

Decision No. 31161

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
GEORGE EARM and WILLIAM RITCHIE, doing)
business as HARVEY AVENUE-HAZELWOOD)
BUS LINE, for a certificate of public)
convenience and necessity to operate)
passenger automobile bus service as a)
common carrier between Chestnut and)
Illinois Avenues in the County of)
Fresno, State of California, and)
Van Ness Avenue and Mariposa Street)
in the City of Fresno, Fresno County,)
State of California.)

ORIGINAL

Application No. 21677

JAMES T. BARSTOW and JAMES J. EKOZ, for Applicant.

H. W. HOBBS, for Fresno Traction Company, Protestant.

BY THE COMMISSION:

O P I N I O N

Applicants George Earm and William Ritchie, a copartnership, doing business as Harvey Avenue-Hazelwood Bus Line, herein seek a certificate of public convenience and necessity authorizing the establishment and operation of a passenger stage service between Fresno and the residential district known as Sierra Vista Tract located east of the city limits of Fresno, as an extension and enlargement of its present operating rights.

A public hearing thereon was conducted by Examiner Paul at Fresno, the matter was submitted on briefs, and is now ready for decision.

Applicants, at the present time, are operating a passenger stage line between Fresno and the suburban district of Hazelwood, southeast of the city limits of Fresno, terminating at the intersection of Butler Avenue and 11th Street and, also, between Fresno and the intersection of Millbrook Avenue and Harvey Avenue northeasterly of the city limits of Fresno. The proposed operation is generally over Mariposa Street and Illinois Street to the Sierra

Vista Tract along a route between the routes of applicants' present operation. The distance between termini is approximately three and one-half miles.

The fares proposed to be charged are 7 cents one way and 4 cents one way for students under eighteen years of age. The applicants have ample equipment to render an adequate service over the proposed route.

Sierra Vista Tract, according to the testimony of A. P. Lohse, executive secretary of the Fresno County Chamber of Commerce, is a rapidly growing center with an estimated population between 3500 and 4000, with many new residences in process of construction. Mr. Lohse testified that, at the present time, this tract has no available transportation facilities other than the electric service of Fresno Traction Company which requires many of the residents of such tract to walk distances, in some instances, as great as approximately one and one-half miles.

The applicants produced eight witnesses all of whom reside in the Sierra Vista Tract who testified to the need for the proposed service. The record shows that some of those witnesses are compelled to walk distances as great as one mile in order to avail themselves of the present electric rail service. It was stipulated that the testimony of twenty-two other persons, present and available to testify, would be substantially the same as those testifying to the need for the proposed service.

The establishment of the proposed service was opposed by the Fresno Traction Company, particularly that portion of the route along Mariposa Street and Illinois Avenue to the intersection of such avenue by Twelfth Street, located approximately two blocks from the terminus of the rails of said protestant which is near the easterly city limits of Fresno, on the grounds that adequate service is now being rendered to all points located within a reasonable

walking distance of protestant's electric rail lines. Protestant further contends that the establishment of any additional transportation services within the territory now served by it would tend to greatly reduce the revenues on its McKenzie Avenue Line.

Protestant takes the position that applicants must first obtain a franchise or permit from the city of Fresno to operate locally between points within the city's corporate limits as a condition precedent to filing an application with this Commission for a certificate of public convenience and necessity to operate as a passenger stage corporation between Fresno and a point without the corporate limits of Fresno and all intermediate points, which includes points within said corporate limits, over and along a specified route.

In support of such position protestant argues that because applicants' operations, as presently conducted as well as the operation herein proposed, are not wholly within the corporate limits of the city of Fresno, applicants are a passenger stage corporation as defined in section 2 $\frac{1}{2}$ of the Public Utilities Act, but it does not follow therefrom that such operations as are conducted wholly within the corporate limits, that is, intracity transportation, are within this Commission's jurisdiction. Protestant contends that "intracity transportation" is a municipal affair, expressly excluded from the Railroad Commission's jurisdiction by the wording of the definition of a "passenger stage corporation" in the Public Utilities Act, following which applicants must obtain authority therefor from the city.

