

a schedule marked exhibit "A" and attached to the application in this proceeding and to operate on a forty minute schedule between the hours of 8:04 A. M. and 8:44 P. M. except Saturdays and Sundays when the schedule will continue until 12:04 A. M., using as equipment such twelve passenger automobiles as the demands of traffic may require.

Applicants rely as justification for the granting of the desired certificate upon the following alleged facts as set forth in the application herein:

"That prior to the 1st day of May, 1917, Gustav Eppson and D. E. Hughes commenced the operation of two stage lines between the points herein named running on alternate schedules of forty minutes. That the said Gustav Eppson has ever since said time continuously operated and does now operate a stage between said points on said schedule. That on the 6th day of May, 1919, the said D. E. Hughes transferred and sold to William D. Waldorf the automobile stage used by him in the operation of said stage line, together with his right to operate as a public carrier between said points. That thereupon and thereafter the said William D. Waldorf operated said stage line between said points upon said schedule until on or about the 15th day of January, 1920, when the said William D. Waldorf transferred all of his interest in said rights and property conveyed by said D. E. Hughes to William D. Waldorf as aforesaid, to the applicants herein. That ever since said 15th day of January, 1920, said applicants herein have continued to operate and are operating said stage line between said points and upon the schedule herein set forth.

That applicants herein are not seeking to establish a new or different stage service than has heretofore existed between the points above named as herein set forth, but make this application for a certificate of public convenience and necessity to continue in operation that certain automobile stage line hereinabove referred to and originally established by D. E. Hughes and since continuously operated by the said D. E. Hughes and William D. Waldorf and the applicants herein."

Witnesses for applicants testified as to the service performed over the route herein requested and that competition existed over the route; such competition being furnished by the automobile stage line operated by Gustav Eppson, also more recent competition by the operation of local stages between Oakland and Richmond, such stages being operated by the Western Motor Transport Company and serving as intermediate on such route the line herein sought by applicants. At the present time 120 to 150 passengers are carried on week days and on Saturdays and Sundays about 500 whereas before the competing lines increased their service approximately 400 passengers were carried on Sundays and holidays. The applicants have been charging a fare of ten cents whereas the Western Motor Transport Company charges a fifteen cent fare over the same route and the railroad fare of the San Francisco, Oakland Terminal Railways is eighteen cents. As a result of comparisons, during the best months of the year the receipts averaged \$25.00 per day whereas at the present time, due to competition, the receipts approximate an average of \$15.00 per day.

Applicants filed as exhibits a lease contract under date of May 6, 1919, between D. E. Hughes and William D. Waldorf, also a lease contract under date of January 15, 1919, transferring the line from William D. Waldorf to applicants herein.

The granting of this application is protested by the San Francisco, Oakland Terminal Railways and Western Motor Transport Company, both protestants being represented by counsel although presenting no evidence in support of their protests.

It appears from the evidence and exhibits filed in this proceeding that on May 6, 1919, D. E. Hughes, who was oper-

ating prior to May 1, 1917, and by reason of such operation did not require a certificate of public convenience and necessity from this Commission nor permits from the governing bodies of the local political subdivisions through which the route operated, transferred to William D. Waldorf his operative rights under a lease contract; such lease contract specifying that application should be immediately made to the Railroad Commission, to the boards of supervisors of Alameda and Contra Costa Counties and to the city councils or board of trustees of the cities of Richmond, El Cerrito and Albany. The Railroad Commission has no record of any application being made by said William D. Waldorf and, under the provisions of Chapter 213, Laws of 1917, no transfer of operative rights could be made; a certificate of public convenience and necessity being required from the Railroad Commission and also permits from the governing bodies of the various political subdivisions through which a route passed to comply with the requirements of the statutory enactment. On January 15, 1919, William D. Waldorf by lease contract transferred to applicants herein the stage line for which certificate of public convenience and necessity is herein requested, the lease contract specifying that applicants should make application to the Railroad Commission and to the governing bodies of the various political subdivisions through which a route passed. Under the provisions of Chapter 280, Laws of 1919, which became effective July 22, 1919, Section 5 of the Auto Stage and Truck Transportation Act (Chapter 213, Statutes of 1917) was amended in the following language:

"Any right, privilege, franchise or permit held, owned or obtained by any transportation company may be sold, assigned, leased, transferred or inherited as other property, only upon authorization by the Railroad Commission."

It is apparent that the original transfer from D. E. Hughes to William D. Waldorf is invalid, the statutory law, as contained in Chapter 213, Laws of 1917, making no provision for the transfer of an operative right and no certificate of public convenience and necessity was applied for to this Commission by William D. Waldorf notwithstanding that the lease contract entered into under date of May 6, 1919, specifically required as one of its conditions that William D. Waldorf was to immediately apply to the Commission for a permit or franchise. We therefore are of the opinion and find as a fact that any operative rights heretofore accruing to D. E. Hughes by reason of operation in good faith prior to May 1, 1917, were automatically cancelled at the time of the transfer to William D. Waldorf and any operative rights supposedly transferred from William D. Waldorf to applicants herein under the lease contract executed under date of January 15, 1919, are not valid in that Waldorf had no authority for the operation of the stage line herein and, under these circumstances and in view of the further fact that no evidence indicating that the public convenience and necessity require the operation of this line was presented at the hearing on this application, the application must be denied.

ORDER

Max G. Heise, Rudolph Barda and Victor Schang, co-partners, having applied to the Railroad Commission for an order declaring that public convenience and necessity requires the operation by them of an automobile stage line as a common carrier of passengers between Main Street, Albany, in Alameda County, and First Street and Macdonald Avenue, Richmond, Contra Costa County; a public hearing having been held; the matter

having been duly submitted and the Commission fully advised and basing its order on the finding of fact as set forth in the preceding opinion.

IT IS HEREBY ORDERED, that this application be and the same hereby is denied.

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 12th day of May, 1921.

H. B. Randall
H. D. Rowland

W. J. Pennington

Commissioners.