

ORIGINAL

Decision No. 34824

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PASSENGER CARRIERS INCORPORATED,  
a corporation,

Complainant,

vs.

Case No. 4495

FLYNN E. REID, AL PATEVAUD,  
JOHNNY HUMISTON and J. COCHRAN, (1)

Defendants.

PASSENGER CARRIERS INCORPORATED,  
a corporation,

Complainant,

vs.

Case No. 4496

EARL NASH, individually and doing  
business as Earl's Travel Bureau  
and Sedan Service,

Defendant.

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

PAUL H. BRUNS, for defendants.

BY THE COMMISSION:

O P I N I O N

These proceedings involve complaints filed by Passenger Carriers, Incorporated, against the respective defendants alleging that said defendants are unlawfully engaged in operating as passenger stage corporations between San Francisco and Los Angeles without having first obtained a certificate of public convenience and necessity from this Commission authorizing such operation.

(1) Defendant "J. Cochran" is also known as "James H. Cochran" and is the applicant seeking a license to act as a motor carrier transportation agent in Application No. 24449 now pending before this Commission.

Personal service of the respective complaints and orders to answer or satisfy the same was had upon defendants Flynn E. Reid and Earl Nash but neither they nor the other defendants appeared at the hearings.<sup>(2)</sup>

Public hearings were had before Examiner Broz at Los Angeles and upon complainant's oral motion for consolidation of the matters for hearing and disposition they were heard upon one record and will be disposed of by one opinion.

Passenger Carriers, Incorporated, vs.  
Flynn E. Reid, et al. Case No. 4495

Complainant's first witness testified that he knows Flynn E. Reid personally and that about August, 1939, Reid commenced operating a so-called travel bureau at the Knox Hotel in San Francisco; that on September 30, 1939, the witness and an assistant took several pictures of the defendant and a passenger automobile in front of the Knox Hotel; that the car bore a sign reading "Charter Sedan Service - Los Angeles - Twice Daily - \$4.00." A similar sign, he said, was carried in the front window of the hotel where the defendant conducted his travel bureau. (Exhibits 1, 2 and 3, Case No. 4495.) The automobile was a Dodge sedan, license No. BE-PC-Y-3922 and was registered to John C. Humiston of Los Angeles. Later, a Cadillac automobile bearing

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- (2) Counsel for the defendants appeared at the hearing, participated in the trial, conducted cross-examination of complainant's witnesses and made statements on behalf of himself and his clients. He stated at the outset that he had held conferences with the defendants and while they had not formally retained him to represent them at the hearing, he was prepared to participate in the hearings on their behalf to determine the extent to which their interests were involved. No proceedings were conducted in his absence, and he was present at all times until the matters were submitted for decision.

license No. BE-PC-Z-8921, also registered to Humiston, was found to be carrying passengers between San Francisco and Los Angeles for account of the defendant Reid.

The next witness for complainant, a representative of the Transportation Tax Division of the State Board of Equalization, testified that in addition to hauling passengers for their own accounts, defendants Humiston, Patenaud and Cochrane also acted as sub-haulers for defendant Reid and that Reid paid them compensation for their services. According to the witness, Reid is a licensee of the State Board of Equalization and makes monthly reports of revenues earned from the business of transporting persons within the state of California, for tax purposes. The witness testified that the following monthly revenues and payments to sub-haulers were reported to the Board by defendant Reid for the period shown:

Payments to sub-haulers by Flynn E. Reid.

<u>MONTH</u>	<u>Gross RECEIPTS</u>	<u>HUMISTON</u>	<u>NASH</u>	<u>COCHRANE</u>	<u>PATENAUD</u>
March 1939	\$ 772.50	\$ 30.00	-	-	-
April "	865.00	102.00	-	-	-
May "	874.00	168.00	-	-	-
June "	530.00	230.00	-	-	-
July "	990.00	465.00	\$ 21.00	\$ 15.00	\$ 46.50
August "	1078.00	255.00	-	201.00	214.50
September "	1094.50	208.00	42.50	80.00	210.00
October "	1230.50	274.00	84.00	225.00	253.00
November "	1225.00	231.50	161.00	142.50	188.50
December "	1455.50	-	133.00	139.50	193.50

According to another witness, defendant Reid admitted that defendants Humiston, Cochrane and Patenaud were associated with him in the business of transporting persons between San Francisco and Los Angeles and acted as sub-haulers in those instances where Reid was unable to haul all the passengers himself.

