

Decision No. 9930BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Investigation)
of the operations, rules and prac-)
tices of UNITED STAGES, INC. and of)
the MORGAN MOTOR COMPANY, a corpora-)
tion.)

Case No. 1473.

S. W. Thompson and E. J. Bischoff, for United Stages, Inc.
E. W. Kidd and Harry A. Excell, for O. R. Fuller and
Motor Transit Company.
Douglas Brookman and Clyde Bishop, for A.B. Watson.
Frank Kerr, H. R. Miller and O. A. Smith, for Pacific
Electric Railway Company.
Hill & Lee, for O. E. Hadley et al.
Warren E. Libby, for Pickwick Stages and White Star
Auto Stages.
C. F. Wren, for Pickwick Stages--Northern Division.
F. E. Watson, for Southern Pacific Railroad Company.
E. W. Camp and Paul Burks, for The Atchison, Topeka
and Santa Fe Railway Company.
W. J. Williams, for Compton Transportation Company.

BY THE COMMISSION:

OPINION

This is a case instituted on the Commission's own motion to determine the nature and extent of the operations of the Morgan Motor Company and United Stages, Inc. as transportation companies, and to investigate the operations, rules and practices of such companies.

The necessity for the proceeding arose from the fact that United Stages, Inc. applied for authority to transfer to O. R. Fuller its operative rights as a transportation company between the termini of Los Angeles and San Diego, Application No. 5735, and indicated therein that such transfer included the right to carry on local operations between Los Angeles and Long Beach and between

Long Beach and Santa Ana which were not shown in either of the tariffs or time schedules of the United Stages, Inc., or its predecessor in interest, on file with this Commission May 1, 1917, and as to which there was no evidence in the records or files of the Railroad Commission of an operative right held by the transferror. It was deemed expedient and in the interest of sound regulation that the Commission should ascertain and define exactly what operative rights the United Stages, Inc. held by reason of operations in good faith on May 1, 1917, and what have been subsequently acquired by such company under the sanction of the Commission. Final determination on Application No. 5735 was accordingly held up pending final conclusion in this proceeding initiated on the Commission's own motion.

The Commission's order instituting the investigation took the form of an order to show cause directed to United Stages, Inc. and the Morgan Motor Company, in which they were required to appear and show cause, if any they had, why they should not be ordered to desist from operating as a transportation company. In their return to this order these stage companies set forth at length the operative rights claimed by them, and also made an application whereby they asked that in the event the Commission should find that by reason of any technicality they were not legally entitled to the operative rights thus claimed, they should be granted a certificate of public convenience and necessity for the continued operation of their stage lines as to the particular routes enumerated in the application.

Appearance was made and a complaint filed in this proceeding on behalf of E. C. Willis et al., setting forth that Willis and his co-plaintiffs had, on and prior to May

1, 1917, owned and operated stages as individual operators but using in common the fictitious name "United Stages," over certain portions of the route now claimed by the United Stages, Inc. in Imperial Valley and between the Valley and San Diego, and between San Diego and Los Angeles. It was claimed by these parties that any operative rights which the Commission should now recognize by reason of operations in good faith on May 1, 1917, within the meaning of Chapter 213, Statutes of 1917, were those of individual operators and not of the United Stages, Inc. or its predecessors in interest. Appearance was also made on behalf of Pacific Electric Railway Company to contest the recognition of any operative rights of United Stages, Inc. between the terminal of Los Angeles and Long Beach, and on behalf of Crown Stages to contest the recognition of operative rights to handle local traffic between Long Beach and Santa Ana and between Los Angeles and Santa Ana. Other appearances were entered on behalf of Pickwick Stages and Pickwick Stages--Northern Division, the Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company and Compton Transportation Company.

Public hearings were held at Los Angeles and El Centro, California, at which a number of witnesses testified and exhibits were filed touching all phases of the proceeding. Briefs were then filed on behalf of some of the parties and the matter was finally submitted, and is now ready for decision.

The following issues are presented:

1. Whether the United Stages, Inc. has any operative rights by reason of operations being actually carried on in good faith on May 1, 1917, by its predecessor in interest as to the routes in the Imperial Valley

and elsewhere over which the operative right is claimed by E. C. Willis and his associates.

2. Whether the United Stages, Inc. has an operative right between Los Angeles and Long Beach and between Long Beach and Santa Ana by reason of operations actually carried on in good faith on May 1, 1917, by its predecessor in interest.

