

Decision No. 11268.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

A. L. RICHARDSON,  
Complainant,

-vs-

FRANK MCKELVERRY  
STEPHEN SALLES,

Defendants.

Case No. 1788.

ORIGINAL

Harry A. Encell by James A. Miller,  
for complainant.  
J. D. Elliott for Defendants.

BY THE COMMISSION.

O P I N I O N

This is a proceeding filed on July 25, 1922, in which complainant Richardson alleges that defendants McKelverry and Sales have been operating automobile stages transporting passengers for compensation between the Fourteen Mile House and Sacramento and Sacramento and the Fourteen Mile House and between the Fourteen Mile House and Placerville, and have been making daily trips over the route over which he holds a certificate, transporting passengers for compensation in violation of the provisions of Chapter 213, Statutes of 1917, as amended.

A public hearing in the above entitled proceeding was held before Examiner Eddy on September 19, 1922, at Placerville at which time the matter was submitted and is now ready for decision.

The complainant called four witnesses in support of his complaint, all of whom testified to the effect that on frequent occasions they had observed automobiles operated by defendants transporting passengers between the points alleged in the complaint.

It would appear that Western States Gas & Electric Company operates a number of construction camps adjacent to the highway running between Placerville and Lake Tahoe; that quite a number of men are employed at these constructions camps, some of which are situated some distance from the main highway; that there is a considerable turn over in this class of labor and that men are leaving and arriving more or less daily; that defendants have been in the habit of calling at the camps either by telephone call or verbal requests, picking up passengers and transporting them to either Placerville or Sacramento. None of the witnesses called knew of their own knowledge of any specific instance in which each of the passengers paid an individual fare for their transportation.

Defendants testifying in their own behalf claimed that they were merely operating a rent car service and agreed to transport one or more passengers between any of the construction camps of the Western States Gas and Electric Company and Placerville or Sacramento at a fixed sum for the trip and that at no time had they collected individual fares from the passengers transported on any specific trip, nor were they holding themselves out as being engaged in the business of transporting passengers for compensation over a regular route or between fixed termini, but had on other occasions transported passengers over entirely separate and distinct routes; that no regular schedule was maintained nor did they have any fixed rate per passenger, the rate

being based upon whatever reasonable amount an individual or group of individuals might be willing to pay for transportation between two specified points.

The evidence itself clearly shows that on frequent occasions both defendants had operated automobiles transporting passengers for compensation between Sacramento, Placerville, Fourteen Mile House and construction camps Nos. A, B, K and R of the Western States Gas & Electric Company.

Chapter 213, Statutes of 1917, as amended, contains no reference in Section 1 thereof that a transportation company as defined in sub-section "c" must operate upon a fixed time schedule. Furthermore, sub-section "e" of Section 1 defines "between fixed termini or over a regular route", the termini or route between or over which any transportation company usually or ordinarily operates any automobile \* \* \* \* \* even though there may be departures from said termini or route, whether such departures be periodic or irregular.

Terming a specific automobile service as a rent car or taxi service does not in itself make it so. It is the actual operation and the service held out by the operator to the general public which must be considered in determining whether or not operation is in violation of the provisions of the automobile stage and truck transportation act or whether it comes within the rent car or taxi cab class. In Young vs. Stout, 19 Cal. Railroad Commission Reports, 877, the Commission held that an individual operating a so-called rent car or taxi service, whose business between two fixed termini had developed to the extent where he was operating a frequent and what might be termed a regular service, although no specified time schedule was maintained, he was operating in violation of the provisions of Chapter 213, Statutes of 1917, as amended, and although there may have been no intention

to violate the State law, the natural growth or development of the business had placed such operation in a class where it could only be considered as a transportation company as defined in section 1, sub-section "c" of the above numbered statutory enactment.

The Commission has further held on numerous occasions that the fact that an operator has no established time schedule for arrival or departures, nor a published or fixed schedule of rates under which he operates, is not sufficient ground for determining that he is not engaged in the business of transportation of persons or property over a regular route or between fixed termini as defined in sub-section "e" of Section 1, of Chapter 213, Statutes of 1917, as amended.

While both defendants in this proceeding may have been under the impression that they were operating a so-called rent car service, and may have engaged at times in what would be held to be the operation of a rent car service, we are of the opinion and find as a fact that in the present instance, they have been actually holding themselves out as being engaged in the business of transportation of persons for compensation and have been so operating between the fixed termini of construction camps of the Western States Gas and Electric Company, Fourteen Mile Stone, Placerville and Sacramento. Furthermore, the contention that an existing operator, holding a certificate authorizing operation of passenger stage service over a particular route has not been rendering efficient service nor properly meeting traffic requirements in no way effects the status of defendants in this proceeding, their remedy in such case being either the filing of a formal complaint to compel the existing carrier to improve his service or the filing of an application in their own behalf for a certificate permitting them to inaugurate a service which would meet traffic

requirements.

O R D E R

A public hearing having been held in the above entitled proceeding, evidence submitted and the Commission being fully advised, and basing its order on the finding of fact contained in the opinion preceding this order,

IT IS HEREBY ORDERED that Frank McKelverry and Stephen Salles be, and they hereby are directed to forthwith discontinue the operation of automobiles or automobile trucks for the transportation of persons for compensation between camps A, B, K, and R, Fourteen Mile Stone, Placerville and Sacramento, or any points intermediate thereto.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission shall furnish the District Attorneys of El Dorado County and Sacramento County with a certified copy of the within Order.

Dated at San Francisco, California, this 23<sup>rd</sup> day of November, 1922.

H. H. Brundage  
W. J. Mackay  
W. H. Brown

Commissioners.