Evidence with respect to the transportation operations of defendants Humiston, Cochrane and Patenaud was developed by testimony of an investigator employed by the transportation department of the Board of Public Works of the city of Los Angeles. He stated that in the course of his investigation the defendants were found to be engaged in carrying passengers for their own account between Los Angeles and San Francisco, securing their clientele mainly from the lower rate hotels in the city of Los Angeles where travel offices were maintained; that extensive advertising in the form of display cards, window cards and business cards was conducted offering passenger transportation between Los Angeles and San Francisco at reduced fares.

The witness from the Board of Equalization testified that the records in his office show defendant Patenaud acquired a 1939 Dodge sedan, license No. BE-Y-8977 and began his operations in March, 1939, reporting the following gross revenues to the Board, as taxable on the basis of intrastate operations conducted between San Francisco Bay points and Los Angeles.

		<u>TOTAL</u>	<u>INTERSTATE</u>	<u>TAXABLE</u>
March	1939	\$ 97.50	\$ 69.30	\$ 28.20
April	"	56.00	-	56.00
May	"	80.00	56.87	23.13
June	"	598.50	425.00	173.50
July	"	907.75	383.46	524.29
August	"	1077.80	414.44	663.36
September	"	930.50	378.41	602.09
October	"	987.20	368.01	619.19
November	"	470.75	353.06	117.69
December	"	809.00	606.75	202.25
January	1940	617.75	463.35	154.43
February	"	451.50	338.62	112.88

Defendant Humiston, the witness asserted, made the following return for tax purposes on passenger operations conducted by him between San Francisco and Los Angeles:

	<u>GROSS REVENUE</u>	<u>Paid to SUB-HAULERS</u>	<u>TAXABLE</u>
May 1939	\$1160.75	\$ 871.75	\$289.00
June "	538.70	353.25	185.50
July "	1381.15	914.25	466.90
August "	1754.75	1322.75	432.00

Among the sub-haulers to whom defendant Humiston paid compensation for transportation services performed in his behalf were the following:

	<u>REID</u>	<u>NASH</u>	<u>COCHRANE</u>	<u>PATENAUD</u>
May 1939	\$172.50	-	-	-
June "	34.50	-	-	-
July "	40.75	\$21.00	\$37.50	\$255.00

In December, 1939, defendant Humiston applied for a renewal of his license from the State Board of Equalization and was given license No. BE-PC-V-16-06 in the name of "West Coast Sedan Service." The evidence shows that this is the name under which Flynn E. Reid operated his place of business at the Knox Hotel in San Francisco.

Defendant Cochrane began operating a Plymouth sedan on July 24, 1939, under license No. 8-M-265 and reported the following gross revenues to the State Board of Equalization from the transportation of persons between Los Angeles, Oakland and San Francisco:

	<u>GROSS REVENUE</u>	<u>Paid to SUB-HAULERS</u>	<u>TAXABLE</u>
July 1939	\$ 52.50	-	\$ 52.50
August "	462.00	\$ 13.00	449.00
September "	744.00	271.50	472.00
October "	776.75	258.50	518.25
November "	818.65	374.50	444.15
December "	832.60	471.25	361.66
January 1940	403.50	231.00	172.50
February "	382.90	196.00	186.90

Passenger Carriers Incorporated vs. Earl Nash, Case No. 4496

Complainant's first witness, a representative of the transportation department of the Board of Public Works of the city of Los Angeles, testified that he has known Earl Nash for approximately six years; that in the course of his business as investigator for the Board, he ascertained that defendant Nash opened an office at 226½ East Fifth Street in Los Angeles and conducted a travel service under the name of Earl's Travel Bureau and Sedan Service, advertising "two trips daily to San Francisco, Oakland and Sacramento." Complainant offered in evidence a picture of the defendant's place of business and a copy of his business card used for advertising purposes. (Exhibits 1 and 2, Case No. 4496.) The witness stated that defendant Nash also operated an office in the Chapman Hotel on the northeast corner of Fifth and Wall Streets in the city of Los Angeles, and that Nash owned and operated automobiles in the transportation of persons between Los Angeles and points in the San Francisco-Oakland district. On cross-examination by counsel for defendants, the witness testified that Nash collected money for his services, a part of the payment being made by the traveler at the time the transportation was arranged, the balance being paid when the service was furnished.

