Decision No. 32477

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

LOS ANGELES RAILWAY CORPORATION, a corporation, and PACIFIC ELECTRIC RAILWAY COMPANY, a corporation, Complainants, vs. ASBURY RAPID TRANSIT SYSTEM, a corporation, PASADENA-OCEAN PARK STAGE LINE, INC., a corporation, ORIGINAL STAGE LINE, INC., a corporation, Defendants.	Case No. 4462

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

Frank Karr 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, an interested party.

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

WAKEFIELD, COMMISSIONER:

O P I N I O N

Complainants furnish passenger transportation service by rail and motor coach locally in the City of Los Angeles and between that City and adjacent territory. They operate several lines into and through sections of the City known as the Highland

Park and Garvanza districts. Those districts are adjacent to the Cities of South Pasadena and Pasadena. Complainants' motor coach lines have been certificated, and the Commission exercises complete regulatory jurisdiction over all of their common carrier operations.

Defendant Asbury Rapid Transit System (hereinafter referred to as Asbury) is the survivor, by merger, of the other defendants, and possesses operative rights as a certificated common carrier "passenger stage corporation," under sections 2-1/4 and 50-1/4 of the Public Utilities Act. The Asbury system, composed of a number of "operating divisions," renders transportation service between various points in Los Angeles County.(1) On certain intercity lines Asbury carries passengers locally between points within municipalities.

On December 10, 1939, Asbury inaugurated and is now furnishing a local transportation service by motor coach between downtown Los Angeles and the Highland Park and Garvanza districts. No certificate therefor was obtained from the Commission.

Complainants allege that the operation of such service, in the absence of a certificate, and at rates not approved by the

---

(1) Among Asbury's "operating divisions" are the following:

Los Angeles-Pasadena-Mt. Wilson.
Pasadena-Hollywood-Ocean Park.
Hollywood-Culver City-Inglewood.
San Fernando-Los Angeles.
San Fernando-U.S. Veteran's Hospital.
Veteran's Hospital-Olive View Sanitarium.
Burbank-Hollywood (2)
Burbank-North Hollywood.

Some twelve divisions are listed in Asbury's Tariff C.R.C. No. 3, effective April 6, 1940.

Commission, is in violation of the regulatory statute and of certain restrictions imposed by a prior Commission order. They also allege that Asbury has purchased motor coaches under conditional sales contracts or lease agreements, with notes providing for payment over a period in excess of one year, without first obtaining authorization. Complainants request the issuance of appropriate desist orders.

On the primary issue -- the necessity of certification -- Asbury takes the position that the termini and route of its Highland Park line are wholly within a single municipality, and that local service may be rendered thereon without a certificate when a permit has been obtained from the local authorities. Before considering the opposing contentions directed to this issue, reference will be made to certain of Asbury's existing operative rights, to pending applications for modification and enlargement thereof, and to proceedings before the municipal authorities.

Asbury's Los Angeles-Pasadena-Mt. Wilson Line.

One of Asbury's intercity operations is the Los Angeles-Pasadena-Mt. Wilson motor coach line, which runs on Figueroa Street through the Highland Park and Garvanza districts, but which is subject to the restriction that no local service shall be performed between Pasadena and Los Angeles.(2) Recently Asbury acquired prop-

(2) Dec. No. 27838, App. No. 13174. Authority to change the route in downtown Los Angeles because of congested traffic conditions was granted by Dec. No. 31111 in App. No. 22079. This line commences in Los Angeles at the Pacific Greyhound Terminal at Sixth and Los Angeles Streets, and is operated on Los Angeles Street to Sunset Boulevard, on Sunset to Castellar Street, and on Castellar to Figueroa Street. It then proceeds out Figueroa Street (the greater portion of the route within Los Angeles being on that street) past Avenue 43 and Avenue 57 through the Highland Park District to Pasadena Avenue in the Garvanza District, and then operates via Pasadena Avenue and Avenue 64 through the Garvanza District and into the City of Pasadena. In the reverse direction this line operates through the Cities of Pasadena and South Pasadena, enters the Garvanza District of Los Angeles via Pasadena Avenue, proceeds on Pasadena Avenue to Figueroa Street, and thence via Figueroa to the point of beginning.

erty in downtown Los Angeles on Hill Street near Olympic Boulevard (10th Street), which is used as the "off-street" southerly terminus of the Highland Park service. Application for authority to change the southerly terminus of the Los Angeles-Pasadena-Mt. Wilson line to that location is now pending.(3)

Asbury's pending Application No. 21102 for enlargement of its Los Angeles-Pasadena-Mt. Wilson operative right.

By the above pending First Amended Application, filed on January 31, 1939, and further amended on February 17, 1939, Asbury requests a certificate removing present restrictions on its Los Angeles-Pasadena-Mt. Wilson operative right, and authorizing service between Los Angeles and Pasadena and all intermediate points, and for the rendering of local service on that line between downtown Los Angeles and the Highland Park and Garvanza districts. Two re-routings of the present line are sought, one via Arroyo Seco Park-way(4), now under construction, and the other via Figueroa Street.(5) The present uncertificated Highland Park service traverses a route which is identical with the Figueroa Route proposed in Application No. 21102 ("as the complement of the service proposed" over the

---

(3) App. No. 22866. Also pending is an application to make the new location the terminus of Asbury's Los Angeles-Burbank-San Fernando line. (App. No. 22865.) Pending at the time of the first hearing in the present complaint proceeding, Asbury's App. No. 22949 requested a certificate from Sunset and Hill in Los Angeles via Olympic through Beverly Hills to Beverly Glen Boulevard in Los Angeles. By this application local service was proposed, Asbury advocated a universal transfer system throughout Los Angeles and environs, and offered to exchange transfers under a fair plan with all other passenger carriers. When the City of Los Angeles denied a permit for the proposed line, the application to this Commission for a certificate was dismissed, Asbury having so requested. (Dec. 32748.)

