

Decision No. \_\_\_\_\_

ORIGINAL

Decision No. 5318

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Reasonableness of the Practices and Methods of Transportation Companies as defined in Chapter 213, Statutes of 1917, with reference to the Leasing of Transportation Equipment. Case No. 1202.

Warren E. Libby for Pickwick Stages, Southern Division.

T. E. Morgan for United Stages.

H. H. Stephens for Southern California Stages.

George M. Waddell for White Star Auto Tours Corporation.

Harry L. Weisbaum for Golden State Auto Tours Corporation.

F. D. Howell, Chief Engineer, Board of Public Utilities, for City of Los Angeles.

Marshall Stimson for Sunset Surety Company, owner of Liberty Bus Line.

C. B. Gillespie for Davis-Schaub Auto Service.

Carl C. Allen for Anchor Line Stages.

Walter J. Burpee for Peerless Auto Stage Association.

W. A. Latta for Star Auto Stage Association.

O. M. Spangler for Union Line of San Mateo.

J. E. McCurdy for Peninsula Rapid Transit Company.

John V. Filippini and Floyd Hanchett for California Stages Company.

THELEN and GORDON, Commissioners.

OPINION.

This is a proceeding instituted by the Railroad Commission on its own motion to investigate the practices and methods of transportation companies as defined in Chapter 213, Laws of 1917, with reference to the leasing of transportation

equipment.

The Pickwick Stages, Southern Division, and Al Hayes, Manager; United Stages and T. E. Morgan, Manager; Southern California Stages and E. E. Stephens, Manager; White Star Auto Stages and George M. Waddell, Manager; Union Auto Stages and J. M. Powers, Manager; Star Auto Stage Association and Charles Wade, Manager; Anchor Stage Line and Carl C. Allen, Manager; Union Line of San Mateo and O. M. Spangler, President; and Peerless Auto Stage Association and Percy L. Bliss, Agent, were ordered to appear and to show cause, if any, why the Commission should not proceed with this investigation. They were notified that, no good cause appearing to the contrary, the Commission would proceed with the investigation and make such order as to the Commission might seem reasonable.

Public hearings were held in Los Angeles on March 5, 1918, and in San Francisco on March 6, 1918.

Chapter 213, Laws of 1917, approved May 10, 1917, confers on the Railroad Commission jurisdiction over Transportation Companies engaged in the transportation of persons or property by automobile, jitney bus, auto truck, stage or auto stage as a common carrier for compensation over any public highway in this state between fixed termini or over a regular route, so defined in the act.

Section 5 of said Chapter 213 provides in part as follows:

"No transportation company shall hereafter exercise any right or privilege under any franchise or permit hereafter granted, by any incorporated city or town, city and county, or county, without first having obtained from the railroad commission a certificate declaring that public convenience and necessity require the exercise of such right or privilege, but no such certificate shall be required of any transportation company as to the fixed termini between which or the route over which it is actually operating in good faith on May 1, 1917."

Some of the transportation companies operating on and prior to May 1, 1917 under the title of "companies" and "associations" have had arrangements whereby the equipment used in their service has not been owned by them but has been leased by them under an arrangement whereby the owner of the equipment either drives the car himself or furnishes an employee as driver. All expenses of maintenance and operation, including also municipal licenses and indemnity bonds, are borne by the owner of the car. The compensation paid to the owner of the car is a percentage of the gross revenue earned by the car, the percentage varying from eighty to ninety per cent of the revenue derived from the operation of the individual car. The car owner is required to protect the schedule of the run to which he is assigned and to comply with all state and municipal regulations. The stage company or lessee is relieved of all responsibility for maintenance or operation and practically acts as a ticket agency or broker. These companies or associations claim the ownership of the right to operate routes and urge that they were in the business of a transportation company in good faith on May 1st, 1917, in accordance with the provisions of Section 5 of Chapter 213, Laws of 1917.

The attention of the Commission having been directed to the fact that frequent changes are being made in the owners of cars operating on various routes under the Commission's jurisdiction, that operators are claiming rights to certain designated runs by reason of having operated over them as individuals continuously for periods preceding May 1, 1917, and that other individual operators have been placed on runs by the self-styled companies and associations, such individual operators not having operated prior to May 1, 1917, the Commission determined that a full investigation into the practice of so-called leasing

of equipment was desirable and thereupon initiated this proceeding.

We shall now outline briefly the status of each transportation company cited to appear in this proceeding, as shown by the testimony herein.