Complainant's next witness, a supervising auditor of the State Board of Equalization testified that defendant Nash is a licensee of that Board under a license issued on March 7, 1939, and made the following returns of revenue earnings for tax purposes:

<u>MONTH</u>		<u>INTRASTATE TAXABLE REVENUE</u>
March	1939	\$ 73.85
April	"	(no operation)
May	"	" "
June	"	\$ 60.00
July	"	120.00
August	"	160.00
September	"	190.00
October	"	197.00
November	"	180.00
December	"	140.00

In addition to the foregoing, defendant Nash was paid the following sums for acting as a sub-hauler for the designated operators:

<u>MONTH</u>		<u>PAID TO EARL NASH BY</u>		
		<u>REID</u>	<u>HUMISTON</u>	<u>E.A. WALSH</u>
July	1939	\$ 21.00	\$21.00	-
September	"	43.50	-	-
November	"	161.00	-	\$167.00
December	"	133.00	-	-

In the above instances, defendant Nash performed a common carrier service for travel bureaus conducted by the said Reid, Humiston and Walsh, and transported passengers for them between Los Angeles and San Francisco.

The foregoing testimony and evidence constitutes the complainant's case against the respective defendants in Cases Nos. 4495 and 4496. The issues involved in these proceedings present a question as to whether or not the defendants individually are passenger stage corporations within the meaning of Section 2½ of the Public Utilities Act and, if they are, whether or not they are operating in violation of section 50½ of said Act.

Section 2½(b) provides that

"(b) 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 defendants are engaged in the operation of motor vehicles used in the transportation of persons, over regular routes, over the public highways between San Francisco and Los Angeles for compensation. Defendants offer this service to the public by means of advertising and solicitation and hold themselves out to serve the public as common carriers. Under these circumstances there can be no doubt that defendants are engaged in business as passenger stage corporations within the meaning of Section 2½(b) and that the evidence substantiates that fact.

The Commission's records indicate that no certificates have ever been issued to the defendants either individually or collectively, authorizing them to engage in passenger stage operations as a common carrier between San Francisco Bay points 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 defendants advertise passenger transportation between San Francisco Bay area points and Los Angeles on an individual fare basis and that their operations have been witnessed and show that individual passengers have been transported during 1939 and 1940 between said points. It is clear, therefore, that defendants' operations were and are in violation of Section 50 $\frac{1}{2}$  of the Public Utilities Act since they do not possess a certificate of public convenience and necessity to engage in such operations.

We are of the opinion and find that the evidence and testimony sufficiently establish the fact that defendants Flynn E. Reid, Al Patencud, Johnny Humiston, James H. Cochrane and Earl Nash have been engaged in business as a passenger stage corporation, as that term is defined in Section 2½(b) of the Public Utilities Act in violation of Section 50½ 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 \$500.00, 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

Public hearings having been had in the above entitled proceedings, defendants having been personally served with complaint and notice of hearing, or represented by counsel, or both, the matters having been submitted and based on the foregoing opinion and findings of the Commission,

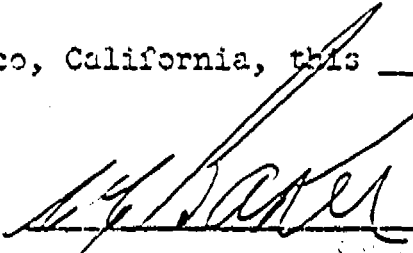
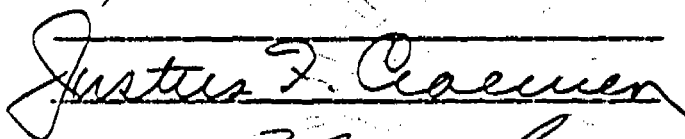
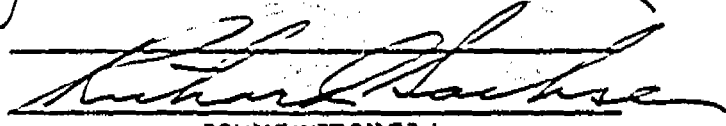
IT IS HEREBY ORDERED that defendants Flynn E. Reid, Al Patencud, Johnny Humiston, James H. Cochrane and Earl Nash, be and they are hereby directed individually and collectively, to

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, particularly between San Francisco and Oakland 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 FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be served upon said defendants and to cause certified copies thereof to be mailed to the District Attorneys of San Francisco, Alameda and Los Angeles counties, to the Transportation Department of the Board of Public Works and to the Department of Motor Vehicles, Highway Patrol, at Sacramento.

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

Dated at San Francisco, California, this 12<sup>th</sup> day  
of January, 1942.

  
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COMMISSIONERS