, dismissing the complaint, be, and the same is hereby vacated.

IT IS FURTHER ORDERED that the defendant cease operating, and until otherwise ordered by this Commission desist from operating any automobile, auto track or auto stage for the transportation of persons or property, as a common carrier, for compensation, between the termini of Paso Robles and San Luis Obispo, or between either of said termini and any intermediate point, or between any intermediate points between said termini, except as authorized by the terms of the certificate of public convenience and necessity contained in Decision No. 5107, as

modified by Decision No. 10,615, rendered this 22nd day of
June, 1922.

The effective date of this order is hereby fixed
and designated as July 6, 1922.

Dated at San Francisco, California, this 22nd
day of June, 1922.

H. B. Brundage

Irving Mattin

Charles A. Tomine

J. F. Brundage
Commissioners.