

DECISIONS OF

The Public Service Commission

OF THE

COMMONWEALTH OF PENNSYLVANIA

September 10, 1929 to May 11, 1931

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HARRISBURG, PENNSYLVANIA

1931

DELAWARE, LACKAWANNA AND WESTERN RAILROAD
COMPANY et al.

v.

FRANK MARTZ BUS COMPANY et al.

COMPLAINT DOCKET No. 8046

Motor carriers—Interstate commerce—Interstate route between intrastate points—Subterfuge.

A complaint that respondent motor carrier was operating between points in Pennsylvania without Commission approval was dismissed where the route was partly in New Jersey and complainants had failed to establish that the route had been adopted as a subterfuge to evade regulation and was not the result of a bona fide business.

G. W. Morgan, H. B. Thomas, H. Z. Maxwell, G. H. Huft, C. T. Wolfe and F. B. Smillie for Complainants.

Francis Shunk Brown, Sr., and Abram Salsburg for Respondents.

REPORT AND ORDER BY THE COMMISSION, *November 18, 1930:*

The complainants in this proceeding are corporations owning and operating lines of railroad, street railways and motor coach lines throughout various parts of the Commonwealth of Pennsylvania. They allege that the respondents for some time past have operated and now operate passenger service on schedule between Scranton and Philadelphia and Wilkes-Barre and Philadelphia and intermediate points, by means of motor vehicles as a common carrier in violation of law, never having applied for nor received a certificate of public convenience evidencing this Commission's approval of the institution and operation of such service, as required by Article III, Section 2 (b) of the Public Service Company Law. The complainants further allege and aver that the aforementioned operation by the respondents is in violation of the Commission's order dated April 23, 1929, in complaints against Frank Martz Bus Company, 9 Pa. P. S. C. 647.

The answer of the respondents by Frank Martz, acting for himself as well as Treasurer of Frank Martz Coach Company, Inc., and Treasurer of White Transit Company, specifically and categorically denies or answers the several averments of the complaint. The substance and essence of the denials and averments is that respondents' service is exclusively interstate; that it is not necessary to obtain a

certificate of public convenience evidencing the Commission's approval of the institution and operation of said service; and further that the Commission's order of April 23, 1929, has not been violated for the reason that the service complained of is not the same service as covered by that order.

Two questions are raised for determination: First, whether the operation of respondents, as averred in the complaint, violates the order of the Commission dated April 23, 1929; second, whether said operation is interstate or intrastate.

The evidence conclusively establishes that the transportation service, under consideration, is now being furnished by a corporation known as the Frank Martz Coach Company and not by the respondents named in the order of April 23, 1929.

If the operation by respondents between Scranton and Philadelphia and between Wilkes-Barre and Philadelphia over route partly in Pennsylvania and partly in New Jersey is an intrastate service, the respondent has no right to operate without the approval of the Commission first had and obtained, but if said operation is an interstate service the Commission's only jurisdiction is under revised rule 14 of General Order No. 18. Whether the operation is an interstate or an intrastate movement depends upon the facts adduced from the evidence. The Commission held in Complaint Docket No. 8489, *Lehigh Valley Transit Company v. Quaker City Motor Coach Lines, Inc.*, that the evidence failed to establish that the route there involved, partly in Pennsylvania and partly in New Jersey, was adopted as a subterfuge to evade the regulatory law of Pennsylvania and was not the result of a bona fide business.

From a consideration of the evidence in this case, in the light of that decision, the Commission is convinced that it fails to establish that respondent, Frank Martz Coach Company, is and has been operating an intrastate transportation service, from the operation of which it could be lawfully restrained. The other respondents named in the complaint are conclusively shown by the evidence to have had no connection with the operation between Scranton and Wilkes-Barre and Philadelphia.

The Frank Martz Coach Company has been granted, by order of even date (Application Docket No. 20750, Folder Nos. 1, 2, 3 and 4) permission to operate under revised rule 14 of General Order No. 18, over certain public highways in Pennsylvania an interstate motor vehicle transportation service between Scranton and Philadelphia and between Wilkes-Barre and Philadelphia; **THEREFORE,**

NOW, to-wit, November 18, 1930, IT IS ORDERED: That the complaint be and is hereby dismissed.