3. Whether the United Stages, Inc. has an operative right to engage in local business between intermediate points on the route from Los Angeles to San Diego.

4. Should a certificate now be issued declaring that public convenience and necessity require the operation by United Stages, Inc. of auto stages as prayed for in its application filed herein?

The record shows that "The Morgan Motor Company" was incorporated and its articles filed in Imperial County April 4, 1913. The stock ownership and control of the corporation has always been held by Thomas E. Morgan and his brothers. Only a few shares were held by others. The articles of incorporation of "The United Stages" were filed in Imperial County October 8, 1915. By judgment of the Superior Court of Imperial County rendered July 13, 1917, under Case No. 3840, the last named corporation was dissolved. Thereafter, on August 1, 1917, there was filed in Imperial County the articles of incorporation of a newly formed company under the same name, "The United Stages."

In the absence of any other evidence, it would appear from this that any operative rights held by the corporation, "The United Stages," on May 1, 1917, lapsed with the dissolution

of that corporation in July, 1917, and that the second corporation, "The United Stages," which completed its organization subsequent to May 1, 1917, could not claim any operative rights by reason of operations in good faith on May 1, 1917. It was contended, however, and the evidence supports this contention, that the Morgan Motor Company and its principal officers acting on its behalf did in fact own and operate auto stages on and prior to May 1, 1917, under the name "United Stages." It further appears that the Morgan Motor Company, by proper legal proceedings, has changed its name to that of United Stages, Inc., and by authorization of this Commission on the 27th day of February, 1920, has adopted the schedule and tariffs on file with the Commission under the name of the United Stages.

The history of the operations of this stage line further shows that the use of the name "United Stages," under which the operations were conducted on and prior to May 1, 1917, is not inconsistent with the conclusion that the Morgan Motor Company was, in fact, a transportation company conducting such operations.

Following the not uncommon trend of many auto stage companies in the early history of their development, a number of individual auto stage operators in the Imperial Valley mutually agreed to combine their operations for better regulation and more efficient management under the fictitious name of "United Stages." Among these individuals were the protestant, Willis, and his associates and Thomas E. Morgan and E. E. Morgan, the principal officers of the Morgan Motor Company. Thomas E. Morgan was recognized as the general manager of the operations thus carried on. He arranged for the stopping places to be used as stage depots, for the printing of tickets and to some extent, supervised the time schedules and routes to be followed by the various individuals joining in this operation. This was

two or three years prior to the enactment of the statute for regulation of auto stages by this Commission (Statutes 1917, Chapter 213). Competition between stage operators was keen and methods somewhat unscrupulous. It was, therefore, concluded to form a corporation called "The United Stages," under the belief that by this means outsiders would be prevented from using the name "United Stages," which had become recognized as a valuable asset by the individuals participating in this combined operation. The corporation of this name was thus formed and its articles, as above stated, filed in Imperial County on October 8, 1915. This corporation did not, in fact, transact any business or own any property, but existed only in name until its dissolution in July, 1917.

At the time auto stage companies were first required to file their schedules and tariffs with the Railroad Commission, Thomas E. Morgan was given power of attorney to file, on behalf of the stage drivers, some of whom appear here as protestants, their tariffs and time schedules. Apparently, the only filing made pursuant to this authorization was the original time schedules and tariffs of the United Stages. No filings were made in the names of the individual operators. Powers of attorney thus given were limited to six months from the date of their execution, and expired in the latter part of the year 1917. Thereafter, none of the stage drivers (including the protestants in this case) filed schedules or tariffs as individual operators, and took no steps to assert their claim to operative rights by reason of operations carried on in good faith on May 1, 1917, until the commencement of this proceeding.

It is clear from the evidence that a stage line was operating in good faith as a transportation company on May 1, 1917, over the routes designated by the tariffs and time schedules on file with the Commission on that date, and that such operations were being carried on under the name of United Stages, and under the management and supervision of Thomas E. Morgan. The management and control of Thomas E. Morgan over United Stages has been continuous and, as time progressed, has become more definite. It appears that he developed and built up the business by inducing the owners of cars to operate these cars as stage drivers under his direction and management, paying their own expenses and, in a large measure, making their own collections, but contributing an agreed amount or percentage of receipts to Mr. Morgan for the privilege of operating on the lines of the United Stages, using its terminal facilities and tickets and sharing the benefits of that management. Both the Morgan Motor Company and the Morgan brothers individually were participating in these operations on May 1, 1917.

