

ORIGINAL

Decision No. 41510

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
WILLIS M. KLEINENBROICH (MODESTO MOTOR) Application No. 25874
BUS SERVICE), for modification of) 2nd Supplemental
certain routes.)

In the Matter of the Application of)
E. M. LESTER for a certificate to)
operate passenger stage service) Application No. 28342
between Modesto and suburbs lying to)
the north and northwest.)

E. M. Lacy, for Willis M. Kleinenbroich; Ronald E. Fates,
for E. M. Lester; Frank C. Damrell, for Mary Maritzen
and E. E. Osthues (Modesto Transit Co.), interested party.

O P I N I O N

These applications relate to passenger stage service between downtown Modesto and residential areas in the northern portion of the city and adjacent county territory. Public hearings were held at Modesto before Examiner Gregory on September 29 and December 9, 1947, following which the applications were submitted on briefs.

There are at present three passenger stage lines operating in the northern part of Modesto and adjacent county territory. Two of the lines, Modesto Motor Bus Service and Modesto Transit Company, also serve outlying areas south of the city. Those routes are not involved here.⁽¹⁾

(1) After the applications were submitted, but before briefs were filed, Kleinenbroich asked that his request to modify a portion of his Paradise Tract route (Route 1) southwest of the city be granted in advance of a final determination of the proceeding, due to public demand. The request was unopposed, and was granted by an interim order. (Decision No. 41262, March 2, 1948.)

The Modesto-Riverbank-Oakdale Stage Line, also operated by Kleinenbroich, provides service along J Street and McHenry Avenue, leaving downtown Modesto at 5:15, 8:20, 10:00 and 11:50 a.m. and 4:00, 5:40 and 10:15 p.m., six days per week. A local fare of 10 cents is charged.

The Modesto Motor Bus Service "Fairmont Avenue" route (Route 2), which Kleinenbroich here seeks to modify, presently operates northeasterly in a counter clockwise loop starting from 10th and H Streets, near the Courthouse, and proceeding out past the County Hospital on the eastern limits of Modesto, and along the northern edge of the city westward via Lucern Avenue, Ila Way, Fairmont, Brady, Coldwell and College Avenues, past the Modesto Junior College on downtown via 10th Street to H Street. As proposed here, portions of the route east and west of McHenry Avenue would be revised to permit safer operation by eliminating certain obscured intersections and by avoiding the Enslen School turn at Brady and Coldwell which is hazardous for children. The new route is also designed to afford greater convenience to the public in residential tracts and areas generally lying between Orangeburg Avenue on the north and Roseburg and Fairmont Avenues on the south, both east and west of McHenry Avenue. These changes would involve an increase of about .3 mile per trip, due to the slightly greater length of the proposed route east of McHenry Avenue.

Kleinenbroich owns seven buses, two of which are operated on the Modesto-Riverbank-Oakdale line and three on Routes 1 and 2 in the local Modesto service. Two units are maintained as standby equipment. On the Fairmont Avenue route buses operate from downtown Modesto on a half-hourly schedule six days per week, from 6:15 a.m.

to 7:45 p.m., then at 8:45, 10:15 and 11:15 p.m. On Sundays and holidays hourly schedules are run between 10:15 a.m. and 7:15 p.m. The adult fare is seven cents, or four rides for 25 cents. School children's fares are ten rides for 55 cents or 20 rides for one dollar.

Kleinenbroich testified that he operated 308 miles per day on both local routes at an approximate cost of 24 cents per mile, with an average monthly profit from both routes of about \$100, forty per cent of which is derived from the upper portion of the Fairmont Avenue route. His opposition to Lester's proposed service in that area, he said, is based on the probability that people living in the vicinity of Roseburg and Fairmont Avenues east and west of McHenry Avenue, and in the James, Monaco and Mensinger tracts between Roseburg and Orangeburg west of McHenry, who now ride his buses, would be diverted to Lester's line. Before discussing Lester's proposal, however, it may be appropriate at this point to consider the other operator, Modesto Transit Company, which, though not an applicant here, claims by reason of certain past events to have a vital interest in the outcome of this proceeding.

