

ORIGINAL

Decision No. 4637

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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In the Matter of the Application of)
 GENERAL MOTOR TRANSPORTATION COMPANY)
 for authority to operate motor busses)
 between Oakland and San Jose and be-)
 tween San Jose and Palo Alto; and for)
 authority to issue stock.)

Application
No. 3089.

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Charles Quayle for applicant;
 R.G. Hudson for Davis-Schaub Auto Service Co., protestant;
 F.L. Smith for Western Auto Stage Co., protestant;
 Anthony Devote for Peerless Stage Association, protestant;
 Charles Wade for Star Auto Stage Association, protestant;
 J.E. McCurdy for Penineular Rapid Transit Co., protestant;
 John D. Wheeler for Gibson Express Co., protestant.

LOVELAND, Commissioner.

O P I N I O N.

In this application GENERAL MOTOR TRANSPORTATION COMPANY asks authority to operate motor busses to carry passengers between Oakland and San Jose on the east side of San Francisco Bay and between San Jose and Palo Alto. Applicant also asks authority to issue \$50,000.00 par value of its capital stock at par to acquire equipment.

In addition to its passenger business, applicant would also engage in a general freight drayage business. The testimony shows that this business is not to be conducted between fixed termini or over a regular route. I am, therefore, of the opinion that, under the facts as presented, the Railroad Commission has no jurisdiction over the freight drayage business of applicant.

Applicant was incorporated in June, 1917, with an authorized stock issue of \$250,000.00 divided into 2500 shares of the par value of \$100.00 each. Of its authorized stock, applicant now seeks authority to issue \$50,000.00 par value.

As above stated, applicant desires to operate motor busses between Oakland and San Jose on the east side of San Francisco Bay, also between San Jose and Palo Alto. To take care of the business between San Jose and Oakland, it would acquire and place in operation six 26-passenger motor busses. Five similar busses are to be operated to take care of the business between San Jose and Palo Alto. A description of the busses which applicant proposes to acquire is contained in its Exhibit Number 6. Unless otherwise directed by the Railroad Commission, applicant will establish an hourly service.

Several auto stage companies and associations were represented at the hearing held upon this application and requested the Commission to deny applicant permission to operate between Oakland and San Jose and San Jose and Palo Alto. A statement made by M.R. Monze, president of General Motor Transportation Company, shows that the company has no intention of operating between San Francisco and Palo Alto. In view of this statement, J.E. McCurdy, representing the Peninsular Rapid Transit Company, withdrew his objection to the granting of the application. M.R. Monze also admitted that the equipment and facilities of the Davis-Schaub Auto Service Company^{operating} between Palo Alto and San Jose were satisfactory and entirely adequate to take care of the present business. He would enter this territory only in case of increase in business. The evidence offered by applicant, however, does not show any definite prospective increase in business, and I, therefore, recommend that this portion of the application be denied.

F.L. Smith, representing the Western Auto Stage Company, protested against the granting of the application on the ground that his company is operating between Oakland and San Jose and is about to complete arrangements to acquire new and additional equipment. The evidence, however, shows that the Western Auto Stage Company is not at this time engaged in offering to the general public adequate transportation facilities between Oakland and San Jose. The company is merely operating a car at infrequent intervals between those points. By so doing, it contends that it is complying with the act relating to the operation of transportation companies and may operate in the territory without permission from the Railroad Commission. It is not necessary in this proceeding to pass on this point. It is obvious to me that this application should not be denied on the ground that Western Auto Stage Company is operating between Oakland and San Jose, when that company operates cars at such irregular intervals as is shown by the testimony in this proceeding.

The Peerless Auto Stage Association, representing a number of individuals who are operating twelve 7 or 8-passenger cars between Oakland and San Jose, also protests against the granting of the application. This association is offering a 30-minute service between Oakland and San Jose. The testimony offered by applicant and this protestant on the adequacy of service and cost of operation is conflicting. As I view the situation, it will not be necessary for the Commission to determine which of the evidence is the more trustworthy. Applicant intends to establish a service entirely different and distinct from that now being offered by Peerless Auto Stage Association. Instead of operating twelve 7 or 8-passenger cars, applicant will operate six motor buses, each having a seating capacity of 26. In this case the Commission is called upon to perform a rather unpleasant duty, that is, authorize competition with parties who have been giving the best service within their means. Yet under the act the Commission has but one course to pursue. It must see that the public is given the best

possible service. The testimony clearly shows that the service which applicant proposes to offer to the public will be an additional service; in some respects it will be superior to that offered by Peerless Auto Stage Association. The busses which applicant proposes to operate are more of the nature of a public vehicle than an ordinary 7-passenger automobile. The rates of applicant and this protestant will be the same.