(4) The proposed Arroyo Seco Route will commence at Asbury's new terminal in downtown Los Angeles and proceed via Olive to 5th, 5th to Figueroa, Figueroa to Arroyo Seco Parkway at Avenue 22, and thence via Arroyo Seco through the Highland Park District and the City of South Pasadena into the City of Pasadena and on to Mt. Wilson.

(5) The proposed Figueroa Route follows the Arroyo Seco Route to Figueroa and Avenue 22, and then continues out Figueroa through the Highland Park District to Pasadena Avenue, on Pasadena past Avenue 64 in the Garvanza District to San Pascual Avenue, on San Pascual to Hough Street, and on Hough to Arroyo Seco Parkway, where it will rejoin the Arroyo Seco Parkway, entering the City of Pasadena.

Arroyo Seco Route), with the following exceptions: first, in downtown Los Angeles the present route proceeds from the new terminal out Hill to Sunset and on Sunset to Figueroa, instead of out Olive to 5th and on 5th to Figueroa, and, second, the present route terminates at San Pascual and Hough, instead of proceeding two blocks on Hough to the city limits and into South Pasadena.

The tariff proposed by Asbury in connection with Application No. 21102 sets forth rates between downtown Los Angeles and points in the Highland Park and Garvanza districts, South Pasadena and Pasadena, together with rates between Highland Park and Pasadena and intermediate points.(6) The application alleges that the pro-

(6) For example, Asbury's proposed tariff provides, in part, for the following rates:

Proposed Figueroa Route	Between					
And	Los Angeles Olympic and Olive	Highland Park Ave. 43	Highland Park Ave. 57	Hough St.	Pasadena South Pasadena City Limits	Pasadena Calif. & Broadway
Los Angeles Olympic and Olive						
Highland Park Avenue 43	$.07					
Highland Park Avenue 57	.07	$.05				
Hough Street	.07	.05	$.05			
Pasadena So. Pasadena City Limits	.14	.14	.07	$.07		
Pasadena California and Broadway	.20	.20	.14	.14	$.07	
Pasadena Lake and Colorado	.20	.20	.14	.14	.07	$.05

Proposed Arroyo Seco Route	Between		
And	Los Angeles	Hough Street and San Pasqual	South Pasadena
Hough Street and San Pasqual Avenue	$.10		
South Pasadena	.15	$.10	
Pasadena	.20	.15	$.10

posed service "will supply a long-felt need of several thickly populated communities, especially Highland Park, Garvanza and San Pascual Valley"(7) "for adequate transportation service to and from the City of Los Angeles, City of South Pasadena and City of Pasadena." It also alleges that territories on and adjacent to the routes of the Los Angeles-Pasadena-Mt. Wilson line are rapidly growing areas, and that public convenience and necessity within those areas will be served by permitting Asbury to render service on that line between Los Angeles and Pasadena and all intermediate points.

The local service in Los Angeles on the Figueroa Route proposed in pending Application No. 21102 is identical with the service inaugurated by Asbury in December of 1939.

Asbury's permit application before the municipal authorities.

In April of 1939, two months after the last amendment to Application No. 21102 before this Commission, Asbury applied to the Board of Public Utilities and Transportation of Los Angeles for a "permit to enlarge operative rights." (Board File 214.32.) The verified application to the Board, after setting forth the route followed by Asbury's Los Angeles-Pasadena-Mt. Wilson line, alleged that Asbury was not then permitted to render service thereon between Los Angeles and Pasadena, but proposed to carry passengers locally within Los Angeles and on the line mentioned, between Olympic and Hill and San Pascual and Hough and all intermediate points. By its verified application, Asbury represented to the Board that

(7) According to Exhibit "A" attached to First Amended Application No. 21102, San Pascual Avenue is in the Garvanza District.

the proposed service was to be a part of a coordinated system of passenger transportation between Los Angeles, Pasadena and Mt. Wilson and other points.(8) Asbury also offered to exchange transfers with all other common carriers, bus or rail, operating within the City, thereby lending itself to the establishment of a universal transfer system, upon any fair basis prescribed by the Board.(9)

The Board adopted a resolution authorizing the issuance of

---

(8) The application to the Board referred to pending App. No. 21102, and alleged that "the route which applicant seeks to serve as set forth in Section II hereof is a part of a coordinated system of passenger transportation service conducted by the applicant herein, between Los Angeles, Pasadena and Mt. Wilson." After alleging a need for the proposed service, the application alleged further that Asbury "intends to perpetuate said service as a part of a coordinated system of passenger transportation between Los Angeles, South Pasadena, Pasadena and Mt. Wilson, and intermediate points, over the route hereinabove specified, as well as over the said new Arroyo Seco Parkway or Freeway, as well as over other routes now traversed by the applicant."

The proposed tariff submitted to the Board was identical, as to the points mentioned therein, with the proposed tariff in the application before the Commission. The rates in App. No. 21102 are set forth in footnote 6, supra. The rates proposed before the Board were as follows:

	Olympic and Hill	Highland Park Ave. 43	Highland Park Ave. 57
Los Angeles Olympic and Hill			
Highland Park Avenue 43	$.07		
Highland Park Avenue 57	.07	$.05	
Hough Street and San Pascual Avenue	.07	.05	$.05

(9) This offer is similar to that made by Asbury in App. No. 22865 before the Commission (see footnote 3), except as to the reservation that the basis of transfer exchanges be prescribed by the Board of Public Utilities and Transportation, rather than the Commission. It is also similar to the offer made to the Commission by Asbury in App. No. 23238, filed on January 15, 1940, which seeks a certificate between Lomita and Asbury's new terminal in Los Angeles, via Torrance and Gardena, serving all intermediate territory.

a permit on July 14, 1939; Asbury agreed to comply with certain conditions on July 20, 1939; and a "motor bus route permit" was issued on October 24, 1939.(10) As heretofore stated, Asbury commenced service on December 10, 1939.

