

Decision No. 40296

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the vessel operations of George Garvin, Ernest A. Judd, Frank A. Gruber, Paul Baker, Elmer Perry, John Does Nos. One to Thirty, inclusive, Thirty-first Doe, a copartnership, Thirty-second Doe, a copartnership, Thirty-third Doe, a corporation, Thirty-fourth Doe, a corporation, Thirty-fifth Doe, a corporation, Thirty-sixth Doe, a corporation,
Respondents.

ORIGINAL

Case No. 4850

S. L. Rummel, for Seven Seas Trading and Steamship Co., a Nevada Corporation, and A. C. Stralla, an individual, James E. Pawson, for H-10 Water Taxi Company and DeLuxe Water Taxi Company, interested parties; James E. Pawson and Louis J. Hart, for Baker Boat Service, interested party; V. L. Ferguson for George Garvin and Elmer Perry, respondents; Jonah Jones Jr., for Ernest H. Judd, Frank A. Gruber, West 7th Street Water Taxi Co., City Water Taxi Co., and Pacific Tow Boat and Salvage Co.

OPINION

The Commission instituted this investigation on its own motion into the operations, rates, charges, contracts, practices and arrangements of George Garvin, Ernest A. Judd, Frank A. Gruber, Paul Baker, Elmer Perry, John Does Nos. One to Thirty, inclusive, Thirty-first Doe, a copartnership, Thirty-second Doe, a copartnership, Thirty-third Doe, a corporation, Thirty-fourth Doe, a corporation, Thirty-fifth Doe a corporation, and Thirty-sixth Doe, a corporation, hereinafter referred to as "respondents."

Public hearings in this matter were conducted at Los Angeles on October 2, November 20 and December 27, 1946, and February 10, 13 and 14, 1947; the matter having been duly submitted on the latter date it is now ready for decision.

The purpose of this proceeding is to determine whether or not said respondents, or any of them, since, on, or about September 1, 1945; including August 6, -7, 8, 30 and 31, 1946, and between September 1 and 10; inclusive,

1946, have owned, controlled, operated or managed, or are owning, controlling, operating, or managing certain vessels, commonly known as "Water Taxis," as a Common Carrier or Common Carriers within the meaning of Section 2 (1) of the Public Utilities Act, for the transportation of persons or property, for compensation, over the high seas between points in this State and more specifically between the City of Long Beach and the "S.S. Lux" or "S.S. Bunker Hill," and return to said City of Long Beach without possessing a certificate of public convenience and necessity issued by this Commission or a prescriptive right so to do:

The following names were substituted at the hearing for John Does, Doe copartnerships and Doe corporations:

- John Doe No. 1 - John A. Burke
- John Doe No. 2 - Matt Bobick
- John Doe No. 3 - Charles J. Fisher
- John Doe No. 4 - Lloyd Leonard
- John Doe No. 5 - Frank J. Perry
- John Doe No. 6 - Carl R. Miller
- John Doe No. 7 - Earl W. Anderson
- John Doe No. 8 - John P. Looney
- John Doe No. 9 - Donald E. Cochran
- John Doe No. 10 - Joseph L. O'Neill
- John Doe No. 11 - Philip S. Calhoun
- John Doe No. 12 - Paul H. Maxson
- John Doe No. 13 - Otis Knight
- John Doe No. 14 - Joe L. Morgan
- John Doe No. 15 - Jim S. Reeves
- John Doe No. 16 - Gordon C. Winkler
- John Doe No. 17 - Hammie L. Adkison
- John Doe No. 18 - Edward D. West
- John Doe No. 19 - George E. Dill
- John Doe No. 20 - James O'Neill

John Doe No. 21 - Marcel Luciene
 John Doe No. 22 - Robt. D. Higgins
 John Doe No. 23 - Charles R. Turner
 John Doe No. 24 - Lucien L. Rice
 John Doe No. 25 - Richard E. Harvey
 John Doe No. 26 - Anthony Cornero Stralla
 32nd Doe - Copartnership, Pacific Water Taxi Co.
 33rd Doe - Corporation, H-10 Water Taxi Company,
 Ltd., a corporation
 35th Doe - Corporation, DeLuxe Water Taxi Company,
 a corporation
 36th Doe - Corporation, Seven Seas Trading and
 Steamship Co., Inc.

The evidence shows that one or more water taxis were operated by respondent George Garvin between Long Beach and the barge "S.S. Bunker Hill" for the transportation of persons, for compensation, on August 6, 7, 8, 9, 31, 1946, and September 1, 2, 14, 15, 16, 17, 1946, and that said Garvin did not possess a certificate of public convenience and necessity issued by this Commission or a prescriptive right to engage in such operations.

Section 2 (1) of the Public Utilities Act reads as follows: "The term common carrier when used in this Act includes every railroad corporation, ***** and every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any vessel, as hereinafter defined, engaged in the transportation of persons or property for compensation between points upon the inland waters of this State, or engaged in the transportation of persons or property for compensation upon the high seas between points within this State. The term 'inland waters' as used in this subsection includes all navigable waters within the State of California other than the high seas."

The water taxis used in this service fall within the term "vessel" as defined in Section 2 (y) of the Public Utilities Act.

The testimony of the Deputy County Surveyor⁽¹⁾ of Los Angeles County, who located the "S.S. Bunker Hill" by geodetic triangulation, an accurate and accepted method of surveying, shows that on August 10, 1946, the stern of the "S.S. Bunker Hill" was located at latitude $33^{\circ} 40' 23.42''$ north, longitude $118^{\circ} 09' 08.92''$ west.

