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between Alta Vista Drive and North Baker Street, (c) beginning at the intersection of Magnolia Avenue and North Inyo Avenue, thence along North Inyo Avenue, Walnut Avenue, Hillcrest Drive, Acacia Avenue and La Cresta Drive to its intersection with Magnolia Avenue, (d) beginning at the intersection of Flower Street and Mt. Vernon Avenue, thence along Mt. Vernon Avenue, Edwards Avenue, Manley Avenue, College Avenue, Locust Ravine and Quincy Drive to its intersection with Mt. Vernon Avenue, (e) along 19th Street between Spruce and F Streets, (f) along 24th Street between Spruce and F Streets, and (g) along Bay and Drake Streets between Hubbard and 24th Streets. Minor route changes required by such proposed abandonments are also requested.

Public hearings were held in Bakersfield on August 14 and 15, 1951, at which time evidence, both oral and documentary, was adduced. Application No. 32568 was submitted upon the filing of concurrent briefs which are now on file, and the matter is ready for decision.

Notice of the hearing and of the proposed abandonments was duly published in a newspaper of general circulation published in Bakersfield on August 3, 1951, and was duly posted on said day in all of the buses traveling over the routes affected by the proposed changes. Such notices remained continuously so posted to and including August 14, 1951.

According to the testimony of officials of applicant, it has been experiencing operating losses, especially over the portions of the routes sought to be abandoned. The City of Bakersfield protested the application and several residents, especially in the Homaker area, appeared to resist the abandonment of service requested there. One witness, who described himself as a public relations and advertising man, stated

that he had made a survey of the Homaker tract with reference to its need for transportation. His testimony as to the needs of residents in that area was not in serious conflict with that of officials of applicant as to the number of persons actually using transportation service there. The Commission finds as a fact that the portions of routes sought to be abandoned have not been, and cannot be, made remunerative. The application will, therefore, be granted by amending route descriptions designated as (d), (e), (j) and (l) in ordering paragraph (3) of Decision No. 45120, dated December 12, 1950, on Application No. 31878.

The vice-president of applicant testified that of the 10 lines now operated three were operated at a profit, one broke even, and six were operated at a loss; that with rising costs of operation it was evident that unless substantial economies were effected it would soon become necessary to increase fares. The changes proposed herein are sought in an effort to avoid an increase in applicant's fare structure ⁽¹⁾. With an average system cost per bus mile, which includes all expenses, of 32.43 cents, the record shows that during the most recent 12 months (August, 1950 to July, 1951, inclusive) system passenger revenue per bus mile has varied between a high of 33.42 cents and a low of 28.38 cents, averaging 31.03 cents for the full period.

The Commission's engineer testified that, in his opinion, a cost of 32.5 cents per bus mile did not appear

(1) The present fare is 10 cents per ride on any one line, with five cents additional for a transfer to a second line.

unreasonable, when compared with recent experiences of other carriers of similar characteristics in California; that, excluding administrative fixed costs, a minimum expense of 25 cents per bus mile could be reasonably anticipated, under present operating conditions, on this property.

From his study of the individual lines' earnings and bus miles operated, the engineer testified that Route 2, as a whole, showed the lowest earnings, per mile, of any of the 10 routes, amounting to 20.2 cents per bus mile, on a test in the latter part of July, 1951. For the full month of July, earnings on this route were 22.5 cents.⁽²⁾

Turning now to that portion of Route 2 along 30th and Pacific Streets, between Chester Avenue and Alta Vista Drive, sought to be discontinued, a distance of 1-1/4 mile, the record shows that 28 round trips are presently operated in daily service or a total of 70 bus miles on this segment. This is the only abandonment which was opposed. During the five day period in July, 1951, the combined pickup and discharge amounted to an average of 105 passengers per day,⁽³⁾ or 15.9 cents per bus mile. Consequently, service along this portion of the route can be continued only as an undue drain on the operating income from the balance of the system.

We have given recognition to the city's suggestion to loop one of the remaining lines on Chester Avenue through Homaker Park in order that service might be continued for approximately

(2) Exhibit No. 5.

(3) Exhibit No. 6.

100 persons in that locality, but, considering the far-reaching modifications which would result in an increased, odd-minute headway on the diverted route, it appears that the inconvenience to the present users of the route would materially exceed the benefits to the Homaker Park residents.

