

ORIGINAL

Decision No. 41288

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
BRUCE W. ROBB for a passenger stage ) Application No. 28410  
certificate in Salinas and vicinity.) 1st Supplemental

Investigation of passenger stage )  
operations of CALTRANSIT LINES, a ) Case No. 4913  
corporation, and of G. W. McLEOD, )  
receiver of CALTRANSIT LINES. )

Harry L. Noland, for applicant; Herbert Cameron, for  
Caltransit Lines, protestant in Application No. 28410,  
and as its interests appear in Case No. 4913.

O P I N I O N

Bruce W. Robb seeks by this application to make permanent the temporary operative right conferred by Decision No. 40284, issued May 20, 1947, authorizing him to conduct a bus service in Salinas and its environs. Robb had operated the line for several years prior to 1945, but in that year sold it under a long-term contract to A. J. and Ione C. Chapin. (Dec. No. 37824, as amended, Appl. No. 26588.) In 1946 the Chapins, with Robb's consent, transferred the properties to Caltransit Lines, a corporation organized by them. (Dec. No. 38596, Appl. No. 27114.) Caltransit Lines conducted the operation until the latter part of April, 1947, when it became involved in financial troubles and suspended service for about two days, commencing at noon on April 23, 1947. On April 29, 1947, Robb, as the largest creditor of Caltransit Lines, applied for and secured an order from the Monterey County Superior Court appointing G. W. McLeod, a former employee of Robb, as receiver of the corporation. (Robb v. Caltransit Lines, No. 27694.) On May 5, 1947, Robb applied to the Commission for temporary operating authority, which was granted by the interim order

of May 20. The receiver was discharged on July 21, 1947. On August 26, 1947, Robb filed the present application, in which he asks that the certificate held by Caltransit Lines be cancelled and that his temporary authority be made permanent.

Caltransit Lines protests the granting of the application, and alleges that upon discharge of the receiver the operative right reverted to the corporation, which, it is stated, is desirous of preserving its assets and conducting the bus service. On September 2, 1947, however, the Salinas City Council revoked the Caltransit Line franchise and about a month later adopted an ordinance conferring a like franchise upon Robb. On September 16, 1947, the Commission instituted an investigation on its own motion (Case No. 4913), to determine whether there had been an unauthorized discontinuance or abandonment of service by Caltransit Lines, and whether, for that reason, its certificate should be revoked.

Upon the issues thus framed, a public hearing was held at Salinas on December 16, 1947, before Examiner Gregory, and the two proceedings were submitted for decision upon a joint record.

The evidence shows that in 1945 Bruce W. Robb, desiring to retire from the transportation business, entered into an agreement with the Chapins to sell his bus operative rights and certain other properties in Salinas for the total sum of \$70,000. By the terms of the contract, \$5,000 was payable upon authorization by the Commission of the transfer of the operative rights, and \$500 or more was to be paid monthly beginning 30 days after the transfer of the rights and the tangible property, the whole to be paid within ten years from the date of the transfer of the operative rights. The title to the

properties was to pass upon payment of the \$5,000. Payment of the balance was to be secured by a chattel mortgage covering seven buses, consisting of one 1936 White, two 1942 Dodges, two 1942 Fords and two 1944 Fords.<sup>(1)</sup> The agreement further provides that in the event of buyers' default in the payment of installments, or if their franchise should be revoked by reason of any action on their part, or if the personal property transferred should be levied upon by creditors, or if buyers should become bankrupt or insolvent or terminate the operation of the bus line, then all unpaid installments should immediately become due and payable; or, if seller should so elect, he might rescind the contract and retain as liquidated damages all sums previously paid. In the event of default, the agreement further provides that buyers consent to the retransfer to seller of the operative rights, subject to a one-year redemption period during which buyers may redeem the certificates and other personal property by paying the total amount due, plus costs incurred by seller as a result of the default. Seller also agrees to refrain from engaging in a competitive business in Monterey County for a period of five years from the date of the agreement.

