

ORIGINAL

Decision No. 7712.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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In the Matter of the reasonableness of
the practices and methods of transport-
ation companies as defined in Chapter
213, Statutes 1917, with reference to
the leasing of transportation equipment.

Case No. 1202.

Harry A. Encell, for Geo. S. Held,
Clarence L. Simonds and O. A. Moon.
J. E. McCurdy, for J. L. Koehn.
Jesse Steinhart, J. Goldberg and
Lawrence Levy, for A. L. Richardson.
W. A. Latta and J. Hancock, for Star
Auto Stage Association and Star
Auto Stage Company.
Charles R. Detrick and Theodore W.
Chester, for Central California
Traction Company.
Dennett & Zion, for E. R. Michaels
and A. L. Parker.
T. S. Louthitt, for C. D. Gulick and
Henry Short.
K. B. Robinson, for Shaves and McFall.

BY THE COMMISSION:

FIRST SUPPLEMENTAL OPINION

The above entitled proceeding is a matter initiated by the Railroad Commission upon its own motion on February 25, 1918, for the purpose of investigating the practices and methods of transportation companies as defined by Chapter 213, Laws of 1917, with reference to the leasing of transportation equipment. After hearings at Los Angeles and San Francisco the matter was duly submitted and decided on April 17, 1918; Decision No. 5318. The opinion preceding the order in the above mentioned decision contained the following reference to the Star Auto Stage

Association;

"The Star Auto Stage Association is organized under section 653b and subsequent sections of the Civil Code of the state of California as a cooperative 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 Four or five members belonging to this association on May 1, 1917, have been replaced by other members, some who have surrendered membership have not been replaced by anyone, and some individual members who have surrendered membership have been replaced by three or four individuals.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 II - 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 be 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 and 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 order in the above mentioned decision contained the following reference to the Star Auto Stage Association,

"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."

On May 23, 1919, J. L. Koehn filed with the Railroad Commission a petition for further hearing on this proceeding, requesting a further order establishing the validity of the Star Auto Stage Association, and the rights claimed by it for the operation of the auto stage lines proposed to be operated under its management and control.

Public hearings were conducted by Examiner Handford at Stockton on December 30, 1919 and January 30, 1920, the matter was duly submitted and is now ready for decision.

The Star Auto Stage Association was organized on October 26, 1916, as a co-operative business association, in accordance with Section 653b and subsequent sections of the Civil Code of the State of California. At the time of organization the principal office of the association was, in accordance with the articles of association, in the city of Sacramento. The articles of association were regularly filed with the County Clerk of Sacramento County, and with the Secretary of State of the State of California. A code of By-Laws was adopted by the association, to which reference has been made in the former order in this proceeding. The date of adoption of these By-Laws does not appear in the record of minutes of the association as filed by the association as evidence at one of the later hearings. A new code of By-Laws was adopted by the association at a call meeting of the members held at Stockton on June 25, 1919, a copy of which By-Laws has been filed in this proceeding.

At the time of the organization of this association in October, 1916, seventy-one members constituted the association and had signed the By-Laws.

Fifteen additional members have become associated with the organization since October, 1916, and fifty-two members have withdrawn from various causes; the present membership at the time of the submission of the rehearing of this case being thirty-four.

The records of the Commission show that the first tariffs and time schedules were filed by the Star Auto Stage Association covering all operative routes in the month of February, 1917; such tariffs and time schedules to be effective March 1, 1917; the filing of schedules being made in accordance with the provisions of the Railroad Commission's General Order No. 47 requiring all automobile passenger and freight carriers to file schedules of rates, fares, charges and classifications. All tariffs and time schedules covering the operation of the lines of the Star Auto Stage Association have continued to be filed by the officials of such association and the association is of record as of May 1, 1917, as being in control as an association of all operative rights under which its various schedules were being maintained.

Section 5 of Article II of the original code of By-Laws of the Star Auto Stage Association provides as follows:

"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.

The evidence in this proceeding indicates that the provisions of such section were followed and that members placed in operation over routes as determined by directors automobiles in accordance with such section of the By-Laws and that the association, through its directing officials, endeavored to secure compliance with the subsequent operation of such automobile in accordance with the rules of the association.

Section 7 of Article II of the original By-Laws provided that a member might transfer or withdraw his membership at any time provided that the consent of the directors was first obtained. Transfer of runs and transfers of membership were made subject to the approval of the Board of Directors and, in some instances, amounts were paid by members of the association or by persons who were not members of the association but who desired to become such and to operate over routes controlled by the association by reason of operation having been in effect prior to May 1, 1917. In some of these transfers amounts were paid exceeding the value of the equipment, which, in many instances, constituted a substantial part of the transfer but we are of the opinion, from the evidence in this case, that amounts so paid and exceeding the value of the equipment acquired was for the purpose of acquiring membership rights and can not be construed as purchasing runs or operative rights; such being held entirely by the association. Members of the association also purchased membership rights and equipment evidently for the purpose of reducing the membership of the association as the record indicates that the total membership existing in 1916 at the time of organization has been reduced from seventy-one members to thirty-four members at the present time.

