

Decision No. 3226A

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion into the operations, rates, charges, classifications, rules, regulations, contracts, and practices, or any thereof, of WILLIAM LAWRENCE WYNKOOP.) Case No. 4393

Robert Brennan and William F. Brooks, for The Atchison, Topeka and Santa Fe Railway Company and Santa Fe Transportation Company, interested parties.

H. C. Lucas, H. D. Richards and C. C. Jensen, for Pacific Greyhound Lines, interested party.

W. G. Reynolds, for Respondent Keith Martin, also known as William Lawrence Wynkoop.

BY THE COMMISSION.

O P I N I O N

This proceeding is an investigation instituted by the Commission on its own motion to inquire into the operations, rates, charges, classifications and practices of the respondent, Keith Martin, also known as William Lawrence Wynkoop.

Specifically, the purpose of the proceeding is to determine whether said respondent is engaged in business as a "passenger stage corporation," as that term is defined by Section 2 1/2 of the Public Utilities Act of the State of California, and as such is operating passenger stages over public highways in this State between fixed termini, namely, between San Francisco and Los Angeles, in violation of Section 50 1/2 of the Public Utilities Act, or is assisting others to so operate.

Public hearings were held before Examiner W. H. Gorman at Los Angeles on March 18, 25 and 31, 1939. The proceeding was submitted on the latter date and it is now ready for decision.

At the outset of the hearing it appeared that the respondent's true name is Keith Martin and that the name William Lawrence Wynkoop is an alias which he has assumed. It was thereupon stipulated by counsel for respondent that the Commission should amend the title of this proceeding to include respondent's true name.

Respondent was called as a witness and stated that he is employed as a "wild cat" bus driver. He amplified this description of his occupation by stating that he drives sedan automobiles transporting passengers between San Francisco and Los Angeles, making about one and one-half round trips each week. Upon occasions he collects fares computed upon an individual fare basis from such passengers and he further stated that he knew such a fare was collected from each passenger so transported.

Certified photostatic copies of the certificates of registration of four sedan automobiles were introduced in evidence. These certificates name respondent, William Lawrence Wynkoop, as the registered owner of these cars. Respondent admitted that the signature, William Lawrence Wynkoop, appearing on one of these certificates (Exhibit No. 1) was placed there by him. He stated that the signatures appearing on the remaining certificates (Exhibits 2, 3 and 4) were placed on the certificates by Frank Mate with his consent and authorization. Respondent disclaimed ownership of any interest whatsoever in the vehicles described in these exhibits. In this connection, he stated that Frank Mate had requested him to hold title to the vehicles in the name of William Lawrence Wynkoop and in return for his consenting so to do, Mate agreed to give him a job driving and repairing the cars. He never possessed any evidence of title to the vehicles nor did he pay any consideration therefor. This arrangement was made in the latter part of May, 1938.

Some time in June, 1938, respondent stated that he began his said occupation pursuant to the aforesaid agreement. Prior to his commencing work, Frank Mate requested him to sign a State Board of Equalization application for a motor vehicle transportation license. A photostatic copy of the application signed by respondent pursuant to this request was placed in evidence as Exhibit 5. This application states that the transportation service to be engaged in under the license sought would be operated under the fictitious name of the "United Sedan Service." The operation was, as has been stated, commenced in June, 1938, and respondent, using the vehicles described in Exhibits 1, 2, 3 and 4, transported passengers in the manner hereinbefore described between San Francisco and Los Angeles. All operations were conducted and all transportation services were rendered in the name of the United Sedan Service. Respondent claimed to be only an employee of the United Sedan Service and to have no proprietary interest in the business. He pointed to Mate's request as the sole reason for his signature appearing on the application. He also testified that the signature, William Lawrence Wynkoop, appearing on the transportation tax returns of the United Sedan Service (Exhibits 6, 7, 8, 9 and 10) was placed there by persons other than respondent, but, with his consent, procured by Mate. Respondent named Frank Mate, Dewey Anderson, W. C. Roberts, Meyers and C. M. Barry as the persons operating the United Sedan Service.

W. C. Roberts was called as a witness and testified that he was an employee of the United Sedan Service. His duties include directing northbound passengers, that is, passengers bound from Los Angeles to San Francisco, to the sedan automobiles operated by the United Sedan Service. The cars to which he so directs passengers are registered to William Lawrence Wynkoop. In

addition he collects individual fares from such passengers and turns the money so collected over to a man named Meyers, or to Frank Mate.