APPLICATION OF FRANK MARTZ COACH COMPANY

APPLICATION DOCKET No. 20750, FOLDER NOS. 1, 2, 3, AND 4

Motor carriers—Interstate service—Jurisdiction of Commission—Foreign corporation—Approval of business.

A foreign motor carrier company was given right to do an intrastate business. An interstate certificate was also granted without a showing of public necessity.

The Commission's jurisdiction with respect to exclusive interstate service is limited to a consideration of matters pertinent under revised rule 14 of General Order No. 18. It has no power to determine whether the proposed service is necessary for the accommodation and convenience of the public.

A foreign corporation desiring to do an intrastate business must show public necessity therefor.

Francis Shunk Brown, Sr., and Abram Salsburg for Applicant.

Sterling G. McNees and McConnell, Blackmore & Cory for Great Lake Stages, Inc.

Gomer W. Morgan for The Delaware, Lackawanna and Western Railroad Company.

John T. Brady for Reading Company.

H. Z. Maxwell and Spencer G. Nauman for The Pennsylvania Railroad Company and Pennsylvania General Transit Company.

George H. Huft for Philadelphia Rapid Transit Company, Philadelphia Rural Transit Company and Doylestown & Easton Motor Coach Company.

Paul Bedford for The Delaware & Hudson Company.

F. B. Smillie for Lehigh Valley Railroad Company.

Obrien & Kelly and W. J. Fitzgerald for Lackawanna & Wyoming Valley Railroad Company.

Sterling G. McNees for Scranton Railway Company and Scranton Bus Company.

S. W. Rhoads for Wyoming Valley Autobus Company and Wilkes-Barre Railway Corporation.

D. A. McNeal for John Lamphere and Monroe and Cecil Palmer.

C. R. Bensinger for East Stroudsburg Bus Company, A. A. Holbrook and Red Star Transportation Company.

REPORT BY THE COMMISSION, *November 18, 1930:*

By Interim Report dated August 1, 1929, the Commission expressed the opinion that the record of this application as then constituted did not contain sufficient data and information upon which a determination could be made, and directed that the application be listed for further hearing at which certain detailed information should be furnished. In accordance with the Interim Report the applicant company filed three supplemental petitions and at subsequent hearings testimony on part of the applicant and the protesting rail and motor vehicle transportation companies was heard.

It has been difficult on account of the numerous differences between the applicant's petitions and testimony to fix definitely and specifically the nature and character of the transportation service which the applicant submits for the Commission's requisite approval. Our understanding and conception of the matter is that the pending applications of Frank Martz Coach Company are for approval of the right to do the business which the company has been performing since it was incorporated and as indicated by the timetable filed of record. Based on this understanding the applicant seeks approval of the right as a foreign public service company to do business in Pennsylvania with headquarters and main office in the City of Wilkes-Barre, limited to the operation of a motor vehicle passenger transportation line across the northern portion of the state on and over a route beginning at the New York-Pennsylvania State Line near Eldred, thence via State Highway Route No. 446 to Larabee, thence via U. S. Route No. 6 to Scranton, thence via U. S. Route No. 611 to Stroudsburg, thence via State Highway Route No. 612 to Delaware Water Gap, thence via U. S. Route No. 611 to the Pennsylvania-New Jersey State Line near Portland, with additional and supplemental route for certain trips between Osterhout and Swiftwater via U. S. Route No. 309 to West Pittston, thence via U. S. Route No. 11 and State Highway Route No. 115 through Wilkes-Barre to Swiftwater, with right to furnish an exclusive interstate service over said routes as part of a through interstate route between New York City, Buffalo, Cleveland, Detroit and Chicago; and also the right to transport over said route in Pennsylvania, intrastate passengers between the City of Wilkes-Barre and the New York-Pennsylvania State Line near Eldred; also the operation of a passenger motor vehicle transportation line over a route beginning at the City of Wilkes-Barre, thence via State Highway Route No. 115 to Swiftwater, thence on U. S. Route No. 611 to Stroudsburg, thence via State Highway Route No. 612 to Delaware Water Gap, thence via U. S. Route No. 611 to Portland, thence to point in New Jersey opposite Portland via the Toll Bridge over the Delaware River, thence along highway through the State of New Jersey, via Delaware, Belvidere and