The foregoing review of this proceeding and summary of facts established at the hearing point only to one conclusion, namely, that for the purpose of regulation by this Commission of the transportation business here involved it is the Star Auto Stage Association, and not the individual members thereof, to whom the orders of this Commission must be directed. That members of the Association held the same view is clearly shown by the testimony of Mr. Geo. S. Held, one of the members whose statements with reference to the operative rights of Mr. Deister, another member of the Association, appear on page 306 of the transcript as follows:

"EXAMINER HANDFORD: Tell me, Mr. Held, is Deister operating the run? A. No.

"Q. Who is operating the run at the present time? A. As far as I know, the Star Association.

"Q. As a matter of fact, isn't the Star Auto Stage Association operating all these runs? A. As near as I can interpret it, yes."

The Central California Traction Company intervened in this proceeding, claiming, first, that the stage lines in the name of the Star Auto Stage Association were in reality owned by the individual members and not by the Association; secondly, that neither the individual members, nor the Association acquired any operative rights under the Act of 1917; and, thirdly, that if it be concluded that operative rights were obtained under the Act of 1917 they are not assignable.

Inasmuch as these contentions suggest a number of questions concerning property rights, validity of organization of the Association and possible forfeiture of its corporate rights, which are outside the purview of this proceeding, they

will be only briefly noticed.

As to the first contention, it has already been stated that the evidence herein establishes that the Star Auto Stage Association was conducting the business of a transportation company subject to regulation by this Commission as of May 1, 1917. This conclusion does not purport to determine any property rights as between the individual members of this Association, or between any member and the Association. This particular proceeding before the Commission is concerned solely with the extent to which regulatory orders of this Commission with reference to the leasing of transportation equipment will be deemed by this Commission to be enforceable against the Star Auto Stage Association. As already stated, the Commission concludes that in the administration of its regulatory orders the Star Auto Stage Association as such, and not its individual members, will be regarded as the responsible operating head as to all routes of transportation set forth in the tariffs and schedules filed with this Commission in the name of the Star Auto Stage Association.

Any question as to the legal organization of the Star Auto Stage Association and of its rights to operate as such, cannot be determined in this proceeding. Under the provisions of Section 653k. of the Civil Code, these matters can only be inquired into by a proceeding in quo warranto at the suit of the Attorney General of this State.

Under the second contention, the Central California Traction Company urges that the Star Auto Stage Association was not, on May 1, 1917, operating in "good faith" as that term is used in the Act (Chapter 213, Statutes 1917.) They base their contention upon the assertion that the Association

failed to comply with certain county ordinances in the counties of Sacramento and San Joaquin, through which their lines operated. As to the interpretation of the term "in good faith" as used in section 5, Chapter 213, Laws of 1917, we are of the opinion that this opinion does not refer to any question of compliance or non-compliance of county ordinances of a regulatory character which companies operating motor stages should have observed in their operations prior to May 1, 1917. We believe that what was intended by the expression "operated in good faith" was actual operation as a transportation company as distinguished from a mere colorable operation to avoid the necessity of obtaining a certificate of public convenience and necessity from this Commission.

With reference to the third contention, that operative rights obtained under the Act of 1917 are not assignable, it becomes unnecessary, in view of the conclusions already stated, to pass upon this point. It is evident from the record in this proceeding that on May 1, 1917, the Star Auto Stage Association, and not the individual members thereof, was operating over the highways of this State. These operations were carried on under tariffs and schedules filed with this Commission some two months prior to May 1, 1917, and have ever since then continued under similar tariffs and schedules filed in the name of this Association. Insofar as this Commission is concerned, no question of transfer of operative rights has been raised. It is apparent that any assignments of runs or routes to individual members were made pursuant to the direction of the board of directors of the Star Auto Stage Association. Sales of equipment and transfers of membership rights have not affected the status of the Association as the responsible head of the business over which the Commission assumes jurisdiction.

We have carefully considered all the evidence and numerous exhibits in this case. Many matters are referred to therein which are necessarily outside the issues. The Commission, however, is not interested in the internal affairs or dissensions of this Association, and can only determine in this proceeding, matters which are at issue and which are properly within its jurisdiction under the authority conferred by the statutory law. Any other contentions, such as the right of individual members within the Association as regards participation in profits, adjustment of property rights, or propriety of action by officials of the Association, are matters not within the scope of the regulatory powers of this Commission, but are for determination by amicable adjustment among the members of the Association or by proper actions in the civil courts. The Commission does, however, suggest that the organization of a corporation instead of a co-operative association would be in the interests of the membership of the present Association in that it would afford a more satisfactory basis for administration of the transportation business here involved, both as regards the traveling public and of those now interested as members of the Association in the financial success of this enterprise.

The Commission in its Decision No. 5318 following the first hearing in this proceeding ordered that 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. The status of the Star Auto Stage Association under this order is here determined. The Commission hereby concludes that the Star Auto Stage Association as such is the transportation company operating the routes as set forth in the tariffs and schedules on file with the Commission and that the Association and not the individual members thereof are deemed by this Commission to be amenable to the above mentioned order.

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 16th day of June, 1920.

Edwin A. Edgerton
H. J. Loveland
James Watson

Commissioners.