

ORIGINAL

Decision No. 41786

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
CALIFORNIA MEDICAL MISSIONARY AND )  
BENEVOLENT ASSOCIATION, a corporation, )  
doing business under the name and style )  
of HOWELL MOUNTAIN BUS LINE, for a )  
certificate of public convenience and )  
necessity authorizing the transportation )  
of passengers, baggage and express be- )  
tween Angwin and the City of St. Helena, )  
serving all intermediate points.. )

Application No. 29143

In the Matter of the Investigation on )  
the Commission's own motion into the )  
operations of F. H. LAWSON, doing )  
business as ST. HELENA SANITARIUM and )  
PACIFIC UNION COLLEGE BUS LINE, and )  
more particularly whether he has vio- )  
lated, or is now violating, Sections )  
17(a) 2 and 50 1/2 of the Public Utilities )  
Act, Statutes of 1917 and 1927, respec- )  
tively, as amended, or any of the pro- )  
visions of the Commission's General )  
Orders Nos. 79 and 93-A. )

Case No. 4951

PALMER & YORK by LOWELL PALMER, for applicant and intervenor  
in Case No. 4951.  
F. H. LAWSON, in propria persona in Case No. 4951.  
ROY FISHER, City Councilman, for the City of St. Helena,  
interested party.  
J. T. PHELPS, for the Field Division, California Public  
Utilities Commission.

O P I N I O N

California Medical Missionary and Benevolent Association,  
a California corporation, seeks a certificate authorizing it to  
establish and operate a service as a passenger stage corporation  
for the transportation of passengers, baggage and shipments of  
express weighing not in excess of 100 pounds each, on passenger  
carrying vehicles between St. Helena and Angwin and intermediate  
points via Sanitarium and White Cottages. This operation would be  
conducted under the firm name Howell Mountain Bus Line.

In Case No. 4951, the Commission instituted an investigation into the operations, rates, rules, charges, practices and service of F. H. Lawson, an individual, doing business as St. Helena Sanitarium and Pacific Union Bus Line, engaged in the transportation of passengers and property as a certificated carrier between St. Helena and Aetna Springs and intermediate points, including Sanitarium, Angwin and Pope Valley to determine whether he has violated or is now violating the provisions of Sections 17(a) 2 and 50½ of the Public Utilities Act or any of the provisions of the Commission's General Orders Nos. 79 and 93-A, in that he is rendering inadequate service, failing to maintain schedules, operating unsafe equipment or operating equipment in an unsafe manner, and charging fares in excess of those authorized and published in his tariff.

A public hearing thereon was had at St. Helena on May 19, 1948, before Commissioner Potter and Examiner Paul and the matters were submitted. The record was consolidated for the receipt of evidence and the issuance of a decision.

We shall first discuss the evidence in regard to the application for a certificate which was unopposed. The only other passenger stage service provided between the points involved is that of Lawson who, when asked to state his position with regard to granting the application replied, "I not only have no objection, but I think it is the best thing for the community."

At Angwin applicant maintains a college known as Pacific Union College. At Sanitarium it conducts a sanitarium and hospital known as the St. Helena Sanitarium and Hospital. According to the record, Sanitarium and Angwin are 3.5 and 8.5 miles, respectively,

from St. Helena. Applicant proposes a one-way fare between St. Helena and Sanitarium and between St. Helena and Angwin of 15 cents and 30 cents, respectively. Other proposed fares would be in proportion. Initially, three round trip schedules would be operated, two of which would be daily except Saturdays and the other daily except Fridays and Saturdays. Additional schedules would be established as indicated by public need. One 1941 model White bus and one 1943 model International bus with seating capacities of 26 and 29 passengers, respectively, would be used to provide the proposed service.

There was testimony that about 1,000 students are in attendance at the College and other schools at Angwin throughout most of the year. It was estimated that approximately 2,500 to 3,000 people reside in the growing community of Angwin. Approximately 300 people are employed at the hospital at Sanitarium who live in the immediate vicinity in a community said to have a population of between 1,200 and 1,500. It was stated that during 1947 the hospital served about 4,500 in-patients and more than 7,000 out-patients. Witnesses testified to the effect that the present operation conducted by Lawson is inadequate and unsatisfactory because of failure to maintain schedules and the asserted practice of assessing fares and charges in excess of his published tariff rates. Others stated that many of the employees of the institutions operated by applicant are on a missionary wage and are unable to pay the charges assessed by the present carrier. Applicant has under construction a major addition to its present plant. Applicant's business manager testified that it has been difficult to obtain workmen and also to obtain staff employees, most of whom must find living accommodations at St. Helena or other places remote from the hospital or college, as they are unable to pay

the present rates charged by the existing carrier.

A full consideration of the evidence of record leads to the conclusion, and we find that public convenience and necessity require the establishment and operation of the passenger stage service proposed by applicant. Accordingly the service will be authorized.

