

Decision No. 31402

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of W. PAUL )  
BUTLER, doing business as POMONA-CHINO-CORONA )  
STAGE LINE, for certificate of public con- )  
venience and necessity to operate passenger )  
and express service as a common carrier, )  
between Pomona and Chino and Corona, and )  
between Ontario and Chino, in the State of )  
California. )

ORIGINAL

Application  
No. 23481

In the Matter of the Application of LOREN W. )  
SMITH, doing business as POMONA-ONTARIO BUS )  
LINE for certificate of public convenience )  
and necessity to operate a passenger stage )  
service between Pomona, Chino and Ontario. )

Application  
No. 23526

HOMER & WARNER, by C. D. Warner, for Applicant  
in Application No. 23481, and Protestant  
in Application No. 23526

LOREN W. SMITH, in propria persona in Application  
No. 23526, and protestant in Application No.  
23481

PACIFIC ELECTRIC RAILWAY COMPANY by E. L. H.  
Bissinger, interested party in both appli-  
cations

BY THE COMMISSION:

O P I N I O N

W. Paul Butler in Application No. 23481, as amended, requests the Railroad Commission to grant to him a certificate of public convenience and necessity authorizing the establishment and operation of a passenger stage service for the transportation of passengers, baggage and shipments of express weighing not in excess of 100 pounds, between Pomona, Ontario, Chino and Corona and intermediate points, including service to Cal-Aero School and Southern California State Prison at Chino.

Loren W. Smith in Application No. 23526, as amended, requests the Commission to grant to him a certificate of public convenience and necessity authorizing the establishment and operation of a passenger stage service for the transportation of passengers and baggage, between Pomona and Ontario and intermediate points, via Chino, Cal-Aero School and Southern California State Prison at Chino.

A public hearing thereon was held at Pomona before Examiner Paul on August 5, 1940. The record was consolidated for the taking of evidence and the issuance of a decision. Evidence having been adduced and the matters taken under submission are now ready for decision.

Each applicant protested the granting of the application of the other. Pacific Electric Railway Company opposed both applications, in part, which opposition was withdrawn upon the agreement of each applicant to accept a certain restriction which would prohibit service between certain portions of Pomona and Ontario as hereinafter more particularly set forth,

Applicant Butler, in Application No. 23481, filed May 17, 1940, requests a certificate of public convenience and necessity authorizing the transportation of passengers, baggage and shipments of express weighing not more than 100 pounds, between Pomona, Ontario, Chino and Corona and intermediate points, including the Southern California State Prison at Chino, and also including Cal-Aero School and Lake Norconian Hotel, by diversion from the proposed regular route. No service is proposed between points in Pomona north of the intersection of Fifth Street and Garey Avenue, on the one hand, and points in Ontario north of the intersection of State Street and Euclid Avenue, on the other hand. Applicant Butler also requests

exemption from the provisions of the Commission's Decision No. 31606 and amendments thereto, in Case No. 4246, in regard to the transportation of shipments of express weighing not more than 100 pounds.

Applicant Smith, in Application No. 23526, filed June 11, 1940, and amendment filed August 1, 1940, requests a certificate of public convenience and necessity authorizing the transportation of passengers and baggage between Pomona, Chino, Ontario and intermediate points, including Southern California State Prison at Chino, and Cal-Aero School, as an extension and enlargement of his present passenger stage service between Upland and Ontario. At the hearing applicant Smith amended his application to include the transportation of shipments of express weighing not more than 100 pounds. Immediately prior to the submission of the matters said applicant further amended his application and offered to provide service to and including Corona and all points intermediate to Corona and Chino. Upon the making of such amendments the proposed operation of applicant Smith then became identical with that of applicant Butler, including the restriction between certain portions of Pomona and Ontario as hereinabove set forth to satisfy the opposition of Pacific Electric Railway Company. Applicant Smith did not request exemption from the provisions of the Commission's Decision No. 31606, as amended, in Case No. 4246.

Applicant Butler proposes to provide two daily round trips between Corona, Pomona and Ontario and intermediate points. Hourly service is proposed between Pomona and Ontario via Chino between approximately 6:30 A.M. and 6:30 P.M. except during the

middle of the day. On Saturdays additional evening schedules would be operated between Pomona, Chino, Chino Prison and Cal-Aero School. The equipment proposed to be used are two new 7-passenger Hudson station wagons with a package compartment. The proposed fares between the principal points are set forth below. <sup>(1)</sup> The proposed fare between Pomona and Cal-Aero School is the same as that between Pomona and Chino Prison.