Proceedings before the municipal authorities relating to operation on Olympic Boulevard.

Complainants, as well as Asbury, also applied to the Los Angeles Board of Public Utilities and Transportation for permits to operate coaches on Olympic Boulevard. (Board File No. 211.223.) In addition, applications for certificates for such service were filed with the Commission by complainants (App. No. 18820, Supp.) and by Asbury (App. No. 22949). When the Board denied Asbury's application for a permit, the latter requested and obtained dismissal of its application to the Commission for a certificate, while complainants' application for a certificate was granted in part. (Decision No. 32748, January 23, 1940.)

---

(10) The resolution authorized issuance of a permit upon condition that Asbury should agree, in writing, upon demand of the Board, to "furnish adequate service, with proper equipment, in any territory now being served by the Los Angeles Railway Corporation or the Pacific Electric Railway Company in the vicinity in which the applicant proposes to render the service mentioned in this application, in case such present service should be curtailed or abandoned." Asbury agreed to render such service "upon approval and authorization by all regulatory bodies having jurisdiction over the transportation services hereafter specified * * *."

The Board's permit reads as follows:

"MOTOR BUS ROUTE PERMIT No. 19

"Name Asbury Rapid Transit System. Address 4908 So. Alameda St, L.A. having complied with the provisions of Ordinance No. 58198, relating to the operation of Motor Buses is hereby granted a permit to operate over the following authorized route: via 1st Terminal San Pascual Ave. 2nd Terminal Olympic Blvd, & Hill St. Along San Pascual Ave to Pasadena Ave, to North Figueroa St, to Sunset Blvd, to Hill St, to Olympic Blvd.

"For the term ending March 31st, 1940, unless sooner Revoked, Suspended or Cancelled."

Excerpts from the Board record were introduced as exhibits in the present proceeding. In September of 1939 Asbury's general manager testified before the Board that Asbury is committed to the purpose of exchanging transfers with all transportation agencies, including its then proposed Highland Park service and all of Asbury's operations. And Asbury's counsel asked the Board to construe the application then pending before that body as an offer by Asbury to standardize all of its operations into five-cent zones, with extension of transfer privileges throughout the entirety of Asbury's system, subject to the necessary procurement of regulatory authority.

The Highland Park Service.

Between December 10, 1939, when the service commenced, and April 15, 1940, Asbury operated 126 schedules daily in each direction between downtown Los Angeles and the Highland Park and Garvanza districts. Since April 15, 1940, 114 schedules have been operated daily in each direction. The service has been well patronized.(11) There are two fare zones, at five and seven cents, respectively.(12) Most of the route within the five-cent zone duplicates the Highland Park Coach Line (Route 64) of complainant

---

(11) Exhibit 15 reads as follows:

"Passenger Riding Highland Park Division

	Total
December 10 to 31, 1939	75791
January, 1940	121991
February, 1940	125651
March, 1940	143539"

(12) The five-cent zone lies between the intersection of Hough Street and San Pascual Avenue and the intersection of Figueroa Street and Avenue 43.

Los Angeles Railway Corporation. The service is rendered by means of eighteen gas-electric motor coaches, each having a capacity of forty-one seated passengers. On January 1, 1940, seven of such coaches were used on Asbury's certificated line between Hollywood and Pasadena. However, except in the one instance mentioned, the eighteen coaches have been used exclusively on Asbury's Highland Park line. This line is an operating division of the Asbury system, and is so designated in the system operations.

Necessity of certification.

Asbury contends that the Commission has no jurisdiction over the Highland Park line, the fares charged thereon, or over defendant with respect to such line and fares, and also that assumption of jurisdiction would constitute a taking of property without due process of law.

Asbury, a "passenger stage corporation" within the meaning of the Public Utilities Act, contends that it is not a "passenger stage corporation"[13] as to its Highland Park service, because in rendering that service it carries passengers in separate equipment between points in the City of Los Angeles only, and

---

(13) Section 2-1/4(b) reads as follows:

> "The term 'passenger stage corporation,' when used in this act, includes every corporation, or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever engaged as a common carrier, for compensation, in the ownership, control, operation or management of any passenger stage over any public highway in this state between fixed termini or over a regular route; provided, however, that this term shall not include those whose operations are exclusively within the limits of a single incorporated city, town or city and county, or whose operations consist solely in the transportation of bona fide pupils attending an institution of learning between their homes and such institution of learning."

issues no transfers. Defendant's counsel concede that local service rendered in connection with operations extending beyond the municipal limits is subject to the Commission's jurisdiction. But it is argued that the Highland Park service forms no part of Asbury's certificated Los Angeles-Pasadena-Mt. Wilson line (14), and bears no relation to any other service rendered by Asbury, in that separate equipment is used and will not be interchanged with other Asbury equipment, and no transfers are proposed "at the present time" with any other Asbury operation or the line of any other carrier. Asbury's position is that transfers will not be issued except "upon a finding by this Commission of public convenience and necessity." Counsel reiterated Asbury's advocacy of universal transfers between all lines, as well as its intent to put them into effect as, if and when proper authorization is procured from the Commission, at which time Asbury concedes that the Highland Park service will be subject to the Commission's complete regulatory authority.

