

Decision No. 31313

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of F. H. LAWSON, d.b.a. ST HELENA  
SANITARIUM AND PACIFIC UNION COLLEGE  
BUS LINE, for a certificate of pub-  
lic convenience and necessity to  
conduct an automotive passenger stage  
service as a common carrier of pas-  
sengers, baggage and express between  
St. Helena and Aetna Springs. )

Application No. 22091

In the Matter of the Investigation on  
the Commission's own motion into the  
operations, etc. of W. B. TWITCHELL,  
doing business as Aetna & Pope Stage,  
and more particularly whether he has  
violated, or is now violating, any or  
all provisions of the Commission's  
General Orders Nos. 91 and 93. )

Case No. 4343

ORIGINAL

ORLA ST. CLAIR, for Applicant in Application 22091.

ORLA ST. CLAIR, for F. H. Lawson in Case 4343 as  
his interests may appear.

WOM HANKIHAN, for W. B. Twitchell, Respondent in  
Case 4343.

WOM HANKIHAN, for W. B. Twitchell, Protestant in  
Application 22091.

CLYDE E. BROWN, for Napa Valley Bus Company and San  
Francisco and Napa Valley Railroad in Application  
No. 22091 and Case No. 4343 as interests may appear.

BY THE COMMISSION:

O P I N I O N

By Application No. 22091 as amended, F. H. Lawson, an  
individual, requests an order of this Commission authorizing him  
to establish and operate an automotive service as a common carrier  
of passengers, baggage and express between St. Helena and Aetna  
Springs via the main county highway and serving the intermediate

points of Sanitarium, Angwin and Pope Valley with service by diversion to Los Posados Camp.

Case No. 4343 is an investigation on the Commission's own motion into the operations, rates, rules, classifications, regulations, contracts and services or any of them of W. B. Twitchell, an individual, doing business as Aetna & Pope Stages, as a certificated automotive common carrier of passengers and property between St. Helena and Aetna Springs and more particularly to determine whether there were violations of any or all provisions of General Orders Nos. 91 and 95.

A public hearing in these proceedings was conducted by Examiner McGettigan at St. Helena on July 28, 1938, where evidence was received, testimony taken, the matters submitted on a consolidated record and they are now ready for decision.

Applicant and respondent respectively appeared represented by counsel and participated in the proceedings. Napa Valley Bus Company and San Francisco and Napa Valley Railroad by Clyde E. Brown entered their appearance as interests appeared. All records of the Commission relating to W. B. Twitchell were made a part of this record by reference.

Briefly the situation, as revealed by the record, is as follows:

Respondent Twitchell has been engaged for many years as an automotive common carrier of passengers and freight, first as a prescriptive operator between St. Helena and Pope Valley and later by reason of an extension of his operative rights pursuant to decision No. 5537, dated July 1, 1918, between Pope Valley and White Rock line serving Aetna Springs & Pope Valley Store as intermediates. In addition Twitchell engaged in the transportation of U. S. mail as a star route mail operator under contract with the United States Government.

With the promulgation of the Commission's General Order No. 91 effective December 1, 1936, requiring highway common carriers of property to obtain and deposit with the Commission evidence of public liability and property damage insurance, Twitchell under date of March 17, 1937, obtained a policy providing this protection. Delay in the filing of this policy was occasioned by Twitchell's prior determination to abandon his property right and thus be relieved of the necessity of providing this protection<sup>(1)</sup> as evidenced by his filing of Application No. 21080, filed March 18, 1937, and subsequently dismissed at applicant's request by Decision No. 29721, dated April 26, 1937.

Under date of February 9, 1938, Twitchell was advised by the Commission that his insurance would expire on March 8, 1938, was readvised by wire under date of March 15, 1938, after expiration of said policy and was later cited by the Commission for failure to obtain this protection. Despite repeated efforts of the Commission Twitchell failed to comply with General Order No. 91 until June 16 when a policy covering a 1929 Oldsmobile sedan was filed. This equipment, however, was not included in the list of equipment allegedly being operated by the assured and further efforts to have him correct this situation were of no avail. Under date of July 26, 1938 (the date of hearing of Case No. 4343) another policy was filed covering all equipment but restricted to the transportation of passengers only and therefore not in compliance with General Order No. 91.

