

Decision No. 36997

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of)
WILLIS M. KLEINENBROICH, an individual,)
doing business as MODESTO MOTOR BUS)
SERVICE, for certificate of public)
convenience and necessity to extend)
present passenger operations beyond)
the Modesto City limits.)

Application No. 25874

WILLIS M. KLEINENBROICH, applicant, in propria
persona.

FRANK C. DAMRELL, for Mary Maritzen and E. B.
Osthues, doing business as Acme Bus
Company, interested party.

REX E. GAILFUS, for City of Modesto.

BY THE COMMISSION:

O P I N I O N

Willis M. Kleinenbroich, doing business as Modesto Motor Bus Service, seeks a certificate of public convenience and necessity under section 50½, Public Utilities Act, authorizing the operation of a motor bus service for the transportation of passengers between 10th and J Streets, in the Modesto central business district, on the one hand, and, on the other hand, certain residential districts adjoining the city on the northeast and on the west, referred to, respectively, as the Fairmont Avenue District and as the Paradise Tract. Light hand baggage would be carried by passengers, at their own risk. The matter was submitted at a public hearing held before Examiner Austin at Modesto on March 17, 1944. Appearances were entered by the city of Modesto, and by Mary Maritzen and E. B. Osthues, doing business as Acme Bus Company, who conduct a local bus

service within the city. Through counsel, the latter announced they had no objection to applicant's proposal. Applicant himself testified, and of the many residents of the affected areas who were present at the hearing, five were called as witnesses.

Applicant proposes to serve these districts over routes, converging at 10th and J Streets, which are specifically described in the following order. The ultimate point reached in the Fairmont Avenue District would be Fairmont and Brady Avenues; and in the Paradise Tract, Vernon Street and Beverly Drive. Under permits issued by the city of Modesto, applicant, since 1932 has conducted a local bus service which now operates over routes coinciding, within the corporate limits, with those proposed herein. ⁽¹⁾

Both the Paradise Tract and the Fairmont Avenue Tract are growing residential districts within each of which, it is conservatively estimated, reside some 1,000 inhabitants. The population of the city itself is approximately 18,000. Applicant daily carries around 600 passengers, 150 of whom, he stated, reside within the affected areas. If the service were extended, as proposed, he estimates that from 350 to 400 residents of these sections would use it daily.

Applicant, it was shown, is financially able to provide the service. He would continue to use his present equipment, consisting of two 21-passenger buses which would operate regularly, and one 10-passenger bus which would serve as a relief car. During

(1) With the city's consent, the routes over which applicant presently operates will be slightly changed if the present application is granted.

peak periods the equipment used in applicant's Oakdale passenger
(2)
stage operation would also be available, if necessary.

The fares which applicant has maintained for several years in his municipal service would be extended to the proposed operations. A single one-way cash fare of 7 cents, and a 4-ride commutation fare of 25 cents would be published; and to accommodate school students both 10 and 20-ride tickets would be issued for 55 cents and \$1.00 each, respectively. Passengers would transfer between buses at 10th and J Streets, and thus could travel without additional charge over both routes, but no transfer tickets would be issued.

Over each route a daily service would be provided, excepting Sundays and federal holidays. Under applicant's proposed time schedule buses would operate under a 20-minute headway between 7:30 A.M. and 6:10 P.M., excepting the period between 11:10 A.M. and 1:30 P.M. when a 40-minute headway would be observed. Such a service would be adequate to meet public requirements, applicant testified. At the outset no service would be afforded during the evening hours.

From applicant's testimony, as well as from that of the public witnesses called, it appears that a public need exists for the extension of service to both of the districts described. Residents of these areas desiring to use public transportation service are compelled to walk considerable distances to the nearest point, within the municipal limits, upon applicant's present bus lines, or

(2) Applicant Kleinenbroich, doing business as Modesto-Riverbank-Oakdale Stage, operates a passenger stage service between Modesto and Oakdale and certain intermediate points.

they must rely upon taxicab accommodations, for which the current charges range from 60 to 80 cents per trip. Gasoline rationing has effectively curtailed the use of private automobiles, upon which they previously have depended to a substantial degree. The public witnesses voiced their approval of applicant's routes, fares and schedules. No present need was shown for an evening service, although it may develop eventually. A public need exists for the extension sought, so the city's representative stated; the proposed fares and time schedules, he said, were satisfactory to the city authorities.

In view of the showing made the application will be granted.

Willis M. Kleinenbroich is placed upon notice that "operative rights" as such do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. 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.

O R D E R

Application having been made as above entitled; a public hearing having been had; the matter having been duly submitted; and the Commission now finding that public convenience and necessity so require;

IT IS ORDERED as follows:

(1) That a certificate of public convenience and necessity be and it hereby is granted to Willis M. Kleinenbroich, doing business as Modesto Motor Bus Service, authorizing the establishment and operation of a service as a passenger stage corporation, as defined by section 2 $\frac{1}{2}$, Public Utilities Act, (a) between 10th and J Streets in the city of Modesto, and Fairmont and Brady Avenues in the Fairmont Avenue District adjoining the northeasterly limits of said city; and (b) between 10th and J Streets in the city of Modesto and Vernon Street and Beverly Drive, in the Paradise Tract adjoining the westerly limits of said city.

The authority herein granted is subject to the provisions of section 52(b), Public Utilities Act, and further to the condition that Willis M. Kleinenbroich, his successors or assigns, shall never claim before this Commission, or any court or other public body, a value for said operative right or claim as the cost thereof, an amount in excess of that paid to the State as the consideration for such right.

(2) That in the operation of said passenger stage service, applicant shall comply with and observe the following service regulations:

1. 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.
2. Applicant shall comply with the provisions of General Order No. 79 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, tariffs and time schedules satisfactory to the Commission within sixty (60) days from the effective date hereof and on not less than one (1) day's notice to the Commission and the public.
3. Subject to the authority of this Commission to change or modify them at any time by further order, applicant shall conduct said passenger stage operations over and along the following routes:

Fairmont Avenue District

Commencing at 10th and J Streets, extending thence to the intersection of Fairmont and Brady Avenues via J Street, Downey Avenue, Bodem Street, Morris Avenue, Ramona Avenue, Lucern Avenue, Johnson Street, Ila Way and Fairmont Avenue; returning thence via Brady Avenue, Coldwell Avenue, College Avenue and 10th Street to J Street.

Paradise Tract

Commencing at 10th and J Streets, extending thence to the intersection of Vernon Street and Beverly Drive, via 10th Street, H Street, 1st Street, Roselawn Avenue, Western Way, Franklin Street, Paradise Road, Chicago Avenue and Vernon Street; returning thence via Beverly Drive, Paradise Road, H Street and 10th Street to J Street.

The effective date of this order shall be the date hereof,

Dated at Los Angeles, California, this 11th day of April, 1944.

Richard Backus
Justus J. Casner
Francis P. Havens
Francis C. ...
Ernest ...
COMMISSIONERS