Asbury contends that Commission jurisdiction depends upon the nature of each particular operation, line or service, regardless of the fact that the operator is a "passenger stage corporation." In other words, as Asbury would have us read sections 2-1/4

---

(14) However, in seeking a permit from the municipal authorities, Asbury's verified application alleged that the proposed Highland Park route and service was to be a part of Asbury's coordinated system of passenger transportation service between Los Angeles, Pasadena, and Mt. Wilson. And Asbury's pending App. No. 21102 before the Commission requests a certificate authorizing local service between downtown Los Angeles and the Highland Park and Garvanza districts via Figueroa Street as an enlargement of its Los Angeles-Pasadena-Mt. Wilson operative right.

and 50-1/4, a passenger stage corporation is not a passenger stage corporation, within the meaning of the Act, as to an operation or service which it may conduct upon a line the route and termini of which are within a city, if no transfers are issued to intercity lines.[15] However, status shifts if such transfers are issued, and a "passenger stage corporation" thereby becomes a "passenger stage corporation" in relation to its intracity line. Therefore, a certificate of public convenience and necessity "to negotiate that transfer arrangement" must then be obtained.[16]

We cannot acquiesce in the above reasoning. As to certi-

---

(15) Under Asbury's theory of the case, issuance of transfers to intercity lines is the decisive factor in determining whether or not section 50-1/4 requires a "passenger stage corporation" to obtain a certificate for an intracity line. For example, Asbury objected to the production of its balance sheet, income statement and revenue and expenditure statements, when complainants sought to ascertain therefrom whether there was a commingling of funds and unified system operation. Asbury's answer alleges that the Highland Park service is independent and complete in itself. And that allegation, according to Asbury's counsel, "is tantamount to simply saying this: That no human being can get on that Highland Park service, * * * and expect any other service on any other common carrier" (operation or line) "in or out of this City, and therein is its isolation, and therein and only therein is its complete independence from any other operation."

(16) Counsel argues that until the Commission, by a finding of public convenience and necessity, enlarges the measure of service which a Highland Park passenger may expect, and permits such passenger to transfer to a line and into a territory "that extends into the field" of Commission jurisdiction, the Highland Park service is within the jurisdiction of the municipal authorities. And, further, "with reference to the plan as proposed" by Asbury, "and addressing myself to the exclusion of any legal concept, but giving you the plan and purpose and policy of" Asbury, "any time that" Asbury "is permitted to engage in transfers with a carrier that is under the jurisdiction of the" Commission "and any widened and enlarged scope and measure of service that the passenger has a right to enjoy, a widening and an enlargement that will embrace both jurisdictions of service, the plan and purpose and avowed policy of" Asbury "will be to come before the" Commission "and get its house in order with an application for a certificate of public convenience and necessity to negotiate that transfer arrangement."

cation, the issue is purely a question of statutory construction, rather than a factual dispute. Asbury is a "passenger stage corporation", and its Highland Park service is a common carrier service between fixed termini and over a regular route. In our opinion the statute requires Asbury to obtain a certificate, and the legislative history confirms such construction.(17)

Before 1927, a stage operator was defined as one operating stages, etc., "and not operating exclusively within the limits of an incorporated city", and the section of the statute requiring the certification of stage operators provided that "no such certificate shall be required *** for operations exclusively within the limits of an incorporated city ***."

In 1927 the definition section was altered to provide "that this term shall not include those" (corporations or persons, etc.) "whose operations are exclusively within the limits of a single incorporated city", and the certification section was changed by completely eliminating therefrom the provision (quoted in the preceding paragraph) to the effect that a certificate was not required for operations exclusively within the limits of an incorporated city. Certainly the change in the definition section did not make any less specific the continuing intent of the Legislature to have the definition embrace a stage operator who, like Asbury, does not confine its common carrier activities to the rendering of service within a municipality. It is equally certain

(17) The Auto Stage and Truck Transportation Act (Stats. 1917, ch. 213, as amended), applicable to stage and truck operators alike, became the Auto Truck Transportation Act in 1927. In that year stage operators were placed under the Public Utilities Act. (Sections 2 1/4 and 50 1/4.) The Truck Act was repealed in 1935, when truck operators were also placed under the Public Utilities Act. (Sections 2 3/4 and 50 3/4.)

that the change made in the certification section, eliminating the exemption from certification of operations within a city, was not an oversight or an inadvertent omission, but the clear expression of a legislative intent to require certification. Other changes made at the same time express a consistent legislative intent. For example, the old definition excluded stage operators "in so far as they *** operate *** busses engaged solely" in transporting school pupils, etc. But the new definition only excludes one "whose operations consist solely" in transporting school pupils, etc.

We are strengthened further in our conclusion as to legislative intent by the fact that when truck operators were placed under the Public Utilities Act in 1935, the Legislature, contrary to its action in dealing with stage operators, did not make the same changes, but adopted verbatim that language of the old statute which expressly exempted from certification truck operations exclusively within the limits of an incorporated city.

We believe that Asbury's position can not be sustained unless it is held that the 1927 legislation was meaningless and of no significance. However, the language used is clear and unambiguous, and evidences a legislative intent which may not be ignored. Therefore, we find that the institution and operation of the Highland Park service, in the absence of a certificate, was and is in violation of section 50 1/4 of the Public Utilities Act.

The Commission is not called upon to determine the extent to which the City of Los Angeles, through its Board of Public Utilities and Transportation, in some degree, may have the right to

grant permits where motor coaches are operated in whole or in part within its boundaries. Nor are we called upon to determine the nature of the permit granted by the City. The issue here is whether defendant "passenger stage corporation" must obtain a certificate from the Commission.(18) And this proceeding does not present any real issue as to conflicting jurisdiction between the City and the Commission. While Asbury must be ordered to desist, such order does not fail to recognize the existence of any power which the City may possess in connection with the granting of franchises or permits for the use of streets in conducting local business thereon. In this instance the City has consented to the performance of local transportation upon its streets by a "passenger stage corporation." However, whether public convenience and necessity warrant the issuance of a certificate authorizing that "passenger stage corporation" to render such service (which necessarily constitutes an enlargement of the carrier's existing operative rights), presents an entirely different question, and one which must be determined by the Commission.

