

Decision No. 32648.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of D. D. McELROY, doing business under the name of Mac's Auto Tours, for a certificate of public convenience and necessity to establish automobile transportation service for the transportation of passengers in sight seeing in and about, and to and from the City of Los Angeles, State of California.

Application No. 22348.

W. R. Williams, for applicant.

McIntyre Faries and David R. Faries, for Tanner Motor Tours, Ltd., and Gray Line, Protestants.

H. C. Lucas, R. B. Wren and C. C. Jensen, for Pacific Greyhound Lines and Pacific Southland Stages, Protestants.

E. Bissinger, H. O. Marler and F. E. Billhardt, for Pacific Electric Railway Company and Motor Transit Company, Protestants.

E. Bissinger, for Southern Pacific Company, Protestant.

Don L. Campbell and Rodney F. Williams, for Pasadena-Ocean Park Stage Line, Inc., Protestant.

J. L. Ronnow, for Yellow Cab Company of California, interested party.

W. H. Moulthrop, for California Parlor Car Tours Co., interested party.

BY THE COMMISSION:

O P I N I O N

D. D. McElroy, doing business under the name of Mac's Auto Tours, filed the above entitled application for a certificate of public convenience and necessity to operate motor coaches for

sightseeing service in and about Southern California.

Public hearings in this matter were held by Examiner Gorman at Los Angeles on February 23rd, March 14th and 15th, and September 13th and 14th, 1939, at which time the matter was duly submitted on briefs. The briefs having been filed, the matter is now ready for decision.

The original application embraced some sixteen tours; however, by amended application, filed at the hearing on February 23, 1939, the number of tours proposed was reduced to nine. As a result of the amended application, representatives of Southern Pacific Company, Pasadena-Ocean Park Stage Lines, Inc. and Yellow Cab Company of California withdrew their protests.

The tours proposed are as follows:

- (1) Hollywood, Beverly Hills and beaches
- (2) Forest Lawn Memorial Park (Glendale) and Los Angeles Civic Center
- (3) Pasadena and Huntington Library
- (4) Circle Studio tour
- (5) Wild Flower trips (March 1st to June 1st)
- (6) Mt. Palomar tour
- (7) San Diego and Tia Juana tour
- (8) Hollywood and radio station tour
- (9) Floral Parade at Pasadena (New Year's Day)

Applicant, in support of her application, alleged that Tanner Motor Tours, Ltd. (hereinafter referred to as Tanner), operates the only certificated sightseeing service between Los Angeles and points outside of the city; that Tanner caters to a certain group of hotels in and about Los Angeles and provides a select service for them in connection with its services at similar hotels at Santa Barbara, San Diego and Palm Springs; that there are approximately one hundred other hotels in the downtown district of Los Angeles which are entertaining thousands of tourists who are desirous of visiting points of interest in and about Los Angeles and Southern California; that tourists at said other hotels desire to have made available to them an established sightseeing service under regulation for their convenience in touring Southern California in a safe, economical and attractive manner; that applicant

proposes to render such a sightseeing service, available generally to the hotels in downtown Los Angeles and Hollywood at rates compatible with the class of patronage at such hotels; that applicant has been in the business of conducting sightseeing tours for more than twenty years in and about the City of Los Angeles, under authority issued by the Board of Public Utilities and Transportation of the City of Los Angeles; that on or about August 10, 1938, applicant was advised by this Commission that some of the points included in the tours then operated were outside of the exterior boundaries of the City of Los Angeles and operation to such points was unlawful and that such operation should be discontinued until a certificate of public convenience and necessity for such operation was first obtained from this Commission, and that applicant, upon the advice of this Commission's inspectors, immediately ceased and desisted from further operating to points outside of the City of Los Angeles.

Applicant also alleged that she had at times prior to August, 1927 (when amendment to Public Utilities Act regulating sightseeing service became effective), operated sightseeing service to many of the points involved in this proceeding; that she may possess a claim for prescriptive rights for such tours; however, she is not relying wholly upon such contention; that she was of the opinion that the matter may be best presented to the Commission by the instant application, in which is sought a certificate governing all of the services as now proposed; and that the proposed services are necessary and convenient in the public interest, entertainment and education in Southern California, with a population of approximately two and one-half million inhabitants who have now but one service available to them for such sightseeing purposes and which service applicant alleges is inadequate to serve all the classes of persons desiring such sightseeing tours.

Applicant D. D. McElroy is the wife of W. W. McElroy and the transportation operations conducted by them under the name of Mac's Auto Tours have been operated since 1921 under permits issued by the Board of Public Utilities and Transportation of the City of Los Angeles. These operations consist principally of sightseeing tours which are operated entirely within the boundaries of Los Angeles, charter car and car or bus rentals.

