

ORIGINALDecision No. 48715

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of D. MOYERS, doing business as)
MOYERS STAGES, for an order clarify-)
ing certain operative rights and) Application No. 34001
restrictions thereto of applicant)
and with definiteness and certainty,)
geographically defining and fixing)
same.)

Crossland & Crossland, by Robert S. Crossland,
for applicant.
Dearing, Jertberg and Avery, by Kenneth G. Avery,
for Fresno City Lines, protestant.

O P I N I O N

In the above-entitled application, filed January 8, 1953, D. Moyers requests the Commission to clarify his operative rights by restating one of the local restrictions applicable thereto within the City of Fresno in connection with his operations between Fresno and other points. A public hearing thereon was held before Commissioner Potter and Examiner Paul at Fresno on April 6, 1953 and the matter was submitted.

The record shows that the restriction complained of reads as follows:

". . . subject, however, to the restriction . . . that no passengers may be carried locally within the City of Fresno."

This restriction, formerly coupled with another restriction, was established by Decision No. 34404, issued July 8, 1941, in original Application No. 24297. We find that it has been continued to date although Decision No. 39315, issued August 13, 1946, in 3rd Supplemental Application No. 24297 in eliminating the other restriction from the order of said Decision No. 34404, above referred to, restated the restriction at issue as follows:

". . . subject, however, to the restriction that no passengers may be carried locally within the City of Fresno."

Applicant requests that that local restriction be restated to provide that no passengers may be picked up and discharged at any points on the routes set forth in Decision No. 34404 as amended by Decision No. 34758 (q.v. infra) within the City of Fresno between his Fresno terminal at Mariposa and H Streets, on the one hand, and the intersection of North Fresno Street and Clinton Avenue and the intersection of Blackstone and Shields Avenues, on the other hand.

Decision No. 34758, dated November 12, 1941, in First Supplemental Application No. 24297, expanded the route of Decision No. 34404 to permit service over an alternate route via Fresno State College. The record shows and we find that the original route as described by Decision No. 34404 remains as it was except as to its form which includes the alternate route via the college. The description of the routes in Decision No. 34758 now reads:

"From Pacific Greyhound Lines terminal in the City of Fresno, thence via H Street to Fresno Avenue, thence via Fresno Avenue to Shields Avenue; or from Pacific Greyhound Lines terminal to H Street, thence via H Street to Fresno Avenue, thence via Fresno Avenue to Van Ness Avenue, thence via Van Ness Avenue to Moroa Avenue, thence via Moroa Avenue to Weldon Avenue (Fresno State College), thence via Weldon Avenue to Blackstone Avenue, thence via Blackstone Avenue to Shields Avenue; and thence via Shields Avenue to Clovis Avenue, thence via Clovis Avenue to Herndon Avenue, thence via Herndon Avenue to Willow Avenue, thence via Willow Avenue to State Route 41, thence via State Route 41 to Friant. Return route to be reverse.

"Subject, however, to the condition that only one round trip may be performed by applicant each school day over the route via Fresno State College.

"In all other respects Decision No. 34404 shall remain in full force and effect."(1)

It will be observed that the foregoing described route consists of two branches between applicant's Fresno terminal and the intersection

(1) The operative right beyond Clovis to Friant was revoked by Decision No. 42848, dated May 10, 1949, in Application No. 29468.

of Fresno and Shields Avenues. This intersection is beyond the restricted area within Fresno.

In support of his request, applicant contends that the present local restriction is subject to attack on the grounds that it is not clear, definite or precise as it does not specify whether it means the corporate limits of the City of Fresno which existed at the time of the issuance of said Decision No. 34404 as modified by said Decision No. 39315 or as such limits may be expanded or extended from time to time. Applicant further contends that, unless modified by the Commission, the restriction for all time applies to the exterior boundaries of the City of Fresno as they existed at the time of the promulgation of said Decision No. 39315. Otherwise, the City, by the act of changing its corporate limits, could change the extent of applicant's operative rights.

