

ORIGINAL

Decision No. 40469

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

- Application of GIBSON LINES for a certificate)
to operate a passenger stage service between) Application No. 28389
Sacramento, North Sacramento, West Sacramento)
and various nearby points.)
- Application of WILLIAM H. PIMENTEL for a)
certificate to operate a passenger stage) Application No. 28415
service between Sacramento, North Sacramento,)
Fair Oaks, and intermediate points.)
- Application of ERNEST TYHURST for a certifi-)
cate to operate a passenger stage service) Application No. 28416
between West Sacramento and Sacramento.)

REGINALD L. VAUGHAN and ROBERT E. GOCKE, for Gibson Lines, applicant in Application No. 28389 and protestant in Applications Nos. 28415 and 28416.

PATRICK J. McCARTHY, FONTAINE JOHNSON and JOHN J. WELSH, for Ernest Tyhurst, applicant in Application No. 28416, and protestant in Application No. 28389 as to that portion of said application relating to service between Sacramento and West Sacramento.

W. G. STONE, for Sacramento Chamber of Commerce, in support of Application No. 28389, and as interested party in Applications Nos. 28415 and 28416.

MITTELSTAEDT, COMMISSIONER

O P I N I O N

These applications relate to suburban bus service between Sacramento and nearby communities to the west, north and east of that city. Prior to the hearing, held June 12, 1947, at North Sacramento, counsel for William H. Pimentel advised the Commission that due to inability to procure bus equipment his client would not press his application. Neither the applicant nor his counsel entered an appearance at the hearing. Application No. 28415 will therefore be dismissed, thus leaving for consideration the Gibson and Tyhurst matters, which were heard on a joint record. Tyhurst

protests only that portion of the Gibson application dealing with service between Sacramento and West Sacramento. A review of events preceding the filing of these applications may serve to clarify the issues.

Prior to and during the early part of World War II suburban bus service between Sacramento and various communities to the north and east, including North Sacramento, Rio Linda, McClellan Field, Fair Oaks and others, was rendered by William H. Pimentel. In 1942, Pimentel sold his business to A. J. Chapin, operating under the name of North Sacramento Stage Lines (later incorporated as North Sacramento Transit Lines).⁽¹⁾

Bus service between Sacramento and nearby communities to the west across the Sacramento River, including West Sacramento, Broderick and Bryte, was formerly provided by Ernest Tyhurst, who in 1939 (Decision No. 31656, Application No. 22438) acquired certain operative rights created in 1926 by earlier decisions of the Commission. In 1945, Tyhurst transferred the business to F. O. Johnson for \$40,000, under an agreement, dated December 1, 1944, whereby Johnson was to assume certain obligations theretofore

(1) In Application No. 28415, filed May 7, 1947, Pimentel requests an order authorizing him to reacquire the rights sold to Chapin. He alleges that under the terms of the contract whereby Chapin acquired the rights, he (Pimentel) retained a vendor's lien thereon, and that the title to the rights was to revert upon default by the vendee. (See D.35778, Sept. 15, 1942, Appl. No. 25202; also D.39407, Sept. 10, 1946, Appl. No. 27561.) The application alleges default on the balance (about \$26,000) of the purchase price, attempted operation of the line by Pimentel during the last week of April, 1947, under an agreement with the North Sacramento Transit Lines stockholders, and inability to continue operations due to financial difficulties in which the corporation was involved. In view of the abandonment of that application there is no need to discuss various infirmities to which it is subject.

owed by Tyhurst, leaving a net price of \$32,329.75 to be paid in monthly installments. (Decision No. 37968, June 12, 1945, Application No. 26516.) Johnson at that time also held bus operative rights authorizing service between Woodland, Davis, Broderick and McClellan Field. By Decision No. 39665, dated November 26, 1946, in Application No. 27940, Johnson was authorized to sell his bus operations to North Sacramento Transit Lines for \$50,000, of which \$12,372.78 was stated to represent the value of the equipment and \$37,627.22 the value of the operative rights. As part of the transaction Chapin and North Sacramento Transit Lines agreed to assume payment of various obligations owed by Johnson to Tyhurst, and by Tyhurst to Fontaine Johnson (Tyhurst's counsel in these proceedings), arising out of the contract of December 1, 1944, and the subsequent assignment of the income thereunder by Tyhurst to Fontaine Johnson, given to secure the payment of two promissory notes totalling \$8,500. Those obligations, amounting to about \$26,000, were secured by a chattel mortgage covering the operative rights, executed by North Sacramento Transit Lines under the authorization of Decision No. 39665 in favor of Tyhurst and his wife, and Fontaine Johnson. The mortgage provides that in the event

