

Decision No. 27536

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PASSENGERS CARRIERS ASSOCIATION,
a corporation,

Complainant,

vs.

Case No. 3882

RAINE EWELL, MRS. EFFIE STELLING,
HARRY LOUIS STELLING, NORMAN WILLIAMS,
H. B. VENNUM, LESLIE CROWLEY, E. SMITH,
SUNSET TRANSPORTATION CO., FIRST DOE,
SECOND DOE, THIRD DOE, FOURTH DOE,
FIFTH DOE, SIXTH DOE, SEVENTH DOE,
EIGHTH DOE, NINTH DOE, TENTH DOE,
ELEVENTH DOE, TWELFTH DOE, THIRTEENTH
DOE, FOURTEENTH DOE, FIFTEENTH DOE,
SIXTEENTH DOE, SEVENTEENTH DOE,
EIGHTEENTH DOE, NINETEENTH DOE, AND
TWENTIETH DOE,

Defendants.

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Orla St. Clair and Howard Day, for Complainant.
Gerald O'Gara and L. W. Rowe, for Better Business
Bureau of San Francisco, Intervenor,
Robert Brennan and W. F. Brooks, for The Atchison,
Topeka & Santa Fe Railway, Intervenor.
Raine Ewell, for defendants Ewell, Stelling et al.

BY THE COMMISSION -

O P I N I O N

Complainant, a corporation, alleges that Raine Ewell, Harry L. Stelling, Mrs. Effie Stelling, Norman Williams, H. B. Vanum, Leslie Crowley, E. Smith, Sunset Transportation Company and twenty Doe defendants have violated the Motor Carrier Transportation Agent Act and the Public Utilities Act, Section 50 $\frac{1}{2}$, by selling transportation and conducting transportation by automotive vehicles between San Francisco and Los Angeles, and other points. Complainant prays for the cancellation of the Motor Carrier Transportation Agent licenses of

Ewell and Mrs. Stelling and for the issuance of an order to cease and desist against the other defendants. Conspiracy between all defendants also is alleged.

Defendants Ewell, Harry L. Stelling, Effie Stelling, Williams, Vennum, Crowley, Sunset Transportation Company (a fictitious name used by Harry L. Stelling), John Hansen, Roy Mills, Earl Nash, William C. Roberts and Helen R. Roberts filed written joint answer generally denying the allegations of the complaint except the possession of Motor Carrier Transportation Agent licenses by Ewell and Mrs. Stelling. The answer also denied the jurisdiction of the Commission on the ground that the Public Utilities Act and Motor Carrier Transportation Agent Act are in violation of the Fourteenth Amendment to the Constitution of the United States, the Sherman Anti-Trust Act of Congress and the Cartwright Anti-Trust Act of California, in so far as either attempts to regulate private carriers.

Upon the issues thus joined public hearings were conducted by Commissioner Harris and Examiner Williams at San Francisco and the matter duly submitted for decision.

Reduced to simple accusations, two questions appear -

(a) Did Raine Ewell and Mrs. Stelling violate the law governing possession and use of their Motor Carrier Transportation Agent licenses; and

(b) Did any or all of the defendants violate Section 50½ of the Public Utilities Act by conducting transportation as a transportation corporation between fixed termini and/or over a regular route?

The facts as to each are involved in the history of the defendants as to their association and the methods used by them in their transportation business, there being no denial that they were in such business.

Harry Stelling was denied a license to sell transportation, (including so-called "charter sedans" for defendant Ewell), at 768 Howard Street in San Francisco. (Decision No.26927, dated April 9, 1934, on Application No.19243). This location had long been used by him for such purposes and he had at one time possessed agent's license. After the refusal to renew Stelling's right, Raine Ewell and Mrs. Stelling applied for and received licenses,- Ewell for 768 Howard Street, and Mrs. Stelling for 1087 Market Street, both in the City of San Francisco. The co-relation between the facts is that Stelling was denied license "to sell to so-called 'private' carriers, particularly Ewell, and that Ewell and Mrs. Stelling were licensed to sell tickets for Ewell as a 'private carrier,'" this phrase meaning carriers licensed under the Board of Equalization to use the highways for the transportation of persons. Upon the issuance of the licenses to Ewell and Stelling the documents were posted at 768 Howard Street and 1087 Market Street and sales thereunder were begun.