In substance applicant contends that it is both desirable and necessary that any restriction applicable to the conduct of its operations be clear, definite, precise and certain and free from ambiguity. In order to avoid any misunderstanding which might grow out of any annexations by the City, as the record indicates might occur, applicant requests a clarifying restatement of the restriction complained of and suggests the imposition of a type contained in Decision No. 39901 applicable to its operations on Belmont Avenue in the City of Fresno.⁽²⁾

(2) The Belmont Avenue restriction is set forth in Decision No. 39901, dated January 28, 1947, 4th Supplemental Application No. 24297 in the following language:

"That no passengers may be picked up or discharged along Belmont Avenue between its junction with Fresno Street and its junction with Garden Avenue except those passengers having point of origin or point of destination east of the intersection of Belmont Avenue and Garden Avenue."

An engineering draftsman of the Department of Public Works of the City of Fresno described in detail that part of the corporate boundary of the City in the areas of the intersection of Blackstone and Shields Avenues and the intersection of Fresno Avenue and Clinton Street which are the intersections under consideration. His testimony showed that during the year 1941 those intersections were well outside the corporate boundary of Fresno.

Fresno City Lines provides a local urban type passenger stage service between points within the City of Fresno and nearby residential areas. Its only objection is to the proposal of applicant as it applies to the intersection of Blackstone and Shields Avenues on the route via Fresno State College within Fresno. Protestant contends that fixing a restriction on that route would revive a right thereover which protestant maintains has been abandoned by nonuse.

On cross-examination by counsel for Fresno City Lines, applicant Moyers testified that within his knowledge he has not conducted passenger stage service over that portion of his route of operations between Fresno and Clovis via Fresno State College within the City of Fresno since the year of 1946, maintaining however, that he has not abandoned the operative right therefor.

We find that the restriction involved is fixed at points on applicant's affected routes where they crossed the city boundary lines on the date of issue of the Commission's decisions, viz., July 8, 1941, Decision No. 34404 and November 12, 1941, Decision No. 34758. The record shows that the points which applicant requests be designated to fix the restricted area, while presently within the corporate boundaries of the City of Fresno, are well beyond the boundary line as it existed in 1941. It should be noted

that the restriction as restated by Decision No. 39315 in 1946 is but a continuation of the same restriction originally created by said Decision No. 34404 in 1941.

After full consideration of applicant's request and of all the evidence of record, we find that public convenience and necessity require a restatement of the local restriction appertaining to applicant's regular route via Fresno and Shields Avenue only. The request to restate the local city restriction as it relates to the inappropriately designated "alternate route" via Fresno State College within the city will be denied at this time without prejudice. Simultaneously herewith we are issuing an order instituting an investigation to determine the facts in relation to discontinuance of service over that route for the purposes as set forth in said order.

O R D E R

An application therefor having been filed, a public hearing having been held thereon and based on the conclusions set out in the foregoing opinion,

IT IS ORDERED that the restriction set forth in Section III, appearing on Sheet 5 in the order of Decision No. 34404, Application No. 24297 as modified by Decision No. 39315 which reads:

". . . .subject, however, to the restriction that no passengers may be carried locally within the City of Fresno."

is hereby further amended to read:

". . . .subject, however, to the restriction that no passengers may be picked up and discharged at points on applicant's route of operation as defined in Decision No. 34404 within the City of Fresno between the intersection of Mariposa and H Streets, and the intersection of Fresno and Clinton Avenues."

IT IS FURTHER ORDERED that Application No. 34001 in all other respects is hereby denied without prejudice.

IT IS FURTHER ORDERED that Decision No. 34404 and amendments thereof shall in all other respects remain in full force and effect.

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

Dated at San Francisco, California, this 16th day of June, 1953.

Commissioner KENNETH POTTER, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

A. J. [Signature]
 President
Justice J. [Signature]
[Signature]

 Commissioners