The Modesto Transit Company presently operates a route in the northwest section of Modesto from the Courthouse (11th and I Streets), along 9th, L and 12th Streets and Virginia Avenue to Coldwell Avenue. The line formerly continued from the latter point out to Hammond General Hospital (now Modesto State Hospital), located west of Highway U. S. 99 about 2.5 miles northwest of the business section of Modesto. This segment of the route was suspended in 1946 coincident with the authorization of a 10-cent fare, or seven rides for 50 cents, on the remaining parts of the system, which

includes routes to South Modesto Acres and the Modesto Airport, located outside the city to the south and east. (Dec. 38808, April 2, 1946, App. 27183.)

On March 22, 1947, three weeks before Lester filed his application, Modesto Transit Company applied to the Commission for authority to restore service to Modesto State Hospital over a modified route. The proposed route extended north from Coldwell and Virginia Avenues (termination of the present route) to Roseburg, west on Roseburg to Carver Road, north on Carver Road to the Wilen Tract, and thence west to the hospital via Clayton Avenue and across U. S. Highway 99, returning to 12th and I Streets via the same route. The application alleged that reactivation of the hospital and an increasing population in the area northwest of Modesto had created "a real need" for the proposed service. This route, in addition to serving the hospital, was designed to tap the growing College Gardens, Wilen, Francek and Woodman Tracts lying northwest of the city between the Tidewater Southern Railway tracks and U. S. Highway No. 99. The proposal was later abandoned after operating officials of the carrier determined that it would not be financially practicable in the absence of full reactivation of the hospital, which was expected to take place during the spring of this year. (Dec. 40359, June 3, 1947, App. 28298.)

At the first hearing on the Lester application, September 29, 1947, counsel for Modesto Transit Company related the above facts, and also pointed out that Lester's proposed route would duplicate the westerly portion of Modesto Transit Company's modified route to the hospital. Three days before the first hearing, Kleinenbroich filed his present application for revision of his routes. After taking some testimony in the Lester matter, counsel for all three parties

stipulated that the Lester and Kleinenbroich applications, together with the Modesto Transit Company proposal, if revived, should be heard together at a later date, in order that the Commission might have before it the complete picture concerning bus service in the northern part of Modesto.

At the hearing on December 9, 1947, counsel for Modesto Transit Company stated that even though that carrier did not then desire to revive its application, it was opposed to the granting of any right to serve in the area northwest of the city.

We are now in a position to consider Lester's application in the light of the existing situation disclosed by the foregoing facts. His proposal, as finally modified during the course of the hearings, contemplates service on an approximate hourly headway between the Courthouse in downtown Modesto and the Woodman and Francek Tracts north of Orangeburg Avenue. The route runs along J Street, out McHenry Avenue to Roseburg, then east to Sunrise, north to Coolidge, west to Florida, south a short distance to Orangeburg, and terminates at Tully Road and Granger Avenue in the two tracts above mentioned. The return trip would follow the same route.

Lester plans to charge a 10-cent fare over the entire line. The route as finally laid out coincides with those of Modesto Motor Bus Service and Modesto-Riverbank-Oakdale Stage Line from 11th and J Streets along J to McHenry Avenue; with that of Modesto-Riverbank-Oakdale Stage Line north on McHenry to Roseburg and at the intersection of McHenry and Coolidge; and with that of Modesto Motor Bus Service, as modified on McHenry from Fairmont north to Roseburg, and on Roseburg from McHenry east to Sunrise.

Lester testified that he intends to purchase two new

31-passenger Dodge buses, costing \$5,100 each, and possibly a 26-passenger Chevrolet for standby use, costing about \$2,000. His financial statement as of the date of filing the application shows the following data:

<u>ASSETS</u>		<u>LIABILITIES</u>	
Real Estate	\$9,000	Deed of Trust on	
1937 Ford Sedan	<u>500</u>	Real Estate	\$1,900
Total	\$9,500	Net Worth	\$7,600

At the first hearing Lester stated that he also had a 1947 Chevrolet automobile, on which \$800 was owing, and that he then owed \$1,800 on his home. He believed he could finance the operation by loans on his home and car, and by a G. I. loan. He will employ four drivers at a total wage of \$40 per day for a 7-hour shift, and will himself act as relief driver, but will draw no salary. Although he had made no detailed estimates of costs or revenues, he anticipated that the operation would produce a gross income of about \$100 per day.