The Chapins took over the operation of the bus line on May 1, 1945, and during the ensuing five months borrowed \$15,237.90 from the Capital National Bank of Sacramento, placed in service two new buses and one rebuilt vehicle and other equipment, and spent more than \$4,000 for bus repairs. During July, 1945, the Chapins caused

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(1) The parties appear to have executed two contracts, - the first, bearing a date of February 5, 1945, is attached to Application No. 26568 as Exhibit A. The second, dated February 10, 1945, forms part of Exhibit 4 of the Transferee's Questionnaire attached to Application No. 27114. The two contracts, however, appear to be substantially alike, and will be referred to hereafter as "the agreement".

to be organized a corporation under the name of Caltransit Lines, and later arranged - with Robb's consent - to transfer the bus line to the corporation subject to the Commission's authorization, which was granted by Decision No. 38596, dated January 16, 1946, in Application No. 27114. That decision authorized the corporation to execute a chattel mortgage in place of the one previously given to Robb by the Chapins, and also authorized the issuance of a note not exceeding \$42,717, payable in monthly installments of \$500 or more, including interest at the rate of 4% per annum. The order also permitted the corporation to assume payment of other indebtedness, amounting to approximately \$16,700, and to issue \$500 par value of its common capital stock, such stock and note issue and assumption of indebtedness to be for the purpose of acquiring the properties and rights of the Chapins under their contract with Robb. The decision, in addition, revoked the operative rights acquired by the Chapins from Robb under Decision No. 37824, and conferred a new certificate upon the corporation covering operations in Salinas and vicinity. It is this certificate that Robb here seeks to have cancelled and that is involved in the Commission's investigation in Case No. 4913.

Both Robb and A. J. Chapin testified at the hearing. Testimony was also given by: Carol F. Joy, Deputy Sheriff of Monterey County, who on April 23 and 25, 1947, at the suit of Eugene J. Miller (an accountant who had formerly worked for Robb), had levied attachments on motor vehicles, parts and monies of Caltransit Lines and Chapin; James H. McIntosh, staff member of the Salinas Chamber of Commerce, who testified that sometime in the spring of 1947 Caltransit Lines' buses were not in service, and that Robb had since been giving proper service; Francis E. Herle, City Clerk of Salinas, who testified that on a certain morning in the latter part of April he received a

telegram from an insurance company to the effect that the insurance of Caltransit Lines was being revoked, that for a few days Caltransit Lines was not operating bus service, that the City Council later revoked the Caltransit Lines franchise for failure to maintain insurance, and that an identical franchise had been granted to Robb; Harry L. Noland, Robb's attorney, who related in some detail a history of the events surrounding the suspension of service by Caltransit Lines and the steps taken by Robb to continue the operation of bus service in Salinas; Eugene J. Miller, who early in April, 1947, had been negotiating with Chapin to acquire Caltransit Lines and who, upon being advised by Chapin's insurance broker that the Caltransit Line coverage would be cancelled at noon on April 23, 1947, conferred with Dean Russell, Salinas manager of Caltransit Lines, regarding taking the buses off the streets, which was done, and who, with \$500 released from his attachment, on April 25, 1947, arranged with his personal broker to insure the bus line.

Coming now to the critical period in this affair, the evidence shows that Chapin and his attorney, Cameron, were in Salinas about the first week in April and had a conversation with Robb, in which Chapin said he could not continue with the operation of the buses due to lack of money, and Cameron said he thought he had a sale for them. A few days later Chapin picked up some of the equipment at the Franciscan Garage (used as a repair shop and garage for the buses), and that was the last time Robb saw him. It appears, however, that Chapin was again in Salinas during the time the buses were not running, for the purpose of making a supervisory trip and to confer with Miller, whom he had previously asked to handle the company's accounts in Salinas, and with whom, on or about April 4, 1947, he had on behalf of the corporation executed a memorandum agreement for the

sale of the bus line. At this time, the evidence shows, the corporation was indebted to Robb in the sum of approximately \$58,000, and was three months behind in the payment of installments under its agreement. The corporation at this time also owed about \$10,000 on open accounts, several hundred dollars in back wages to drivers, legal fees to Cameron, about \$11,000 in withholding and social security taxes to the Federal Government, and \$1800 to Miller. During this period Gaudin Motor Company, Miller and Cameron caused attachments to be levied against the corporation, and in September the Federal Government served a notice of levy upon the sheriff on its tax claim.

After McLeod was appointed receiver Robb proceeded to repossess the buses covered by the chattel mortgage and bought three buses which had been repossessed from the corporation by the General Petroleum Company. The Capital National Bank took back two buses which were parked in the Franciscan Garage, and which were at that time temporarily out of service. Robb also paid about \$4,000 for tire rental owed by Caltransit Lines, and purchased a new stock of tires for about \$3,500. He testified that he spent some \$13,000 in all to put the line back in operation.