Inauguration of the Highland Park service is not merely a matter of municipal concern, for it is conducted by a "passenger stage corporation" and is part of a comprehensive plan of intracity and intercity transportation in the Los Angeles metropolitan area, as Asbury has heretofore urged, and for which Asbury has sought certification. And any obligations which may be assumed or losses which may be incurred in connection with Asbury's

(18) Our finding that the statute requires a certificate renders unnecessary any discussion of the contention that institution of the Highland Park service is also in violation of certain restrictions contained in prior Commission orders relating to Asbury's operative rights.

Highland Park operating division will be burdens upon the entire Asbury system. Complainants and Asbury are present and potential competitors in this field, and have applied for certificates, reroutings, etc., in the same territories. Those applications should be heard and determined upon their merits. Concurrently with the issuance of this decision, the Commission is setting Asbury's Application No. 21102 for an early hearing.

The alleged violation of section 52 of the Public Utilities Act.

A "passenger stage corporation" is a common carrier and a "public utility," as that term is used in the Public Utilities Act. Under section 52(b) of the statute, a public utility "may issue notes, *** payable at periods of not more than twelve months after the date of issuance of the same, without the consent of the commission, but no such note shall, in whole or in part, be refunded by *** notes of any term or character or any other evidence of indebtedness, without the consent of the commission."

The section also provides that a utility may issue stocks, bonds, "notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof," for certain purposes only, and where the utility "shall first have secured from the commission an order authorizing such issue." The Commission has construed a conditional sales contract to be an "evidence of indebtedness" within the meaning of the section.

Complainants allege that the coaches used in rendering the Highland Park service were purchased by Asbury under a conditional sales contract or lease agreement, with notes therefor providing for payments over a period in excess of one year, without first obtaining authority.

In August of 1939 Asbury ordered eighteen coaches from the manufacturer. No agreement as to the manner of payment was entered into until December 9, 1939. On that date Asbury became a party to a conditional sales contract covering the purchase of eighteen coaches at $13,232.65 each, or a total of $238,187.70. Of this amount, $10,187.70 was paid in cash. Under the contract, the balance is to be paid in seven installments, the last and largest of which is payable on July 15, 1940.(19) There is no present agreement or understanding between Asbury and the manufacturer relative to the refinancing or extension of the last payment of $207,000.

Payments under the conditional sales contract in question will not extend over a period in excess of one year, and hence Asbury's failure to obtain Commission authorization was not in violation of section 52 of the Public Utilities Act.

---

(19) The contract requires the following payments:

"Schedule of Payments

"No.	Due Date	Principal	Interest	Total
1	1-15-40	3500.00	1368.00	4868.00
2	2-15-40	3500.00	1122.50	4622.50
3	3-15-40	3500.00	1105.00	4605.00
4	4-15-40	3500.00	1087.50	4587.50
5	5-15-40	3500.00	1070.00	4570.00
6	6-15-40	3500.00	1052.50	4552.50
7	7-15-40	207000.00	1035.00	208035.00
	Total	228000.00	7840.50	235840.50"

O R D E R

Based upon the record and upon the findings of fact contained in the above opinion, IT IS ORDERED AS FOLLOWS:

1. Asbury Rapid Transit System, a corporation, shall cease and desist, on the 90th day after the effective date of this decision, and shall thereafter abstain from operating, or causing to be operated, common carrier passenger transportation service by motor vehicle in Los Angeles between Olympic Boulevard and Hill Street, on the one hand, and San Pascual Avenue and Hough Street, on the other hand, and intermediate points, unless and until a certificate of public convenience and necessity therefor has been obtained from this Commission.

2. The Secretary shall cause a certified copy of this decision to be served by registered mail upon Asbury Rapid Transit System.

3. The effective date of this decision shall be the twentieth day after the date of the above service.

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, San Francisco, California, this 10th day of September, 1940.

Commissioners.

DISSENTING OPINION

We dissent as we believe the majority opinion proceeds upon an incomplete determination of the facts and an erroneous interpretation of the law.

The majority opinion recounts Asbury's representations in the course of the proceedings leading up to the inauguration of the Highland Park line that it was to be a part of his coordinated passenger service, and the opinion asserts that the Highland Park line "is a part of a comprehensive plan of intra-city and inter-city transportation in the Los Angeles Metropolitan area . . ." But the opinion does not discuss and, as we understand it, does not attempt to determine whether the Highland Park line, as the record shows it to have been operated, is a distinct transportation service conducted independently of any of Asbury's inter-city operations and "exclusively within the limits of a single city, town, or city and county," or whether it is so related to Asbury's inter-city operations as not to constitute the operation of passenger stages used in the transportation of persons exclusively within the limits of a single city. Therein, we think, the opinion fails to make an essential finding of fact.

The majority opinion concludes, however, that under Sections 2¾ and 50¾, certification of the Highland Park line by the Commission is required even though it may of itself constitute an operation "exclusively within the limits of a single city" unrelated to any intercity operation, merely because Asbury is a "passenger stage corporation" in the operation of other lines. In this, we think, the majority opinion erroneously interprets the law.

The particular provision involved is the proviso in Section 2¾(b) that

> " . . . this term ('passenger stage corporation') shall not include those whose operations are exclusively within the limits of a single incorporated city, town or city and county, or whose operations consist solely in the transportation of bona fide pupils attending an institution of learning between their homes and such institution of learning."

The majority opinion proceeds on the assumption that the word "operations" as twice used in that proviso is intended to embrace collectively the ownership, control, operation, or management of all passenger stages by any passenger stage corporation over all public highways and between all the termini and over all the routes where such passenger stage corporation may be operating, regardless of whether or not some of such operations may be totally unrelated to and disconnected with others and in themselves conducted exclusively within the limits of a single city or solely in the transportation of pupils between their homes and an institution of learning.