Lester's potential patrons reside chiefly in two areas. The first, which is comparatively well built up, lies east and west of McHenry between Sunrise and the Tidewater Southern Railway tracks, and north and south of Roseburg generally between Coolidge and Orangeburg on the north and Fairmont on the south. The second area, northwest of Modesto, is that which lies between the Tidewater Southern Railway tracks and U. S. Highway No. 99. This includes the Woodman, Francek and Wilen Tracts north of Orangeburg, and the two College Gardens Tracts south of Roseburg and west of Tully Road. This locality, except for houses built and building in the various subdivisions, contains much open country. The same is true, also,

of the area north of Orangeburg between Sunrise and the Tidewater Southern tracks.

In support of his proposal Lester called sixteen witnesses. These consisted of five persons engaged in real estate and subdivision activity in the area here involved, nine housewives, a Junior College student and a retired business man. The testimony of the five real-estate witnesses indicates that considerable building has been going on in the area north and northwest of Modesto during recent years, that the subdivisions are rapidly filling up, and that new tracts are either opening up or are projected for the near future. As of the close of the year 1947, the situation in the various tracts according to these witnesses, was somewhat as follows: ⁽²⁾

<u>SUBDIVISION</u>	<u>LOCATION</u>	<u>LOTS SOLD</u> <u>HOUSES BUILT</u>	<u>HOUSES</u> <u>OCCUPIED</u>
Wilco Tract	N. of Orangeburg between Tully and Carver	168 built	166
Woodman Tract	N. of Granger between Tully and College	102 lots 35 sold 18 built	9
Francek Tract	S. of Granger between Tully and College	80 lots 72 sold 24 built	24
College Gardens No. 1	S. of Roseburg between Tully and Del Rio	96 built	84
College Gardens No. 2	S. of Roseburg between Del Rio and Del Vale	70 under construction	

The Monaco, James, Brady and Mensinger Tracts, lying generally in the area near McHenry between Orangeburg and Fairmont, are fairly well built up. According to Kleinenbroich, who made a house count in the area east of McHenry to Sunrise and from Roseburg

(2) There are several other tracts shown on the map (Ex. 1), but those mentioned throughout the opinion are the ones which figured chiefly in the testimony.

north to Coolidge, there were approximately 130 houses in that vicinity, without counting those on a number of secondary streets.

The testimony of the real estate witnesses, on the whole, dealt in a general way with the need for service in the various tracts in which they were interested.⁽³⁾ The other witnesses were more specific in their testimony. Five of these, who lived in the area east of McHenry and north of Roseburg, were patrons of Modesto Motor Bus Service and, if that carrier's route were to be changed along Roseburg as requested, or if Lester's application were to be granted, would be either on or within short walking distance of both routes. These persons now must walk either to Lucern and Sunrise or to McHenry and Fairmont, over roads or fields for distances ranging from about one-quarter of a mile to approximately one and one-half miles. In some cases the distances would be shorter if these patrons were to use the less frequent service of the Modesto-Riverbank-Oakdale bus on McHenry Avenue.

The six remaining witnesses, five of whom lived in the Wilon Tract and one in the College Gardens Tract, were also patrons of Modesto Motor Bus Service. These, when they used the service of that carrier, got on or off the bus at the corner of Coldwell and College. The walking distances here range from about one and one-half miles or more to the Wilon Tract to approximately one-half mile or more to the College Gardens Tracts. People living in the Woodman and Francek Tracts must walk about three-quarters of a mile east to McHenry to take the Modesto-Riverbank-Oakdale bus, or more than a mile south to take the Modesto Motor Bus Service vehicle at Fairmont and Brady, the nearest point. The evidence revealed that the people in these outlying subdivisions would experience little or no relief

(3) Of the five, three lived in Modesto and one in each of the Woodman and College Gardens Tracts.

from the proposed rerouting of Modesto Motor Bus Service in this area, but would be benefited to some extent by Lester's service especially in the Woodman and Francek Tracts in which his proposed route terminates.

