

Decision No. 30091

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
MOTOR TRANSIT COMPANY, a corporation, )  
to sell and MAX H. GREEN to purchase \$ Application No. 21334  
San Bernardino Mountains automobile )  
passenger stage and truck operating )  
rights. )

ORIGINAL

E. L. H. BISSINGER, for Applicant Motor Transit Company  
MAX H. GREEN, Applicant in Pro. Per.

BY THE COMMISSION:

O P I N I O N

In this proceeding, the applicant Motor Transit Company seeks authority to sell and transfer to applicant Max H. Green, and the latter asks permission to purchase and acquire from the former, certain operative rights held by Motor Transit Company for the transportation of property, passengers, baggage and express between San Bernardino and Redlands and points in the San Bernardino Mountains.

A public hearing was had before Examiner Austin at Los Angeles on August 25, 1937, when evidence was offered, the matter submitted, and it is now ready for decision.

Applicant Motor Transit Company operates as a passenger stage corporation over a network serving the territory south and east of Los Angeles. Included in its system are the lines sought to be transferred, extending from San Bernardino and Redlands to the San Bernardino Mountain area, comprising generally the resorts surrounding Lake Arrowhead and Big Bear Lake and along Rim of the World Boulevard. In addition to its passenger stage service, Motor

Transit Company operates in this territory as a highway common carrier.

The application contemplates the transfer to applicant Green of operative rights authorizing a passenger stage and a highway common carrier service over the following routes, viz:

Redlands to Big Bear Lake via Mill Creek Canyon, serving as intermediate points the resorts and camps at Mountain Home, Camp Angeles, Weeshaw Club, Seven Oaks, Clarks Ranch and I. S. Ranch.

San Bernardino to San Bernardino, via "Rim of the World Boulevard," serving as intermediate points the resorts and camps at Arrowhead Arch, Camp Waterman Junction, Crestline Store, Skyline Heights, Horseshoe Bend, Squirrel Inn, Allison's Ranch, Running Springs Park (Formerly Fredalbe Junction), Green Valley Junction (formerly Green Valley Store), Fawnskin, Big Bear Lake, Northside Lake, Moon Camp Boat Landing, Southside Lake, Pine Knot, I. S. Ranch, Clark's Ranch, Seven Oaks Junction, Camp Angeles, Mountain Home, Igo's Store (formerly Lower Control) and Redlands.

San Bernardino to Big Bear Lake via City Creek Canyon, serving as intermediate points the camps and resorts at Dutch Johns, Fredalbe, Running Springs Park (formerly Fredalbe Junction), Green Valley Junction, Fawnskin and Moon Camp.

San Bernardino to Lake Arrowhead via Waterman Canyon and Rim of the World Boulevard, serving as intermediate points the camps and resorts at Arrowhead Arch, Camp Waterman Junction, Crestline, Skylands, Horseshoe Bend, Squirrel Inn, Pine Crest, Strawberry Flats and Pacific Electric Camp.

Between Arrowhead Lake and Big Bear Lake, serving as intermediate points the camps and resorts at Skyforest, Allison's Ranch, Running Springs Park (formerly Fredalbe Junction), Deep Creek, Green Valley Junction (formerly Green Valley Store), Gray's Camp, Fawnskin and Moon Camp.

From a point near the westerly line of Big Bear Lake, extending easterly along the shores of Big Bear Lake to its intersection at North Bay Spawning Station with the Mill Creek Canyon Road.

Between Arrowhead Lake and Last Ranch, also around Arrowhead Lake.

San Bernardino to Big Bear Valley, via Victorville, serving as intermediate points Box "S" Ranch and Doble.

San Bernardino to Lake Arrowhead via Hesperia.

The operative rights of Motor Transit Company rest upon Decision No. 29660, dated April 5, 1937, in Application No. 20948,

by which an in-lieu certificate was granted this applicant. That portion of its operative rights sought to be conveyed is specifically described in subdivision "K" of the order in that proceeding.

Motor Transit Company now conducts a passenger stage service between San Bernardino and Patton, via Highlands, over Baseline Street to Palm Avenue, Highlands, thence northerly to its intersection with Highland Avenue, and thence westerly on Highland Avenue to Patton. That portion of this operation conducted over Highland Avenue between Patton and the intersection of Highland Avenue and Palm Avenue coincides with and parallels a part of the mountain operations conducted between San Bernardino and Big Bear Lake, via Highland Avenue and City Creek Road which is sought herein to be transferred. Since the operative rights have all been consolidated and unified by Decision No. 29660, any separate or distinct identity which these operations may have previously enjoyed has been destroyed. It is apparent, therefore, that unless Motor Transit Company retains and reserves the right to operate along Highland Avenue, between Palm Avenue and Patton, it will be left, upon the consummation of the proposed transfer, without an operative right under which it may continue to serve Patton.