We believe that a different intention is apparent from the language of the statute. It is to be observed that the term "passenger stage corporation" is defined in the first part of paragraph (b) of Section 2¾ by the description of a single typical operation, a single passenger stage line or service. The definition, moreover, is in the singular, that is to say, it pertains to "every corporation or person," individually, engaged in the operation described. Plainly, if one is conducting two or more distinct passenger stage operations, the determination of whether or not the statute applies to any of such operations must be made initially by applying the definition to each such operation separately and independently of any other. So far as concerns the application of the primary definition at least, whether the operator, with respect to any particular service, is a "passenger stage corporation"

will not depend in any manner on how or where he may be operating another distinct service.

In construing the proviso to the definition it seems clear therefrom that it is used purely as a qualification to the primary definition to except therefrom certain particular cases, for such is the very nature and function of a proviso. Its purpose is the same as the corresponding qualification to the definition of the term "highway common carrier" in Section 2-3/4(a) which is not in the form of a proviso.

It is to be noted also that while the definition proper is in the singular number, the proviso is expressed in the plural. Obviously, the word "those" in the proviso is not plural in the collective sense, but means "those persons individually," or, more accurately, "anyone," referring to any person or corporation otherwise described and defined as a "passenger stage corporation" in the definition.

The word "operations" is first used in the proviso and as twice used there has a different and broader connotation than the word "operation" in the definition. It refers to the activities mentioned in the definition and means "ownership, control, operation or management of any passenger stage" as therein described. The proviso being a qualification and exception to the definition, the activities and operations to be considered in applying the proviso are necessarily the identical activities or operations considered in applying the definition. Thus it seems plain that one "whose operations are exclusively within the limits of a single incorporated city . . . or solely in the transportation of pupils . . ." means one whose particular operations under consideration in connection with the primary definition, are exclusively or solely of that character. The words "exclusively" and "solely" in the proviso pertain only to the particular operations in question and do not demand that other

totally separate and distinct operations be brought into consideration.

A study of the history of the regulation of passenger stages in California lends further support to this conclusion. The regulation was originally enacted in the Auto Stage & Truck Transportation Act (Statutes of 1917, Chapter 213, page 330), applying equally to motor carriers of passengers and motor carriers of freight. Section 1(c) thereof provides:

> "The term 'transportation company', when used in this act, means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing, any automobile, jitney bus, auto truck or auto stage used in the transportation of persons or property as a common carrier, for compensation, over any public highway in this state between fixed termini or over a regular route; provided that the term 'transportation company', as used in this act, shall not include corporations or persons, their lessees, trustees, receivers or trustees appointed by any court whatsoever insofar as they own, control, operate or manage taxicabs, hotel busses or sightseeing busses or any other carrier which does not come within the term 'transportation company' as herein defined."

Section 3 required that before operating any truck or stage as a common carrier between any termini or over any route not previously served, a permit be obtained from each incorporated city or town, city and county, and county within or through which the applicant intended to operate. Section 5 provided that no transportation company should thereafter exercise any right or privilege thereafter granted by any incorporated city or town, city and county, or county

> " . . . without first having obtained a certificate from the railroad commission declaring that public convenience and necessity requires the exercise of such right or privilege, but no such certificate shall be required of any transportation company as to the fixed termini between which or the route over which those actually operating in good faith on May 1, 1917 . . ."

The Commission was authorized to grant or deny the certificate or to issue it for the partial exercise of the privilege sought, and, after notice and hearing, to revoke, alter, or amend any certificate.

There was in this language nothing to exempt from the statute any operation conducted, or any carrier operating, exclusively within the limits of an incorporated city. As though to correct this feature of the statute, the legislature at its next session in 1919 (Statutes 1919, Chapter 280, page 457) amended Section 1(c) of the Act to read as follows, the amendments and all additions being indicated by underscoring:

> "The term 'transportation company', when used in this act, means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing, any automobile, jitney bus, auto truck or auto stage used in the <u>business of</u> transportation of persons or property, <u>or</u> as a common carrier, for compensation, over any public highway in this state between fixed termini or over a regular route, <u>and not operating exclusively within the limits of an incorporated city or town or city and county;</u> provided that the term 'transportation company', as used in this act, shall not include corporations or persons, their lessees, trustees, receivers or trustees appointed by any court whatsoever insofar as they own, control, operate or manage taxicabs, hotel busses or sightseeing busses or any other carrier which does not come within the term 'transportation company' as herein defined."

At the same time, Section 3, relating to permits from cities, towns, cities and counties, and counties was repealed, and Section 5 amended and recast to require that a certificate from the Commission be obtained before a "transportation company" should operate any stage or truck, but providing also that:

> " . . . no such certificate shall be required of any transportation company as to the fixed termini between which or the route over which it is actually operating in good faith at the time this act becomes effective, or for operations exclusively within the limits of an incorporated city, town, or city and county . . ."

At this time, therefore, the Act unequivocally provided, first, that no operation exclusively within the limits of an incorporated city or town or city and county was subject to certification by the Commission and such exemption in no manner depended on whether or not the same carrier was subject to certification and regulation with respect to other distinct operations; and, second, that the operation of taxicabs, hotel busses, and sightseeing busses was exempt from the regulation, and such exemption similarly was unaffected by the status of the carrier with respect to any other operations.

In 1925 (Statutes 1925, Chapter 145, page 297), by amendment of the proviso in Section 1, exemption was provided for all persons in so far as they were operating "busses engaged solely in the transportation of bona fide pupils attending an institution of learning when such pupils are transported solely between their homes and such institution of learning." The exemption of school bus operations was thus made complete and explicit to the same extent and in the same manner as the preexisting exemption of taxicabs, hotel busses, and sightseeing busses.

