

Decision No. 23897

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Burt W. Smith d.b.a. under the firm name )  
of Alum Rock Bus Line for certificate of )  
public convenience and necessity to ) Application No. 21153  
operate General Passenger Service as a )  
common carrier between 25 So. Market St., )  
San Jose, California, and Alum Rock Park, )  
California. )

HARVEY MILLER, for Applicant.

LOUIS O'NEIL and ARTEUR S. SHOUP, by Arthur S.  
Shoup for San Jose Railroads, Interested Party.

C. B. GOODWIN, City Manager, and ARCHEER BOWDEN,  
City Attorney, by Archer Bowden for City of  
San Jose, Interested Party.

WAKEFIELD, Commissioner:

O P I N I O N

By this application, Burt W. Smith, operating under the fictitious name and style of Alum Rock Bus Line, seeks a certificate of public convenience and necessity for the establishment and operation of an automotive service, on Sundays and Holidays only, for the transportation of passengers as a common carrier between the City of San Jose and Alum Rock Park, a municipally operated amusement and recreational center of some 700 acres, located about seven miles east of San Jose.

A public hearing was held in this matter on Thursday, May 24, 1937 in San Jose where the matter was submitted and is now ready for decision.

San Jose Railroads and the City of San Jose made appearances as interested parties. San Jose Railroads' interest was confined to the imposition of a restriction to applicant's proposal which would protect the Railroads' operations where paralleled by applicant's

proposed line. A stipulation, wherein it was agreed that applicant would not engage in the transportation of passengers locally between 25 South Market Street and the intersection of Alum Rock Avenue and Mt. Hamilton Road, was entered into between counsel for applicant and counsel for the Railroad, whereupon San Jose Railroads' interest being satisfied, that company indicated there would be no protest from them to the granting of a certificate to applicant.

The position of the City of San Jose, as stated by counsel, was that a bus service to Alum Rock Park was necessary and that it favored such a service if there was assurance that the service would be adequate and dependable and that the equipment used therefor would be of a type and capacity properly maintained and which would meet the needs of, and protect, park patrons in all respects.

A resolution of the San Jose Chamber of Commerce, dated June 10, 1937, endorsing the proposal and recommending granting of a certificate therefor to Burt W. Smith was introduced and received as an exhibit.

Applicant testified that he proposed to operate a seasonal service from approximately May 1 to October 1 of each year, that he proposed no complete intermediate service but rather would operate in accordance with the stipulation set forth above between San Jose and Alum Rock Park. He further stated that he wished to cooperate to the fullest extent with San Jose Railroads.

Scheduled trips under applicant's proposal are to be operated from San Jose at 9:00 A.M., 10:00 A.M., 11:00 A.M., 12:01 P.M., 3:00 P.M. with a final trip at 5:00 P.M. From the Park, schedules will leave at 9:30 A.M., 10:30 A.M., 11:30 A.M., 3:30 P.M., 4:30 P.M. and 5:30 P.M. Twenty-five minutes each way will be consumed in negotiating this 7.5 mile trip over paved highway. A one-way fare of 30 cents is proposed by applicant and a round-trip ticket may be purchased for 50 cents. A twenty-passenger Yellow Coach bus is to be used in this service and applicant testified that he is in a position to provide

additional equipment should traffic demands warrant.

E. R. Ward, superintendent of Alum Rock Park, testified that, on an average, some eight or ten thousand people visited this amusement center on Sundays and Holidays and that he had received a number of requests, particularly by phone, for information as to how the Park could be reached by bus or other common carrier service. He testified that the Park had sulphur baths, an indoor plunge, dance pavilion and restaurant and picnic facilities. Alum Rock Park is open day and night but the plunge is closed at 9:00 P.M. with other facilities open and in use until approximately 2:00 A.M. Mr. Ward testified that he felt a bus service was necessary and that applicant's proposal would satisfactorily serve the needs of patrons of this diversion center. He questioned applicant's time schedules and stated he believed additional trips to and from the Park should be established to care for early evening and night patrons of this resort.

While the record is practically void of any figures covering the cost of operation of this proposed service, there is sufficient testimony to show public need for a service of this kind and I believe that applicant, an experienced operator now conducting another certificated operation in San Jose and environs, should be given an opportunity to institute this service. No definite protest to the granting of such a certificate has been received; the former certificated common carrier to the points involved has abandoned the service, (1) the interest of San Jose Railroads the only other common carrier seriously involved has been satisfied by stipulated restriction in service heretofore referred to and applicant has testified that he is ready,

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(1) C. J. Amorosa and Patrick Higuera, operating as San Jose Auto Stage Company, had their operating right revoked by Decision No. 29811, dated June 1, 1937, for unauthorized abandonment of service.

willing and able to undertake the establishment of this common carrier automotive service.

I am of the opinion that, based on the record herein, the application should be granted subject to the stipulated service restriction agreed to and with the further admonition to the applicant that his scheduled service be adjusted to better suit the operating conditions indicated as necessary to satisfy Alum Rock Park patrons.

Burt W. Smith is 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.

#### ORDER

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Burt W. Smith, operating under the fictitious name and style of Alum Rock Stage Line, of an automotive service as a passenger stage corporation as such is defined in Section 2 $\frac{1}{2}$  of the Public Utilities Act for the transportation of passengers only between San Jose and Alum Rock Park as a seasonal service on Sundays and Holidays only from approximately May 1 to October 1 over and along the following route:

"From 25 South Market Street, San Jose, thence via East Santa Clara Street to the intersection of Kirk Road (Fleming Avenue). Linda Vista Station and Alum Rock Avenue, thence via Alum Rock Avenue to Alum Rock Park. Reverse of above route on return trip."

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is, granted to

Burt W. Smith, subject to the following conditions:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Between 25 South Market Street and the intersection of Alum Rock Avenue and Mt. Hamilton Road no passengers shall be transported locally.
3. Applicant 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.
4. Applicant 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.
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 obtained.
6. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

The effective date of this order shall be 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 28<sup>th</sup> day of June, 1937.

Walter W. Smith  
John C. White  
Henry K. Allen  
Garret W. ...  
Ray & Riley  
Commissioners.