Regardless of whether or not the individual stage operators may now equitably claim a share in the value of the transportation business created under the name, United Stages, or in the profits derived therefrom--which we believe to be a matter for settlement in the civil courts--it is sufficiently clear from the evidence herein that the Morgan Motor Company, E. E. Morgan and Thomas E. Morgan were actually operating in good faith as a transportation company under the name, United Stages, over the routes indicated in the tariffs and time schedules on file with this Commission, on that date. Furthermore, it is shown that operations of the Morgan Motor Company thus established, have not lapsed by subsequent

abandonment. The same is not true, however, as to the rights, if any, of the individual stage drivers. The evidence shows that, regardless of whether or not these individuals were operating in their own right, or on behalf of Thomas E. Morgan, or of the Morgan Motor Company on May 1, 1917, they have subsequently abandoned their operations or admittedly become employees of Morgan or the Morgan Motor Company.

Concerning the question of right to operate via Long Beach, it is our conclusion that, on and prior to May 1, 1917, neither United Stages, Inc., Morgan Motor Company, nor the predecessor in interest of either, was actually operating in good faith as a transportation company between the termini of San Diego and Los Angeles, as to that portion of the route from Santa Ana to Los Angeles via Long Beach. While there was some evidence of trips having been made via Long Beach, it appears that the operation over this portion of the route was not the usual or ordinary operation of the stage between Los Angeles and San Diego. There was evidence to the effect that the individual stage drivers were permitted to go by way of Long Beach, and that they occasionally did so. None of the proceeds from such business was received by the stage company, all of it going to stage drivers or owners of cars operating for the company on a commission basis. The first time schedule and tariff C.R.C.No.1 of United Stages, under which operations were being conducted on May 1, 1917, do not show Long Beach as an intermediate stopping point between Los Angeles and San Diego, nor any rates applicable to such local business. It is proper to conclude, therefore, that United Stages, so-called, had not, on or prior to May 1, 1917, undertaken to render this Long Beach service, nor was it, on May 1, 1917, holding itself out to the public to render such service, nor actually engaged in the bona fide operation of automobile

stages between the points in question. Later, time schedules and tariffs, showing rates and schedules pertaining to Long Beach, are unsupported by any showing of an operative right as to the operations between Santa Ana and Los Angeles via Long Beach. It will, therefore, be necessary for corrections to be made by the operating company in such schedules and tariffs.

In dealing with the question of the company's right to engage in local business between intermediate points on the Los Angeles and San Diego route, the same test is applicable as in the case of the Long Beach operations. The only operative rights claimed are by reason of operations carried on in good faith on and prior to May 1, 1917. A determination must, therefore, be made as to what business the company was actually doing on May 1, 1917, and what service it had undertaken to render and was holding itself out to render to the public.

It should be first pointed out that the absence of an operative right between Santa Ana and Los Angeles via Long Beach does not necessarily mean that the company was not legally operating into Los Angeles. The evidence shows that on and prior to May 1, 1917, the company was actually operating in good faith between Los Angeles and San Diego, using alternative routes between Los Angeles and Santa Ana, by the way of the Whittier Road and by way of the Telegraph Road. These two routes diverge at a point near the city limits of Los Angeles and come together again at or near Santa Ana, from which place the route is identical over what is known as the Coast Highway to San Diego.

Both the time schedule and tariff C.R.C.No.1 of United Stages, under which operations were being conducted on May 1, 1917, show the following intermediate stops proceeding northward from San Diego to Los Angeles: La Jolla, dis-

tant 14 miles from San Diego; thence to Del Mar, 11 miles; to Cardiff, 4 miles; Encinitas, 2 miles; Carlsbad, 9 miles; Ocean-side, 3 miles; Capistrano, 36 miles. Between Capistrano (also known as San Juan Capistrano) and Los Angeles, a distance of 58 miles, no intermediate stops are shown. The testimony of stage drivers and officials of the stage company was to the effect that on and prior to May 1, 1917, the company was undertaking to render only a through service between Los Angeles and San Diego, or between Los Angeles and points south of Capistrano, as shown on the time schedule and tariff. Evidence of actual operations on and prior to May 1, 1917, shows only a slight variation from this undertaking. No tickets were sold or reservations made for transportation between Los Angeles and any intermediate points north of Capistrano, or between any of such intermediate points themselves. However, reservations could be made, and were, in fact, made in the regular course of business by persons desiring to board the stage at such intermediate points for transportation to Capistrano or points south thereof. Similarly, passengers were frequently hauled from San Diego to points north of Capistrano, which were not shown on the schedule. It further appears, however, that persons transported between San Diego and points north of Capistrano were charged the same fare as between San Diego and Los Angeles. The record also shows that the stage drivers occasionally picked up and carried local passengers anywhere along the line when seats were available, charging a cash fare and keeping the money thus collected. It was the recognized right of all stage drivers, except those operating on a salary basis instead of a commission basis, to keep the cash fares paid by local pick-up passengers. Since the majority of stage drivers, on and prior to May 1, 1917, were not employed on a salary basis, it is apparent that any compensation received by the