Applicant Smith proposes to provide seven daily round trips between Ontario and Pomona serving Chino, the prison and Cal-Aero School. These schedules would also operate through to Upland which applicant Smith is now serving from Ontario. The first schedule would leave Ontario at 6:15 A.M. and the last at 5:00 P.M. The last schedule would arrive at Ontario at 7:00 P.M. Although applicant Smith amended his application during the hearing and offered

(1) Exhibit "B"

| Between<br>And       | Pomona | Phil.&<br>Garvey | Chino | Ontario | Chino<br>Prison | Norco |
|----------------------|--------|------------------|-------|---------|-----------------|-------|
| Chino                | 15     | 10               | --    | --      | --              | --    |
| Ontario              | 25     | 20               | 10    | --      | --              | --    |
| Chino<br>Prison      | 20     | 15               | 10    | 15      | --              | --    |
| Norco                | 50     | 45               | 35    | 45      | 30              | --    |
| Corona<br>City Limit | 55     | 50               | 40    | 50      | 35              | --    |
| Corona               | 60     | 55               | 45    | 55      | 40              | 10    |

Fares shown above are for adults. Children's fares will be one-half the adult fare.

to provide service to and from Corona and intermediate points, he did not indicate the extent of such service. The fares proposed to be charged are set forth below. <sup>(2)</sup> The fares to and from Corona were not offered.

Evidence was offered through the testimony of fourteen public witnesses, including representatives of the Chambers of Commerce of Pomona, Ontario, Chino, Corona and Norco, businessmen's associations, merchants and officials of Cal-Aero School and the State Prison. It was stipulated that fourteen other persons, if sworn, would have given testimony similar in effect to that of some of the witnesses.

John A. Evans, a clothing merchant of Pomona, testified that he has a very definite need for a service for the transportation of shipments of goods to customers of his store who reside at Chino, Norco and Corona and points intermediate thereto; that he is now compelled to use his own car or the cars of some of his employees to make deliveries of merchandise to customers at Chino and other points;

(2) Exhibit "B"

| : Between   | : Pomona | : Ely | : Chino | : Prison | : Cal- | : Riverside |
|-------------|----------|-------|---------|----------|--------|-------------|
| : And       | :        | St.   | :       | :        | : Aero | : Drive     |
| : O.W.      | .06      |       |         |          |        |             |
| : Ely St.   | R.T. .10 | --    | --      | --       | --     | --          |
| : O.W.      | .12      | .06   |         |          |        |             |
| : Chino     | R.T. .20 | .10   | --      | --       | --     | --          |
| : O.W.      | .17      | .11   |         |          |        |             |
| : Chino     | R.T. .30 | .20   | .05     | --       | --     | --          |
| : Prison    | O.W. .25 | .19   | .13     |          |        |             |
| : Cal-      | R.T. .35 | .30   | .20     | .08      | --     | --          |
| : Aero      | O.W. .30 | .24   | .18     | .13      |        |             |
| : Riverside | R.T. .45 | .35   | .25     | .20      | .05    | --          |
| : Drive     | O.W. .35 | .29   | .23     | .18      | .10    |             |
| : Ontario   | R.T. .50 | .40   | .30     | .25      | .15    | .05         |
| : O.W.      | .41      | .35   | .29     | .24      | .16    |             |
| : Upland    | R.T. .55 | .45   | .40     | .35      | .20    | .11         |

Top Figure indicates one way fare, bottom figure, round trip.

Commute fares are also proposed.

that in some cases he uses the facilities of the United States Post Office which are not satisfactory as to service; and that he would use the services of one of the applicants every weekday if established. The exact number of shipments the witness would make was not established.

Through the testimony of John Coulter, Lieutenant in the air service of the United States Army and second in command of the military personnel at Cal-Aero School, it was shown that Cal-Aero School is a California corporation, organized by and operating under the direction of Major C. C. Moseley, formerly of the United States Army air service; that Major Moseley has entered into a contract with the United States Army for the training of flying cadets; and that a civilian force of about 30 mechanics and 40 other civilian employees including instructors is maintained by the school to provide for the ground instructions and flying training of the cadets. In addition, so he stated, a force of about 56 flying cadets or students together with about 20 members of the regular army establishment is stationed at the school. The cadets are maintained in quarters at the school under the jurisdiction and command of regular army officers. The training planes used are furnished by the United States Army. The cadets upon the satisfactory completion of the course of instruction at the school are commissioned in the reserve corps of the United States Army air service. No living accommodations are or will be available at the school for members of the civilian staff. Such accommodations must be obtained at Chino, Pomona or other nearby communities. It is contemplated that the present personnel will be more than doubled by about October 5, 1940 and again substantially increased by about the first of next year. Instructions began on August 5, 1940.