During this critical time, it appears, Chapin was out of touch with the others who were attempting to restore some semblance of order to the tangled situation. The evidence shows that Noland, Russell and Cameron had all tried on several occasions to locate him, but without success. In this connection, Chapin testified that, following partial recovery from serious injuries suffered in an automobile accident in February, 1947, he was under doctor's orders to remain as quiet as possible, but that he had instructed Miller to

look after the accounts in Salinas, and in the early part of April had tentatively agreed to sell the bus line to Miller. He stated that he believed Russell and Miller were doing everything necessary to keep the line in operation, and even after he heard that Robb had taken over he did not think things would seriously go wrong. (2)

Chapin's own testimony, considered with other evidence previously discussed, tends to throw grave doubt on the likelihood of successful resumption of operations by Caltransit Lines, either at the time Robb took over, or after. Its buses were gone, its bank accounts were tied up and its financial obligations were heavy and largely overdue. Moreover, neither Chapin nor anyone connected with the corporation, present at the hearing, was able to state, in answer to questioning, whether Caltransit Lines had assets with which to purchase operating equipment or to pay its creditors. (3)

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(2) There is nothing in the record, however, to suggest that any official connected with Caltransit Lines, either before the disruption of service or after, conceived it to be his duty to advise the Commission of the emergency and seek appropriate relief. The first intimation of trouble came with the filing of Robb's application for temporary authority on May 5, 1947.

(3) Chapin's testimony on this subject is revealing. The following portion appears on pages 126 and 127 of the Reporter's Transcript, where Chapin was undergoing cross-examination by Robb's counsel:

"Q. Mr. Chapin, Caltransit Lines has no assets of any kind independent of what there may have been or may be here at Salinas, is that right?

"A. Well, not outside of Salinas, no.

"Q. In order to resume, for Caltransit Lines to resume operation, it would have to depend on whatever assets it had here at Salinas? A. Not necessarily. As I mentioned before, that can be acquired.

"Q. Can you tell the Commission at this time what assets, if any, are available to Caltransit Lines? A. I wouldn't attempt to make a statement to that effect at the present time.

"Q. Isn't it a fact that it is a hope that maybe something could be done rather than a fact? A. Isn't it true when anything is being prepared that it is in the state of hope before it really crystallizes?

"Q. That is true. A. It must be something along that line. Mr. Noland: That is all."

These, then, being the essential facts disclosed by the evidence of record, we are brought to the point of determining whether we are justified in permitting Robb to acquire permanent operating authority and in revoking the certificate held by Caltransit Lines.

The prime consideration in cases of this kind should always be the interest of the public. Public transportation agencies, while enjoying a limited monopoly conferred by certificates of public convenience and necessity, are not thereby guaranteed continuous life. Nor does the Commission, by granting such rights, say to the holder that he will thenceforth be free to conduct the authorized service under any and all circumstances. We have recently had occasion to mark the disintegration of another Chapin enterprise - North Sacramento Transit Lines - attended by much the same confusion and conflict of interest as seen here. (See Dec. 40469, App. 28389, etc. - 47 Cal PUC 309; Dec. 41144, Jan. 18, 1948, App. 28707.) In the former case we said (47 Cal PUC at p. 313): "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." The fact that a new operator, Gibson Lines, was there given a certificate, rather than the previous operator, as here, is of no significance. The important facts which should control our action are that there has been an unauthorized and serious disruption of service by an existing carrier, and that a qualified operator stands ready to assume the obligation to serve. When that is the case, and a temporary certificate has been issued to the new carrier who continues to render proper service, the Commission should be slow to deprive the public of that service at the request of the defaulting operator, who for financial or other reasons is manifestly



unable to carry on.

We conclude from the evidence that a permanent certificate should be granted to Bruce W. Robb in place of the temporary authority he now holds. We find from the evidence that Caltransit Lines, on April 23, 1947, without authority from the Commission, discontinued operations as a passenger stage corporation in Salinas. While the actual period of disruption of service by Caltransit Lines was not great, the fact of such unauthorized interruption of operations, together with the evidence of inability to resume service and the further fact of revocation of the company's local franchise, all point to the conclusion that the certificate held by Caltransit Lines must be revoked.

Bruce W. Robb is hereby placed on 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

A public hearing having been held in the above-entitled and numbered proceedings, evidence having been received and considered, the matters having been submitted for decision, 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 Bruce W. Robb be and he is hereby granted a certificate of public convenience and necessity authorizing the establishment and operation of service as a passenger stage corporation, as defined in Section 2 $\frac{1}{2}$  of the Public Utilities Act, for the transportation of passengers and baggage between points in Salinas, Santa Rita, Kaiser Camp, East Salinas (Alisal District), Camp McCullum, Eckhart Seed Company, Spreckels, Riverside and Boronda, and intermediate points, in the place and stead of the temporary certificate heretofore issued to said Bruce W. Robb by Decision No. 40284, in Application No. 28410, which temporary certificate is hereby cancelled.

