

Decision No. 48750**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 NORMAN W. HOLMES for certificate of)
 public convenience and necessity to)
 operate passenger service between) Application No. 34226.
 First and Santa Clara Streets, San)
 Jose, and Toyon Avenue and Holly)
 Drive, Santa Clara County.)

Herman J. Mager, for applicant.
George H. Hook, L. P. Williams and A. P. Habura,
 for San Jose City Lines, Inc., protestant.
William R. Peters, for the Commission's staff.

O P I N I O N

Applicant Norman W. Holmes seeks authority to operate a passenger stage service between First and Santa Clara Streets in the City of San Jose, and Toyon Avenue and Holly Drive in the East Foothill area of the County of Santa Clara and intermediate points, a distance of 8.5 miles.

A public hearing was held before Examiner Daly on June 5, 1953 at San Jose. The authority sought was protested by San Jose City Lines, Inc.

Applicant proposes to provide nine round-trip hourly schedules daily. He stated that he would inaugurate the service with a 1947, 27-passenger Ford transit bus. It was asserted that negotiations have been made with Peerless Stages, Incorporated, for rental of a bus in the event an emergency need should arise. Applicant proposes to charge a maximum fare of 20 cents and a fare of 10 cents within the two zones located one on each side of the intersection of Story and King Roads. Children under six years of age would be transported without charge. Applicant indicated assets in the amount of \$6,880.

The proposed area of service for the most part consists of approximately 2,000 newly constructed homes. Ten public witnesses

testified on behalf of the proposed service. Briefly stated, they testified that they must presently use private transportation, taxicabs, or walk anywhere from 1/4 of a mile to 3/4 of a mile to the existing service of San Jose City Lines on Alum Rock Avenue. In addition, the Commission is in receipt of a petition signed by 286 persons favoring the service as proposed.

San Jose City Lines took the position that it already operated in the general vicinity and that the proposed operation would be economically unfeasible. It was stated that protestant has received requests for extension of service to the proposed area and that consideration has been given to extending service when the area becomes more stabilized and developed. In any event it was stated that it would be three or four months before authority for an extension would be sought.

A need for a passenger stage service has been expressed by residents of the area covered by the application herein considered. Applicant appears ready and willing to meet that need. There is nothing in the record to indicate why the proposed operation should be more economically feasible in three or four months than at the present time.

After consideration the Commission is of the opinion and so finds that public convenience and necessity require the granting of the authority sought.

Applicant 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

Application having been filed, a public hearing held thereon and based upon the evidence adduced therein,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is hereby granted to Norman W. Holmes authorizing the establishment and operation of service as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, for the transportation of passengers between First and Santa Clara Streets, San Jose, and Toyon Avenue and Holly Drive, Santa Clara County, and intermediate points.

(2) That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- a. Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.
- b. Within sixty days after the effective date hereof and on not less than five days' notice to the Commission and the public, applicant shall file in triplicate, and concurrently make effective, appropriate tariffs and timetables.
- c. Subject to the authority of the Commission to change or modify it at any time by further order, applicant shall conduct the service herein authorized over and along the following route:

Commencing at the intersection of Santa Clara and First Streets, thence along First Street to St. John Street, 2nd Street, Santa Clara Street,

10th Street, Keyes Street, Story Road, White Road,
McKee Road, Toyon Road to Holly Drive.

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

Dated at SAN FRANCISCO, California, this 23rd
day of JUNE, 1953.

A. E. Morrison
 President
James F. Collier
Lawrence H. Potts
W. L. Mitchell

Commissioners

Commissioner Harold P. Huls being
necessarily absent, did not participate
in the adoption of this proceeding.