company from such local business was of a most casual and haphazard sort.

The foregoing references to the record points to the conclusion that the United Stages had not, on and prior to May 1, 1917, undertaken to render a local service between Los Angeles and Capistrano. From all the evidence herein, the Commission finds that the United Stages, Inc., or its predecessor in interest, was not "actually operating in good faith on May 1, 1917," automobiles or auto stages for the transportation of passengers as a common carrier for compensation between intermediate points from Los Angeles to Capistrano on its regular route or routes from San Diego to Los Angeles, or between any such intermediate points and the terminus of Los Angeles.

We further find that this company, or its predecessor, was, on and prior to May 1, 1917, actually operating in good faith as such common carrier between the termini of Los Angeles and San Diego and such intermediate points as are shown and designated on the time schedule and tariff in effect on that date; also, between all points intermediate between Los Angeles and Capistrano on the one hand, and San Diego and other stations as shown by the above-mentioned time schedule and tariff between San Diego and Capistrano on the other hand.

There remains for consideration the application of United Stages, Inc. for a certificate of public convenience and necessity. This application was filed with its return to the order to show cause herein, and asked that in the event of a failure to find that United Stages was actually operating in good faith on May 1, 1917, over the routes claimed, or, in the event of a finding that the company, for technical irregularities or any other reason, has waived or forfeited its right to operate over such routes, the Commission should issue a certificate declaring that public convenience and necessity require such operations. We find upon uncontradicted evidence that

United Stages, Inc. or its predecessor, in addition to its operation between Los Angeles and San Diego as described above, was actually operating in good faith on May 1, 1917, its automobiles and auto stages for the transportation of persons as a common carrier for compensation on the public highways of the State between the termini and over the routes described as follows:

1. SANTA BARBARA DIVISION: Between Los Angeles and Santa Barbara, via the following route and serving the following intermediate points: Los Angeles, thence via Cahuenga Pass, Ventura Boulevard, Encino Acres, Calabasas, Newberry Park, Triunfo, Conojo, Camarillo, Oxnard, El Rio, Ventura, Rincon, Carpinteria to Santa Barbara.

2. SANTA PAULA DIVISION: Between Los Angeles and Santa Paula, via the following route and serving the following intermediate points: Los Angeles, thence via Cahuenga Pass, Universal City, Lenkershim, San Fernando, Newhall, Saugus, Castic, Piru, Fillmore and to Santa Paula.

3. EL CENTRO DIVISION: Between San Diego and El Centro, via the following route and serving the following intermediate points: San Diego, via Dulzura, Potrero, Campo, Warrens Ranch, Boulevard, Jacumba, Mountain Springs, Coyote Wells, Dixie Land, Seeley to El Centro.

4. IMPERIAL VALLEY LOCAL DIVISION: From El Centro to Calexico, via Heber, and serving all local points and traffic; El Centro to Brawley, via Imperial, and serving all local points and traffic; Brawley to Calipatria via Rockwood, and serving all local points and traffic.

The application for certificate does not include the route between San Diego and Los Angeles, concerning which an issue was raised as to their operative rights. We are, therefore, precluded from considering in this proceeding whether public convenience and necessity at the present time requires the operation by this transportation company of its auto stages for local transportation between the termini of Los Angeles and San Diego, which they were not actually doing on May 1, 1917. In view of this fact and the above finding, the application will be denied without prejudice.