It is apparent from this record that the segment of Route 2 along 30th and Pacific Streets between Chester Avenue and Alta Vista Drive is not sufficiently supported by public patronage to warrant its continuation. We recognize that certain residents of the Homaker Park district will no longer be afforded transportation service through their area and, further, that certain of the patrons in the northerly section of the city and adjoining county will have an increased travel time between their residences and downtown Bakersfield under the discontinuance of service proposed herein. This latter area will, however, be provided with an improved service on the northerly portion of Route 2 via Baker Street through a reduction of more than 1-1/4 route miles from the present circuitous terminal loop.

On the basis of the record, we find it in the public interest to authorize the discontinuance of that section of Route 2 along 30th and Pacific Streets between Chester Avenue and Alta Vista Drive.

Protestant City of Bakersfield contended that applicant, under the franchise granted by said city, is obligated to render service over routes described in said franchise unless the changes are consented to by the city. This position entirely

disregards the constitutional and statutory provisions granting exclusive authority to this Commission, and such contention is without merit. The city cannot, insert in a franchise contract, provisions in excess of its authority to impose and thus extend its powers so as to conflict with powers of this Commission granted by the Legislature under the State Constitution. It is elementary that contracts, however valid, must fall when they conflict with the police power exercised by a State. The contract clause of the Federal Constitution affords no protection in such a case.

The city in its brief cites no authorities for its position. On the other hand applicant's brief refers to many Supreme Court and Commission decisions, which fully support its position. Sections 22 and 23 of the State Constitution and Section 50½ of the Public Utilities Act grant to the Commission plenary power to regulate passenger stage corporations which operate in and beyond city boundaries, as does applicant. This plenary power is only subject to local, police and sanitary regulation vested in cities. Consequently, regulations and ordinances of the City of Bakersfield as they apply to this applicant must be limited to local, police and sanitary regulations, addressed to matters that are exclusively municipal affairs.

In view of the company's continued operating losses in the areas to be abandoned, and the fact that the service in such areas has not been used to a greater extent by the traveling public, the Commission could not support an order requiring applicant to continue such service. The suggestion by the city that applicant operate a short loop into the Homaker tract is not justified by the current and past use of the service by residents in that area.

(4) Bay Cities Transit Company v. City of Los Angeles, 16 Cal. 2d 772; Los Angeles Ry. Corp. v. City of Los Angeles, 16 Cal. 2d 779; Asbury Rapid Transit System v. Railroad Commission, 18 Cal. 2d 105; Northwestern Pac. R. R. Co. v. Superior Court, 34 Cal. 2d 454.

O R D E R

Application No. 32568, as above entitled, having been filed, public hearings having been held, the Commission being fully advised in the premises and the matter being under submission,

IT IS ORDERED:

(1) That subparagraph (d) of ordering paragraph (3) of said Decision No. 45120 be, and it hereby is, amended to read as follows:

Beginning at the intersection of Chester Avenue and 19th Street, thence along 19th Street, F Street, Hubbard Street and Spruce Street to its intersection with 19th Street.

(2) That subparagraph (e) of ordering paragraph (3) of said Decision No. 45120 be, and it hereby is, amended to read as follows:

Beginning at the intersection of 19th and F Streets, thence along F Street, Truxton Avenue, Elm Street and 19th Street to its intersection with Spruce Street.

(3) That subparagraph (j) of ordering paragraph (3) of said Decision No. 45120 be, and it hereby is, amended to read as follows:

Beginning at the intersection of Pacific Street and Alta Vista Drive, thence along Alta Vista Drive, La Cresta Drive, Magnolia Avenue, Skyline Boulevard, North Baker Street, Bernard Street, Baker Street and Pacific Street to its intersection with Alta Vista Drive.

(4) That subparagraph (l) of ordering paragraph (3) of said Decision No. 45120 be, and it hereby is, amended to read as follows:

Beginning at the intersection of Chester Avenue and 21st Street, thence along 21st Street, K Street, 19th Street, East 19th Street, and Baker Street to its intersection with Pacific Street.

Also, beginning at the intersection of Baker Street and Flower Street, thence along Flower Street and Mt. Vernon Avenue to its intersection with Niles Street.

(5) That Bakersfield Transit Company be, and it hereby is, authorized to abandon and discontinue passenger stage service over the portions of its present routes described as follows:

(a) Along 30th and Pacific Streets between Chester Avenue and Alta Vista Drive.

(b) Along Columbus Street between Alta Vista Drive and North Baker Street.

