

ORIGINAL

Decision No. 44145

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN K. SHULTS and JAMES W. WILLIAMSON,)
co-partners,)

Complainants,)

vs.)

Case No. 5180

CARL WHEAT,)

Defendant.)

Lowell and Lowell, by John R. Couzens, for complainants.
John D. Maatta, for defendant.

O P I N I O N

The complaint herein alleges that defendant is operating as a passenger stage corporation over the route for which a certificate of public convenience and necessity has been issued to complainants (Truckee, Squaw Valley, Tahoe City, California-Nevada State line) without a certificate of public convenience and necessity and in violation of the Public Utilities Act.

The defendant denies the allegations of the complaint, and alleges that he is operating a taxi and limousine service on an on-call basis by appointment only; that individual fares are not charged, and that he does not operate between fixed termini or over a regular route.

A public hearing was held in Tahoe City on April 13, 1950, before Commissioner Craemer and Examiner Gillard and the matter submitted for decision.

The evidence shows that defendant, under written agreement with Tahoe Tavern, leases a storage garage and service station,

conducts a travel service principally devoted to securing train, bus and airplane reservations and operates a "limousine" service. In connection with the latter, defendant owns a seven passenger De Soto and a five passenger Dodge, neither of which has any sign or marking indicating it is a for hire vehicle.

Defendant has operated his "limousine" service, based at Tahoe Tavern, for five years, usually from June 15 to September 15 of each year. However, for the winter season 1949-1950, Tahoe Tavern opened for the first time, and consequently defendant renewed operations for the period the Tavern was open - December 23, 1949, to February 26, 1950. Complainants' certificate is limited to periods commencing November 15 of each year and ending May 15 of the following year.

Defendant was called as an adverse witness by complainants, and also testified in his own behalf. He stated that he renders service only upon request - either by telephone, in person at the Tavern, or by mail through the Tavern. His cars do not cruise for business, do not park anywhere except at the Tavern, and do not meet trains or buses except upon prior request. He charges a fixed price for the passenger vehicle based upon time (\$6 an hour) or distance (e.g. Squaw Valley \$3) regardless of the number of passengers. Individual fares are not charged. Since a great number of his passengers are Tavern guests he, in agreement with Tavern management, permits transportation charges to be collected by the Tavern on his behalf. He in turn submits his statement to the Tavern twice monthly for remittance thus making his collection for such transportation service.

The Tavern in its literature advertises that it has a

limousine service available, but does not name the operator. He also stated that the Tavern has never refused to allow complainants or anyone else to pick up or deliver passengers on its property.

Defendant has no fixed routes, but will take persons wherever they want to go. If the passenger wants to delay en route, stand-by time at the rate of \$3 per hour is charged.

Complainants introduced some evidence of solicitation by defendant at the Greyhound Depots at Truckee and Tahoe City, although one of these witnesses, who operates the lunch stand at the Depot at Tahoe City, testified he frequently called defendant to pick up discharged bus passengers. John K. Shults, one of the complainants, testified that defendant operates almost daily between the Tavern and Truckee. This was the only evidence presented by complainants relative to regularity of route, or fixed termini, but they introduced no testimony to show that such service to Truckee was other than as described by defendant. Schults also testified that under his certificate he now only meets the 5:40 p.m. train arriving in Truckee, and that he meets all other trains with his "charter car service".

Defendant called the Southern Pacific agent at Truckee, who testified that five trains arrived daily; that complainants only meet the 5:40 p.m. eastbound train and that there is a very decided need for other connecting service between Truckee and Tahoe; that he has never heard defendant solicit, but has heard him call for passengers by name, and the witness has called the Tavern to get transportation for train passengers.

After carefully considering the entire record we are of the opinion that defendant is operating a private service for

people who desire to hire his automobiles at rates based upon the use of the cars without regard to the number of passengers, and that the destinations and routes are selected by the riders. The evidence is insufficient to find that defendant is operating as a passenger stage corporation within the meaning of the Public Utilities Act, and the complaint will therefore be dismissed.

O R D E R

A public hearing having been held and based upon the findings and conclusions set forth in the opinion,

IT IS ORDERED that the complaint be and it is hereby dismissed.

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

Dated at San Francisco, California, this 9th day of May, 1950.

R. E. Johnson
Justice J. Cramer
Frank L. Kelle
Harold A. Hale
Kenneth W. Potter
COMMISSIONERS