

ORIGINAL

Decision No. 10211

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

LOS ANGELES RAILWAY CORPORATION,
a corporation, and PACIFIC ELECTRIC
RAILWAY COMPANY, a corporation,

Complainants,

vs.

Case No. 4462

ASBURY RAPID TRANSIT SYSTEM, a
corporation, PASADENA-OCEAN PARK
STAGE LINE, INC., a corporation,
ORIGINAL STAGE LINE, INC., a cor-
poration,

Defendants.

S.M. Haskins, General Counsel, by Woodward M. Taylor,
General Attorney, and Max E. Utt, for Los Angeles
Railway Corporation, complainant.

Frank Kerr and C.W. Cornell, for Pacific Electric
Railway Company, complainant.

Bart F. Wade; and Ware & Berol, by Wallace L. Ware
and D.M. Manning, for defendants.

Ray L. Chesebro, City Attorney, and Frederick
Von Schrader, Assistant City Attorney, for City
of Los Angeles, intervener on behalf of defendants.

Hector P. Baida, for Bay Cities Transit Company,
intervener on behalf of complainants.

BY THE COMMISSION:

INTERIM ORDER DENYING MOTION TO DISMISS

Complainants operate passenger rail lines and motor coach
lines both within and without the City of Los Angeles. Several
of such lines are operated into and through the Highland Park

and Garvanza Districts of that City. Defendant Asbury Rapid Transit System, a certificated "passenger stage corporation," renders passenger transportation service by motor vehicles between points within Los Angeles and points outside of that City. (1)

The complaint alleges in substance that Asbury proposes, and publicly has stated, that it would operate a motor coach service for the transportation of persons locally between downtown Los Angeles and San Pascual Avenue and Hough Street (2), serving all intermediate points along the route. The complaint alleges that such service will be rendered by Asbury at rates not approved or fixed by the Commission, without obtaining a certificate of public convenience and necessity, in violation of certain restrictions imposed by a prior Commission order granting a certificate in connection with one of Asbury's intercity operations, and in violation of section 50-1/4 of the Public Utilities Act. (3) It

(1) On August 31, 1939 Original Stage Line, Inc., changed its name to Asbury Rapid Transit System by amending its articles of incorporation. On September 19, 1939 Pasadena-Ocean Park Stage Line, Inc., and Asbury Rapid Transit System were authorized to execute a merger agreement (Dec. No. 32331, App. No. 22808), under which the Asbury corporation, as surviving corporation, would acquire all assets and operative rights of the Pasadena corporation. According to the answer herein, such merger took place as of the close of business on September 30, 1939. For convenience the word "Asbury" is used throughout this Order in referring to any of the defendants named in the complaint.

(2) The intersection of San Pascual Avenue and Hough Street is two blocks from the boundary line between the cities of Los Angeles and South Pasadena.

(3) The complaint also alleges that Asbury's Amended Application No. 21102, now pending before the Commission, seeks a certificate of public convenience and necessity removing restrictions on Asbury's certificated Los Angeles-Pasadena-Mt. Wilson line, and authorizing local service between downtown Los Angeles and San Pascual and Hough, and into South Pasadena and Pasadena. It is alleged that subsequent to the filing of the above application Asbury sought and obtained from the Board of Public Utilities and Transportation of the City of Los Angeles, a permit to operate over a route similar to that set forth in pending Application No. 21102, and between downtown Los Angeles and San Pascual and Hough.

also alleges that Asbury has placed an order for, and has obligated itself to purchase, certain motor coaches to be paid for over a period of time, and has failed to seek Commission authority for such purchase or obtain approval of any agreement relating to purchase or use of such coaches. Such purchase is alleged to be in violation of the conditions of a Commission order authorizing the transfer of certain operative rights to Asbury. Complainants request that Asbury be ordered to show cause why proper applications should not be filed with the Commission. They also ask that appropriate desist orders be issued, and that such further action be taken as may be necessary to prevent the operation of local service and the purchase of coaches in the absence of authorization first obtained.