The testimony shows that applicant has no permits or franchises from any of the municipalities or counties in which it intends to operate. Until such permits or franchises are secured, I do not believe that the Railroad Commission should issue a final order authorizing applicant to operate motor busses between Oakland and San Jose.

Applicant desires authority to issue \$50,000.00 par value of capital stock at not less than 90 per cent. of its par value.

Inasmuch as applicant will not be allowed to operate between Palo Alto and San Jose, it will have to acquire but six busses. The cost of each bus is reported at \$4,900.00. Under these circumstances, I believe that an issue of \$40,000.00 of stock will be adequate to meet applicant's needs. Such an amount of stock will enable applicant to pay the entire purchase price at once instead of paying on an installment plan.

M. R. Monze stated that no arrangements had been made for the sale of any stock. The stock is not to be offered to the public generally, but to certain individuals known to M. R. Monze and his associates.

Applicant was unable to definitely assure the Commission that it can sell its stock. I believe that the stock

should be sold for cash and the proceeds deposited with some bank or trust company and expended only pursuant to supplemental order of the Railroad Commission. I do not believe that the Commission should authorize the expenditure of any part of the proceeds until applicant has collected a sufficient amount in cash to purchase and pay for the equipment which it contemplates to use.

In view of the testimony in this proceeding, I believe that applicant should be permitted to operate motor busses, as described in applicant's Exhibit No. 6, between Oakland and San Jose. It is understood that the right to operate between these points shall not be transferred or assigned without an order from the Railroad Commission.

I herewith submit the following form of order.

O R D E R.

GENERAL MOTOR TRANSPORTATION COMPANY having applied to the Railroad Commission for authority to operate motor passenger busses between Oakland and San Jose and San Jose and Palo Alto, as indicated in the foregoing opinion, and for authority to issue \$50,000.00 par value of its capital stock, and a hearing having been held and it appearing to the Commission that this application should be granted subject to the conditions herein specified,

IT IS HEREBY ORDERED that General Motor Transportation Company be, and it is hereby, authorized to issue \$40,000.00 par value of its common capital stock, provided that none of the stock shall be issued and sold until applicant has furnished the Railroad Commission with satisfactory evidence showing that it has obtained all necessary permits and franchises, as required by this order.

IT IS HEREBY FURTHER ORDERED that the Railroad Commission hereby declares that public convenience and necessity

require General Motor Transportation Company to operate motor passenger busses, similar to those described in applicant's Exhibit No. 6, between Oakland and San Jose, provided that General Motor Transportation Company shall first have obtained from all the cities and counties in which it intends to operate the necessary permits or franchises, and shall have filed with this Commission copies of such permits or franchises, and provided further that the right to operate said busses shall not be assigned or transferred without an order from the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that that portion of General Motor Transportation Company's application relating to the operation of motor passenger busses between San Jose and Palo Alto be denied without prejudice.

The authority hereby granted is granted upon the following conditions and not otherwise:-

1.-The stock hereby authorized to be issued shall be sold by applicant for cash at not less than \$90.00 per share.

2.-All moneys obtained from the sale of the stock shall be deposited by General Motor Transportation Company in a bank or banks as trust funds, on the express condition that if the total sum of at least \$36,000.00 shall not be deposited on or before December 15, 1917, or at such subsequent date as shall be determined by the Railroad Commission, said moneys shall be repaid to the persons who paid them, -either in toto or diminished by the ratable proportion of such expenditures as the Railroad Commission, in the meantime, may have authorized.

3.-No part of the proceeds from the sale of the stock shall be expended until applicant has filed with the Railroad

Commission copies of all necessary permits and franchises and the Railroad Commission has by supplemental order found said permits and franchises to be satisfactory, and designated the purposes for which the proceeds from the stock may be expended.

4.-General Motor Transportation Company shall keep separate, true and accurate accounts, showing the receipt and deposit of all funds secured in payment for or on subscriptions to the stock hereby authorized to be issued; a list of subscribers with the address and amounts subscribed by each, and on or before the twenty-fifth day of each month the company shall make verified report to the Railroad Commission showing the receipt and deposit of all such moneys, the stock issued during the preceding month, the terms and conditions of the issue, all in accordance with the Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

5.-The authority hereby granted to issue stock shall apply only to such stock as shall have been issued on or before December 15, 1917.

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 13th day of September, 1917.

Max Thelen

H. B. Ireland

Edwin O. Edgerton

Commissioners.