The application proposes that the transfer shall be made subject to certain restrictions and limitations dealing primarily with local service. Two of these which prohibit the transportation of passengers, baggage and express locally between San Bernardino and Hesperia or Victorville, and the transportation of freight locally between San Bernardino and Hesperia or Victorville, were imposed by Decision No. 29660. The provision found in the application that "Free transportation of baggage not exceeding 50 pounds in weight shall be permitted in connection with one way or round trip fares," is substantially the same as the limitation imposed by

Decision No. 29660 upon the transportation of baggage over the San Bernardino Mountain lines.

There remain two additional restrictions to which it is proposed Applicant Green shall be subjected in the conduct of this service; viz. that passengers, baggage and express will not be handled locally (1) between San Bernardino and Redlands, nor (2) between San Bernardino and Highlands. Since Motor Transit Company operates between these points over routes other than those proposed to be transferred, these restrictions are deemed essential to protect it against competition. By permitting them to stand, the public will be deprived of no service not now adequately provided.

In justification of the application, operating and traffic officials of Motor Transit Company testified that the service, though conducted economically and efficiently, had failed to yield a profit. During the year 1936, which is typical of recent operations, its loss, based upon a full allocation of the system's general office and other general and miscellaneous expense, determined according to a motor coach car mileage pro rate, without regard to traffic or revenue, amounted to \$1879.81. In their opinion, applicant Green can effect substantial economies, reduce the overhead, and increase the efficiency of the service; and because of his wide acquaintance with resort owners and his long familiarity with passenger stage operations in this region, they believe he can substantially increase the traffic.

From Mr. Green's testimony it appears that he has had wide experience with passenger stage operations in the San Bernardino Mountains, both as an independent operator and, since 1920, as traffic manager for Motor Transit Company. Following his resignation in 1932, he has directed trucking operations for the State in connection with its relief work, and has also supervised trucking operations for the Federal Theater Project in eighteen western states.

By the terms of an agreement entered into between applicants Motor Transit Company and Green, dated July 7, 1937, a copy of which accompanies the application, it is provided that Green will acquire not only the operative rights but also certain operative property, both real and personal, including a terminal at Pine Knot, certain automotive equipment, and furniture and fixtures contained in the San Bernardino freight office and in the terminal at Pine Knot. For this, he has agreed to pay a total consideration of \$7500, of which one dollar has been allocated to the operative rights, and the remainder to the real property, equipment and fixtures. The contract provides that the purchase price will be paid in installments; viz. \$700 on the effective date of the Commission's approval of the transfer, \$1,300 within sixty days thereafter, and the balance at the rate of \$1500 per annum, including interest, being payable in monthly installments of \$200 each for the months of June, July and August, and \$100 during each of the remaining months of each year.

From Mr. Green's testimony, it appears that his financial resources are adequate to permit the performance of the contract and the operation of the service. On behalf of Motor Transit Company assurances were given that, pending the fulfillment by Mr. Green of his contractual obligations, the former would undertake to underwrite the continuance of adequate service over these lines. When this period has expired it is anticipated Mr. Green will be able to assume completely the burden of continuing the service.

Ordinarily, we would be inclined to view with disfavor the "splitting" of the operative right, contemplated by this application, between Patton and the junction of Highland Avenue and Palm Avenue, in the city of Highlands. Over this portion of Highland Avenue, Motor Transit Company now conducts not only its local service

between San Bernardino and Patton, via Baseline Street and Palm Avenue, but also a portion of its mountain operations, reaching Big Bear Lake via City Creek Road. Although physically the characteristics of the two services are distinct, one being designed to accommodate local passenger traffic, and the other contemplating the performance of a passenger and a freight service, nevertheless, over this segment of Highland Avenue the existing underlying operative right is but a single unit. As such, it was derived from the Commission's Decision No. 29660, by which the operative rights of Motor Transit Company were unified and consolidated, the former operative rights rescinded, and a new operative right granted in their stead. This "in lieu" certificate has replaced all the operative rights which this applicant formerly possessed. Now it is proposed to divide the operative right in so far as it may affect operations over this part of Highland Avenue, so that two distinct operative rights, each owned by a separate operator, will grow from a single stem. Thus, the operative right will be divided longitudinally, so to speak. As we have stated, the Commission, as a matter of policy, has sought to discourage the division of operative rights, but, as pointed out in re Benjamin Walters, et al, Decision No. 30062, dated August 25, 1937, on Application No. 21076, and associated cases, the rule will be relaxed where it appears that, otherwise, an unjust, unreasonable, or inequitable situation would be created. In this respect, each case must be determined according to its peculiar facts. Here, the longitudinal "splitting" of the operative right will embrace a distance not exceeding a mile in length. We believe that the division of the operative right over a distance so insignificant, when compared with the total length of the lines sought to be transferred as well as those retained, should not impel the denial of the application in toto, thus forcing, as the only alternative,