W. W. McElroy testified that he was unaware that the Public Utilities Act had been amended in 1927 so as to require sightseeing operations, not entirely within the confines of a single city, to be certificated by this Commission. He alleged that it was not until August, 1938, that he was advised by this Commission that the sightseeing services being operated by Mac's Auto Tours between Los Angeles and points outside thereof were illegal and that immediately upon that advice all such illegal operations were discontinued.

Applicant, in her application, alleged that many of the points proposed to be served in the instant application have been served for a number of years and, as a result thereof, may have acquired a prescriptive right thereto. With the exception of the operation between Los Angeles and Pasadena for the Floral Parade on New Year's Day, the record does not contain any documentary or other proof that sightseeing operations to the points involved were being conducted during August, 1927, and have been conducted continuously ever since. In the absence of such proof, the Commission is unable to make a finding declaring prescriptive rights to such points.

In respect to applicant's operation between Los Angeles and Pasadena on New Year's Day, the record is clear that applicant was operating such service in 1927 and has operated during each subsequent year. Applicant should have, immediately after the amendment to the Public Utilities Act became effective during August,

1927, filed her tariff with this Commission for the service then being conducted.

Applicant's only excuse for not declaring the alleged prescriptive rights and the filing of a tariff as required in 1927 was that she was not aware that the law had been amended until August, 1938. While it does seem that more than sufficient time elapsed between 1927 and 1938 for applicant to become familiar with the amendment to the Public Utilities Act, we believe, in view of the testimony and her action of immediately discontinuing the illegal operations when called to her attention, that her request warrants some consideration. After carefully considering all of the evidence in this proceeding, we are of the opinion that applicant's operation between Los Angeles and Pasadena for the Floral Parade on New Year's Day was being operated prior to 1927 and continuously thereafter. Inasmuch as applicant indicated that she preferred to have the various operating rights certificated, we see no objection to the granting of a certificate of public convenience and necessity for this service in lieu of a declaration of a prescriptive right.

With respect to the other sightseeing services, applicant presented ten so-called public witnesses who testified generally as to the need of sightseeing service between Los Angeles and points of interest outside of the City of Los Angeles. A review of this evidence indicates generally that these witnesses were of the opinion that a need existed in the City of Los Angeles for cheaply priced sightseeing tours; that the rates being charged by Tanner were considerably higher than those proposed by applicant for comparable tours; that more than one company should be permitted to operate sightseeing tours in the Southern California area; that applicant would serve patrons at many of the smaller hotels in downtown Los Angeles, which patrons are now required to go to the larger hotels for sightseeing service; and that hotel owners are

reluctant to send their guests to other hotels for the purpose of securing sightseeing service.

The record in this proceeding is devoid of any evidence relating to the inadequacy of the existing sightseeing service being rendered by Tanner, except possibly in one instance, and the controversial testimony of that witness related to charter car service.

In the briefs in this matter, as well as at the hearing, applicant contended that the monopoly of sightseeing service by Tanner should not be maintained and that applicant should be permitted to operate in competition with the Tanner service. Applicant, in support of her contention, argued that the facts in the instant case were analogous with the facts in the Santa Fe Case (Decision No. 30790), wherein the Commission advanced the theory of regulated competition. The evidence in this proceeding does not indicate that the facts in this case are substantially the same as those in the Santa Fe Case. There is nothing in this record to indicate any inadequacies existing in the service being rendered by Tanner; that the rates being charged by Tanner are greater than reasonable rates; that the operation of all of the service proposed by applicant would not divert a substantial portion of Tanner's sightseeing patrons to its line; and that the public interest would be subserved by the granting of the application on the theory of regulated competition.

The following is a comparison of the fares proposed by applicant and those being charged by Tanner for comparable

tours:

<u>Tour</u>	<u>Applicant's Proposed Fare</u>	<u>Tanner Fare</u>
Hollywood, Beverly Hills & Beaches	\$2.00	\$2.25
Forest Lawn Memorial Park & Civic Center	1.25	- (1)
Pasadena & Huntington Library	1.50	1.50
Circle Studio Tour	2.50	4.00 (2)
Wild Flower Trips	6.00	-
Mt. Palomar Tour	6.00	-
San Diego & Tia Juana	7.00	8.00 (3)
Hollywood & Radio Station Tour	1.75	1.50

It appears that a majority of the witnesses who testified in behalf of applicant were unfamiliar with the service and rates of Tanner. The record shows that Tanner provides service to many of the smaller hotels in downtown Los Angeles upon request.

After a careful review of the evidence, we are of the opinion that applicant has not made a showing of public convenience and necessity sufficient to warrant the granting of a certificate of sightseeing service over routes upon which a comparable sightseeing service is now being rendered. These are the "Hollywood, Beverly Hills and Beaches Tour," "Pasadena and Huntington Library Tour," "Circle Studio Tour," "Hollywood and Radio Station Tour" and the "San Diego and Tia Juana Tour."