Ewell sold practically, no transportation himself but the testimony shows that an abundance of transportation was sold under color of his license. To induce inquiry the following advertisement was inserted in the San Francisco Examiner under the title "Trips and Tours:"

L. A. \$4.50. Port. \$7.50. Seattle \$8.50.
Low fares East. Licensed charter sedans.
768 Howard St., DO 9633.

This advertisement was contracted for by Ewell and paid for by him, either directly or through Stelling. Similar advertisement was made of Mrs. Stelling's office on the mezzanine floor of the Federal Hotel, 1087 Market Street, and for which Ewell paid.

Those responding to this advertisement and who inquired about the \$4.50 fare to Los Angeles were told that this rate was by boat and steerage class. The record is clear that no defendant was authorized to offer boat transportation and that none had been sold. The inquirer was told about "private sedans" leaving for Los Angeles at certain hours. The fare was stated to be \$5.00 one way.

In some instances Stelling was connected with such information but usually another in Stelling's office was brought forth to deal with the inquirers. In most cases it was Leslie Crowley, identified by witnesses as "the hunchback" and admitted to be the "loader" for the sedans. If the inquirer desired to make the journey, he was, sometimes, required to "register" by signing his name and address to the alleged "contract." (Exhibit No.2). Many were accepted and transported who did not sign. The contract provided for "a standard accident policy" in the sum of \$3000.00 for each passenger. Many did not receive policies. In each instance the policy was issued by Stelling as agent for the insurance company. Such a policy is Exhibit No.5. The exhibit shows that it was issued by Stelling and bears his stamped name, and the stamped words "For Insurance Only." Just why a standard one-day policy of insurance should be so stamped is not explained except by the fact that the premium collected was 25 cents (shown by the marginal coupon), while the record shows that Stelling received \$1.00 for each policy.

When the passengers had been accumulated, with or without contract or insurance, the "loader," whether Crowley, Norman Williams or another, collected the rate of fare from each passenger. This, less the \$1.00 for insurance, was paid to the driver of the sedan. Having disposed of this routine, the group of passengers was transported, sometimes by devious routes, to destination.

In some instances a passenger was induced to make the collection of fares and turned the collection over to the driver. This process was repeated daily at both offices of the Stellings. Passengers accumulated for trips to Los Angeles in vehicles furnished by eight regular drivers, and a number of occasional ones. There were also instances where "overflow" customers were sent to the Tanner "outfit," a similar operation, at the Statler Hotel, or vice versa. The record is replete with passenger experience as to the transportation conducted. Two of the drivers, Freeman and West, testified to the agreement of all with Stelling and Ewell for the use of the method adopted to conceal the actual transactions in a maze of different personalities and circumlocution.

The record leaves no doubt of the careful preparation of a plan to conduct passenger transportation between fixed termini and by this plan to evade, by subterfuge, the law governing such business. Complainant calls it conspiracy and the facts in the record justify such classification, not only by direct evidence but by every reasonable construction of the acts of defendants. The effort of Ewell to disguise the operations as those of ticket agents for private carriers, operating under Board of Equalization licenses, is specious. Chapter 339, Acts of 1933, authorizing such licenses to automotive operators on the public highways (and only outside of municipal boundaries), granted no right to operate other than according to law. When defendants operate between fixed termini and/or over a regular route for compensation, and offer their services at per capita rates to the public, through the "plan" disclosed in the record, they are violating Section 50 $\frac{1}{2}$ of the Public Utilities Act until a certificate of public convenience and necessity therefor has been obtained. Equally true, those who procure Motor Carrier Transportation Agent licenses are authorized to use them only for the sale of tickets

over lawful operations. It is plain that both Ewell and Mrs. Stelling used the licenses only as a disguise for the operations of Harry L. Stelling in providing public transportation in a clandestine and fraudulent manner and that in aiding, abetting and sharing in this business the office employees and drivers and operators of sedans were equally guilty parties.

Defendants presented no testimony except that of Ewell, who testified at length in his own behalf; Galik and Marlow, to impeach Charles West's testimony, which failed, and officers of complainant corporation about its organization. Ewell admitted possessing a license to operate his automobile over the public highways, acquired by compliance with Chapter 339, Acts of 1933; admitted operating his automobile between San Francisco and Los Angeles and that he sold transportation under this license for his own operations. He admitted maintaining his law office at Stelling's Howard Street office, to be convenient in advising, as a lawyer, Stelling and others; admitted arranging for the newspaper advertising, both for himself and Mrs. Stelling, but admitted that it was paid for by Stelling by credits on an open legal account with Stelling. He denies that he sold transportation at the Howard Street address; denies that he did more than furnish other than legal advice to clients. Considering his admissions and denials together with the testimony of other witnesses and the direct testimony of Freeman and West, he appears as the most active member of the "plan" and its author and protector.