In the meantime, the record shows, Twitchell had endeavored to get several persons to operate his line for him, among them being F. H. Lawson, Guy Morley and C. Kilgare. Lawson is the applicant of

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1. General Order No. 91 referred specifically to carriers certificated under section 2-3/4 of the Public Utilities Act and exempted passenger operations under section 2-1/4 thereof.

record herein, Kilgare, an employee of Lawson, and Morley a mail carrier successor to Twitchell on one mail route. At no time was the Commission formally advised of any of these negotiations, nor was it ever apparent that the alleged transfer of this operating right would be brought to the Commission for approval. The record contains allusions to certain arrangements all of which were conjectural and without definite basis in any respect. The record also shows that Twitchell has lost his drivers license and has been unable to have it reissued despite having tried three times. He also was involved in two accidents which were not reported to the Commission.

F. H. Lawson, the applicant herein, being unable, after negotiations, to purchase the operations from Twitchell determined to file his own application with this Commission. He testified that he had complaints from patrons of Twitchell's line in regard to equipment and excessive speed resulting in a general disinclination to ride because of these conditions. His proposal as amended provides for a passenger, baggage and express service of one round trip daily except Saturday between St. Helena and Angwin which will connect with Pacific Greyhound Line and Napa Valley Bus Company schedules. Scheduled service beyond Angwin will be operated if one passenger presents himself. Rates and fares to be assessed for the service proposed are those set forth in Exhibit "B" attached to the application. Joint rates and through ticket arrangements will also be provided. A twenty-four hour on call service, seven days a week, will be maintained between St. Helena and Aetna Springs and will be subject to a minimum of two passengers per trip. Service to and from Los Posados Camp will be on call. This applicant has a garage and service station in St. Helena where he is Chevrolet dealer, as well as maintaining a bus depot. It was his expectation, he stated, that considerable business could be developed at Aetna Springs,

which has facilities to accomodate some 150 people; the Seventh Day Adventist Sanitarium and Pacific Union College at Angwin.

While the record is not persuasive with respect to the development of any great amount of traffic, it is apparent that with the light equipment (two Chevrolet sedans) to be used and applicant's other activities as above described that he is in a good position to perform a reasonable service which will fill a definite public need.

With respect to the operator Twitchell, the record supports a finding that he is operating neither a safe nor an adequately satisfactory service. It is further apparent that there exists no reasonable assurance of further improvement in this situation as Twitchell is apparently disinclined or unable to make arrangements for the operation of this automotive service in a manner compatible with requirements of the public.

Under these circumstances the Commission has no alternative save to conclude, in the public interest, that the operative rights of W. B. Twitchell be revoked and that there be granted to F. H. Lawson the certificate of public convenience and necessity he seeks herein.

F. H. Lawson 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 in the above-entitled proceedings, evidence having been received, the matter having been duly submitted and the Commission being now fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by F. E. Lawson, an individual, of an automotive service as a common carrier of passengers, baggage and express, as a passenger stage corporation as such is defined in section 24 of the Public Utilities Act, between St. Helena and Aetna Springs via the main county highway and the intermediate points of Sanitarium, Angwin and Pope Valley, between termini, serving by diversion Los Posados Camp, subject to the following restriction:

1. In the transportation of express no single shipment in excess of 100 pounds shall be transported and all express so transported shall be transported on passenger vehicles only.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefore be, and the same hereby is, granted to F. E. Lawson, 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. 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.
3. 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, a

time schedule or 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 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.

IT IS HEREBY FURTHER ORDERED that any and all automotive common carrier rights heretofore granted to or acquired by W. B. Twitchell and any and all certificates of public convenience and necessity heretofore held thereunder are hereby revoked and annulled and all tariffs and time schedules filed thereunder are hereby cancelled.

IT IS HEREBY FURTHER ORDERED that Decision No. 5537 be and it is hereby revoked and annulled.

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

Dated at San Francisco, California, this 26<sup>th</sup> day of September, 1938.

Robert W. Higgins

James D. Kelly

Ray L. Vail

COMMISSIONERS