

Decision No. 32522

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PASSENGER CARRIERS INCORPORATED,
a corporation,

Complainant,

vs.

A. L. SMITH,

Defendant.

ORIGINAL

Case No. 4497

ORLA ST. CLAIR, for Passenger Carriers
Incorporated, Complainant.

BY THE COMMISSION:

O P I N I O N

This proceeding involves a complaint by the Passenger Carriers Incorporated against A. L. Smith, alleging that the latter is unlawfully engaged in business as a passenger stage corporation over the public highways between San Francisco and Los Angeles and intermediate points. Complainant asks that the defendant be ordered to cease and desist from performing his alleged unlawful operations or from engaging in business as a passenger stage corporation until he shall first secure a certificate of public convenience and necessity.

A public hearing was held in San Francisco before Examiner Broz, the matter was submitted, and is now ready for decision.

Complainant's witness, an employee of the Transportation Tax Division of the State Board of Equalization, testified that the defendant is a regularly licensed booking agent for the booking of passenger transportation between San Francisco and Los Angeles, with an office located at the Grand Central Hotel, 1412 Market Street, San Francisco. ⁽¹⁾ Defendant's license as a passenger booking agent was taken out with the State Board of Equalization on March 15, 1938 and was regularly renewed in 1939 and 1940.

The witness testified that booking agents are required by the State Board of Equalization to make monthly reports of their gross revenues earned from the business of booking passenger transportation for intrastate travel between points in California. The witness asserted that defendant has regularly made these reports.

The testimony of the witness shows, moreover, that some time during the month of December, 1939, the defendant started to haul passengers between San Francisco and Los Angeles with a Packard automobile. Board of Equalization license plates had not been secured on this vehicle when its operations were first discovered. The witness stated that he did not know whether or not the defendant had secured B. E. plates but that he observed a "red sticker" on the windshield of the automobile as evidence of an application for said plates.

The witness testified further that the operation of the

(1) The witness testified that defendant maintains signs and advertising at said hotel offering passenger transportation to Los Angeles for \$7.95 per round trip.

Packard car was investigated by him in January, 1940 and it was found to be engaged in regular service hauling passengers between San Francisco and Los Angeles. The witness said that passengers were picked up at the Hotel Knox in San Francisco and that said passengers were destined for Los Angeles and intermediate points. The same car also picked up passengers at the Dewey Hotel in San Francisco for Los Angeles and intermediate points in the month of December, 1939.

Some time in the month of February, 1940 the defendant applied for and secured B. E. plates upon a different Packard automobile. ⁽²⁾ The second Packard car is now operated by the defendant, is driven by one John Doe Generus, and is observed to be engaged in regular service carrying passengers between San Francisco and Los Angeles, according to the witness. The car is registered to the defendant A. L. Smith, whose residence on the registration certificate is shown as 1412 Market Street, San Francisco.

The complainant's witness appeared at the hearing in response to a subpoena duces tecum and produced records of the State Board of Equalization to show the revenues reported by the defendant covering both his booking agency operations and his passenger transportation operations from November, 1939 to March, 1940. These records show certain payments made by the defendant to so-called sub-haulers ⁽³⁾ for passengers booked by the defendant but actually transported by the sub-haulers. The following tabulation shows the chronological statement of revenues reported

(2) This Packard automobile bears Engine No. 188586 and carries B. E. license plate No. PC-Y-6621.

(3) Sub-haulers are passenger carriers by automotive vehicle who transport passengers for a person or agency other than themselves.

to the State Board of Equalization by the defendant:

<u>Month</u>	<u>Gross Revenue</u>	<u>Paid to Sub-Haulers</u>	<u>Net Revenue to A.L. Smith</u>
Nov. 1939	\$118.95	\$90.00	\$ 28.95
Dec. 1939	113.10	56.00	57.10
Jan. 1940	67.05	51.00	16.05
Feb. 1940	193.20	56.50	136.70
Mar. 1940	216.85	39.00	177.85

The witness pointed out from the above figures that defendant's net earnings increased materially during the months of February and March, 1940, during which period defendant was engaged in carrying passengers between San Francisco and Los Angeles in the second Packard automobile referred to above.

The foregoing testimony and evidence constitute the complainant's case. The defendant did not appear at the hearing although he was served with a copy of the complaint by registered mail on March 20, 1940. At the same time he was served with an order of this Commission to answer said complaint within ten days from date of service. Receipt of the complaint and order to satisfy were acknowledged by defendant but he filed no answer, whereupon the proceeding was scheduled for hearing. A notice of hearing was mailed to the defendant at the address shown on his automobile registration certificate, namely 1412 Market Street, San Francisco. The defendant did not appear at the hearing, nor was he represented by counsel.

