

Decision No. 6433

ORIGINAL

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Service of
DE LUXE TRANSPORTATION COMPANY,
Inc., and the revocation of cer-
tificate of public convenience
and necessity issued to said
company.

Case No. 1382.

In the Matter of the Application
for right to transfer franchise
of the DE LUXE TRANSPORTATION
COMPANY.

Application No. 5066.

W. M. Rank, for De Luxe Transportation Company, Inc.

Clarence W. Morris, for Maurer and Sanford.

Harry A. Encell, for Peerless Auto Stage Company.

John C. Scott, E. Porter Ashe and Edmund Tauszky,
for Committee of Creditors of De Luxe
Transportation Company.

H. H. Gogarty, for United States Railroad Adminis-
tration, Southern Pacific Railroad.

BY THE COMMISSION:

O P I N I O N

The above entitled case is a proceeding instituted on
the Commission's own motion citing the De Luxe Transportation
Company, Inc. to appear and show cause, if any, why an investi-
gation should not be made regarding the alleged discontinuance
of service heretofore rendered by said De Luxe Transportation
Company, Inc., between Oakland and San Jose under the authority

granted by the Railroad Commission on August 3, 1918, in Application No. 3841, and March 22, 1919, in Application No. 4382.

R. Porter Ashe, W. A. Sloan and John C. Scott, as a committee representing the creditors of the De Luxe Transportation Company, and J. M. Maurer and W. M. Sanford have petitioned the Railroad Commission for an order approving the transfer of the operative rights of the De Luxe Transportation Company for the carriage of passengers as a common carrier between Oakland and San Jose, J. M. Maurer and W. M. Sanford to purchase, acquire and hereafter operate passenger service between the above mentioned points at the rates and in accordance with the schedules heretofore filed with the Railroad Commission by said De Luxe Transportation Company.

A public hearing was conducted by Examiner Brookman at San Francisco on November 7, 1919, at which time it was stipulated that the above-entitled matters would be consolidated for hearing. The matters were duly submitted and are now ready for decision.

On October 1, 1919, the Railroad Commission was advised by telephone that no service was being rendered on the schedules of the De Luxe Transportation Company between Oakland and San Jose and an investigation by the Commission's Service Department developed that by reason of an attachment having been placed on the property of the De Luxe Transportation Company the equipment was not being operated and the service contemplated by the schedules on file with the Railroad Commission was not available for the public. Efforts were made by the Railroad Commission to have service resumed and to such end the President of the De Luxe Transportation Company and also attorneys representing the principal creditors were interviewed and advised of the necessity for resumption of service. The situation as regards suspension of service was particularly aggravated by reason of labor troubles on the line

of the San Francisco-Oakland Terminal Railways and the resumption of service would have been of material advantage to the communities of Oakland, San Leandro, Hayward and intermediate points. The efforts of the Railroad Commission to secure resumption of service informally being of no avail, a citation was issued to show cause why an investigation should not be made and an order be issued revoking or modifying the authority heretofore granted under the orders of the Commission on Applications Nos. 3841 and 4382.

On October 22, 1919, a joint application was filed with the Railroad Commission on behalf of R. Porter Ashe, W. A. Sloan and John C. Scott, as a committee representing the creditors of the De Luxe Transportation Company, and J. M. Maurer and W. M. Sanford as proposed purchasers of the operative rights heretofore held under the authority of the Railroad Commission for passenger service on the route between Oakland and San Jose, such application alleging that the De Luxe Transportation Company had assigned and transferred to said creditors' committee all its property, assets, rights and franchises, and that a bona fide offer of the sum of Twenty-five hundred dollars (\$2500.00) had been made for the passenger franchise or operative right heretofore granted to the De Luxe Transportation Company by virtue of the certificates of public convenience and necessity issued by the Railroad Commission. At the hearing in the above-entitled proceedings the De Luxe Transportation Company, by its President, joined in the application as a petitioner.

The evidence in this proceeding is conclusive that the De Luxe Transportation Company has not operated any service between Oakland and San Jose and intermediate points since October 1, 1919, that the Company is unable to render service by reason of equipment no longer being available, and that the creditors' committee as assignees of the property has no intention of operating the line, although desiring to dispose of the operative right for the carriage of passengers to the applicants, Maurer and

Sanford.

We are of the opinion that the obligation to render service to the traveling public desiring stage transportation between Oakland and San Jose under the authority conveyed by the Railroad Commission to the De Luxe Transportation Company has not been complied with, either by the officials of the De Luxe Transportation Company or by the committee representing the creditors, and that the efforts of the Railroad Commission to restore service for the public should have been met with a response resulting in the resumption of service. Equipment could have been procured from other sources or by the lease of cars and the public, who were entitled to service, could have obtained transportation, particularly when labor troubles had practically eliminated all regular transportation, with the exception of that afforded by the steam railroads, between Hayward, San Leandro, Oakland and intermediate points.

The Railroad Commission expects and will require transportation companies as defined by Section 1 of Chapter 213, Laws of 1917 as amended by Chapter 280, Laws of 1919, to fully discharge their obligations to the public in accordance with schedule filings and other regulations of this Commission, and suspension of service, without the consent of the Railroad Commission will be regarded as a relinquishment of any operative rights conferred by order of this Commission.

ORDER

A proceeding having been instituted on the Commission's own motion directing the De Luxe Transportation Company, Inc. to appear and show cause why an investigation should not be made regarding the alleged discontinuance of service heretofore rendered by said De Luxe Transportation Company between Oakland and San Jose; an application having been made by R. Porter Ashe, W. A.

Sloan and John C. Scott, representing the creditors of the De Luxe Transportation Company, and J. M. Maurer and W. M. Sanford, for an order approving the transfer of the operative rights of the De Luxe Transportation Company for the carriage of passengers as a common carrier between Oakland and San Jose to said Maurer and Sanford; a public hearing having been held at which the two matters were consolidated for the purpose of receiving testimony, the matters having been duly submitted and the Commission being fully advised and finding as a fact that the rules and regulations of the Railroad Commission regarding observance of schedule filings have not been complied with during the period from October 1, to November 7, 1919, both dates inclusive, by the De Luxe Transportation Company, Inc.,--

IT IS HEREBY ORDERED, that the rights and privileges heretofore granted by the Railroad Commission to the De Luxe Transportation Company, Inc., in Decision No. 5651 on Application No. 3841 decided August 3, 1918, and in Decision No. 6206 on Application No. 4382 decided March 22, 1919, and covering the operation of a passenger stage line as a common carrier between Oakland and San Jose and intermediate points, be, and the same hereby are, revoked. The tariffs and time schedules of the De Luxe Transportation Company, Inc. now on file with the Railroad Commission covering the carriage of passengers between Oakland and San Jose and intermediate points are hereby ordered canceled.

IT IS HEREBY FURTHER ORDERED, that the application of R. Porter Ashe, W. A. Sloan and John C. Scott, as a committee representing the creditors of the De Luxe Transportation Company; De Luxe Transportation Company as represented by

its President, W. M. Rank; J. M. Maurer and W. M. Sanford for an order approving the transfer of the operative rights of the De Luxe Transportation Company as a common carrier of passengers between Oakland and San Jose and intermediate points, be, and the same hereby is, denied.

Dated at San Francisco, California, this 9th day of ~~December~~ November, 1919.

Edwin O. Edgerton
H. J. Loveland
Frank P. Hill
William W. Martin
Commissioners.