(2) That in providing service pursuant to the certificate herein granted, 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 30 days from the effective date hereof.
2. 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.
3. 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 I

Between the intersection of Main Street and Alisal

Street, Salinas, and Santa Rita (Community, distance 3.4 miles), Main Street, U. S. Highway 101 to Santa Rita.

- (A) Beginning at the intersection of U. S. Highway 101 and Rochex (Salinas Airport), thence Rochex, South 4th Street, Curtis Street, 3rd Street, Boeing Street, 1st Street, Curtis Street, East Curtis Street, Tapadero Street, Chaparral Street, to the intersection of Chaparral Street and U. S. Highway 101.
- (B) Beginning at the intersection of Bernal Dr. (Rd) and North Main Street (U. S. Highway 101, Sherwood Park District), Bernal Drive (Rd), Natividad Road to Kaiser's Permanente Plant (6.8 miles), detouring on an appropriate road to serve Monterey County Hospital.

#### Route II

Beginning at the intersection of Main Street and East Market Street, (Salinas), East Market Street, Quilla Street, Paloma Street, Sycamore Street, Afton Street, Miami Street, Cross Avenue, Bardin Rd., Williams Rd., Del Monte Ave., Pacific Ave., Garner Ave., Sanborn Rd., to the intersection of Sanborn Rd. and Del Monte Ave.

- (A) Beginning at the intersection of East Market Street and Towt Street, Towt Street, Kentucky Street, Linden Avenue, Oregon Street, Sanborn Rd., Juanita Ave., Williams Rd., to the intersection of Bardin Rd. and Williams Rd.

#### Route III

Between the intersection of Main Street and Alisal Street, (Salinas), and Camp McCullum, Alisal Rd., to Camp McCullum, detouring over an appropriate road to serve the U. S. Army Air Base.

- (A) Beginning at the intersection of Alisal Rd. and Hebberson Street, Hebberson Street, East Street, Sanborn Rd., Connely Street, Eucalyptus Drive to Market Street.
- (B) Between intersections of Alisal Rd. and Griffin St. and East Market St. via Griffin Street.
- (C) Between the intersection of North Main Street and Monterey Street and the intersection of Monterey Street and Alisal Rd. via Monterey Street, Salinas.

Route IV

Beginning at the intersection of Gabilan, Salinas, via Gabilan Street, Front Street, Abbott Street, U. S. Highway 101, Harkins Rd. (Spreckels), Spreckels Rd., (near Riverside), Salinas-Monterey Rd., South Main Street, to intersection of South Main Street and Alisal Rd., Salinas.

- (A) Beginning at Junction U. S. Highway 101 and Harkins Rd. (Spiegel Foods Co.) via U. S. Highway 101 to Eckhart Seed Co.
- (B) Beginning at the intersection of Railroad Ave. and Spreckels Rd. (Spreckels), Railroad Ave., 3rd Street, Llano Street, to Spreckels Rd.

Route V

Beginning at the intersection of Central Ave. and North Main Street, Central Avenue, Lincoln Avenue, Natividad Rd., West Market Street, Boronda Rd. (Boronda District), Airport Rd., to North Main Street, (U. S. Highway 101).

- (A) Between the intersection of Natividad Rd. and West Market Street, and unnamed street and North Main Street via Natividad Rd. and unnamed street.

Route VI

Beginning at the intersection of Gabilan Street and Main Street, Gabilan Street, Capitol, Park Street, Villa, Wilson, Santa Barbara, Nacional, Central, Lorimer, Alisal, Homestead, Iverson, Lang, Riker, Alisal, Salinas (Clay), Winham, Front, Maple, Carmel, Santa Lucia, Laureles, El Paso, Alameda, Romie Lane, California to Winham.

- (A) Between the intersections of Salinas and Gabilan, and Salinas and Alisal Street via Salinas.

(3) That the certificate of public convenience and necessity heretofore granted to Coltransit Lines, a corporation, by Decision No. 38596, in Application No. 27114, authorizing service as a passenger stage corporation in and in the vicinity of Salinas,

California, be and it is hereby revoked, and all effective tariffs and schedules filed in connection therewith are hereby cancelled.

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

Dated at San Francisco, California, this 9<sup>th</sup> day of March, 1948.

*R. Z. [Signature]*  
*Justin J. Casper*  
*J. A. [Signature]*  
*Harold [Signature]*  
*Kenneth [Signature]*  
COMMISSIONERS