Protestant further argues that

"Applicant proposes a consolidation of all intracity operation. It proposes to use the identical equipment for both services, charge the same rate of fare, whether the trip is intracity or between the city and adjacent outside territory, and it further proposes the issuance of transfers between the various lines or routes. This necessarily would require this Commission's authority and the service, if and when properly authorized, will be one,

in effect, so similar to a street railroad service as to be indistinguishable from it except for the fact that the passengers will be transported on rubber instead of on rails. Every reason exists, therefore, why the same procedure applied to street railroads should be applied to the proposed bus service."

Protestant contends that no provision is found in the Public Utilities Act touching the precise question it raises and makes reference to subsection (c) of section 50 of the Public Utilities Act which relates to the exercise of street railroad franchise, etc.

In support of such argument protestant cites Oro Electric Corp. vs Railroad Commission 169 Cal 466, 475. In that case the court reviewed a decision of this Commission wherein the applicant was denied a certificate of public convenience and necessity to exercise a franchise granted said applicant by the city of Stockton for the use of its streets for the erection of an electric power line. The court held that the city of Stockton did not, when the Public Utilities Act was passed or when it became effective, have the power to grant to electric corporations franchises permitting them to furnish electricity to the inhabitants of the city, if, indeed, it had the power to grant the limited franchise or right to use the streets for that purpose.

The case cited by protestant is not in point with the situation here presented.

The Railroad Commission has recognized the exclusive jurisdiction of a municipality only where the operations of the transportation company are conducted wholly within the limits of a single incorporated city. In Application No. 11049, in re Pacific Electric Railway 27 C.R.C. 431, the Commission said:

"The power of the Commission to fix rates on street railroads, whether operating within a single municipality or not, exists by virtue of the provisions of the Public Utilities Act and is well established. The power of the Commission to fix rates of transportation companies

operating motor vehicles on the public highways exists by virtue of the provisions of Chapter 213, Statutes of 1917, and acts amending said statute, section 1 of which specifically excludes from the Commission's jurisdiction such transportation companies as operate exclusively within the limits of an incorporated city or town."

The city of Pasadena sought to review this decision of the Commission in the Supreme Court of California. The writ of review was denied December 20, 1926 (City of Pasadena vs R.R.C. and P.E.Ry. S.F. No. 12309).

Prior to 1927 passenger stage corporations were regulated under the provisions of the Auto Stage and Truck Transportation Act, Chapter 213, Statutes of 1917. Regulation is now had under the provisions of Sections 2 $\frac{1}{2}$ and 50 $\frac{1}{2}$ of the Public Utilities Act, Chapter 42, Statutes of 1927, as amended, which provisions govern the application now before the Commission. Section 50 $\frac{1}{2}$ of said act provides in part as follows:

"The railroad commission, in the exercise of the jurisdiction conferred upon it by the constitution of this state and by this act, shall have power and authority to grant certificates of public convenience and necessity and make decisions and orders and to prescribe rules and regulations affecting passenger stage corporations, notwithstanding the provisions of any ordinance or permit of any incorporated city or town, city and county, or county and in case of conflict between any such order, rule or regulation, and any such ordinance or permit, the certificate, decision, order, rule or regulation of the railroad commission shall in each instance prevail."

The foregoing opinion reflects a surrender by this Commission of its jurisdiction however only with respect to transportation companies who operate exclusively within the limits of an incorporated city or town. The applicant here is not such a carrier and does not propose to operate exclusively within the limits of the city of Fresno, therefore this Commission is not divested of its jurisdiction over the applicants' proposed operations both as to service from points outside the city, as well as

between points within the city where the latter forms a part and portion of an operation extending without the corporate limits of such city.

The Railroad Commission of the State of California has long held the position that its jurisdiction extends over the entire operation of an automotive transportation service, even though part of the operations, and in some instances most of the operations, are conducted wholly within the incorporated limits of a city.