ORDER

An investigation having been instituted on the Commission's own motion into the operations, rules and practices of United Stages, Inc. and of Morgan Motor Company, a corporation, as the same were carried on and in effect on May 1, 1917, and subsequent thereto, and an order to show cause issued, requiring United Stages, Inc. and Morgan Motor Company to show cause why they should not be required to cease operations and to desist from further operating as a transportation company on any public highway in this State, and a return to the said order to show cause, together with an application having been filed by United Stages, Inc., a corporation--the corporate name of which was formerly that of Morgan Motor Company--asking that a certificate be issued declaring that public convenience and necessity require the operation by said United Stages, Inc. between certain termini and intermediate points named in said application; public hearings having been held thereon, formal appearances made and protests filed by various interested parties, testimony and other evidence having been received and the matters submitted,--

THE RAILROAD COMMISSION HEREBY FINDS:

1. That United Stages, Inc., a corporation--the corporate name of which was formerly Morgan Motor Company--was, in good faith, on May 1, 1917, actually operating automobiles and auto stages for the transportation of persons, as a common carrier for compensation, on the public highways of this State, between fixed termini and over regular routes, as follows:

1. SANTA BARBARA DIVISION: Between Los Angeles and Santa Barbara, via the following route and serving the following intermediate points: Los Angeles, thence via Cahuenga Pass, Ventura Boulevard, Encino Acres, Calabasas, Newberry Park, Triunfo, Concho, Camarillo, Oxnard, El Rio, Ventura, Rincon, Carpinteria to Santa Barbara.

2. SANTA PAULA DIVISION: Between Los Angeles and Santa Paula, via the following route and serving the following intermediate points: Los Angeles, thence via Cahuenga Pass, Universal City, Lankershim, San Fernando, Newhall, Saugus, Castic, Piru, Fillmore and to Santa Paula.

3. EL CENTRO DIVISION: Between San Diego and El Centro, via the following route and serving the following intermediate points: San Diego, via Dulzura, Potrero, Campo, Warrens Ranch, Boulevard, Jacumba, Mountain Springs, Coyote Wells, Dixie Land, Seeley to El Centro.

4. IMPERIAL VALLEY LOCAL DIVISION: From El Centro to Calexico, via Heber, and serving all local points and traffic; El Centro to Brawley, via Imperial, and serving all local points and traffic; Brawley to Calipatria via Rockwood, and serving all local points and traffic.

5. SAN DIEGO-LOS ANGELES DIVISION: Between San Diego and Los Angeles and the following intermediate points: La Jolla, Del Mar, Cardiff, Encinitas, Carlsbad, Oceanside and Capistrano, as shown and designated on the time schedule and tariff in effect May 1, 1917, via the Coast Highway--San Diego to Santa Ana, thence via the so-called Whittier Road or via the Telegraph Road, as alternate routes between Santa Ana and Los Angeles; also between all points intermediate between Los Angeles and Capistrano on the one hand, and San Diego and other stations above named as shown by said time schedule and tariff between San Diego and Capistrano on the other.

2. That said United Stages, Inc. was not, in good faith, on or prior to May 1, 1917, actually operating any automobile, jitney bus, auto truck, stage or auto stage for the transportation of persons or property as a common carrier for compensation on the public highways of this State between the termini of Santa Ana and Long Beach, or between Long Beach and Los Angeles, or between Los Angeles and any intermediate point between Los Angeles and Capistrano, or between any such intermediate points;

And basing its order upon said findings and the further findings and statements of fact contained in the opinion preceding this order,

IT IS HEREBY ORDERED that United Stages, Inc. cease operating and desist from further operating as a transportation company over the routes and between the termini described as follows:

(a) Between the termini of Santa Ana and Long Beach and intermediate points.

(b) Between the termini of Long Beach and Los Angeles and intermediate points.

(c) Between the termini of Los Angeles and a point distant one mile from the Post Office of San Juan Capistrano toward Los Angeles on the Coast Highway and any intermediate points: provided, however, that nothing herein shall be deemed to preclude or prohibit the operation by said United Stages, Inc. as a transportation company between the termini of Los Angeles and San Diego as to operations which said company was actually carrying on in good faith on May 1, 1917, as set forth in the above findings.

IT IS FURTHER ORDERED that United Stages, Inc. shall, within five (5) days from the effective date of this order, cause to be filed with this Commission new tariffs and time schedules or supplements to existing tariffs and time schedules cancelling all schedules and rates pertaining to the operations set forth in the preceding paragraph of this order.

IT IS FURTHER ORDERED that the application of United Stages, Inc. for certificate of public convenience and necessity filed herein on the 27th day of October, 1920, be, and the same is hereby denied without prejudice.

The effective date of this order is hereby fixed and designated as the 12th day of January, 1922.

Mem
Dated at San Francisco, California, this 21st day of December, 1921.

H. B. ...
H. ...
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Commissioners.