Phillipsburg to Reigelsville, thence via the bridge across the Delaware River to Riegelsville, Pennsylvania, thence via U. S. Route No. 611 to terminus in Philadelphia, with additional or supplemental route for the operation of certain trips between Wilkes-Barre and Swiftwater via Routes Nos. 115 and 11 to West Pittston, thence to Pittston, thence via U. S. Route No. 11 to improved highway immediately northeast of the Borough of Avoca, thence via improved highway to Scranton and thence via U. S. Route No. 611 to Swiftwater, with the right to transport persons over said routes both in interstate and intrastate service.

It is not necessary for this applicant to establish the necessity for the proposed exclusive interstate service, i. e., for the transportation of persons originating at points and places in Pennsylvania and destined to points and places in the adjoining states, and vice versa. By report and order of even date in complaint of The Delaware, Lackawanna and Western Railroad Company et al. *v.* Frank Martz, trading as Frank Martz Bus Company et al. (Complaint Docket No. 8046), the Commission has determined that the proposed route from Wilkes-Barre and Scranton to Philadelphia extending over certain highways in Pennsylvania and New Jersey is not an intrastate service. The Commission's jurisdiction with respect to the exclusive interstate service is limited to consideration of matters pertinent under revised rule 14 of General Order No. 18 of the Commission. It has no power or authority to determine whether the proposed interstate service is necessary for the accommodation and convenience of the public. Nor is the applicant required to establish necessity for the interstate service. Frank Martz Coach Company has established proper qualifications to meet and comply with all the regulations which can be lawfully imposed by the Commission upon interstate motor vehicle transportation companies.

With respect to the intrastate service and the right to do business as a foreign public service company in Pennsylvania the applicant must establish public necessity. The character and financial ability of the applicant not having been attacked or questioned, the right of the Frank Martz Coach Company as a foreign corporation to do business in Pennsylvania and to operate an exclusive interstate service will be approved.

The policy of the Commission in the matter of intrastate service in connection with cross-state operation which is clearly set forth in various opinions of the Commission, is to grant no intrastate right between any portions of the cross-state route where there are existing transportation facilities which adequately and conveniently accommodate the public. This policy was adopted for the protection of the

local operators and to conserve to the public the local transportation service which has become necessary for its accommodation.

With this policy controlling, the protest of the Great Lakes Stages, Inc., is the only protest to the intrastate service which requires any discussion. The Frank Martz Coach Company and the Great Lakes Stages, Inc., began operating through Pennsylvania an interstate motor vehicle transportation service at approximately the same date, operating over practically the same highways in Pennsylvania and have been competitors in the interstate service. The Commission has no power or authority to interfere with or to prevent such competition. The public has the right and privilege of using the buses of both companies and no convincing reason has been advanced to justify the Commission in denying to the Frank Martz Coach Company the same rights to perform intrastate service which have been granted by the Commission to the Great Lakes Stages, Inc.

In conformity with the foregoing conclusions and giving due consideration to the evidence, the Commission finds and determines that the approval of the right of the Frank Martz Coach Company, a corporation of the State of Delaware, to do business in Pennsylvania, is necessary for the service, accommodation and convenience of the public, said business confined to the specific rights and privileges set forth in annexed order. The Commission further finds and determines that the approval of the right of the Frank Martz Coach Company to operate and furnish intrastate service on the route between northern terminus near Eldred and Pennsylvania-New Jersey State Line east of Portland subject to conditions contained in the attached order, is necessary for the service, accommodation and convenience of the public.

The Commission further finds that the granting of permission to the Frank Martz Motor Coach Company to operate in the aforementioned and described interstate service is the proper exercise of the police power vested in it.

DELAWARE, LACKAWANNA AND WESTERN RAILROAD
COMPANY et al.

v.

GREAT LAKES STAGES, INC.

COMPLAINT DOCKET No. 8090

Motor carriers—Interstate commerce—Interstate route between intrastate points—Subterfuge.

A complaint that respondent motor carrier was operating between intrastate points without Commission approval was dismissed where the route