The Pickwick Stages, Southern Division, with headquarters at San Diego, is a co-partnership consisting of four members. This line operates between Los Angeles and San Diego, San Diego and El Centro, and El Centro and various points in the Imperial Valley. The co-partnership as such owns no equipment. Individuals who are members of the co-partnership own nine cars. The remaining thirty-one cars are operated by third parties on a basis whereby a percentage of the receipts from their operation accrues to the car owner. The Pickwick Stages, in return for the percentage retained, furnish offices, pay for advertising and terminal expenses such as ticket clerks, and attend to the filing of schedules with the Railroad Commission. Municipal licenses are taken out in the name of the Pickwick Stages and their cost is charged to the owner of the car. Indemnity bonds, required by some of the municipalities through which the line operates, are taken out in the name of the Pickwick Stages and the cost of such bonds is charged to the owner of the car. Frequent changes have been made in the individual operators who are running under the Pickwick Stages schedules, and it has not been thought necessary to secure the approval of the Railroad Commission in the transfer of individual operators. No evidence was presented indicating that written leases or agreements outlining the method of operation and the rights of the individual car owners and the Pickwick Stages have been executed. The Pickwick Stages presented as an exhibit a suggested form of lease for the approval of the Commission. This lease provides for the

employment of the car and driver, requires the lessor to pay all licenses and taxes and to defray all expenses of maintenance and operation. The compensation is to be on a mileage basis on a graduated scale dependent upon the number of passengers carried per trip.

The United Stages, with headquarters at Los Angeles, is a corporation. This line operates between Santa Barbara and Los Angeles, Los Angeles and San Diego, San Diego and Camp Kearny, and San Diego and Imperial Valley and covers local runs in the Imperial Valley. The corporation owns five automobiles and operates approximately fifty-one others under a contract providing a certain compensation per trip with a bonus for business obtained over a fixed minimum. The contracts provide that if service satisfactory to the United Stages is not rendered the owner of the car can be discharged and replaced by another owner on fifteen days' notice. Not over thirty per cent of the operators owning cars and working under the above arrangement were so engaged on May 1, 1917. Local permits in San Diego have been taken out by the United Stages and paid for by that Company. In Los Angeles some of the permits have been taken out and have been paid for by the owner of the car. Permits in El Centro have been taken out and paid for by the United Stages. All indemnity bonds, wherever required, have been taken out and paid for by the United Stages. On May 1, 1917, a total of ninety cars were operating under the management of the United Stages. Forms of leases now being used by the United Stages were presented to the Commission as exhibits. These leases provide for the leasing of a car on the basis of a fixed sum for each round trip, the lessor to keep the car in good mechanical condition and repair, to furnish a driver to operate, to keep the car equipped in accordance with the requirements of the Railroad Commission, to furnish bond as the same may be

required ~~maintained~~ by any municipality and to keep the car at the disposal of the lessee at all times. The contract also carries a bonus clause on the basis of a certain unnamed sum, providing additional compensation for revenue derived from passengers carried in excess of the amount stipulated as minimum compensation for the total trips performed each day.

The Southern California Stages is a co-partnership consisting of two members, and having headquarters at Los Angeles. The co-partnership owns no cars, all equipment being leased on a basis of a percentage of the earnings being taken by the Southern California Stages in return for terminal facilities, advertising, superintendence and expense of ticket agencies. This line operates between Los Angeles and San Diego and at present is operating four cars under this arrangement. During the year 1916, the line operated as many as seven cars. The indemnity bonds required by municipalities are carried in the name of the Southern California Stages, are paid for by the Company and are charged back against the car operators, as are the city licenses in Los Angeles. The licenses in San Diego are paid for by the Company and the cost of the same is not charged to the car operator. But one of the four operators on this line was in the service of the Southern California Stages on May 1, 1917. A form of lease was submitted for the information of the Commission as an exhibit of the Southern California Stages. This lease provides for the furnishing of a car and driver, the lessor to furnish bond and licenses as required by the lessee and to keep car in good mechanical condition and at the disposal of the lessee. The lessor agrees to operate in the service of and under the direction of the lessee between Los Angeles and San Diego for an agreed price per round trip, based on a minimum of five passengers or less. Additional

compensation for each person in excess of five passengers is provided for and is based on a proportion of the tariff rates assessed between San Diego and Los Angeles and intermediate points. The contract provides for cancellation upon thirty days' notice by either party.

The White Star Auto Stages is a co-partnership consisting of three members, and operates between San Diego and El Centro and locally in the Imperial Valley. The co-partnership as such owns no equipment, although two of the co-partners own three cars. Approximately thirty-two cars are operated under either a verbal arrangement or a written form of lease. A form of lease was submitted for the information of the Commission as an exhibit of the White Star Auto Stages. This lease provides a one year term. The lessor agrees to provide a car fully equipped and conforming to all state, county, municipal and local laws and ordinances, to devote his full time to the operation of the car, to comply with and obey the orders of the lessee, to defray all cost of maintenance and operation and to pay the cost of insurance against damage arising from fire, accident, theft, and liability accruing from damage to persons or property. The compensation to accrue to the car owner is based on an unnamed percentage of all gross earnings, to be paid daily during the period that the car continues in the service of the lessee. The lease is terminable at the option of the lessee if the car is lost, destroyed or irreparably disabled, or is otherwise unfit or unsafe for passenger service.