The issues involved in this proceeding present a question as to whether or not the defendant is a passenger stage corporation within the meaning of Section 2 $\frac{1}{2}$ (b) of the Public Utilities Act and, if he is, whether or not he is operating in violation of Section 50 $\frac{1}{2}$ of said Act.

Section 2½(b) provides that:

"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."

The evidence discloses that defendant is engaged in the operation of a motor vehicle used in the transportation of persons, over regular routes, for compensation, over the public highways between San Francisco and Los Angeles. Defendant offers this service to the public by means of advertising and solicitation and holds out his service to the public as a common carrier. Under these circumstances there can be no doubt that defendant is engaged in business as a passenger stage corporation within the meaning of Section 2½(b) and that the evidence substantiates that fact.

The Commission's records indicate that no certificate has ever been issued to the defendant authorizing him to engage in passenger stage operations as a common carrier between San Francisco and Los Angeles, as required by the provisions of Section 50½ of the Public Utilities Act. That section reads in part as follows:

"No passenger stage corporation shall hereafter operate or cause to be operated any passenger stage over any public highway in this state without first having obtained from the railroad commission a certificate declaring that public convenience and necessity require such operation,....

* * * * *

. "When a complaint has been filed with the commission alleging that any passenger stage is being operated without a certificate of public convenience and necessity, contrary to or in violation of the provisions of this act, the commission shall have the power, with or without notice, to make its order requiring the corporation, or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, operating or managing such passenger stage, to cease and desist from such operation, until the commission makes and files its decision on said complaint, or until further order of the commission.

"Whether or not any stage, auto stage, or other motor vehicle is being, or is proposed to be operated as a passenger stage corporation 'between fixed termini or over a regular route' within the meaning of this act shall be a question of fact, and the finding of the railroad commission thereon shall be final and shall not be subject to review. Any act of transporting or attempting to transport any person or persons by stage, auto stage, or other motor vehicle upon a public highway of this state between two or more points not both within the limits of a single incorporated city, town or city and county, where the rate, charge or fare for such transportation is computed, collected or demanded on an individual fare basis, shall be presumed to be an act of operating as a passenger stage corporation within the meaning of this act....."

The evidence reveals that defendant advertises passenger transportation to Los Angeles on an individual fare basis and that his operations have been witnessed and show that individual passengers have been transported by the defendant between San Francisco and Los Angeles and intermediate points on various occasions during the months of February and March, 1940. It is clear, therefore, that defendant's operations are in violation of Section 50 $\frac{1}{2}$ of the Public Utilities Act, since he does not possess a certificate of public convenience and necessity to engage in such operations.

The evidence and testimony sufficiently establish the fact that defendant has been engaged, and is presently engaged, in business as a passenger stage corporation, as that term is defined in Section 2 $\frac{1}{2}$ (b) of the Public Utilities Act, in violation of Section 50 $\frac{1}{2}$ of said Act.

An order of the Commission directing the suspension of an operation is in its effect not unlike an injunction by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a person is adjudged guilty of contempt, a fine may be imposed in the amount of \$500, or he may be imprisoned for five (5) days or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C., 571.

O R D E R

A public hearing having been held in the above-entitled proceeding, evidence having been received, the matter having been duly submitted, and the Commission being now fully advised,

IT IS HEREBY ORDERED that the defendant, A. L. Smith, be and he is hereby required and directed immediately to cease and desist, directly or indirectly, or by any subterfuge or device, from engaging as a common carrier in the ownership, control, operation and management of any motor vehicle or motor vehicles transporting any person or persons, for compensation, over the public highways of the State of California, between fixed termini, to-wit: between San Francisco, on the one hand, and Los Angeles and intermediate points, on the other hand, without having first obtained from the Railroad Commission of the State of California a certificate of public convenience and necessity authorizing such operation.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be served upon said defendant, A. L. Smith, and to cause certified copies thereof to be mailed to the District Attorneys of San Francisco and Los Angeles Counties and to the Department of Motor Vehicles, Highway Patrol, at Sacramento.

IT IS HEREBY FURTHER ORDERED that for all purposes this order shall become effective twenty (20) days from and after service thereof, as hereinabove provided, upon said defendant.

Dated at San Francisco, California, this 8th day of October, 1940.

Ray & Rice
Frank D. Miller
Ray B. Wharf
J. Baker
Justin F. Craven
COMMISSIONERS