

ORIGINAL

Decision No. 29782

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
PATRICK HIGUERA to sell, and )  
RITA CHRISTIANSEN to purchase, )  
seller's one-fourth interest in an )  
automobile passenger line operated )  
between Market and San Fernando )  
Streets and Alum Rock Park, in the )  
City of San Jose and the County of )  
Santa Clara, State of California. )

Application No. 20461

Patrick Higuera, in pro per, Applicant;  
Joseph T. Curley, for Rita Christiansen, Applicant;  
C. J. Amorosa, in pro per.

BY THE COMMISSION:

O P I N I O N

In this matter Patrick Higuera and Rita Christiansen have applied to the Commission, asking that the former be permitted to sell and transfer to Rita Christiansen, and that the latter be permitted to purchase and acquire from the former, Higuera's entire interest, consisting of an undivided one-fourth of the operative right and equipment used in conducting a passenger stage service between San Jose and Alum Rock Park.

Public hearings were had before Examiner Austin at San Francisco on November 17 and 20, 1936, when evidence was offered, the matter submitted, and it is now ready for decision.

The operative right involved was created by Decision No. 28097 in Application No. 20003 dated July 8, 1935, which granted to C. J. Amorosa and Patrick Higuera, as co-partners, a certificate of public convenience and necessity authorizing the operation of a passenger stage service between San Fernando and Market Streets, in the City of San Jose, and Alum Rock Park, subject to the limitation that no local service may be performed between San Fernando and Market Streets, and Fleming Avenue near Linda Vista station, excepting only for the transportation of passengers originating at or destined to points east of Fleming Avenue. Neither the decision nor the application in that proceeding specified the respective interests of the applicants in the business.

From the testimony of the applicants in this proceeding, together with that of Amorosa (who did not join as an applicant), it appears that in July, 1935, when service was commenced, two old cars - a Packard sedan and a Cadillac sedan - were originally used. The Cadillac was soon returned to the dealer and replaced by a second-hand Fageol bus, which also was turned in within two months. This was replaced by a second-hand Yellow Coach bus purchased in October, 1935, and repossessed in January, 1936. Then a second-hand 1927 Buick sedan was utilized until April, 1936, when it was returned to the dealer. For a short period the service was conducted with borrowed cars, but in September, 1936, it was completely abandoned.

During the summer season, extending from April until September, the traffic has averaged about sixty passengers daily, being considerably heavier on Sundays and holidays. The patronage consists mostly of visitors to Alum Rock Park, as well as residents along the route and those visiting the Country Club. During the winter months the

traffic drops to an average of thirty-five passengers a day. No round-trip fares have been published, the tariff specifying one-way fares of fifteen cents to Alum Rock Park and ten cents to Linda Vista. Thus, under the most favorable assumption, the daily revenue would average \$9.00 during the summer, and \$5.25 during the winter. On the basis of ten cents a mile for ten round-trips daily of 15.3 miles each, Amorosa estimated the daily operating expenses at \$15.00. Under these circumstances, profitable operation appears hopeless.

The light patronage, which has proved so disappointing, was due primarily, so Amorosa testified, to the limitation imposed in the original certificate prohibiting local operation in the City of San Jose, between Market and San Fernando Streets and Fleming Avenue. Unless this is removed, he stated, the line can never be profitably operated, an opinion shared by applicant Higuera. Residents along the route frequently carry neighbors in their own cars, a practice operating to still further deplete this carrier's revenues.

From the inception of the service both Amorosa and Higuera have frequently borrowed money from applicant Rita Christiansen to be used in financing the operations of this line. According to her testimony these sums totaled \$800.00, while Amorosa and Higuera stated it did not exceed \$450.00. Mrs. Christiansen testified she financed the purchase of the Yellow Coach bus as well as other equipment, and has advanced sums used for operating expenses. No note or other evidence of indebtedness was given by either Amorosa or Higuera.

By the proposed transfer, Mrs. Christiansen expected to secure Higuera's entire interest. She was somewhat hazy as to

the extent of this interest, and she admitted there was some dispute between Amorosa and Higuera as to Higuera's precise share. Amorosa testified that although it was originally agreed each should own an equal share, an understanding was reached between them later, when actual experience demonstrated Higuera's inability to contribute funds toward the enterprise, that he should own only a one-fourth interest. Higuera admitted such a proposal had been made, but denied he had ever consented to the arrangement, insisting on the contrary that he was the owner of a one-half interest. According to his version the proposed transfer to Mrs. Christiansen would vest in her a one-quarter interest, leaving a one-quarter and a one-half interest remaining in himself and Amorosa, respectively. Although Amorosa did not concede this, he suggested as a compromise that the transaction be consummated on this basis. Mrs. Christiansen stated, however, that she expected to secure all of Higuera's interest. In consideration for this transfer she offered to extinguish her claim against him for \$200.00, representing funds previously advanced, and, in addition, she would pay \$100.00 in cash. She had no intention of advancing further funds for additional equipment or operating expenses; these obligations, she believed, should be met by the others. From her testimony it is clear she sought to obtain Higuera's interest as security for her in payment of the money she had previously advanced. Because of her unwillingness to accept a mere one-quarter interest, she announced at the conclusion of the hearing her determination to abandon the transaction and to withdraw from the application so far as she was concerned.

Since the transferee no longer desires to go forward with

this application, there is nothing now before the Commission upon which it may act. The application will therefore be denied.

O R D E R

A public hearing having been had in the above-entitled matter, evidence having been offered, the matter having been duly submitted, and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that the application of Patrick Figuera to transfer to Rita Christiansen, and the latter to acquire from the former an interest in the passenger stage line authorized to be conducted pursuant to Decision No. 28097 in Application 20003, be and it is hereby denied.

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 24<sup>th</sup> day of May, 1937.

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*Leon Whittell*  
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*Frank P. Kline*  
\_\_\_\_\_  
*Ray & Kelley*  
\_\_\_\_\_  
Commissioners.