The Golden State Auto Tours Corporation, with headquarters in Los Angeles, operates between Los Angeles and San Bernardino, Los Angeles and San Jacinto and Los Angeles and Lancaster.

This is a corporation owning and operating six cars in the auto stage business, but owning nine other cars which are operated as sight-seeing cars and in rent and taxi service and which are available for use in case of heavy travel on the stage lines operated by this corporation. One car is operating under a lease and contract of sale entered into on February 22 or 23, 1917, whereby the purchaser agreed to operate under the management of the Golden State Auto Tours Corporation and to reimburse the corporation at the rate of \$7.00 per day until a total amount of \$2500.00 would have been paid. All schedules and tariffs have been filed by the Golden State Auto Tours Corporation including the schedule of the operator who is purchasing the car and route on the deferred payment plan. As this operator was rendering service in good faith on and prior to May 1, 1917, we are of the opinion that the route covered by him is his individual property and that such operator has an established right which will be recognized so long as his operation is conducted in accordance with the provisions of Chapter 213, Laws of 1917, and the rules and regulations from time to time established by this Commission.

The Anchor Stage Lines, with headquarters at Fresno, is a corporation. Its purpose is to provide terminal facilities for its members and to see that schedules are maintained and that equipment is kept up to a standard satisfactory to the public and in compliance with the local and state requirements. No tariffs or time schedules are filed by the corporation for its members, such members filing their own individual tariffs and time schedules and themselves controlling their own routes. This corporation does not come within the scope of the inquiry in this proceeding for the reason that its activities are confined to the purposes of a joint terminal association for the benefit of its members who retain entirely the control



over their individual lines.

The Star Auto Stage Association is organized under Section 653b and subsequent sections of the Civil Code of the State of California as a co-operative business association. This association was organized on October 26, 1916, with its principal or home office in the city of Sacramento. The association owns no cars. On May 1, 1917, between fifty-five and sixty members comprised the association. At the date of the hearing herein in San Francisco the association had from forty-five to fifty members. Four or five members belonging to this association on May 1, 1917, have been replaced by other members, some who have surrendered membership have not been replaced by anyone, and some individual members who have surrendered membership have been replaced by three or four individuals. The Star Auto Stage Association takes the position that all runs are the property of the association and that the individual operators on May 1, 1917 have no rights as individuals. The association's by-laws read in part as follows:

"ARTICLE III - MEMBERSHIP"

Sec. 4. Upon election to membership each applicant shall sign these By-Laws, which signing shall constitute a contract between the member and this Association.

Sec. 5. At the time of becoming a member each person shall bring into and deliver up to the Association, for the use and purposes for which it is organized, under such rules as the Directors may from time to time adopt, one or more automobiles, auto stages, trucks, or motor conveyances, to be by said member placed in operation upon and over a route to be fixed and selected by said Directors, and subject to change; and during his said membership shall keep and operate such auto stage or conveyance in accordance with the rules of the Association.

Sec. 6. The Board of Directors may make rules and regulations relating to admission to membership, and relating to the use and operation of stages and conveyances over the routes covered by the Association and its members."

A number of members of the Star Auto Stage Association have informed the Commission that they have never executed any documents which they considered as a surrender of their right to operate over a designated route upon which they were operating in good faith on May 1, 1917, either as members of the Star Auto Stage Association at that time or by reason of their having become members of the Association since that date. The By-Laws themselves contain evidence that the runs, or some of them, may be held by individual operators and not by the association, as appears from Section 10 of Article II, reading as follows:

ARTICLE II - MEMBERSHIP

Sec. 10. Any membership in the Association shall cease upon such member transferring or disposing of his title to or interest in the automobile or auto stage or truck, or stages or trucks, used and operated by him as a member of the Association, or his right to operate a stage or truck on or over any route within the territory covered by the Association, when such sale shall leave such member without other stages, trucks, or conveyances upon the routes of the Association. Any membership shall cease when a majority of the members of the Association shall by vote at any regular or special meeting so determine."

From the evidence herein we are unable to reach a satisfactory conclusion on the question whether all the routes operated in the name of the Star Auto Stage Association are held by the association or by individual operators. The question will receive our further attention and investigation <sup>and</sup> may be the subject of a supplemental opinion and order. This proceeding will, for the present, be held open in so far as Star Auto Stage Association is concerned.

The Union Line of San Mateo is an association organized under date of March 1, 1917, and consists of fourteen members operating out of San Mateo. All the members own their individual routes and file individual tariffs and time schedules.