Upon the filing of the complaint, Asbury filed a written special appearance in the nature of a demurrer to the complaint, and also objecting to the Commission's jurisdiction. Jurisdiction to hear the complaint was challenged upon the ground that the operation complained of would be entirely within the City, would not be connected with or an integral part of any other operation, and that the Board of Public Utilities and Transportation of the City of Los Angeles has exclusive jurisdiction thereover. In that pleading Asbury claimed that certain allegations on information and belief are surplusage, and raise no issue. It was asserted also that the complainants allege a conclusion to the effect that Asbury will violate section 50-1/4 without alleging facts in support thereof, and that such conclusion is surplusage and does not raise any issue within the Commission's jurisdiction. Asbury requested a hearing, before the full Commission, "of arguments on the jurisdictional issue hereinabove raised."

Complainants answered Asbury's special appearance, and the Commission thereafter set the complaint for hearing before one of its examiners. Answer was filed at the hearing. As permitted by Rule 15 of the Commission's Rules of Procedure, Asbury did not concede jurisdiction by the filing of an answer, but moved to dismiss the complaint upon the ground that the Commission is without jurisdiction of the subject matter thereof. Oral arguments were presented, exhibits were introduced in connection therewith, and the matter was submitted for such action as the Commission may deem appropriate.

The pleadings raise several issues involving rates, certification, and the effect of prior Commission decisions, and call for construction of the Constitution and the regulatory statute as applied to the facts. But the primary issue is whether a certificate must be obtained for that portion of the transportation activities of a certificated "passenger stage corporation" which consists of the rendering of transportation service on a particular bus line whose termini and route are wholly within a given municipality. On this issue the pleadings show that Asbury intends to inaugurate such activities, but the complaint does not allege and the record does not show actual commencement of the service which, as the answer states affirmatively, would be commenced. However, outside of the present record, and subsequent to the hearing, the Commission has been advised by ex parte statements that such is the fact. It may well be argued that the complaint is premature as to the alleged service to be inaugurated in the future. Accordingly, we are of the opinion that under the circumstances complainants should file an appropriate amended complaint. We should not dismiss

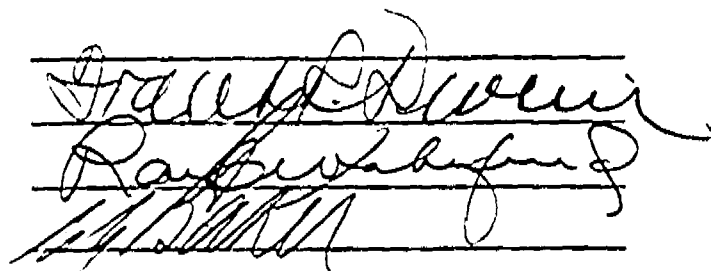
the complaint because of a possible defect as to a portion of the allegations, and we think it clear that the Commission has jurisdiction to entertain a complaint alleging violation of the statute and of Commission orders.

Asbury's motion to dismiss will be denied. The complaint will be set for hearing on the merits. At such hearing the parties will be expected to present evidence as to the facts, or to stipulate thereto. And as a final decision upon the important legal issues raised may vitally affect not only various transportation companies involved in this proceeding but others as well, the Commission will then arrange for a further and full argument of such issues.

Therefore, good cause appearing, IT IS ORDERED that the motion to dismiss be and it is hereby denied, and the complaint is set for hearing before Commissioner Wakefield, on Wednesday, the 10th day of April, 1940, at 9:30 o'clock A.M., in the Courtroom of the Railroad Commission of the State of California, State Building, Los Angeles, California.

IT IS HEREBY FURTHER ORDERED that complainants may file an amended complaint not less than ten days prior to the date of hearing above designated.

Dated, San Francisco, California, this 19th day of March, 1940.

The block contains two handwritten signatures in cursive script, written over two sets of horizontal lines. The first signature is larger and more prominent, while the second is smaller and positioned below it.

Commissioners