(c) Beginning at the intersection of Magnolia Avenue and North Inyo Avenue, thence along North Inyo Avenue, Walnut Avenue, Hillcrest Drive, Acacia Avenue, and La Cresta Drive to its intersection with Magnolia Avenue.

(d) Beginning at the intersection of Flower Street and Mt. Vernon Avenue, thence along Mt. Vernon Avenue, Edwards Avenue, Manley Avenue, College Avenue, Locust Ravine, and Quincy Drive to its intersection with Mt. Vernon Avenue.

(e) Along 19th Street between Spruce and F Streets.

(f) Along 24th Street between Spruce and F Streets.

(g) Between the intersection of Bay and Hubbard Streets and the intersection of 24th and Drake Streets along Bay and Drake Streets.

(6) That, in all other respects, said Decision No. 45120, as amended by said Decision No. 46130, shall remain in full force and effect.

(7) That Bakersfield Transit Company be, and it hereby is, authorized to cancel all fares, rules, regulations and schedules

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applying to said service herein authorized to be abandoned by ordering paragraph (5) herein.

(8) That, at least ten (10) days prior to the changes and abandonments of service herein authorized, applicant shall advise the public thereof by posting at its terminals and in all its buses operated over each of the lines affected, a plainly visible explanatory notice describing each of said abandonments and changes of route.

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

Dated at San Francisco, California, this 8th day of October 1951.

A. F. [Signature]
President
Justin F. [Signature]
[Signature]
[Signature]
Commissioners

I dissent. The majority decision states that the contention of protestant City of Bakersfield, that, under the franchise granted by that city, the applicant is obligated to render service over routes described in the franchise unless the changes are consented to by the city, is without merit and that the city's contention disregards the constitutional and statutory provisions granting exclusive authority to this Commission. The opinion further states, "The city cannot insert in a franchise contract, provisions in excess of its authority to impose and thus extend its powers so as to conflict with powers of this Commission granted by the Legislature under the State Constitution." The decision cites Bay Cities Transit Company v. City of Los Angeles, 16 Cal. 2d 772; Los Angeles Railway Corp. v. City of Los Angeles, 16 Cal. 2d 779; Asbury Rapid Transit System v. Railroad Commission, 18 Cal. 2d 105; Northwestern Pacific Railroad Co. v. Superior Court, 34 Cal. 2d 454, as authority in opposition to the city's position.

With this I cannot agree. Those cases did not involve city franchises as to which the charters of cities such as Bakersfield have special powers under the Constitution, a fact recognized by the last proviso in Section 23 of Article XII of the Constitution. That proviso reads as follows:


" . . . and provided, further, that this section shall not affect the right of any city and county or incorporated city or town to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law."

Although not stated in the opinion, the facts divulged at the hearing disclosed that pursuant to its charter, the City of Bakersfield granted a franchise to applicant by Ordinance No. 789 New Series, which contained a description of the routes over which the franchise was granted. Section 2 of the franchise ordinance provides for changes in the routes and states, ". . . and over such changes in said routes and such new and additional routes within the city as may be established from time to time by grantee with the consent of the Council of the city." The testimony shows that the city had not granted consent

to the applicant to reroute or abandon portions of its routes, Nos. 2, 3, 5, or 8, but instead the City Council directed that a protest be entered in this proceeding against such abandonment or change. The city contends that applicant must either render the required service over those routes or must abandon its franchise.

In my opinion, the Supreme Court of this state has not determined that the power of the Public Utilities Commission to designate routes to be served by a passenger stage corporation operating both within and without a city, is exclusive and paramount to the power of the city, under its franchise, to designate such routes. The Supreme Court of this state in Bay Cities Transit Company v. City of Los Angeles, supra, has expressly refrained from so stating (P. 778). Until the Supreme Court of this state shall have made a definitive statement as to the extent of this Commission's jurisdiction over such routes, it is my opinion that this Commission should not assume that it has such jurisdiction in opposition to the expressed will of the legislative body of the city expressed in the provisions of its franchise ordinance. To do so is to ignore the terms of the last proviso in Section 23 of Article XII of the Constitution.

Until or unless the city consents to abandonment of such routes, abandonment is not the only alternative to a losing operation. The applicant herein is entitled to preserve its earning position by seasonably applying to this Commission for an increase in its fares.


Harold P. Huls
Commissioner

October 5, 1951