

Decision No. 23372

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Passenger Carriers Association, a corporation,	Complainant,
vs.	
RALPH J. KELLER, OLIVE L. KELLER, FIRST DOE, SECOND DOE and THIRD DOE,	Defendants.

Case No. 4168

ORIGINAL

Orla St. Clair, for Complainant.

Ralph J. Keller and Olive L. Keller,
Defendants, in propria persona.

BY THE COMMISSION:

O P I N I O N

Complainant herein, a corporation, alleges that Ralph J. Keller and Olive L. Keller and certain Doe defendants have been engaged in the business of operating a passenger stage corporation as such is defined in the Public Utilities Act (Statutes of 1915, Chapter 91, page 115, as amended); operating or causing to be operated passenger stages as defined in said Public Utilities Act. It is further alleged that defendants engaged in this business as a common carrier of passengers and their baggage over the public highways of the State of California, particularly between San Francisco and Los Angeles, for compensation, without having first

secured from this Commission a certificate of public convenience and necessity therefor.

Public hearing herein was held by Examiner W. R. Williams, at San Francisco, at which time the matter was duly submitted and is now ready for decision.

Defendants, by their answer to the formal complaint, deny, generally and specifically, the allegations of the complaint. Particularly do they deny the allegations of any acts alleged to have been committed in July and August, 1935, claiming immunity by reason of the fact that section 801 of the Penal Code requires that such acts be brought to the attention of a magistrate before six months had expired; also that certain acts alleged to have been committed in April, 1936, had been adjudicated by the Justice's Court in Murray Township, County of Alameda; that no penalty could be imposed because of any such acts.

Defendants' objection is not effective, for the reason that this proceeding is not a penalty proceeding, but is one in which complainant seeks to require defendants to cease and desist from operations which they have no legal right to conduct.

The record presents only the affirmative testimony of the complainant. The defendants, though present, did not cross-examine the witnesses and did not offer any testimony in their own behalf. The facts presented are substantially as follows:

Mr. and Mrs. Keller maintain headquarters at the Grand Hotel, No. 57 Taylor Street, San Francisco. It is from this point that passengers, who were witnesses in the proceeding, were received for transportation and the same actually were transported

between San Francisco and Los Angeles. Seven passenger sedans were used. The record discloses that defendants maintain a travel agency at this hotel; that the hotel officers and employees direct inquiries to Mrs. Keller, and that Mr. Keller arranged the dispatch of the vehicles and in many cases drove a vehicle through to destination. Either of two routes was used, one via Modesto and Fresno, and the other via Pacheco Pass from Fresno. Defendants gave cards to prospective customers, which set forth their office at the Grand Hotel in San Francisco, and the Mercer Hotel in Los Angeles. The cards bore the words "Daily Service." Witnesses testified that Mrs. Keller and Mr. Keller informed them that vehicles left twice daily, once about 11:00 o'clock in the morning and again about five in the evening, destined for Los Angeles.

Guy V. Wright, supervising auditor of the State Board of Equalization, testified that a permit to operate passenger vehicles, under Chapter 339, Acts of 1933, was issued to Ralph J. Keller, January 30, 1936. Subsequent to this date, Mr. Keller and his wife reported monthly their gross revenue from transportation to the State Board of Equalization, and gross receipt taxes were paid on the amounts reported. The gross receipts varied from \$59 in April, to \$219 in August. During the nine months, reports were made every month and the tax paid on a passenger business.

Howard Day, manager of complainant corporation, testified as to continuous advertising in the newspapers in San Francisco, in and after July, 1936, of transportation between San Francisco and Los Angeles, and referring inquirers to telephone "Ordway 1805," which is the telephone number in the hotel of defendants herein.

Mr. Day also testified as to specific acts of defendants in arranging transportation at the hotel, and a number of movements by Ralph Keller were disclosed by twelve photographs which had already been exhibits in Application No. 20159, wherein Mrs. Keller sought a license to sell motor transportation exclusively for her husband, Ralph L. Keller.