Passenger stages were placed under the Public Utilities Act in 1927 (Statutes 1927, Chapter 42), by the addition thereto of Sections 2½ and 50½. It was doubtless the plan at the same time to delete the passenger stage provisions from the Auto Stage & Truck Transportation Act, but for some reason this was not done until 1929, and during the two-year period, therefore, the provisions regulating passenger stages appeared in both acts. Section 2½ stands now in the same form in which it was originally enacted in 1927. Section 50½ was amended in 1931 by adding the proviso now found in the third sentence in the section. Otherwise, that section also is still in the form in which it was originally enacted.

The following differences between Sections 1(c) and 5 of the Auto Stage & Truck Transportation Act and Sections 2½(b) and 50½ of the Public Utilities Act are significant to the present inquiry; first, the reference to operations exclusively within the limits of an incorporated city, etc. was removed from the definition proper and made a part of the proviso to the definition, reference to taxicabs, hotel busses, and sightseeing busses being deleted from the proviso; second, the language of the proviso was changed from an exemption of persons "insofar as they own, control, operate or manage" busses used for the exempted purposes to an exemption of "those whose operations are exclusively . . . or solely . ." of the exempted types; and third, the express exemption of intracity operations from the certification requirement in Section 5 of the Auto Stage & Truck Transportation Act was deleted from the certification provision found in Section 50½ of the Public Utilities Act.

It is perfectly evident that the legislature did not intend to effect any change in the status of intracity and school bus operations by these slight changes in wording. Section 1(c) of the Auto Stage & Truck Transportation Act, except as its meaning was made plain by Section 5, was just as much or as little subject to the interpretation that all operations of a carrier must be considered collectively in determining the application of the Act to a separate intracity operation as is the proviso to Section 2½(b) of the Public Utilities Act. If a given carrier has two independent operations between fixed termini or over a regular route, one intracity and the other intercity, from the standpoint of both operations collectively, he is, in the language of the Auto Stage & Truck Transportation Act, "not operating exclusively within the limits of an incorporated city," nor is he, in the language of Section 2½(b), "one whose operations are exclusively within the limits of a single incorporated city. . .:" and, so interpreting the language, he would, under both acts, be within the definition with respect

to both operations. But Section 5 of the Auto Stage & Truck Transportation Act expressly exempting intracity operations from certification made it abundantly plain that a carrier's operations were not to be considered collectively, but that the definition was to be applied to each independent operation separately in determining whether certification thereof was required. It is clear, furthermore, that it was intended to be so applied for all other purposes as well. The same language is still in effect with reference to motor carriers of property, now called "highway common carriers", in Section 2-3/4 of the Public Utilities Act, enacted in 1935 when the Auto Stage & Truck Transportation Act was repealed. At the same time, the legislature, in the City Carriers' Act (Stats. 1935, Ch. 312), for the first time enacted regulation of intracity motor freight transportation which, with respect to regulation of rates at least, would have been in conflict with Sections 2-3/4 and 50-3/4 if they applied to any intracity operations whatever. Sections 2-3/4, 50-3/4, and the City Carriers' Act, having been enacted at the same session and, with the Highway Carriers' Act, constituting a comprehensive plan of regulation, any such conflict would presumably have been eliminated at that time. Being pari materia, their provisions are to be harmoniously construed. The qualification to the definition of "highway common carrier" with reference to intracity operations in Section 2-3/4(a), in accordance with accepted principles of statutory construction, must therefore be interpreted as applicable to each operation independently and to be in effect a complete exemption from the provisions of the Public Utilities Act of every such operation. The same language in Section 1(c) of the Auto Stage & Truck Transportation Act, used in the identical context and with reference to the identical operations, must be given the identical meaning. The proviso in Section 2¾(b) of the Public Utilities Act, having precisely the same force in this respect,

being a direct derivative of Section 1(c) of the earlier Act and applying to the same carriers under the same conditions, should similarly be accorded the same meaning. It also should therefore be construed as referring to each independent operation separately.

In enacting Section 2¾, the qualification was removed from the definition proper to the proviso to make entirely clear that an intracity operation was exempted for all purposes, and the express exemption from the certification provision was deleted from Section 50¾ because it was no longer necessary. The word "single" was inserted before the word "incorporated" in Section 2¾ to clarify the legislative intent in the cases of cities entirely surrounded by other cities, such as Beverly Hills and Piedmont.

Furthermore, Section 2¾(c) places intracity and school bus operations on precisely the same basis. Previous to 1927 the Auto Stage & Truck Transportation Act fully exempted school bus operations of the same type described in Section 2¾(c). No change in the law has ever been made to subject to regulation such school bus operations when conducted by persons who were "transportation companies" by reason of motor freight operations independently conducted; there is no reason to suppose, therefore, that the legislature, by Section 2¾(c), intended to regulate them when and merely because they are operated by "passenger stage corporations." It is significant also, that the Act of 1927 manifested an intention to regulate sightseeing busses which had theretofore been exempted by providing grandfather rights for them, but that no such grandfather rights were provided for any school bus or intracity operations.

The majority opinion expresses a construction of the Act which the Commission has never before been asked to give it in twenty-one years of administration. It results in a classification

of intracity passenger stage operations which bears no relation to practical conditions and which would lead to absurd and far-reaching consequences. For example, let us assume that Asbury's only operations consisted of a far-flung and extensive motor coach service exclusively within the limits of the City of Los Angeles. Such an operation the legislature, under the terms of the proviso, unquestionably excluded from the Commission's jurisdiction under the Act, leaving the city authorities free to regulate it, apparently with the thought that it is a matter primarily of local concern. However, should Asbury later establish in addition a purely intracity passenger stage operation in Eureka, then both operations, according to the majority interpretation, would thereupon become subject to regulation by the Commission because, considered collectively, his operations would then not be "exclusively within the limits of a single city." The obvious purpose of the legislature would thus be nullified, as the cities' regulation would be superseded by that of the State. Moreover, immediately upon the commencement of his Eureka operations Asbury's Los Angeles operations would ipso facto become unlawful and would so remain unless and until he obtained certificates of public convenience and necessity from the Commission for both operations.