If defendants wished to test their rights under Chapter 339 in the use of the highways, the test could have been conducted openly. Instead, furtive and clandestine methods were used as witness the invention of the dummy passenger fare collector, the delusive advertising, the payment of a fee of \$1.00 to Stelling for issuing a 25-cents insurance policy, the shifting of passengers from one office to the other, all unnecessary

except to escape police surveillance and complicate the process so that no one person would be visible or connected in all the acts of the group carrying out the plan.

An order revoking the licenses of Raine Swell and Mrs. Effie Stelling, and also ordering all defendants participating in the illegal action to cease and desist from further violations should issue.

An order of this Commission finding an operation to be unlawful and directing that it be discontinued is in its effect not unlike an injunction issued by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a party is adjudged guilty of contempt, a fine may be imposed in the amount of \$500.00, or he may be imprisoned for five (5) days, or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 50-1/3 of the Public Utilities Act, (as amended), a person who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding \$500.00, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. Likewise a passenger or other person who aids or abets in the violation of an order of the Commission is guilty of a misdemeanor and is punishable in the same manner.

The following form of order is proposed:

O R D E R

Public hearings having been held in the above entitled matter and the same now being duly under submission,

IT IS HEREBY ORDERED that Motor Carrier Transportation Agent Order No.1075, issued to Raine Ewell, May 7, 1934, approved by Resolution No.40, dated April 9, 1934, be and the same hereby are canceled and annulled.

IT IS HEREBY FURTHER ORDERED that Motor Carrier Transportation Agent License No.2017, issued on Motor Carrier Transportation Agent Order No.1127, issued to Effie Stelling on July 30, 1934, approved by Resolution No.52, dated July 30, 1934, be and the same hereby are canceled and annulled.

IT IS HEREBY FOUND AS A FACT that Edwin M. Shubert, Robert Lowman, Eugene Mills, also known as Roy Mills, Helen Roberts, William C. Roberts, Ludwig Wallin, Earl Nash, Robert Hunter, Raine Ewell, Mrs. Effie Stelling, Harry Louis Stelling, Harry L. Stelling, operating as Sunset Transportation Company, Norman Williams, H. B. Vennum and Leslie Crowley are operating as a passenger stage corporation as defined in Section 50 $\frac{1}{2}$ of the Public Utilities Act, as amended, with common carrier status between San Francisco and Los Angeles and without certificates of public convenience and necessity or prior right authorizing such operations.

Based on the finding herein and the opinion preceding this order,

IT IS HEREBY ORDERED that Edwin M. Shubert, Robert Lowman, Eugene Mills, also known as Roy Mills, Helen Roberts, William C. Roberts, Ludwig Wallin, Earl Nash, Robert Hunter, Raine Ewell, Mrs. Effie Stelling, Harry Louis Stelling, Harry L. Stelling, operating as Sunset Transportation Company, Norman Williams, H. B. Vennum and Leslie Crowley shall cease directly or indirectly or by any subterfuge or device from continuing such operations.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon Edwin M. Shubert, Robert Lowman, Eugene Mills, also known as Roy Mills, Helen Roberts, William C. Roberts,

Ludwig Wallin, Earl Nash, Robert Hunter, Raine Ewell, Mrs. Effie Stelling, Harry Louis Stelling, Harry L. Stelling, operating as Sunset Transportation Company, Norman Williams, E. B. Vennum and Leslie Crowley; that he cause certified copies thereof to be mailed to the District Attorneys of San Francisco, San Mateo, Santa Clara, Santa Cruz, Monterey, Kings, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Kern, Fresno, Madera, Stanislaus, San Joaquin and Alameda counties; to the Board of Public Utilities and Transportation of the City of Los Angeles and to the Department of Public Works, Division of Highways, at Sacramento.

IT IS HEREBY FURTHER ORDERED that the complaint herein shall be dismissed as to all other defendants.

The effective date of this order shall be twenty (20) days after the date of service upon said defendants, except defendants Raine Ewell and Effie Stelling, the effective date of the cancellation of whose licenses is of the date of this order.

Dated at San Francisco, California, this ¹¹16 day of November, 1934.

Leon Whitely
M. J. Linn
M. B. Lewis
W. H. ...
Frank ...
COMMISSIONERS.