The association is a mutual arrangement for the handling of the service rendered by the various members, one of same being empowered to supervise the operation of all the runs and to see that each member complies with time schedules, state, county and municipal regulations. All licenses are paid for by the individual members of the association and all indemnity bonds are also taken out and paid for by individual members.

The Peerless Auto Stage Association is an organization operating under articles of incorporation dated April, 1917. The association consisted of twelve members on May 1, 1917, one of whom has surrendered his membership, leaving eleven members in the association at this time. All the members are operating between Oakland and San Jose, and control their individual rights. The association has filed tariffs and time schedules as an association, but it appears that such filing was the result of a misunderstanding as each individual member controls his own run and operates as an individual. We suggest that a cancellation of the association's filings be made and that individual filings be made by the members so that the actual conditions under which the runs are being operated may be reflected. The members of the association have combined for the purpose of using common terminals in Oakland and San Jose and for the mutual use of agents at such terminals, such agents handling ticket sales and directing the operation of the cars so that the same may be operated on the schedules as filed with this Commission. No cars are owned by the association as such, nor are any leased, all being under the direct control of the individual members of the association who own their own runs and equipment.

We have carefully considered all the evidence in this proceeding and we find that the practice of so-called leasing of cars on a percentage basis is not desirable from the standpoint of the public interest and does not result in the automobile transportation business being conducted on a stable basis. Under the so-called lease where the entire up-keep of the car, its maintenance and operation falls on the lessor, who hires himself and car to a line claiming rights to operate by reason of having been engaged in this class of business prior to May 1, 1917, and where the operator is burdened with all the expense of licenses, indemnity bonds and other costs, the lessee taking practically no risk nor responsibility, the public does not receive the character of service to which it is rightfully entitled nor does the car owner receive the just return for the service which he is performing.

At the Los Angeles hearing herein, Mr. F. D. Howell, Chief Engineer of the Board of Public Utilities of the City of Los Angeles, who has had supervision over the regulation of automobile transportation in the City of Los Angeles, stated that in his observation of conditions with reference to "leased cars" no particular service was rendered to the public by the lessees and that in the case of a ten months' check of licenses issued for interurban stages operating out of the city of Los Angeles it was found that ninety-eight cars had been licensed to care for schedules that could be filled with forty-one cars, or practically 2.4 cars to protect the schedule that would be covered by one car.

At the Los Angeles hearing, representatives of the United Stages, Southern California Stages, Pickwick Stages, White Star Auto Stages, Eldorado Stage Company, Golden State Auto Tours Company, A. R. G. Bus Company, Clark Bus Line and

O. R. Fuller, being practically all auto stage companies operating out of Los Angeles, agreed that it would be desirable and satisfactory to them if an order were entered in this proceeding providing that all transportation companies be required to own their equipment or to lease the same on a basis approved by this Commission.

We are of the opinion and find as a fact that all transportation companies as defined by Chapter 213, Laws of 1917, should be required to own their equipment (proprietary control being deemed ownership) or to lease such equipment for a specified amount on a trip or term basis and that the leasing of equipment shall not include the services of a driver or operator. All employment of drivers or operators of leased cars should be made on the basis of a contract by which the driver or operator shall bear the relation of an employee to the transportation company by whom such driver or operator is engaged.

This finding, of course, has no applicability to an individual who owns his car and runs in his own right, even though he belongs to some terminal or other association.

We submit the following form of order:

O R D E R

Public hearings having been held in the above entitled proceeding, the matter having been submitted, the Railroad Commission being fully advised and basing its order on the finding of fact contained in the preceding opinion,

IT IS HEREBY ORDERED that, effective one hundred and twenty (120) days from the date of this order, all transportation companies as defined in Chapter 213, Laws of 1917, shall either own their

equipment (proprietary control being deemed ownership) or lease such equipment for a specified amount on a trip or term basis, the leasing of equipment not to include the services of a driver or operator. All employment of drivers or operators of leased cars shall be made on the basis of a contract by which the driver or operator shall bear the relation of an employee to the transportation company by whom such operator or driver is engaged.

The practice of leasing equipment or employing drivers or operators on the basis of compensation on a percentage basis and dependent on the gross receipts per trip or for any period of time is hereby prohibited from the effective date hereof.

IT IS FURTHER ORDERED that the status of the Star Auto Stage Association, as set forth in the foregoing opinion, be made the subject of further inquiry, investigation and subsequent order of the Commission.

The Commission hereby reserves the right to make such other and further orders in this proceeding as to it may appear right and proper or as may be required in the regulation of the matter of leased equipment of transportation companies as defined by Chapter 213, Laws of 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 17<sup>th</sup> day of April, 1918.

Max Heller  
H. D. Stewart  
Alex Gordon  
Edwin O. Edgerton  
Frank R. Devlin  
Commissioners.