

Decision No. 22455

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ERNEST TYHURST for extension of existing certificate, Decision No. 31656, of public convenience and necessity to operate a bus line service between West Sacramento, County of Yolo, Sacramento, County of Sacramento, and Gardenland, County of Sacramento.

Application 22810

In the Matter of the Application of W. H. PIMENTEL, doing business under the fictitious name and style of NORTH SACRAMENTO STAGE LINE, for a certificate of public convenience and necessity to operate an automotive passenger stage service between the junction of Rio Linda Blvd. and El Camino Ave., North Sacramento, and the junction of Natomas Blvd. and Auburn Blvd., Sacramento, California, over and along the following route: Rio Linda Blvd. and El Camino Ave., over El Camino Ave. to American Ave., to Haggin Avenue, to Lower Marysville Road, to Jefferson Avenue, to the junction of Natomas and Auburn Blvds., as an extension to the existing rights of applicant to operate automotive passenger stage service between Sacramento, California, and North Sacramento, California, and intermediate points, and to consolidate the existing rights of applicant with the operative right herein sought.)

Application 22877

MONTAINE JOHNSON, for Ernest Tyhurst,
applicant in Application No. 22810
and protestant in Application No.
22877.

HARRY A. ENCELL, for W. H. Pimentel,
applicant in Application No. 22877
and protestant in Application No.
22810.

CRAEMER, Commissioner:

O P I N I O N

By amended Applications Nos. 22810 and 22877 respectively, Ernest Tyhurst and W. H. Pimentel seek authority to establish and operate automotive services as common carriers of passengers, to and from Gardenland, a suburb of Sacramento, as an extension and enlargement of their existing services, in and about Sacramento and environs. Briefly, applicant Tyhurst proposes to establish such service between West Sacramento, Sacramento and Gardenland, and applicant Pimentel proposes to establish such service between North Sacramento, Sacramento, the Army Air Base and Gardenland.

A public hearing in these proceedings was had in Sacramento on September 20, where testimony was taken, exhibits received, and the matters submitted on separate records. Due to the apparent community of interest involved, however, it has been determined to adjudicate these matters in a single decision.

The only protests to the granting of these applications were those entered by the respective applicants, one against the other.

Both applicants testified and, in addition, applicant Tyhurst presented two public witnesses and called the attention of the Commission to a petition, attached to his application, which contained more than one hundred (100) names of individuals supporting his proposal. Applicant Pimentel also had public witness testimony, including ten public witnesses who actually testified in his behalf, and thirty additional witnesses, all from Gardenland,

(1) Pimentel operation under name and style of North Sacramento Stage Line only. Sacramento-Fair Oaks operation not involved here.

present in the court room, who were sworn and their testimony stipulated as to the need for a public means of transportation such as proposed. Also presented by this applicant, through representative witnesses, were resolutions endorsing his proposal, promulgated by the North Sacramento City Council, North Sacramento Chamber of Commerce and the North Sacramento Retail Merchants Association.

From the records in these proceedings, it was developed that Gardenland is a rapidly growing suburban residential district of some 400 working men and their families who, at the present time, lack any common carrier transportation facilities and are likewise, for the most part, without private means of transportation. Additionally, it was shown that the chief need of the Gardenland people, in so far as these proceedings are concerned, is for a transportation service to and from North Sacramento, their principal trading and recreational center, with a somewhat lesser need to Sacramento proper. These facts were strongly evidenced by the testimony of the forty (40) witnesses presented by the applicant Pimentel who now serves both points. Far less interest was evidenced in a service to West Sacramento which is served by the applicant Tyhurst.

Analyzing the proposal of applicant Tyhurst, we find that hourly service on a daily basis is proposed via Del Paso Blvd., Natomas Blvd. - Marysville Ave. and 12th Street, with approximately five round trips afternoon and evening, to be operated on Sundays and holidays. A fourteen-passenger bus is to be utilized in this

(2) Estimates of the population in Gardenland varied from 1200 to 3000. Best estimate would appear to be approximately 1500 to 2000 individuals.

service and a fare of ten (10) cents for adults and five (5) cents for children between the ages of five and twelve years is to be assessed. Although not a part of his original proposal, this applicant indicated his willingness to establish monthly commutation rates and to issue script at a reduced rate based on a minimum number of rides. A restriction which provided that on trips from Sacramento no passengers were to be picked up or discharged between his terminal at Tenth and I Streets, Sacramento, and his terminal at the Gardenland Grocery in Gardenland while agreeing to discharge inbound passengers from Gardenland along his route within the city of Sacramento, was adopted by this applicant. Further consideration of the Tyhurst proposal reveals that no cost study of this extension of service had been made, and the applicant was unable therefore, to state whether or not his proposal was a compensatory one.