an application on the part of Motor Transit Company to abandon its mountain operations, and, on the part of Green, an application for a certificate to serve the same territory.

Not only do applicants seek to bring about a longitudinal division of the operative right, but also they seek to sever from the general operations of Motor Transit Company that portion of its service conducted in the San Bernardino Mountain area. As we have stated, its entire operations now rest upon a single certificate which has replaced all the constituent operative rights. To divide this operative right as proposed, would seem to run counter to the general policy we have announced. But it clearly is in the public interest to permit the continued operation of the mountain lines at a profit by applicant Green rather than prolong the present unremunerative operation by Motor Transit Company, thus inviting the ultimate abandonment of the service. In our judgment the public interest will best be served by sanctioning, in this instance, the division of the operative right.

Accordingly, the application will be granted.

Max H. Green 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.

#### O R D E R

A public hearing having been had, evidence received, the matter submitted, and the Commission being now fully advised:

IT IS HEREBY ORDERED that the application herein be and it is hereby granted; that applicant Motor Transit Company, a corporation, be and it is hereby authorized to sell and transfer to applicant Max H. Green, and the latter is hereby authorized to purchase and acquire from the former, for the consideration and subject to the terms and provisions of the contract executed by said parties, dated July 7, 1937, a copy of which is annexed to the application herein, all of the operative rights hereinabove specifically described, which were created by Decision No. 29660, dated April 5, 1937, on Application No. 20948, subject to all the restrictions and limitations therein imposed, together with the real property, automotive equipment, and furniture and fixtures more specifically described in the application herein.

IT IS HEREBY FURTHER ORDERED that there is hereby excepted and reserved from the operative rights herein authorized to be transferred, an operative right for the transportation of passengers, baggage and express by said Motor Transit Company over and along that portion of Highland Avenue, extending from Patton to the intersection of Palm Avenue and Highland Avenue, in the city of Highlands, in connection with, as a part of, and to be consolidated with the operative right which said Motor Transit Company still retains, subject to any and all restrictions and limitations imposed by said Decision No. 29660; provided, however, that such exception and reservation shall not be construed in any way to prejudice or impair the operative right herein authorized to be transferred to said Max H. Green over and along said Highland Avenue, including that portion thereof extending from Patton to the intersection of Palm Avenue and Highland Avenue in the city of Highlands.

Said authority is hereby granted subject to the following conditions:



1. No passengers, baggage or express having both point of origin and destination between San Bernardino and Highlands and intermediate points shall be transported.
2. No passengers, baggage or express having both point of origin and destination between San Bernardino and Redlands and intermediate points shall be transported.
3. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission, or any other rate fixing body, as a measure of value of said property for rate fixing, or for any purpose other than the transfer herein authorized.
4. Applicant Motor Transit Company shall within twenty (20) days after the effective date of the order herein unite with applicant Max H. Green in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicant Motor Transit Company withdrawing and applicant Max H. Green accepting and establishing such tariffs and all effective supplements thereto.
5. Applicant Motor Transit Company shall within twenty (20) days after the effective date of the order herein withdraw all time schedules filed in its name with the Railroad Commission and applicant Max H. Green shall within twenty (20) days after the effective date of the order herein file, in duplicate, in his own name time schedules covering service heretofore given by applicant Motor Transit Company which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicant Motor Transit Company or time schedules satisfactory to the Railroad Commission.
6. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been obtained.
7. No vehicle may be operated by applicant Max H. Green unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.
8. The authority herein granted to sell and transfer the rights and/or property shall lapse and be void if the parties hereto shall not have complied with all the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.
9. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.

10. This order shall become effective when there shall have been paid to the Railroad Commission the fee required to be paid on all evidences of indebtedness extending over a period of one year by the Public Utilities Act, in this instance the minimum fee of \$25.

Dated at San Francisco, California, this 7<sup>th</sup> day of September, 1937.

W. H. Harrison  
Leon O. Whelan

Ray L. Ricci  
COMMISSIONERS.