We shall now turn to the evidence adduced in the investigation proceeding, Case No. 4951. Respondent testified that his most recent passenger tariff is that filed with the Commission bearing an effective date of November 15, 1938. According to the record this is respondent's Local Passenger Tariff No. 1, C.R.C. No. 1, Rule No. 14 of which reads as follows:

"On Call Service will be operated FROM St. Helena to other points named herein at minimum charge of two (2) adult fares as published in Section 2."

Section No. 2 of this tariff shows the following one-way and round trip adult fares:

Between	Kind of Ticket	St. Helena	Sanitarium	Angwin	Los Pesados	Pope Valley
And						
Sanitarium	OW	\$ .50	\$	\$	\$	\$
	RT	1.00				
Angwin	OW	.50	.50			
	RT	1.00	1.00			
Los Pesados	OW	.75	.75	.50		
	RT	1.00	1.00	1.00		
Pope Valley	OW	1.00	1.00	.75	.50	
	RT	1.80	1.80	1.00	1.00	
Aetna Springs	OW	1.50	1.50	1.00	.75	.50
	RT	2.50	2.00	1.80	1.00	1.00

Time Table No. 6 of respondent, of record herein, bears an effective date of May 1, 1947, and contains the following

## Information:

Frequency		Daily	Daily	Daily
Miles	Stations	A.M.	P.M.	P.M.
0.0	St. Helena	8:16	12:16	8:16
3.5	Sanitarium	8:24	12:26	8:26
8.0	Angwin	8:38	12:41	8:41
8.0	Angwin		OC 12:42	
15.0	Pope Valley		OC 12:52	
19.0	Aetna Springs		OC 1:01	

Frequency		Daily	Daily	Daily
Miles	Stations	A.M.	P.M.	P.M.
0.0	Aetna Springs		OC 1:30	
4.0	Pope Valley		OC 1:39	
11.0	Angwin		OC 1:49	
11.0	Angwin	8:38	1:50	8:44
15.5	Sanitarium	8:51	2:05	8:59
19.0	St. Helena	8:59	2:15	9:09

## ON CALL SERVICE

Twenty-four hours - seven days a week - between St. Helena and Aetna Springs and intermediate points for a minimum of three (3) passengers.

Respondent was granted a certificate authorizing passenger stage service between St. Helena and Aetna Springs via the main county highway and the intermediate points of Sanitarium, Angwin and Pope Valley (Decision No. 31313 in Application No. 22091). Said respondent testified that in providing service pursuant to this certificate he used one Kaiser automobile and one 1941 year model Hudson sedan. This equipment is also used by respondent in providing a general taxicab service in the vicinity of St. Helena.

A witness testified that she was transported by respondent from St. Helena at about 5 p.m. on March 31, 1948, to Angwin for

which she was charged \$2.00. This witness had purchased a passenger stage interline ticket at Eureka for transportation between Eureka and Angwin and upon boarding respondent's equipment at St. Helena presented the portion of the ticket applicable to transportation from St. Helena to Angwin which the driver refused to accept, stating that the ticket was good only on a scheduled run; that he was providing a special trip for her and that the witness could obtain a refund on the ticket which was surrendered to him. The witness stated that she never received the refund. Another witness testified that she arrived at the Pacific Greyhound Lines depot at St. Helena about 8:16 p.m. on January 22, 1948, which was a scheduled leaving time of respondent from that point. Respondent transported her at that time from St. Helena to Sanitarium and demanded and collected a fare of \$1.00. The witness did not remonstrate with respondent about the fare collected but stated that he had earlier remarked to her that he would charge her only 75 cents if other passengers rode the same schedule. According to the witness four other passengers rode the same schedule.

A member of the Commission's Field Division testified that he called on respondent on April 28, 1948, who described to the witness the equipment used in performing respondent's certificated service. It was developed from the testimony of this witness that respondent made a practice of meeting all schedules of Pacific Greyhound Lines at St. Helena and picked up and transported passengers to destinations as requested. Respondent as a rule did not make regularly scheduled trips to or from Angwin or Sanitarium unless he had received a telephone call that passengers desired transportation from those places. This was under an arrangement made with the Sanitarium and the College, according to the witness,

so that respondent could avoid making unnecessary trips. This witness further testified that on April 27, 1948, respondent pursuant to a telephone request picked up the witness at Angwin at about 10:35 a.m. and transported him to St. Helena for which a charge of \$2.00 was demanded and paid. Respondent, according to the witness, characterized this as an "on call" service for which the fare was \$2.00. This witness, in company with another member of the Commission's Field Division, examined the report sheets of respondent's drivers for the month of April 1948. They prepared copies of these reports, in evidence as Exhibit No. 3, which purport to show that on 17 out of 25 days of the month covered by the report, about 53 passengers were transported by respondent between certificated points at individual fares which in 21 instances were less than, and in 32 cases were considerably in excess of the lawfully published fares of respondent. This exhibit also purports to show that approximately 82 passengers were transported between said points on 21 days of the said month of April 1948 at the fares published by respondent if allowance is made for the collection of a 10 cent federal tax on a 50 cent fare which respondent stated was done. Not only was there no objection to the receipt of this exhibit in evidence, but respondent stated he was present during its preparation, had made a comparison and said it was a duplicate of his drivers' report sheets.