The bow of said boat was found to be 4412 feet inside of Orange County and 4252 feet seaward of the outer limits of San Pedro Bay as determined by U. S. vs. Carrillo, 13 Federal Supplement 122.

The testimony of Lieutenant K. L. Peterson, of the United States Coast Guard, a qualified navigator, who made a fix or determination of the location of the "S.S. Bunker Hill," on September 17, 1946, shows that said "S.S. Bunker Hill" was located at latitude $33^{\circ} 38' 40''$ north, longitude $118^{\circ} 08' 55''$ west, which location is between the outer limits of San Pedro Bay as determined by U. S. vs. Carrillo (supra) and a line drawn parallel thereto and three English miles seaward distant therefrom.

On August 10, 1946, no water taxis were being operated to the "S.S. Bunker Hill" but were being operated to it on September 17, 1946, on which date the "S.S. Bunker Hill" was located less than three miles distant seaward from the outer limits of San Pedro Bay. Said water taxis carried passengers.

The evidence also shows that the "S.S. Bunker Hill" was located on certain days more than three miles seaward from the outer limits of San Pedro Bay, at which time, carrying passengers, water taxis were operating to it.

The water taxis, transporting passengers, were operated from a dock located adjacent to 1500 West 8th Street, Long Beach to the "S.S. Bunker Hill" and return to said dock with no intermediate stops enroute to or from the "S.S. Bunker Hill."

The passengers paid 50 cents either at the time they boarded the water taxis at the dock in Long Beach or after they left the dock enroute to the "S.S. Bunker Hill" and were not requested or required to pay any additional fare.

(1) E. T. Mankey, a registered Civil Engineer

The location of the "S.S. Bunker Hill," i.e. whether it was landward or seaward from the three-mile limit or upon the inland waters of the State, or upon the high seas, insofar as a determination of the question of the legality of the water taxi operations with which we are here concerned, is immaterial.

Section 2 (1) of the Public Utilities Act defines a common carrier as one engaged in the transportation of persons for compensation between points upon the inland waters of this State, or engaged in the transportation of persons for compensation upon the high seas between points within this State. The water taxis were operating from the dock at Long Beach to the dock at Long Beach with an intermediate stopover at the "S.S. Bunker Hill" enroute. The payment of 50 cents at the time of leaving the dock confirms the fact that it was the intention to cover the trip from the time of leaving the dock at Long Beach to the return to the dock at Long Beach. The mere stopping off at the "S.S. Bunker Hill" enroute wherever said ship was located does not alter the fact that the passengers were being transported either between points on the inland waters of this State or on the high seas between points within this State.

A careful review of the evidence shows that George Carvin operated vessels as defined in Section 2 (y) of the Public Utilities Act as a common carrier as defined in Section 2 (1) of said Act for the transportation of passengers for compensation between points upon the inland waters of this State or upon the high seas between points within this State without first having secured a certificate of public convenience and necessity as required by Section 50 (d) of said Act or without having a prescriptive right so to do; all of which operations were in violation of laws.

Under ordinary circumstances, when one has been found to be conducting a transportation service in contravention of the provisions of the Public Utilities Act, he is ordered to cease and desist from carrying on such operations; however, in this case the circumstances are somewhat unusual. On September 18, 1946, the United States Government seized the barge "S.S. Bunker Hill," at

which time the operation of water taxis being conducted by George Garvin ceased. Water taxi operations of the kind herein involved have not since been conducted and the likelihood of such operations being resumed in the future appears doubtful.

The issuance of an Order by this Commission, requiring George Garvin to cease and desist carrying on the operations which have already ceased to exist ~~... and~~ **would serve no useful purpose; however, Mr. Garvin,** or anyone else who may contemplate such an operation in the future as herein found to be illegal, is hereby placed upon notice that this Commission will not condone any such operation unless and until a certificate of public convenience and necessity has been issued for such operation, or a prescriptive right so to operate has been shown.

The record does not show conclusively that any of the other respondents were engaged in the operation of the water taxi service herein involved. Therefore, this proceeding insofar as it relates to said respondents, will be dismissed.

The evidence shows that two common carriers by vessel, H-10 Water Taxi Company, Ltd., and DeLuxe Water Taxi Company leased, under bare boat charter, water taxis to George Garvin. These boats constitute operative property of said carriers and are necessary or useful in the performance of their duties to the public. Therefore, the lease of said boats, without authority of this Commission, was a violation of Section 51 of the Public Utilities Act. Said carriers are hereby placed upon notice that any lease of property useful in the performance of their duties to the public should receive the authorization of this Commission and failure to do so may result in the imposition of penalties.

ORDER

The above entitled case having been instituted on the Commission's own motion, public hearings having been held and the Commission being fully apprised of the facts,

IT IS HEREBY ORDERED that H-10 Water Taxi Company, Ltd., and DeLuxe Water Taxi Company cease and desist from leasing operative property without securing the prior approval of this Commission so to do.

IT IS HEREBY FURTHER ORDERED that Case No. 4850 be and the same is hereby discontinued.

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

Dated at San Francisco, California, this 20th day of

May 1947.

Harold J. Hull
Justin J. Gorman
Earl H. Powell
A. J. [unclear]
Kenneth [unclear]

Commissioners