

Decision No. 28442

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of OLIVE L. KELLER for a Motor Carrier Transportation Agent's License.

Application No. 20159.

ORIGINAL

J. H. Morris for Applicant.

Orla St. Clair and Howard Day for  
Passenger Carriers' Association, Protestant.

Robert Brennan and Wm. F. Brooks for  
The Atchison, Topeka and Santa Fe Railway,  
Protestant.

BY THE COMMISSION:

OPINION AND ORDER

Applicant seeks a motor carrier transportation agent's license under Chapter 390, Statutes of 1933. The license, as applied for, is to be used solely for the sale of transportation to be conducted by Ralph Keller, husband of applicant. Ralph Keller holds no certificate of public convenience and necessity granting him authority to conduct any highway common carriage in California. He proposes to operate, at San Francisco,

"a motor sedan passenger service, carrying passengers for compensation, but who will not run or operate between fixed termini, or over any regular route, but who proposes to carry said passengers to any point in said State, at any hour, and over any route desired, having no fixed time of departure or arrival, or fixed route of travel."

A public hearing thereon was conducted by Examiner Williams at San Francisco. The matter was submitted on briefs which have been filed.

Section 6 of Chapter 390, supra, provided:

"No license shall be issued to an applicant when, with or without hearing, the Railroad Commission shall determine (1) that applicant is not a fit and proper person to receive the same, or (2) the motor carriers for whom applicant proposes to sell transportation have not complied, and are not then and there complying and do not propose to comply, with the State and/or Federal laws, and/or all general orders of the Railroad Commission of the State of California, applicable to the operations of said motor carrier."

Applicant, Olive Keller, testified that she intends to sell transportation solely for Ralph Keller, in the lobby of the Grand Hotel, No. 57 Taylor Street, San Francisco. Mrs. Keller testified she had "never sold tickets." Asked if she "had not sold passage" Mrs. Keller replied: "No, I have never sold anything."

Ralph Keller, called in behalf of applicant, testified that he had been driving a vehicle for Benjamin Franklin Lines, operating as an interstate carrier under certificate of registration issued by this Commission, over a route via Santa Barbara, Los Angeles, San Diego, El Centro and Mexicali, in the Republic of Mexico, and to Arizona points. Keller also testified in answer to a question as to what other business he had been in:

"Well, wildcatting once in a while."

He also testified, directly, that he would operate without fixed route, or termini, "load my own equipment, run when I want to any place in the State." Photographs, taken on July 31, 1935, showing witness loading passengers for transportation in his Lincoln Sedan for Los Angeles, were identified by witness (Exhibit No. 1).

Passenger movements would be made "under a mileage charge;" that the mileage would be 8 or 10 cents per passenger and that "to go to Los Angeles it would be five dollars." When his attention was called to the fact that 10 cents per passenger mile, between San Francisco and Los Angeles, would mean a single fare of \$40 or more, witness answered that he would collect that amount for eight passengers; that he would not take one passenger for \$5 but would require a minimum of four passengers, but would not transport more than four for the same amount. On cross examination the witness testified he would transport passengers for Santa Barbara and Los Angeles on the same vehicle, "at Five Dollars apiece." Also that the fare for a single passenger getting off at Salinas would be "about \$1.50." The record presents the proposed operation of Keller as one to be conducted on demand of four or more passengers, between any designated points, at a rate of fare per passenger.

Section 50½ of the Public Utilities Act provides:

"Any act of transporting or attempting to transport any person or persons by stage, auto stage, or other motor vehicle upon a public highway of this state between two or more points not both within the limits of a single incorporated city, town or city and county, where the rate, charge or fare for such transportation is computed, collected or demanded on an individual fare basis, shall be presumed to be an act of operating as a passenger stage corporation within the meaning of this act."

It is clear from the record that Ralph Keller is not proposing to comply with state law in that he intends to transport passengers over the public highways in a manner repugnant to the above quoted provisions of Section 50½ of the Public Utilities Act, and without proper certificate therefor or at all.

Testimony was also presented alleging dealings of applicant. Edgar H. Douglas testified Mrs. Keller in June, 1935, told him she would arrange for transportation for him between San Francisco and Los Angeles and that the fare would be \$5. Witness, an employe of Passenger Carriers' Association, did not complete arrangements. Similar testimony was received from Albert H. Thompson, who quoted Mrs. Keller as stating that two vehicles (sedans) left San Francisco daily at 11:00 a. m. and 5:00 p. m.

Etta Ross, also employed by Passenger Carriers' Association, testified she dealt with Mr. Keller at the Grand Hotel and received the same information as to transportation and, in addition, a card on which Mr. Keller wrote his name, to facilitate further contact. The card advertised "fast Sedan Service, licensed, twice daily, insurance" and also gave the addresses and telephone numbers of the Mercer Hotel, Los Angeles, and Grand Hotel, in San Francisco. Witness did not deal with Mrs. Keller.

Marguerite Leusch related separate dealings with Mr. and Mrs. Keller at the Grand Hotel, by which she was provided with transportation to Los Angeles August 7, 1935. She paid a fare of \$5 and the vehicle was driven by one Bransford; there were six passengers, including witness. The trip was made via Modesto and Fresno. Fares were not collected until the vehicle reached Fowler at midnight. Witness was delivered in Los Angeles.

Neither the applicant nor Mr. Keller made any effort to refute the testimony of these witnesses.

Applicant's counsel contends as to Ralph Keller that "irrespective of what this witness' derelictions may have been in the past, he has stated here what he proposed to do in the future, which is the only thing we are concerned with."

Brief in behalf of applicant is based on the theory quoted and contends this Commission has no jurisdiction over the character

of operation outlined by Ralph Keller. This outline, fairly considered, presents a continuance of "wildcat" operations (per capita fare, service to intermediate points and other attributes of services for which Section 50½ plainly requires certification), through the granting of a license to applicant, if she be found fit and proper. There is enough in the record to cast serious doubt on her fitness as the uncontradicted testimony (except for her denial that she "ever sold anything") is that she answered inquiries at the Grand Hotel, quoted rates and made arrangements for the transportation conducted by her husband. This transportation admitted by him to be "wildcattling," was not in connection with Benjamin Franklin Lines. While it is true that Ralph Keller is not now an applicant before the Commission the license sought herein is limited to the operation he proposes to conduct and for his benefit only.

We, therefore, basing our findings on the record presented, find as a fact that (1) applicant has offered for sale and has negotiated to sell transportation over the public highways of this State, without first obtaining license to perform such service; and (2) that the motor carrier for whom applicant proposes to sell transportation has not complied, and does not propose to comply, with the State laws, and/or all General Orders of the Railroad Commission, applicable to said motor carrier; and, based upon the foregoing findings,

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

Dated at San Francisco, California, this 16<sup>th</sup> day of December, 1935.

Leon A. Kelly  
M. B. Kelly  
W. B. Kelly  
W. B. Kelly  
W. B. Kelly  
Commissioners.