As hereinabove set forth the one-way published fare for scheduled service between St. Helena and Sanitarium and between St. Helena and Angwin is 50 cents, and the one-way fare between the same points for "on call" service is \$1.00. On numerous scheduled runs, according to Exhibit No. 3, respondent charged individual one-way fares in various instances amounting to 54 cents,

60 cents, 75 cents, 85 cents, \$1.00 and \$2.00. Similarly for "on call" runs between those points said Exhibit No. 3 indicates that respondent charged individual fares of 60 cents, 75 cents, \$1.00 and \$2.00.

A witness from the Commission's Field Division testified that he had observed that respondent did not operate the schedule due to leave St. Helena at 12:16 p.m. on April 26, 1948. Another witness from said Division stated that he waited from 8:16 to 9:40 p.m. on April 27, 1948, at respondent's bus stop at Angwin and did not observe the operation of respondent's schedule due to arrive at and depart from that point at 8:41 p.m. and 8:44 p.m. respectively. During a conversation the following day between this witness and respondent it was disclosed that the latter schedule had been operated some time prior to the scheduled hour.

The desk clerk employed at the sanitarium testified that she was generally familiar with the schedules of respondent which served the sanitarium; that upon arrival of schedules the driver usually went into the sanitarium office to inquire as to passengers; that she is on duty at the times these schedules are due to arrive except the evening schedule; that the southbound noontime schedule of respondent usually stops and that the northbound schedule seldom stops at the sanitarium more than two or three times a week. She further testified that in order for passengers to obtain desired transportation from the sanitarium to St. Helena the witness was required to telephone respondent at St. Helena. This, so she asserted, occurred on the average of two or three times a day and was done because the witness did not expect the bus to appear as scheduled without the telephone call.



In his testimony, respondent admitted that he had raised his fares above those established in his published tariff; that his published fare for "on call" service between St. Helena and Sanitarium is \$1.00 but that for the period of the last six or seven years he had charged and collected only 50 cents for such service; and that he had charged and collected an individual fare of \$2.00 for transportation between St. Helena and Angwin on an "on call" basis for which his published fare was \$1.00. He contended, however, that on scheduled runs he charged and collected his published fare of 50 cents only, plus a federal tax of 10 cents, for service between St. Helena and Sanitarium and between St. Helena and Angwin notwithstanding that the correct tax on the 50 cent fare was only 7½ cents. He did not show whether the alleged tax so collected was remitted to the Federal Government. Respondent further stated that he increased his charges to the levels maintained by competitive taxicab operators for the same service.

Other evidence was produced relating to the condition of respondent's vehicles and the manner in which they were operated. We see no need to discuss this evidence.

A careful examination of all the evidence of record with respect to the investigation of the operations of respondent clearly shows, and we hereby find, that over a considerable period of time he has consistently charged, demanded and collected greater, less and different compensation for the transportation of persons between certificated points than the fares and charges applicable to such transportation as published and filed in his effective tariffs, all of which is in violation of Section 17(a) 2 of the Public Utilities Act. Such examination further shows without question, and we hereby find, that respondent has for a long time failed to provide passenger

stage service between certificated points at all of the scheduled times set forth in his effective time table on file with the Public Utilities Commission, which is in violation of said Commission's General Order No. 93-A. On these findings we conclude that respondent's operative rights should be revoked and annulled.

California Medical Missionary and Benevolent Association, a corporation, 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.

#### ORDER

An investigation into the operations and practices of F. H. Lawson having been instituted by the Commission on its own motion and an application having been filed by California Medical Missionary and Benevolent Association, a corporation, for a certificate authorizing passenger stage service, a public hearing having been had, evidence having been received and considered, the matters having been submitted for decision, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED:

- (1) That the operative right created by Decision No.

31313 on Application No. 22091 is hereby revoked and annulled and all effective tariffs and time tables on file with the Commission in the name of F. H. Lawson are hereby cancelled.

(2) That the Secretary of the Public Utilities Commission shall cause a certified copy of this order to be personally served upon said F. H. Lawson.

(3) That a certificate of public convenience and necessity is hereby granted to California Medical Missionary and Benevolent Association, a corporation, 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, baggage and shipments of express weighing not in excess of 100 pounds each on passenger carrying vehicles only, between St. Helena and Angwin and intermediate points via Sanitarium, Four Corners and White Cottages.

(4) That in providing service pursuant to 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 Orders Nos. 79, 80 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:

Over Main Street in St. Helens, Pratt Ave.,  
Sanitarium Road, Silverado Trail and White  
Cottage-Howell Mt. Road.

As to F. H. Lawson this order shall become effective  
upon the 20th day after service of this order upon him.

In all other respects this order shall become effective  
20 days after the date hereof.

Dated at San Francisco, California, this 29<sup>th</sup>  
day of June, 1948.

R. Z. Anderson  
Justin F. Calver  
Frank H. Howell  
Harold P. Hale  
Kimeth Potter  
COMMISSIONERS