(2) By a previous decision (D.39407, Sept. 10, 1946, Appl. No. 27561) Chapin was authorized to transfer the properties acquired from Pimentel to North Sacramento Transit Lines, a corporation. Decision No. 39665, in addition to authorizing the transfer of the Johnson interests to North Sacramento Transit Lines and the execution of the chattel mortgage, granted to the corporation a new certificate covering the West Sacramento operation, as an extension of its existing rights to the north and east of Sacramento, and also granted a new certificate covering the former Johnson right between Woodland, Davis, Broderick and McClellan Field.

of default in the payments secured thereby, the mortgagees may take possession of the operative rights and proceed to sell the same, or may foreclose the mortgage by legal action in which a receiver may be appointed to take possession of and operate the properties.

As a result of the various transactions just described, North Sacramento Transit Lines emerged at the close of 1946 as the sole suburban bus operator in the territory here under consideration. It was soon in financial difficulties, however, and the service rapidly deteriorated. At midnight on May 1, 1947, all operations ceased. Anticipating that eventuality Gibson Lines, which has operated an interurban bus service in the Sacramento area and elsewhere for many years, on April 30, 1947 filed an application for a certificate to provide service between Sacramento and the communities above described, over nine routes. By Decision No. 40227, dated May 1, 1947, the Commission granted that carrier temporary operative authority, and service was begun over some of the routes at 5 a.m., May 2, 1947.⁽³⁾

Other events followed in rapid succession. On May 6, 1947, the Tyhursts and Fontaine Johnson, mortgagees under the chattel mortgage executed December 21, 1946, by North Sacramento Transit Lines, filed suit in the Sacramento County Superior Court against the corporation and A. J. Chapin asking judgment for \$26,168.35 and interest, and for the appointment of a receiver to take possession of the operative rights and properties. That

(3) By a supplemental order (D.40316, May 27, 1947, Appl. No. 28389 - 1st Sup.) certain changes in routes were authorized on a temporary basis, and temporary authority was also given to render a limited express service over a portion of the routes.

action was still pending on June 12, 1947, the date of the hearing on these applications. On May 7, 1947, Pimentel and Tyhurst filed applications setting forth the transactions previously described, and asking for authorization to reacquire the rights they had theretofore sold to North Sacramento Transit Lines. As stated, Pimentel has abandoned his application. The Tyhurst matter will be considered following discussion of the Gibson showing on its request for a permanent certificate.

The evidence in support of the Gibson application was both comprehensive and convincing. The carrier and its predecessors have long been engaged in bus transportation in the territory here involved in connection with widespread operations covering a large part of Northern California, as well as east to Reno, Nevada. Terminal facilities at Sacramento are modern, well equipped and conveniently located downtown, and are available to suburban patrons as well as to those traveling on interurban schedules. Present motor vehicle equipment appears to be adequate as to quantity, and will be augmented by units now on order which are designed primarily for local service. Schedules placed in operation on and after May 2, 1947, following the grant of temporary rights, though modified to some extent as dictated by experience during the first few weeks of operations, appear to be reasonably adequate at the present time for the local service proposed. If granted permanent authority, however, the carrier intends to make further surveys of the territory, and as the need for and feasibility thereof develop, will supplement present operations with additional routes and schedules.

A basic one-way adult fare of five cents is proposed, applying within each of twelve designated zones, with round-trip

fares at 180 per cent of the one-way fare, Adult individual and school children's commutation fares are also provided. The proposed tariff also indicates that express will be transported under present local express tariffs on file with the Commission. No evidence was offered, however, to establish the need for express service in connection with the operations here under consideration, although such service was authorized on a temporary basis, at applicant's request, over a portion of the routes. Authority to transport express will accordingly be deferred until such time as applicant may establish the need therefor by supplemental application.

Approximately twenty residents of West Sacramento, North Sacramento and other localities here involved testified in support of the application, and were unanimous in requesting that the Gibson Lines' service be continued. Many of those witnesses had used one or more of the other bus services operated by North Sacramento Transit Lines and by Tyhurst and Johnson, and stated that the Gibson buses were cleaner and more dependable, on the whole, than those of the former operators. Instances of breakdowns, discourtesy unsafe operations and other operational defects were given by a number of witnesses who, at one time or another, had suffered such experiences while riding the buses of the previous operators.

The Gibson application was also strongly supported by public authorities and civic organizations in the territory, including the Board of Supervisors of Sacramento County and the Sacramento City Council. A representative of the Sacramento

(4) See Footnote 3, supra.