Roy W. Yager and J. V. McGuire each testified that he was employed to drive cars registered to William Lawrence Wynkoop in which passengers were transported between Los Angeles and San Francisco. In this employment, each makes about two and one-half round trips between the terminal cities per week. Each of these witnesses stated that he regarded the United Sedan Service as his employer, but was uncertain as to the person to whom he was responsible in connection with such employment.

C. M. Barry testified that Frank Mate had employed him to conduct loading operations for the United Sedan Service. In this occupation, he was required to pick up passengers from various locations in Los Angeles and concentrate them at a depot pursuant to their being placed for transportation to San Francisco. He collected fares from the passengers upon an individual fare basis and gave the money so collected to Mate. The cars in which the passengers were placed for transportation to San Francisco were always driven by Yager, Wynkoop or McGuire.

It is quite clear from the foregoing evidence that the vehicles described in Exhibits 1, 2, 3 and 4 have been used and are being used in connection with the passenger transportation business operated under the name of the United Sedan Service. It is equally clear that the transportation service being so conducted is that of a passenger stage corporation as that term is defined by Section 2 $\frac{1}{2}$ (b) of the Public Utilities Act. The records of this Commission reveal that neither the United Sedan Service nor any of the persons described as being associated therewith has been granted a certificate of public convenience

and necessity by this Commission authorizing the conduct of such service. The said records also show that the Commission has never authorized the transfer of any existing operative right to the United Sedan Service or to any of said persons and in addition that there is not vested in said persons or in the United Sedan Service any prior operating right. It therefore follows that this operation is unlawful and is in violation of the terms and provisions of Section 50 $\frac{1}{2}$ of the Public Utilities Act.

As has already been indicated, some of the witnesses were reluctant to identify the actual owner and operator of the United Sedan Service. However, the statements of Wynkoop and Barry are sufficient to identify Frank Mate as the actual owner and operator of this business. Each of these witnesses was employed by Mate to handle some detail of the unlawful transportation service and worked under his direction. The testimony of Wynkoop, correlated with that of the other witnesses, shows that the only equipment used in connection with the service was actually owned by Mate.

It is our opinion that the evidence herein is sufficient to, and it does establish that Frank Mate, operating under the fictitious name of the United Sedan Service, has been engaged as a common carrier for compensation in the ownership, control, operation and management of motor vehicles transporting persons over the public highways of the State of California between fixed termini, to-wit: between Los Angeles, on the one hand, and San Francisco, on the other hand, without having first obtained a certificate of public convenience and necessity from the Railroad Commission of the State of California authorizing such operation and without owning, possessing or holding any operative right based upon operations conducted in good faith

at the time Section 50½ of the Public Utilities Act (Stats. 1927, Chap. 42) became effective and continuously thereafter.

The evidence further establishes that respondent, William Lawrence Wynkoop, has aided and abetted said Frank Mate to so engage as a common carrier in the transportation of passengers as aforesaid.

O R D E R

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

IT IS HEREBY ORDERED that the title of this proceeding be and it is hereby amended to read as follows:

(1) "In the Matter of the Investigation on the Commission's own motion into the operations, rates, charges, classifications, rules, regulations, contracts and practices of KEITH MARTIN, also known as WILLIAM LAWRENCE WYNKOOP";

(2) That the respondent, KEITH MARTIN, also known as WILLIAM LAWRENCE WYNKOOP, be and he is hereby required and directed to cease and desist from aiding and abetting FRANK MATE to engage as a common carrier in the ownership, control, operation or management of any motor vehicle or motor vehicles transporting any person or persons for compensation over the public highways of the State of California between fixed termini, to-wit: between Los Angeles, on the one hand, and San Francisco, on the other hand, without having first obtained the

authority to conduct such transportation service required by Section 50 $\frac{1}{2}$ of the Public Utilities Act of the State of California;

(3) That the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon the respondent; and

(4) That for all purposes this order shall become effective twenty (20) days from and after service thereof on said respondent.

Dated at San Francisco, California, this 19th day of August, 1939.

Robert W. Hoffman
Frank R. Allen

W. B. H.
Justus J. Cooney
Commissioners.