In Application No. 12820, in re Pacific Electric Railway Company, 28 C.R.C. 612, 613, the Pacific Electric Railway Company requested a certificate from this Commission to operate its motor coach lines in and about the city of Pasadena, California. The Pacific Electric Railway had operated these lines under the assumption that a certificate from the Railroad Commission of California was not necessary and that it had to deal only with the city of Pasadena regarding those operations wholly within the incorporated limits of said City. One of the bus services of the Pacific Electric Railway extended beyond the city limits of Pasadena, however, and when the Commission was apprised of the fact it directed applicant to procure a certificate of public convenience and necessity, in response to which an application was filed and public hearing held. In this decision the Commission said:

"Counsel for the city took the position that this Commission does not have jurisdiction over the operations in question; that in effect the city authorities had dealt with the company for transportation facilities in accordance with the provisions of Section 19, Article XI of the Constitution, and that he found no provision of the law which specifically abrogated the rights of the city under that section of the constitution. He maintains that the incident of a stub-end part of the service passing a short distance outside the city limits should not deprive the city of which he alleges to be its constitutional rights.

"It is true that the bus operations here under consideration were inaugurated as a purely municipal service and in reality are such at the present time. It is also true that the Supreme Court of this state at all times

has carefully guarded the home rule provisions of our laws. This Commission, however, is faced with the duty of carrying out the provisions of the Transportation Act of 1917, which is the only expression of the legislature governing the rates and service of automotive transportation. This act clearly places all such transportation, that is not exclusively within the limits of a city, under the jurisdiction of this Commission. While the undertaking of applicant is described as consisting of different and seemingly independent bus lines, as a matter of fact from the standpoint of practical operation it is a unified and single service. It therefore appears that the Commission has jurisdiction over the whole operation covered in the application."

The city of Pasadena sought to review this decision of the Commission in the Supreme Court of California. The writ of review was denied December 20, 1926, (City of Pasadena vs R.R.C. and P.E.Ry. S.F. No. 12310).

In asserting its right to jurisdiction over the operations wholly within the city of Pasadena, the Commission in the same decision said:

"As to the lines within the city at present being operated by the Company, we can make no permanent finding at this time, but will grant the company a temporary permit to operate them until permanent routes can be established that meet the approval of this Commission."

Thus we see that this Commission properly assumed jurisdiction not only over the services outside the city of Pasadena, but also as to the lines then operated by the Pacific Electric Railway Company within the city and fixed the routes within the city limits of Pasadena on a temporary basis pending the establishment of permanent routes which would meet the approval of the Commission.

This record shows that no additional transportation service is needed in the area lying west of the intersection of Twelfth Street and Illinois Avenue but does show that public convenience and necessity require an adequate transportation service between Fresno and the area comprised in the Sierra Vista Tract which applicant proposes to serve and a certificate therefor will be granted.

George Harm and William Ritchie 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.

O R D E R

A public hearing having been held herein, the matter duly submitted,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by George Harm and William Ritchie, copartners, doing business as Harvey Avenue-Hazelwood Bus Line, of a passenger stage service as defined in section 2 $\frac{1}{2}$ of the Public Utilities Act for the transportation of passengers between Fresno and the Sierra Vista Tract and intermediate points as an extension and enlargement of the operating right heretofore established by Decision No. 25332, dated November 7, 1932, on Application No. 18417, over and along the following route:

Beginning at the intersection of Mariposa Street and "M" Street in the city of Fresno, thence southeasterly along "M" Street to Tulare Street, to Van Ness Avenue, to Fresno Street, to "M" Street, to its intersection with Mariposa Street, thence along Mariposa Street to Divisadero Street, North Angus Street, Illinois Avenue, Chestnut Avenue, Belmont Avenue, Sierra Avenue, Washington Avenue, Barton Avenue, to the intersection of Barton Avenue and Illinois Avenue.

IT IS ORDERED that a certificate of public convenience and necessity therefore is granted to George Harm and William Ritchie subject to the following conditions:

1. No passengers shall be transported having both point of origin and destination between the intersection of Twelfth Street and Illinois Avenue and the intersection of Mariposa Street and "M" Street.

2. Applicants shall file a written acceptance of the certificate herein granted within a period not to exceed fifteen (15) days from date hereof.

3. 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.

4.- 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, a time schedule or 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 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.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 1st day of August, 1938.

Ray Swank
John Whittell
Frank Nelson
Ray & Riley

COMMISSIONERS