(5) Much of such testimony related to operations conducted during the war years, when all transportation services were considerably strained.

Chamber of Commerce, corroborating testimony previously given by Beverly Gibson, vice-president and general manager of Gibson Lines, stated his belief that one strong carrier like Gibson Lines would be in a position to render a more economical and efficient service than would two competing carriers. Population is increasing and industry is developing in the territory west, north and east of Sacramento, he said, and dependable bus service is needed between Sacramento and those areas.

The Tyhurst application requests authorization to reacquire the West Sacramento operative rights transferred to North Sacramento Transit Lines under Decision No. 39665, and to resume service under those rights. By the terms of the mortgage, heretofore mentioned, the mortgagees were given an immediate right of possession of the hypothecated property on default by the mortgagor, and could either sell the rights or foreclose the mortgage by legal action, in which a receiver might be appointed to take possession of and operate the bus line. As above stated, foreclosure proceedings are now pending, but as of the date of the hearing in these applications no receiver had been appointed.

Neither Tyhurst nor anyone else who might be entitled to possession of the West Sacramento properties has come forward with a feasible plan for rehabilitation of the line. In fact, this applicant's own testimony suggests that he would find it difficult to provide the necessary finances, equipment and operating personnel at this time.

Whether or not Tyhurst may have some legal claim to the West Sacramento operative right, no actual bus operations have been

conducted by either North Sacramento Transit Lines or Tyhurst under that right subsequent to May 1st of this year. Nor has Tyhurst submitted any evidence indicating his real ability to begin and continue an adequate transportation service. On the other hand, when North Sacramento Transit Lines ceased operations, Gibson Lines promptly sought and was granted temporary authority to render the needed service, and strong public support is evidenced for the continuance of that service. The fact that the Commission has once granted an operative right to serve in a given territory does not preclude it from granting another when the public interest so requires.

It is concluded that public convenience and necessity require that Gibson Lines be granted a permanent operative right between Sacramento and the various communities now being served by it under the temporary certificate heretofore issued. The order to follow will provide for the cancellation of the temporary authority and the issuance in its place of a permanent certificate, with the exception, however, that no authority will be conferred at this time to render express service, in view of the absence of a showing of need therefor.

The application of Tyhurst to reacquire the operative right under which North Sacramento Transit Lines rendered service to West Sacramento prior to May 1, 1947, must be dismissed. If Tyhurst should perfect his claim to that right in the pending court action, the Commission would then be in a position to appraise the situation in light of that and other pertinent facts. His present application to have that right transferred to him is premature.

I recommend the following form of order.

O R D E R

Public hearing having been held on the applications of Gibson Lines, William E. Pimentel and Ernest Tyhurst herein, evidence having been submitted, and the Commission being now fully advised, and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED:

(1) That Gibson Lines, a corporation, be and it is hereby granted a certificate of public convenience and necessity authorizing the establishment and operation of service as a passenger stage corporation, as defined by Section 24 of the Public Utilities Act, for the transportation of passengers and their baggage between Sacramento, North Sacramento, Hagginwood, Del Paso Heights, Robla, Rio Linda, McClellan Field, Carmichael, Fair Oaks, Broderick, Bryte and West Sacramento and all intermediate points, as an extension of and to be consolidated with applicant's existing service, in the place and stead of the temporary certificate heretofore issued to applicant by Decision No. 40227, as amended by Decision No. 40316, in Application No. 28389, which temporary certificate is hereby cancelled.

(2) That in providing service under the certificate herein granted, applicant shall comply with and observe the following service regulations:

- a. Applicant shall file a written acceptance of the certificate her-in granted within a period of not to exceed 30 days from the effective date hereof.
- b. Within 60 days from the effective date hereof and on not less than 1 day's notice to the Commission and the public, applicant shall establish the service herein authorized and 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, appropriate tariffs and time tables.

- c. Subject to the authority of this Commission to change or modify them by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the following routes:

Route 1.

Over applicant's presently certificated routes from Sacramento via North Sacramento to junction of U. S. Highways 99-E and 40 and Marconi Avenue at Ben Ali; thence east along Marconi Avenue to junction of Marconi Avenue and Fair Oaks Boulevard at Carmichael; thence along Fair Oaks Boulevard to Fair Oaks; thence north on Fair Oaks Boulevard to its intersection with Sunset Avenue; thence east on Sunset Avenue to its intersection with Winding Way; thence north on Winding Way to its intersection with Greenback Lane at Orangevale.

Route 2.

