

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

ORIGINAL

Decision No. 5589

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the matter of the application of	)	
Pickwick Stages, Northern Division,	)	
a corporation, for a certificate of	)	
public convenience and necessity to	)	Application No. 3421.
operate stage service between Los	)	
Angeles and San Francisco and inter-	)	
mediate points.	)	

John F. Davis, City Attorney, for City of Burlingame.  
J. E. McCurdy for Peninsula Rapid Transit Company.

GORDON, Commissioner.

SUPPLEMENTAL OPINION

The Railroad Commission heretofore, on February 5, 1918, granted, upon certain conditions, the application of Pickwick Stages, Northern Division, for a certificate of public convenience and necessity to operate an automobile service between Los Angeles and San Francisco. One of the conditions was that before the certificate of public convenience and necessity should become effective, applicant should secure permits to operate "from the governing bodies of all political subdivisions through which the proposed line will operate between Los Angeles and San Francisco".

The question then arose as to whether by this condition the Railroad Commission intended that applicant obtain permits from those political subdivisions through which its automobiles would run but within the limits of which no passengers or freight would be taken on or discharged. As result of requests from the City of San Mateo and the Peninsula Rapid Transit Company for a specific ruling on this question, a further hearing in this matter was had at which full opportunity for argument on the matter was given, which argument has been fully considered by the Commission. We are of the opinion that it is necessary for applicant to obtain a permit from each political subdivision through which its automobiles run, even though no passengers or freight are taken on or discharged therein.

Chapter 213, Stats 1917, p. 330, established a new and complete plan of regulation of automobile transportation in this state. Secs. 3-a, 3-b, 3-c and 3-d provide:

(a) "No corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall operate any automobile, jitney bus, auto truck, stage or auto stage for the transportation of persons or property as a common carrier for compensation on any public highway in this state between any fixed termini between which or over any route over which such corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, are not actually operating in good faith on May 1, 1917, unless a permit has first been secured as herein provided.

(b) "Application for such permit shall be made by such corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, to the legislative or other governing board or body of each incorporated city or town, city and county, and county within or through which applicant intends to operate. Such application shall be in writing, verified by applicant, and shall specify the following matters: \* \* \* \* \*

(c) "Upon the filing of said application, the legislative or other governing board or body with which the same has been filed may in its discretion fix a time and place for a hearing on said application, which time shall not be less than five days subsequent to the filing of said application. No application shall be granted without a hearing. When a time and place for a hearing have been fixed, the applicant shall, at least three days prior to said hearing, cause to be published in a newspaper of general circulation in the incorporated city or town, city and county, or county within which applicant desires to exercise a permit, a notice reciting the fact of the filing of said application, together with a statement of the time and place of the hearing of said application.

(d) "At the time specified in said notice or at such later time as may be fixed by said legislative or other governing board or body, a public hearing upon said application shall be held by or under the direction of said legislative or other governing board or body. After such hearing, said legislative or other governing board or body may issue the permit as prayed for or refuse to issue the same, or may issue the same with modifications and upon such terms and conditions as in its judgment the public convenience and necessity may require."

It will be noted that under Sec. 3-b, the application for a permit shall be made to the legislative or other governing board or body of each incorporated city or town or county "within or through which applicant intends to operate", and in Sec. 3-d, specific authority is granted to the governing bodies to grant or refuse to issue the permit applied for.

Other sections of the act require that the ~~the~~ certificate of public convenience and necessity be obtained from this Commission before such permits are exercised. With reference to the permits, however, we believe the statute clearly empowers the counties and municipalities of this state to grant such permits and requires that such permits be obtained before automobile transportation is conducted through the county or city, even though no passengers or freight be taken on or discharged therein.

Those who take the opposite view of this question rely upon Matter of the Application of Smith, 33 Cal. App. 161. In that case an ordinance of the City of Tropicco was held invalid in so far as it required a person to obtain a license from the city before operating an automobile for hire over the streets thereof, even though no persons were taken on or discharged within the city limits. The reason for this decision, however, was found in the limitations of the charter for cities of the sixth class, which empowers such cities to impose licenses only on business which is "transacted and carried on in such city", and the Court holds that the mere running of an automobile for hire through a city does not constitute carrying on business within the city.

On page 163 of the Reporter, the Court says:

"The transportation of the passengers over any particular part of the public highway is one of the incidents of the business, but it no more constitutes the business than does the collection of their fares. Hence, it cannot be said that the carrying of passengers for hire from Los Angeles to Bakersfield by means of a motor vehicle operated over the public highway, a part of which extends through Tropicco, where no stops are made, nor any of the incidental acts of such transportation performed other than traveling along the streets, constitutes a business 'transacted and carried on in such city.'"

There is no such limiting language in Chapter 213, Statutes of 1917. In this statute the permit is required from "each political subdivision within or through which applicant intends to operate". These words, we believe, are intended to require permit from political subdivisions within which no passengers or freight are either taken on or discharged.

It is not necessary to make any further order in this proceeding, as the order heretofore made is in entire accordance with the views expressed.

The foregoing supplemental opinion is hereby approved and ordered filed as the supplemental opinion of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th  
day of July, 1918.

Edwin C. Edgerton  
H. D. Loveland  
Chas. Gordon  
Commissioners.