No evidence was introduced to show whether or not the Mt. Palomar Observatory will be available to sightseers. Undoubtedly, if Mt. Palomar Observatory, the site of the largest telescope in the world, is to be opened to public inspection, many sightseers will be desirous of visiting this point of interest. Inasmuch as the record contains no evidence in respect to the proposed tour to Mt. Palomar, the application, in so far as this

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- (1) Tanner does not operate similar tour. Tanner Tour, including Forest Lawn Memorial Park, is \$4.00.
 - (2) Applicant's tour operates past the studios, while Tanner Tours include admission to studio, which charge is absorbed by Tanner.
 - (3) Tanner Tour includes Agua Caliente.

tour is concerned, should be denied.

The record does not show any sightseeing tours now being operated which are similar to the proposed "Forest Lawn Memorial Park and Civic Center Tour," and the "Wild Flower Tour." The evidence is convincing that there exists a need for such tours at the fares proposed by applicant.

The record shows that applicant proposes to enter into some operating arrangement with Florence E. Grim, President and General Manager of Clifton Motor Tours, Inc., whereby applicant is to furnish the equipment, oil, gas, insurance, etc. and Mrs. Grim is to furnish the driver, office, one-half of tax, etc., and that the profit is to be divided equally between applicant and Mrs. Grim. Applicant should be placed on notice that the certificate of public convenience and necessity granted herein is granted to applicant alone, and the responsibility to the public and to this Commission rests entirely with applicant, and this Commission will not condone any division of that responsibility.

D. D. McElroy, doing business as Mac's Auto Tours, 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 as to the number of rights which may be given.

O R D E R

The above entitled application having been filed, public hearings having been held, briefs having been filed and the

Commission being fully apprised of the facts; therefore,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
HEREBY DECLARES that public convenience and necessity require the establishment and operation by D. D. McElroy, doing business as Mac's Auto Tours, of an automotive sightseeing service as a common carrier of passengers as a passenger stage corporation, as such is defined in Section 2½ of the Public Utilities Act, between the City of Los Angeles, on the one hand, and points outside of the City of Los Angeles, on the other hand, over and along the following routes:

TOUR NO. 1 - FOREST LAWN MEMORIAL PARK AND CIVIC CENTER TOUR

Start Sixth and Olive, west on Sixth St., to Figueroa St., north on Figueroa St. to Second St., thence west on Second to Glendale Blvd., north on Glendale Blvd. to Fletcher Dr., continuing on to San Fernando Rd., west on San Fernando Rd. to Glendale Ave., north on Glendale Ave., to entrance of Forest Lawn Memorial Park, driving through grounds on Park, visiting Little Church of Flowers, Wee Kirk of Heather, Mausoleum, Mystery of Life, and other statuary throughout grounds, Masonic Memorial, Tower of Legends; leaving Forest Lawn returning via Glendale Ave., to San Fernando Road, east on San Fernando Rd., to Fletcher Dr., south on Fletcher Drive to Riverside Dr., east on Riverside Dr., to Figueroa St., south on Figueroa St. to Sunset Blvd., east on Sunset Blvd. to Olvera Street, circle Plaza and west to Spring St. passing through Civic Center, south to Second Street, west on Second to Hill Street, south on Hill to Seventh St., west on Seventh St. to Olive, north on Olive to Sixth, starting point; or by reversal of route.

TOUR NO. 2 - WILD FLOWER TOUR

Leaving Los Angeles via San Fernando Rd. through Burbank, past Central Air Terminal and Union Air Terminal past Olive groves and curing plant in San Fernando City via Highway No. 99, to Bakersfield through beautiful mountain regions passing through Castaic, Grapevine. Visiting wild flower districts above Bakersfield, in the Shafter district, and also flower district through Grapevine and Arvin sections. Also to Mojave via Lancaster and Palmdale, visiting flower sections bordering Lancaster and Palmdale. Returning to Los Angeles via Highway No. 99; or by reversal of route.

TOUR NO. 3 - FLORAL PARADE TOUR (Pasadena)

Beginning at 618 South Olive Street, thence via Sixth Street, Hill, Temple, Broadway, Mission Road, Huntington Drive, Fair Oaks Avenue and Green Street to the end

thereof; or such other streets or terminus in the City of Pasadena as may be consistent with the traffic regulations of said city.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for the routes as shown above be and it is hereby granted to D. D. McElroy, doing business as Mac's Auto Tours, 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 (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, 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 (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.
- (4) Applicant shall transport no one-way passengers between any two points on the routes and shall transport only passengers having both origin and destination in Los Angeles.
- (5) Applicant shall operate Tour No. 2 - "Wild Flower Tour," during the period of March 1 to June 1 of each year, only, and shall operate Tour No. 3, "Floral Parade Tour," on January 1st, only.
- (6) The rights and privileges herein authorized may not be discontinued, sold, leased, transferred or assigned, unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been obtained.
- (7) 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.

For all other purposes the effective date of this Order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 12th day of December, 1939.

Robert W. Smith
Harry R. Smith
Ray & Kelly
Justin P. Galloway
Commissioners.