

Decision No. 28897

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
C. J. AMOROSA and PATRICK HIGUERA for)
certificate of public convenience)
and necessity to operate as a common) Application
carrier between the City of San Jose) No. 20,003
and Alum Rock Park, all in Santa Clara)
county, California.)

ORIGINAL

T. J. Randazzo, for applicants.

E. J. Foulds, for San Jose Railroads, Protestant.

C. B. Goodwin and Archer D. Bowden, for
City of San Jose.

BY THE COMMISSION -

OPINION and ORDER

Applicants are co-partners and propose to conduct passenger bus operations, if authorized, under the name San Jose Auto Stage Company, between San Jose and Alum Rock Park and intermediate points.

A public hearing was conducted by Examiner Williams at San Jose.

Applicants (experienced stage drivers) have authority from the City of San Jose to operate a stage line from San Fernando and Market Streets over Santa Clara Street and Alum Rock Avenue to King Road (35th Street) the city limits as a part of the route to be served. Applicants seek certificate between King Road and Alum Rock Park. The intent of the City was to provide service to Alum Rock Park, municipally owned and recently greatly improved. This desire was testified to by Ernest R. Ward, Superintendent of the park.

Mrs. Wayne, A. Eadd, residing on Alum Rock Drive, testified that street car service to San Jose from Linda Vista station (also called Fleming Avenue), is hourly from 7 a.m. to 6:30 p.m. and does not permit residents of the area to get to work or to the city and return of evenings. Her husband uses a bicycle to catch earlier or later service at Kings road - 2½ miles west of Linda Vista station. Applicants produced no other witness.

Protestant San Jose Railroads operates electric service over the same route as far as Linda Vista station. The adequacy of this service to King road is admitted by applicants. Likewise, protestant admits necessity for service to points east of Linda Vista station and to Alum Rock Park. The disputed area is between King road and Linda Vista. Protestant stated its purpose to rearrange its car schedules (one man operation) to provide early morning and late evening service as far as Linda Vista. Exhibits filed by protestant show that the patronage of present schedules has been self supporting, part of the time. T. L. Billingsley, General Superintendent of protestant, testified that the electric service, as a whole, produces enough profit to permit the maintenance of similar service to Santa Clara and Willow Glen; but to impair its revenue, he said, would jeopardize all electric service, which includes transfers. He also testified fares have been reduced and it is intended to reduce the fares to Linda Vista. This would provide a 7-cent fare to King road and a 10-cent fare to Linda Vista.

Applicants proposed to begin service with two seven-passenger sedans and promise 21-passenger equipment if the patronage justifies. The distance between termini is 8 miles and the

fare 15 cents. There is no showing that the half hourly service they propose between 6 a.m. and midnight would receive support to sustain it, without local traffic in San Jose. Applicants were willing to forego such local traffic by the route proposed or to pursue another route.

The record justifies no grant to applicants except between San Jose and to points east of Linda Vista to Alum Rock Park. Such a service may be rendered with much less frequency of schedules as proposed and might receive profitable support, particularly week-ends and holidays. Exhibits filed by protestant indicate that maintenance of electric service is precarious but protestant's counsel stated that adequate service would be maintained, even at a loss, if competition is not presented. Under the record applicants will be granted a limited certificate, as heretofore indicated, only.

C. J. Amorosa and Patrick Higuera are hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

O R D E R

C. J. Amorosa and Patrick Higuera, co-partners, operating under the name San Jose Auto Stage Company, have made application to establish automotive transportation service between San Jose and Alum Rock Park, a public hearing having been held, and the matter being duly submitted,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY
DECLARES that public convenience and necessity require the es-
tablishment of automobile passenger transportation service be-
tween San Jose and Alum Rock Park, over and along the following
route:

Between San Fernando Street and Market Street, via
Santa Clara Street and Alum Rock Avenue, and

IT IS HEREBY ORDERED that a certificate of public convenience
and necessity therefor be and the same hereby is granted applicants
herein, and subject to the following conditions:

1. No service is to be performed between San Fernando
and Market Streets and Fleming Avenue (near Linda
Vista station) except such passengers as may originate
at or be destined to points east of Fleming Avenue.
2. Applicants shall file their written acceptance of
the certificate herein granted within a period of not
to exceed fifteen (15) days from date hereof.
3. Applicants shall file, in triplicate, and make
effective within a period of not to exceed thirty (30)
days after the effective date of this order, on not
less than ten days' notice to the Commission and the
public a tariff or tariffs constructed in accordance
with the requirements of the Commission's General Orders
and containing rates and rules which, in volume and
effect, shall be identical with the rates and rules shown
in the exhibit attached to the application in so far as
they conform to the certificate herein granted, or rates
satisfactory to the Railroad Commission.
4. Applicants shall file, in duplicate, and make effect-
ive within a period of not to exceed thirty (30) days
after the effective date of this order, on not less than
five days' notice to the Commission and the public, time
schedules covering the service herein authorized in a
form satisfactory to the Railroad Commission.
5. The rights and privileges herein authorized may not
be discontinued, sold, leased, transferred nor assigned
unless the written consent of the Railroad Commission to
such discontinuance, sale, lease, transfer or assignment
has first been secured.

5. No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 8th day of July, 1935.

Leon A. Whiteley

W. J. Carr

M. B. Harris

Stan R. Durbin
COMMISSIONERS.