

1969

Lewis Bros. Stages, Inc. v. The Public Service Commission of Utah; Hal F. Bennett, Donald Hacking, and Donald T. Adams, Its Members and Link Trucking, Inc., Uintah Freightways, et al., v. Public Service Commission of Utah, Donald Hacking, Don T. Adams and Hal S. Bennett : Petition For Rehearing and Reconsideration and Brief of Defendant, Wycoff Company, Inc.

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Recommended Citation

Petition for Rehearing, *Lewis Bros. Stages v. Public Service Comm'n of Utah*, No. 11081 (1969).
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IN THE SUPREME COURT OF THE STATE OF UTAH

LEWIS BROS. STAGES, INC., a corporation,
Plaintiff,

vs.

THE PUBLIC SERVICE COMMISSION OF
UTAH; HAL F. BENNETT, DONALD HACK-
ING; and DONALD T. ADAMS, its members;
and WYCOFF COMPANY, INCORPORATED,
a Utah corporation,
Defendants,

Case No.
11081

LINK TRUCKING, INC., UINTAH FREIGHT-
WAYS, a corporation, MILNE TRUCK LINES,
INC., PALMER BROTHERS, INCORPORATED,
RIA GRANDE MOTOR WAY, INC., LAKE
SHORE MOTOR COACH LINES, INC., DEN-
VER-SALT LAKE-PACIFIC STAGES, INC.,
and CONTINENTAL BUS SYSTEM, INC.,
Plaintiffs,

Plaintiffs,

Case No.
11082

vs.

PUBLIC SERVICE COMMISSION OF UTAH,
DONALD HACKING, DON T ADAMS and
HAL S. BENNETT, Commissioners of the Pub-
lic Service Commission of Utah, and WYCOFF
COMPANY, INCORPORATED,
Defendants.

PETITION FOR REHEARING AND RECONSIDERATION AND BRIEF OF DEFENDANT, WYCOFF COMPANY, INCORPORATED

Review of an Order of the Public Service Commission of Utah

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FILED

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Defendants.

Case No.
11082

PETITION FOR REHEARING AND RECONSIDERATION

COMES NOW Wycoff Company, Incorporated,
and respectfully petitions the Court for a rehearing
and reconsideration of the Decision and Order in these
cases filed March 24, 1969 and particularly that portion

which directs that the Order of the Commission "be set aside until such time as the record is completed and reviewed by the Commission and returned to this Court."

This petition is based upon the following grounds:

(a) The provisions of Section 54-7-17, Utah Code Annotated, 1953 and its subsections relating to the conditions, bond and procedure for a stay or suspension of the operation of an order or decision of the Commission have not been sought by the protestants nor complied with by the Supreme Court.

(b) The action taken by the Court was not sought by any of the protesting carriers in their petitions for writs of review in either case. In each the prayer was only that the Court require certification of the record and "review of the proceedings" and reversal.

(c) The order negatives the statute empowering the use by the Commission of an examiner (Section 54-1-6, Utah Code Annotated, 1953) and that his findings, orders or decision "when approved and confirmed by the Commission and filed in its office, shall be deemed the findings, orders or decision of the Commission and shall have the same effect as if originally made by the Commission."

(d) This decision and setting aside by the Court is contrary to the provisions of Section 54-7-10, Utah Code Annotated, 1953, which provides that orders of the Commission of their own force shall "take effect and become operative twenty days after the service thereof."

(e) This decision and setting aside by the Court reverses the statutory mandate of Section 54-7-16, Utah Code Annotated, 1953 stating that the "findings and conclusions of the Commission on questions of fact shall be final and shall not be subject to review" as it apparently presumes that the findings of the Commission are erroneous because no transcript of the testimony has been supplied to the Commission or the Court by the protestants.

(f) The setting aside of the Commission's order until it has completed the record, reviewed it and returned it to this Court, has the effect of penalizing and punishing Wycoff Company, Incorporated and the public for the failure of the several motor carrier protestants to procure a transcript of the testimony so the Commission could certify such to this Court along with the rest of the record.

(g) The effect of the order is to reward the protestants in their failure to purchase and supply a transcript of the testimony for the Commission, as is the practice on appeals, and will leave the Commission and this Court as well as Wycoff Company, Incorporated and the public at the mercy of further years of dalliance by these protestants.

(h) The public, and Wycoff Company, Incorporated, since September 1967, have had the benefits of the authorized service under the Commission's Order, have come to rely upon it, and will be adversely affected by this Decision. Such Certificate of Convenience and

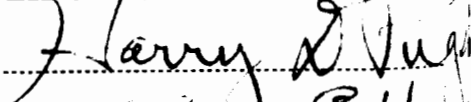
Necessity should not be summarily revoked as the burden of showing grounds for reversal of the Commission is on the appellant motor carriers and none have been shown as yet to this Court because the record is not complete enough to satisfy the Court's requirements.


(i) The concept of submitting this appeal to this Court without the transcript was initiated by this Court and not by the carriers, hence Wycoff Company, Incorporated should not be penalized by revocation of its Certificate and the public deprived of service now merely because the appellant motor carriers have failed to supply to the Court the requisite transcript.

(j) An appropriate order might well be made by this Court withholding final determination of the case until the transcript of the testimony has been procured by the appealing protestant carriers and certified to this Court so it may determine whether or not the Commission has lawfully pursued its authority in this case.

Dated this 9th day of April, 1969.

HARRY D. PUGSLEY
ZAR E. HAYES





Attorneys for Wycoff Company,
Incorporated