It is to be expected that an operator interested in maintaining frequent service at a profitable level would be reluctant to extend his routes through lean territory in order to reach places in which there is greater density of population. At the same time, the traveling public located in the general area in which stage service has been dedicated is entitled to receive a reasonable quantity and quality of service although to give it may impose an added burden on the carrier. And where a community or area in which existing carriers are operating is shown to be developing and in need of additional transportation, we conceive it to be the duty of those already in the field to make a serious effort to meet reasonable needs. Failing this, they may not be heard to complain if additional facilities are authorized.

We have in the case before us a somewhat unique problem. The most heavily populated area is now served by Modesto Motor Bus Service. This is the vicinity generally on both sides of McHenry Avenue from the Tidewater Southern Railway tracks on the west to Sunrise Avenue on the east, and north and south between Orangeburg and Fairmont Avenues. It is within this area that Modesto Motor Bus Service, for reasons of safety and for the greater convenience of the public, desires to reroute its line east and west of McHenry Avenue. Between downtown Modesto and the intersection of McHenry and Fairmont Avenues people either walk to their destinations if close to the downtown section, or, if the rerouting were authorized,

would have available both of Kleinenbroich's lines along J Street and for a short distance on McHenry between Fairmont and Roseburg. The extreme northern end of the territory which Lester offers to serve, along Coolidge and Orangeburg on both sides of McHenry, clearly would receive little benefit from the rerouting of Kleinenbroich's Fairmont Avenue line and patrons there would be compelled to continue using the infrequent service of Modesto-Riverbank-Oakdale Stage Line. West of the Tidewater Southern Railway, the territory in which Modesto Motor Bus Service has disclaimed any interest, there is evidence of need for additional facilities. Modesto Transit Company is not presently willing to serve that area.

Under the circumstances, and holding the public interest to be paramount, we find that public convenience and necessity require the establishment of passenger stage service as herein proposed by Lester. Revision of the route of Modesto Motor Bus Service east and west of McHenry Avenue appears to be justified in the public interest, and will accordingly be authorized. The permission to modify Kleinenbroich's Paradise Tract route (Route No. 1), heretofore given on a temporary basis by the interim order, will be confirmed.

E. M. Lester is hereby 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

Public hearing having been held on the above entitled and numbered applications, evidence and briefs having been received and carefully considered, the matters having been submitted for decision, the Commission now being fully advised, and basing its order on the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED:

(1) That E. M. Lester 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 24 of the Public Utilities Act, for the transportation of passengers and their baggage between the intersection of 11th and J Street, in the City of Modesto, and the intersection of Granger Avenue and Tully Road, in adjacent county territory north of Modesto.

(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 herein 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 5 days' 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 route:

Commencing at the Courthouse Square, 11th and I Streets, in the City of Modesto, thence via 11th Street, J. Street, McHenry Avenue, Roseburg Avenue, Sunrise Avenue, Coolidge Avenue, Florida Avenue, Orangeburg Avenue, College Avenue and Granger Avenue to Tully Road. Return via the same route.

Applicant may turn his 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 Decision No. 36997, rendered April 11, 1944, in Application No. 25874 of Willis M. Kleinenbroich, as modified with respect to applicant's Fairmont Avenue Route by Decision No. 38059, dated July 10, 1945, be and said Decision No. 36997 is hereby further modified by further amending Section 3 of Paragraph (2) of the service regulations therein set forth, to read as follows:

"Fairmont Avenue District

Commencing at 10th and J. Streets, thence via J Street, Downey Avenue, H Street, Scenic Drive, Coffee Road, Lucern Avenue, Sunrise Avenue, Roseburg Avenue, McHenry Avenue, Fairmont Avenue, Virginia Avenue, Coldwell Avenue, College Avenue and 10th Street to J Street."

(4) That the authorization to reroute a portion of applicant Kleinenbroich's Paradise Tract Route (Route No. 1), southwest of the City of Modesto, heretofore granted on a temporary basis by Decision No. 41262, dated March 2, 1948, in Second Supplemental Application No. 25874, be and it is hereby confirmed.

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

Dated at San Francisco, California, this 27th day of April, 1948.

R. F. [Signature]
James F. [Signature]
Ernest H. [Signature]
Harold P. [Signature]
Samuel [Signature]
COMMISSIONERS