Edmund Crane, accounting officer for the Chino State Prison, testified that approximately 721 men are employed by the W.P.A. and S.R.A. at the prison site in construction activities there; that of such force about 500 are receiving compensation sufficient to enable them to pay for transportation to or from their work and their homes; and that these men are in need of a public transportation service.

Witnesses from Corona and Norco testified that there is a need for a common carrier service for the transportation of passengers and express between such points and Chino and Pomona.

Rex B. Clark, owner of the Lake Noconian Hotel near Norco, stated that he has one or more daily calls in regard to transportation service to and from his hotel. He further stated that he was providing a common carrier passenger stage service between his hotel and Corona under a certificate issued by the Railroad Commission but that he was compelled to abandon such operation during January, 1935 because of insufficient patronage.

Applicant Butler testified that he is presently engaged in the taxicab business and is the local Hudson automobile distributor at Riverside, California and proposes to purchase and use 2 new 7-passenger Hudson station wagons to provide the proposed service if authorized. Based upon his taxicab experience he stated that it would cost him approximately 4.5 cents a mile to operate such equipment in the proposed operation. Such cost includes the expenses of gas, oil, tires, repairs and drivers' wages. It did not include any compensation for himself nor did it include the cost of tickets, office or station facilities or insurance. Under his proposal of service the vehicles would be operated a minimum daily average of about 392 miles. Based upon

such mileage his daily cost of operation would be about \$18.00. No dead head mileage was included for the cars which would be garaged at Riverside. Applicant Butler stated that he had made no personal investigation to enable him to determine the extent of the probable need for his proposed service nor the revenue which he might expect to derive therefrom.

Applicant Smith testified that for some time he had contemplated applying for authority to establish a passenger stage service between Pomona, Chino and Ontario including service to the Chino Prison and Cal-Aero School, as an extension of the passenger stage service he is presently operating between Upland and Ontario; that he had made a personal investigation of the probability of success of such a service. Such investigation included interviews with numerous persons using his present service, and householders along the proposed route of travel in Pomona, Chino and Ontario, also discussion with officers and members of the Chino Chamber of Commerce, as well as others. He stated that among such persons about thirty had stated that they would use his service if established. He had also talked with the owners of health resorts along his proposed route who had stated that they had a need for such a service for the transportation of passengers. He had also surveyed the territory between Chino and Corona and had discussions with stage drivers who had driven stages between such points in regard to their experiences as to traffic handled between such points and based upon such survey and discussions had concluded that there was an insufficient need for a service between such points to justify its establishment.



However, he stated, in substance, that inasmuch as there appeared to be some demand for service to and from Norco and Corona he desired to extend his proposal to include such points and amended his application in accordance therewith as hereinbefore set forth.

Smith has available the equipment he is presently using consisting of one 25-passenger capacity 1939 Indiana bus and one 17-passenger capacity 1931 Dodge bus. The purchase price of the Indiana bus was \$2,250 on which he still owes \$500. The Dodge bus is fully paid for. Applicant Smith stated that he is financially able to establish and operate his proposed service. He will drive one schedule and employ only one driver to assist him.

Smith further stated that prior to his acquisition of his operative right between Upland and Ontario the line had been operated by his predecessor at a considerable annual loss and that subsequent to his acquisition of the right he had been operating it at a profit. The annual amount was not indicated. He also stated that he is one of the directors of the corporation which is providing a common carrier passenger stage service between Santa Ana and Laguna Beach. This operative right was acquired from another carrier which had been unable to continue the operation on a paying basis and that since its acquisition by the present owner economies were instituted as a result of which the operation is now profitable.

The record clearly demonstrates that there is a public need for the establishment and operation of a passenger stage service for the transportation of passengers, baggage and shipments of express weighing not more than one hundred pounds, between Pomona, Ontario, Chino, Southern California State Prison at Chino, Cal-Aero School and Corona and intermediate points.

The remaining problem is the selection of the applicant to whom a certificate of public convenience and necessity should be granted.