Under the proposal of applicant Pimentel, an operator of nineteen years of transportation experience, the residents of Gardenland will be afforded a daily service, approximately hourly, plus additional Sunday and holiday services afternoon and evening to and from Sacramento, North Sacramento and the Army Airport, either via El Camino Ave., Natomas Blvd - Marysville Ave. or Del Paso Blvd. with both direct and connecting service available. This applicant has a fleet of nine busses available for this and other services he now renders in and about Sacramento and environs. A fare of ten (10) cents will be assessed along the proposed Gardenland extension to either Sacramento or North Sacramento. From the junction of El Camino Avenue and Rio Linda Blvd. to points east along the existing routes of this applicant additional fares will

be assessed in accordance with rates now on file with the Railroad Commission. A monthly commutation fare of \$3.50 will be available between Gardenland and Sacramento and script on a basis of four (4) rides for thirty (30) cents will be issued. Reduced fares for children are also provided. Applicant Pimentel also stated that it was his belief, after surveying the territory involved, that the proposed extension could be operated without incurring a loss and might even show a small profit based on future development.

After fully considering both proposals as presented in the instant proceedings, we find that the record is not convincing that the proposal of the applicant Tyhurst will satisfy the transportation needs of the residents of Gardenland, nor does it lead to a conclusion that he could operate on a compensatory basis. The record further contains no indication that the principal flow of traffic from this area goes to the Sacramento - West Sacramento area, Tyhurst's present outlet. Rather, the reverse appears to be true, i.e. North Sacramento being the main point at issue, with Sacramento involved to a lesser degree. The Pimentel proposal, on the other hand, will afford service not only to Sacramento for employment needs among other considerations, but will, in addition, furnish a needed service to North Sacramento where Gardenland residents generally trade and seek recreation, as well as employment and will furthermore, afford a greater diversity of routings than will the Tyhurst proposal.

(3) Most eligible workers in Gardenland are obliged to seek employment outside its boundaries.

Summarizing the facts of record, we find that a common carrier service is needed by the residents of Gardenland. Furthermore, it appears that the service desired is one which will provide a connection with North Sacramento and Sacramento rather than West Sacramento and Sacramento. Additionally, diversity of service, within practical bounds, appears the more desirable, particularly in view of the necessity for any operator serving the territory involved to be in a position to offer facilities which will attract and serve the greatest number of patrons and thus assure, in so far as is possible, that such a service be successfully maintained.

Based upon the respective showings of the applicants herein and after fully considering the entire record in the instant proceeding, in the light of the foregoing opinion, it appears that, in the public interest, the application of Ernest Tymurst should be denied and the application of W. H. Pimentel be granted. The following order will so provide.

W. H. Pimentel 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.

(4) The amount of revenue which may be expected from the services proposed is not impressive according to the record. However, there is an indication that an established carrier in the territory having the advantage of a more attractive operation from the standpoint of service and popularity of termini would in all likelihood be enabled to successfully operate in this area as the mileage involved will not exceed seven miles round trip for either applicant.

ORDER

A public hearing having been had in the above-entitled applications, the matters having been duly submitted, and the Commission now being fully advised in the premises,

IT IS ORDERED that Application No. 22810 of Ernest Tyhurst, be and it is hereby denied.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by W. E. Pimentel, of an automotive service, for the transportation of passengers, as a passenger stage corporation, as such is defined in section 24 of the Public Utilities Act, between the junction of Rio Linda Blvd. and El Camino Avenue and the junction of Natomas Blvd. and Auburn Blvd. over and along the following route:

From the junction of Rio Linda Blvd. and El Camino Avenue, thence westerly along El Camino Avenue to American Avenue, thence northerly along American Avenue to Haggin Avenue, thence southerly along Marysville Road to Jefferson Avenue, and thence along Natomas Blvd. to the junction of Natomas Blvd. and Auburn Blvd. and intermediate points.

as an extension and enlargement of applicant's existing rights, as heretofore defined and set forth in Decisions Nos. 28874 and 24384, as amended, and consolidated therewith.

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

Pimentel, doing business as North Sacramento Stage Line, subject to the following conditions:

1. The authority herein granted shall lapse and be void if applicant shall not have complied with all of 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.
2. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
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 (10) 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 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 (5) 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 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 twenty (20) days from 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 10th day of
October, 1939.

Raymond A. ...
Frank ...
W. G. & ...
H. ...
Justus J. Coe
COMMISSIONERS