Again, let us assume that Asbury, having established independent operations in Los Angeles and Eureka, obtains certificates of public convenience and necessity therefor in accordance with the requirements of the statute as construed in the majority opinion. Should Asbury later dispose of one of these purely local operations or form two corporations to hold the certificates independently, jurisdiction over them would thereupon revert to the cities and the certificates become worthless.

Further, let us assume that Asbury's only operations originally consist of passenger stage operations exclusively within the City of Los Angeles and that he subsequently, in a wholly different part of the State, commences an operation consisting solely in the transportation of pupils between their homes and institutions of learning. Certification of both the intracity operations and the transportation of the pupils would then be required for, considered collectively, the operations would neither be "exclusively" within a single city nor "solely" for the transportation of pupils. In such a case the clear intention of the legislature would be defeated, by the construction adopted by the majority, with respect to both the intracity and the school bus operations.

Similar situations flowing from the majority interpretation might be multiplied indefinitely. Such results, so far as we can see, neither contribute in any way to the accomplishment of the apparent purpose of the legislation nor serve any other reasonable end. We cannot see that such a construction is unavoidably required by the language of the statute.

It is well established that a construction of a statute which leads to absurd results is to be avoided wherever possible and that general terms used will be limited to avoid such a result, the intention of the legislature apparent from the statute prevailing over the mere literal construction thereof. In Reuter v. Board of Supervisors, 220 Cal. 314, the Supreme Court of this State declared (p. 321):

> "It is a cardinal rule in the interpretation of statutes and also of constitutional enactments that a construction should not be given to the statute or to the Constitution, if it can be avoided, which would lead to absurd results. (Bakkenson v. Superior Court, 197 Cal. 504, 511 [241 Pac. 874].)

"'A construction should not be given to a statute, if it can be avoided, which would lead to absurd results or to a conclusion plainly not contemplated by the legislature.' (Merced Security Sav. Bank v. Casaccia, 103 Cal. 641, 645 [37 Pac. 648, 649].) 'In other words, where the meaning is doubtful, any construction which would lead to absurd results should be rejected, provided, of course, nothing stands in the way of a different and more rational construction, since absurd results are not supposed to have been contemplated by the legislature.' (23 Cal. Jur. 766)".

In People v. Ventura Refining Co., 204 Cal. 286, at 290, the court said:

"Where the interpretation claimed leads to injustice, oppression or to absurd consequences, the general terms used in a statute will be limited in their scope so as to avoid such a result. In Ex parte Lorenzen, 128 Cal. 431, 438, 439 [79 Am. St. Rep. 47, 50 L. R. A. 55, 61 Pac. 68], the court had before it a city penal ordinance regulating the issuance and delivery of street-car transfers and prohibiting the giving of them by passengers to others for their use in continuing the journey over a connecting road. The ordinance, if literally enforced, would have made it a penal offense for a passenger, after paying the fare of himself and his family or guests and securing transfers, to deliver such transfers to the members of his party. The court, restricting the literal language of the ordinance and holding that the legislation did not apply to an innocent use of a transfer, said: 'But for the more substantial objection that the ordinance by its terms would oppress and lead to the conviction of persons guilty of no fraudulent act, it is to be remembered that the letter of a penal statute is not of controlling force, and that the courts, in construing such statutes, from very ancient times have sought for the essence and spirit of the law and decided in accordance with them, even against express language; and in so doing they have not found it necessary to overthrow the law, but have made it applicable to the class of persons or the kind of acts clearly contemplated within its scope.'"

Several other examples of the application of these principles of construction are given in the opinion.

In In re Haines, 195 Cal. 605 (613), the Court quoted approvingly from Lewis' Sutherland on Statutory Construction, 2d ed., sec. 376, p. 721, as follows:

"'The mere literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the legislature apparent by the statute; and if the words are sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act. "While the intention of the legislature must be ascertained from the words used to express it, the manifest reason and the obvious purpose of the law should not be sacrificed to a literal interpretation of such words." Words or clauses may be enlarged or restricted to effectuate the intention or to harmonize them with other expressed provisions. Where general language construed in a broad sense would lead to absurdity it may be restrained. The particular inquiry is not what is the abstract force of the words or what they may comprehend, but in what sense they were intended to be used as they are found in the Act.'"

In the light of the incongruous results produced by the majority interpretation which are manifestly contrary to the legislative intent, it is well within the purview of the foregoing rules of construction to construe the words "operations," "exclusively," and "solely," as they are used in the proviso in Section 2½, to refer separately to each of several distinct operations which may be conducted by any carrier rather than in the broad sense as embracing all collectively.

We believe, therefore, that the majority opinion is in error in holding that the Highland Park line requires certification merely because Asbury, in operating certain other lines, happens to be a "passenger stage corporation." On the contrary, we believe that if the Highland Park line is in fact an operation exclusively within the limits of the City of Los Angeles, conducted independently of and not in conjunction with any of Asbury's intercity lines, it falls within the first exemption of the proviso in Section 2½(b) and is not subject to the jurisdiction of the Commission. More specifically, it is our view that if the facilities of the Highland Park line are used by Asbury for the transportation of persons

exclusively within the City of Los Angeles and not in connection with any transportation of persons between points within the city and points without the operation of the line is exempt from the statute.

Ray L. Riley

Justus F. Craemer

COMMISSIONERS.