Applicant Butler's application was filed with the Commission on May 17, 1940 and that of applicant Smith on June 11, 1940. Butler in his original application proposed a service between Pomona, Ontario, Chino, Corona, Cal-Aero School and Chino Prison and intermediate points. Applicant Smith in his original application proposed to serve only between Pomona, Ontario, Chino, Cal-Aero School, Chino Prison and intermediate points and at the hearing amended his application to propose the identical service as proposed by Butler. Usually, under ordinary circumstances with all factors being substantially equal, the first applicant should be accorded the preference in consideration. Applicant Smith was twenty-five days later than applicant Butler in filing his application and not until the hearing on such applications was in progress did he expand his proposal to meet that of his opponent.

As hereinbefore stated, it is clear from this record that there is a need for public transportation over the route proposed by these applicants. It is equally clear that the expected business that a common carrier can develop in serving this district is not sufficient to justify more than one operator. Therefore, we must turn to the record to determine which of these two applicants should be certificated. Applicant Butler has in his favor the prior filing of his application. His showing, however, consists almost entirely of public witness testimony to the effect that they would use his service if established. In contrast to applicant Butler's showing, the record shows that applicant Smith is experienced in the public transportation business and has made a showing based upon a more or

less detailed survey that he can provide his proposed service upon a remunerative basis. The record also shows that applicant Smith by his experience has demonstrated his ability to successfully operate services of the type herein proposed. It further shows that Smith is now providing a successfully operated service between points contiguous to the territory involved. If a certificate be granted to him as an extension of such presently operated service a greater benefit will accrue to the public by reason of such extension. Summing up the evidence offered by both applicants we are of the opinion and conclude that a certificate of public convenience and necessity should be granted to applicant Smith primarily due to the fact that he made the more convincing showing, and that the application of applicant Butler should be denied. The order will so provide.

Loren W. Smith 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.

#### ORDER

A public hearing having been held in the above-entitled proceedings, evidence adduced, the matters having been taken under submission, and the Commission now being fully advised therein,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY  
DECLARES that public convenience and necessity require the estab-  
lishment and operation by Loren W. Smith of an automotive service  
as a passenger stage corporation, as that term is defined in section  
2½ of the Public Utilities Act, for the transportation of passengers,  
baggage and shipments of express weighing not over 100 pounds, on  
passenger vehicles only, between Pomona, Ontario, Chino, Southern  
California State Prison at Chino, Cal-Aero School, Norco, Lake  
Norconian Hotel and Corona and intermediate points, as an extension  
and enlargement of applicant's present service between Upland and  
Ontario as acquired under the authority of the Commission's Decision  
No. 31664, in Application No. 22179, provided, however, that no  
service may be performed between any point on applicant's route in  
Pomona west of the intersection of Fifth Street and East End Avenue,  
on the one hand, and any point in Ontario north of the intersection  
of Euclid Avenue and State Street, on the other hand. The foregoing  
service shall be provided over and along the following described  
route:

Commencing at Third and Main Street in Pomona, thence  
to Gordon St. to Fifth Ave. (State Highway U.S.#60); to  
East End Ave. to Riverside Drive, to Sixth St., to Chino  
Ave., to Central, south on Central Ave. to Merrill St.,  
north on Central to Edison, east on Edison Ave., to  
Euclid Ave., south on Euclid Ave. to Merrill, east on Mer-  
rill approximately three-tenths of a mile to the private  
street leading to Cal-Aero School; thence west on Merrill  
to Euclid Ave., north on Euclid Ave. to Depot Street in  
Ontario, the easterly terminus. Also South along Central  
Ave. and Chino-Corona Road to Corona, serving Lake Norconian  
Hotel by diversion from the regular route.

IT IS ORDERED that a certificate of public convenience  
and necessity therefor is hereby granted to Loren W. Smith, 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 forty-five (45) 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.
4. Applicant shall file, in triplicate, and make effective within a period of not to exceed forty-five (45) 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. Applicant is authorized to turn its motor vehicles at termini, either in the intersection of the street or by operating around two blocks contiguous to such intersection in either direction, and to carry passengers as traffic regulations of the municipality may require.
6. 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.
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.

IT IS FURTHER ORDERED that Application No. 23481 is hereby denied.

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

Dated at San Francisco, California, this 13<sup>th</sup> day of August, 1940.

Ray L. Riley  
James H. [unclear]  
Karl [unclear]  
[unclear]  
Justin J. [unclear]  
COMMISSIONERS