

Decision No. 29854

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Ray  
(Kelly)Withers and Andrew C. Byrd, for  
a certificate of public convenience and  
necessity to operate a motor bus service,  
as a common carrier, between the community  
Hospital, San Mateo and Oxford Avenue,  
Burlingame, running generally along the  
El Camino Real, "B" Street, San Mateo,  
and San Mateo and California Drives, San  
Mateo and Burlingame, with four branch  
lines as follows: one running toward the  
Bay Shore from Third Avenue and Main  
Street, San Mateo, Northeast to Grant  
Street, thence southeast to Ninth Avenue;  
a second branch line running toward the  
Foot Hills from Third Avenue and Main  
Street, San Mateo, southwest to Edinburgh  
Street, thence southeast to Barneson Avenue;  
a third branch line running toward the Bay  
Shore from Burlingame Avenue and the Southern  
Pacific Depot, Burlingame, northeast to Dwight  
Road, thence southeast to Bayswater Avenue,  
thence northeast to Idaho Street, in San  
Mateo; a fourth branch line running toward  
the Foot Hills from the Southern Pacific  
Depot in Burlingame along Burlingame Avenue  
southwest to Occidental Avenue, thence  
southeast to Poplar Avenue in San Mateo.

ORIGINAL

Application  
No. 20970

WILLIAM J. LOCKE, for Applicants,

MARKET STREET RAILWAY, by Ivores R. Dains  
and E. B. Mills, Protestant.

SOUTHERN PACIFIC COMPANY, by A. S. Williams,  
Interested Party.

RILEY, Commissioner:

O P I N I O N

Ray Kelly Withers and Andrew C. Byrd, a copartnership,  
in their amended application seek a certificate of public con-  
venience and necessity authorizing the transportation of passengers  
only, between San Mateo and Burlingame and intermediate points

over a particular route. There was but one protest to the granting of this application, that of Market Street Railway; Southern Pacific Company appearing as an interested party only.

Public hearings were had at San Mateo and San Francisco.

Applicants in the original application proposed a route of operation which, in part, would have very closely paralleled the tracks of Market Street Railway between points in Burlingame and San Mateo for a distance of approximately three and one-fourths miles along California Drive and San Mateo Drive. In its amended application, however, applicants have proposed a routing which, while still competitive with Market Street Railway between the intersection of Burlingame Avenue and California Drive at Burlingame and the intersection of Third Avenue and Main Street at San Mateo, does not closely parallel the tracks of said railway except for a few blocks.

Applicants propose a daily except Sunday and legal holiday service with a headway of approximately thirty minutes.

The applicants testified at considerable length giving descriptions of the proposed service and also called public witnesses comprising representatives of Chambers of Commerce and improvements associations, merchants and residents of outlying districts proposed to be served.

From the showing made it was developed that the territory proposed to be served, including the local districts or tracts known as Aragon, Baywood and San Mateo Park, in the city of San Mateo, and the district in Burlingame adjoining San Mateo Park tract, has an estimated population of approximately 7600 people.

The evidence indicates that those portions of the districts not immediately contiguous to El Camino Real have no

public means of transportation to and from the shopping districts of Burlingame and San Mateo, or the depots and stations of the rail common carriers. Those now desiring to travel between points along the proposed route are obliged to provide private transportation.

The record clearly shows that there is a demand for a public transportation service between the outlying districts of these cities and the shopping centers of Burlingame and San Mateo as well as depots and stations of the rail carriers for those desiring to travel by public conveyance between Burlingame and San Mateo. It was also shown that there is a need for a public transportation service to and from the San Mateo Junior College located at Baldwin Avenue and San Mateo Drive. These cities are suburban in character and it was shown that the districts herein involved are among the fastest growing centers of population in the state.

Market Street Railway vigorously protested the original application and produced testimony and records to show that a competitive stage service closely paralleling its lines along California Drive and San Mateo Drive between Burlingame and San Mateo would rapidly reduce its local revenues to a point where it would be compelled to drastically curtail its service, if not entirely abandon all service between such points. However, applicants, by their amended application, are proposing a new and different route and the record shows that the grounds of protest of Market Street Railway are materially lessened and it does not appear that the granting of the authority requested will adversely affect the revenues of protestant to any appreciable extent.

It is apparent from the record that there is a public need for the proposed service. Therefore, the application will be granted.

Ray Kelly Withers and Andrew C. Byrd 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.

I recommend the following form of order.

#### O R D E R

A public hearing having been held in the above entitled proceeding, evidence having been received, the matter having been duly submitted, and the Commission now being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Ray Kelly Withers and Andrew C. Byrd, as a passenger stage corporation, as defined in Section 2 $\frac{1}{2}$  of the Public Utilities Act, of an automotive passenger stage service for the transportation of passengers between Burlingame and San Mateo and intermediate points over and along the following route:

"Commencing at the intersection of Hobart Avenue and Edinburgh Street, San Mateo, thence north-westerly along Edinburgh Street to West Third

and Third Avenues, thence northeasterly along Third Avenue to Main Street and S.P. Depot; thence northwesterly along Main Street to Second Avenue; thence southwest along Second Avenue to "B" Street; thence northwesterly along "B" Street to Baldwin Avenue; thence southwesterly along Baldwin Avenue to El Camino Real (U. S. Highway 101); thence northwesterly along El Camino Real to Park Road; thence northwesterly along Park Road to Burlingame Avenue; thence southwesterly along Burlingame Avenue to Occidental Avenue; thence southerly along Occidental Avenue to its intersection with Clark Drive; with a loop from Park Road at Howard Avenue, thence along Howard Avenue to Highland Avenue, to Burlingame Avenue to Park Road."

IT IS HEREBY ORDERED that a certificate of public Convenience and necessity therefor is hereby granted to Ray Kelly Withers and Andrew C. Byrd subject to the following conditions:

1. Applicants shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicants shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file in triplicate and concurrently make effective on not less than ten days' notice to the Railroad 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 and rules satisfactory to the Railroad Commission.
3. Applicants shall file, in duplicate, and make effective 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 Railroad Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
4. 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 obtained.

5. No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased by applicants 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.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14<sup>th</sup> day of June, 1937.

William W. ...  
Leon ...  
Frank ...  
Ray ...  
Ray ...  
COMMISSIONERS.