Over applicant's presently certificated routes from Sacramento to intersection of U. S. Highways 99-E and 40 with the Lower Marysville Road; thence north along Lower Marysville Road to its intersection with El Camino Avenue (Gardenland); thence east along El Camino Avenue to its intersection with Del Paso Boulevard; thence along applicant's presently certificated route to the intersection of U. S. Highways 99-E and 40 and Marconi Avenue at Ben Ali; thence east over Marconi Avenue to its intersection with Fulton Avenue; with an alternative route from El Camino Avenue to Del Paso Boulevard via 6th Street, North Sacramento.

Route 3.

Over applicant's presently certificated routes from Sacramento to North Sacramento along Del Paso Boulevard to its intersection with El Camino Avenue, North Sacramento; thence along Del Paso Boulevard to its intersection with N. 22nd Street; thence along N. 22nd Street to its intersection with Grand Avenue; thence east on Grand Avenue to its intersection with Antelope Road; thence over applicant's presently certificated route to Gate No. 1 at McClellan Field.

Route 4.

Over applicant's presently certificated routes from Sacramento to North Sacramento, along Del Paso Boulevard to its intersection with El Camino Avenue, North Sacramento; thence along Del Paso Boulevard to its intersection with N. 22nd Street; thence along N. 22nd Street to its intersection with Grand Avenue; thence west on Grand Avenue to its intersection with Marysville Road.

Route 5

Over applicant's presently certificated routes from Sacramento to North Sacramento along Del Paso Boulevard to its intersection with El Camino Avenue, North Sacramento; thence along Del Paso Boulevard to its intersection with Nogales Avenue; thence west on Nogales Avenue to its intersection with Rio Linda Boulevard; thence north over applicant's presently certificated route along Rio Linda Boulevard to its intersection with Grand Avenue; thence east on Grand Avenue to its intersection with Marysville Road.

Route 6

Over applicant's presently certificated routes from Sacramento to North Sacramento along Del Paso Boulevard to its intersection with El Camino Avenue, North Sacramento; thence along Del Paso Boulevard to its junction with Marysville Road; thence along Marysville Road to Parker Homes.

Route 7

Over applicant's presently certificated route from Gibson Lines Depot west on "I" Street to the "I" Street Bridge; thence over "I" Street Bridge to 3rd Street, Broderick; thence along State Highways Nos. 16 and 24 to the intersection with Bryte Avenue; thence north along Bryte Avenue to its intersection with Riverbank Road; thence west along Riverbank Road to its intersection with Water Street; thence south on Water Street to its intersection with State Highways Nos. 16 and 24 and Reed Street; thence west along Reed Street to its intersection with Riverbank Avenue; thence along Riverbank Avenue to its intersection with U. S. Highway 40 and 99-W; thence east along U. S. Highway 40 and 99-W to its intersection with Park Boulevard; thence south along Park Boulevard to its intersection with Alameda Street; thence east on Alameda Street to Alabama Avenue; thence south on Alabama Avenue to 16th Street; thence east on 16th Street to Virginia Street; thence north on Virginia Street to 15th Street; thence east on 15th Street to Clarksburg Road; thence along Clarksburg Road to U. S. Highway 40 and 99-W; thence east on U. S. Highway 40 and 99-W to 5th Street, Broderick; thence north on 5th Street to D Street; thence east along D Street to 3rd Street; thence across "I" Street Bridge and along "I" Street to Gibson Lines Depot.

Route 8

Beginning at the intersection of Rio Linda Boulevard and Grand Avenue, Del Paso Heights; thence north on applicant's presently certificated route along Rio Linda Boulevard to its intersection with M Street, Rio Linda; thence along M Street to the Sacramento Northern Railway Tracks.

Route 9

Beginning at the intersection of Del Paso Boulevard and El Camino Avenue, North Sacramento; thence along Del Paso Boulevard to its junction with Marysville Road; thence along Marysville Road to its intersection with 16th Street; thence along 16th Street to its intersection with Bell Avenue; thence east along Bell Avenue to Gate 4, McClellan Field.

Applicant may turn its motor vehicles at termini or intermediate points either in the intersection of the street, or by operating around a block, in either direction, contiguous to such intersection.

(3) That Application No. 28415 of William H. Pimentel and Application No. 28416 of Ernest Tyhurst be and each of said applications is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Public Utilities Commission of the State of California.

The effective date of this order shall be 20 days from the date hereof.

Dated at San Francisco, California, this 28th day of June, 1947.

Harold J. Kule
Justus F. Calver
Ernest F. Paulsen
R. T. Dunning
Kenneth Potter
COMMISSIONERS