The record also shows that on April 2, 1936, defendant Ralph J. Keller was arrested by Highway Patrolmen Hewitt and Alves, on the highway near Livermore, driving a sedan in which there were seven passengers. The vehicle was enroute to Los Angeles, according to the witnesses produced by complainant and who were passengers in the vehicle. The Patrolmen cited Keller to appear in the court at Livermore for violation of Section 50 $\frac{1}{2}$ of the Public Utilities Act, along with several others arrested about the same time for similar operations. The citation was dismissed by the Justice of the Peace, after hearing one other similar case, under stipulation with the District Attorney that testimony in the case heard would determine others of similar character.

As a matter of fact, after the citation was delivered to defendant Keller, he drove the car by way of Manteca and Fresno to Los Angeles and according to the testimony of Martin Bekedam, a witness, collected the fares of the passengers, at two o'clock in the morning at an isolated spot on the Ridge Route south of Grapevine. Bekedam further testified that he and his companion, Milton Fraser, paid their fares to Austin Abbott. Abbott told the Patrolmen he was riding merely as a friend of Keller. He, however, collected the fares from the passengers.

It is also significant that the passenger operations reported by defendants to the State Board of Equalization in April totaled only \$59, in May \$82, but after advertisements were renewed, the amount increased to \$170 in June, \$136 in July and \$219 in August. The income for a portion of the month of September was \$150.

The record of this matter is plain. Defendants have
(1) a travel office at the Grand Hotel in San Francisco; they offered the public daily service between San Francisco and Los Angeles; their reports to the State Board of Equalization show that this business has been conducted continuously for a period of nine months in 1936; the record indicates frequent trips of the character indicated between termini. The practice of collecting the fares through an intermediary, is a form of subterfuge familiar to this Commission. Upon such a showing, the duty of the Commission is to grant the prayer of the complainant and order the defendants to cease and desist from such operations.

We further believe it to be our duty to warn the management of the Grand Hotel that continued sufferance, with knowledge, of this illegal business within its premises, may in fact be aiding and abetting an illegal operation. The testimony of Mr. Howard Day is that he warned Mr. Howell, the manager of the Grand Hotel, of this possibility, being advised to do so by the District Attorney of San Francisco City and County.

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

(1) In Application No. 20159 Mrs. Keller was denied a license as Motor Carrier Transportation Agent for Ralph J. Keller, exclusively, by Decision No. 28442.

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, or he may be imprisoned for five 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, 35 C.R.C. 571.

It should also be noted that under section 79 of the Public Utilities Act, a person who violates an order of this Commission or who procures, aids or abets any utility in its violation of the act, or in its failure to comply with any order of the Commission, is guilty of a misdemeanor and is punishable by a fine not exceeding \$1,000, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

O R D E R

Public hearing having been held in the above entitled matter, and the same having been duly submitted to the Commission,

It is Hereby Found as a Fact that Ralph J. Keller and Olive L. Keller are engaged in business as a passenger stage corporation and operate as a common carrier of passengers, for compensation, over the public highways, between San Francisco and Los Angeles, without having first obtained a certificate of public convenience and necessity therefor, as required by the Public Utilities Act; and

IT IS HEREBY ORDERED that the above named respondents shall immediately cease and desist from such operation as a passenger stage corporation, unless and until proper certificate of public convenience and necessity therefor shall have been obtained, and notice is hereby given that such operation shall not be conducted by the above named respondents, either directly or indirectly, or by any subterfuge, or by their agents, employees, representatives or assignees.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission cause personal service of a certified copy of this opinion and order to be made upon Ralph J. Keller and Olive L. Keller and that copies thereof be mailed to the District Attorney of the City and County of San Francisco, and to the District Attorneys of the Counties of Alameda, Stanislaus, Merced, Fresno, Kern, Los Angeles, San Mateo, Santa Clara and San Benito and to the Board of Public Utilities and Transportation of the City of Los Angeles and the Department of Public Works, Division of Highways, at Sacramento.

This order shall become effective twenty days after personal service as hereinabove directed.

Dated at San Francisco, California, this 15th day of December, 1936.

M B Linn

Walter H. H. H.

Frank R. H. H.
COMMISSIONERS