

1068

Lakeshore Motor Coach Lines, Inc., Wasatch Motors, Inc., Metro Transportation, Inc., Ogden Bus Lines v. Salt Lake Transportation Company, Public Service Commission Of Utah, Donald Hacking, Hal S. Bennett And Donald T. Adams : Brief of Plaintiffs Lewis Bros Stage Lines, Inc. And Bingham Stage Lines

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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LAKE SHORE MOTOR COACH LINES, ET AL,  
vs. Plaintiffs, }  
SALT LAKE TRANSPORTATION CO. and } No. 10904  
PUBLIC SERVICE COMMISSION OF UTAH, }  
ET AL., Defendants. }

LEWIS BROS. STAGES, INC., ET AL,  
vs. Plaintiffs, }  
PUBLIC SERVICE COMMISSION OF UTAH, } No. 10907  
ET AL., and SALT LAKE TRANSPORTA- }  
TION CO., Defendants. }

CONTINENTAL BUS SYSTEM, INC., ET AL,  
vs. Plaintiffs, }  
PUBLIC SERVICE COMMISSION OF UTAH, } No. 10908  
ET AL., and SALT LAKE TRANSPORTA- }  
TION CO., Defendants. }

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**BRIEF OF PLAINTIFFS LEWIS BROS STAGE LINES, INC.  
AND BINGHAM STAGE LINES**

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Review of the Order of the  
Public Service Commission of Utah

**FILED**

APR 27 - 1967

CLERK OF SUPREME COURT

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## STATEMENT OF THE KIND OF CASE

This is an appeal from an Order of the Public Service Commission of Utah, granting to Salt Lake Transportation Company a Certificate of Convenience

and Necessity to operate a a common motor carriage by motor vehicle for transportation of passengers and their baggage in the same or separate vehicles, in charter operations, and in special operations, in sight-seeing or passenger tours, between all points and places within a twenty-six air-mile radius of the city limits of Salt Lake City, Utah, including Salt Lake City, but excluding all points in Weber County and in Utah County beyond such twenty-six mile radius areas, and from said radial area to all points and places in the State of Utah and return, over predetermined routes and/or irregular routes, excluding traffic originating or terminating at Provo, Utah.

## DISPOSITION OF CASE

This is a direct appeal to the Supreme Court from the Order of the Public Service Commission granting such authority, and is made subsequent to denial of a Petition for Rehearing and Reconsideration filed with the Commission.

## RELIEF SOUGHT ON APPEAL

This appeal seeks to set aside the Order of the Public Service Commission granting the Certificate of Convenience and Necessity to Salt Lake Transportation Company.

## STATEMENT OF FACTS

Defendant Salt Lake Transportation Company, a Utah corporation, applied to the Public Service Commission for a Certificate of Convenience and Necessity to operate as a common motor carrier by motor vehicle for the transportation of passengers and their baggage in the same or separate vehicles in charter operations and in special operations in sight-seeing or passenger tours between all points and places in Davis, Morgan, Salt Lake, Utah, Tooele, Summit and Wasatch Counties, and from said Counties to all points and places in the State of Utah, and return, over predetermined routes and or irregular routes, excluding traffic originating at Provo, Utah. At the hearing the application was restrictively amended to designate origin within twenty-six air miles of Salt Lake City, Utah, as hereinabove set forth.

Plaintiffs are holders of Certificates of Convenience and Necessity authorizing them to operate as follows:

Bingham Stage Lines, Nos. 44 and 61, authorizing operations for the transportation of passengers, their baggage and express, between Salt Lake City, Utah, and Bingham Canyon, Utah, and intermediate points, and intrastate charter authority;

Lewis Bros. Stages, Inc., No. 1565, authorizing operations for the transportation of passengers, their baggage and express, between Salt Lake City, Utah, and Park City, Utah, and intermediate points; between

Salt Lake City, Utah, and Wendover, Utah, and intermediate points; between Salt Lake City, Utah, and TAD Park, Tooele County, Utah, and intermediate points; between Salt Lake City, Utah, and Delta, Utah, and intermediate points; and intrastate charter authority. These plaintiffs, together with other common carriers, protested the granting of the Certificate requested by defendant Salt Lake Transportation Company.

After hearing, the Commission entered its Order on the 20th day of January, 1967, and its Order Amending and Reissuing Certificate on the 6th day of April, 1967, which in substance granted the application of Salt Lake Transportation Company.

## THE ARGUMENT

1. The evidence submitted to the Public Service Commission is insufficient and inadequate, and does not support the Commission's Findings and Order that convenience and necessity exist for such a service within the territories already served by plaintiffs.

2. The action of the Commission is capricious and arbitrary insofar as it affects these plaintiffs, and in granting such authority, the Commission ignored the adverse effect on existing transportation services.

## POINT I.

### THE EVIDENCE IS NOT SUFFICIENT TO SUPPORT THE FINDINGS OF THE COMMISSION.

The record will disclose that defendant Salt Lake Transportation Company failed to establish necessity for the service proposed, or to show that service presently being rendered is in any way inadequate or unsatisfactory; and the record will further disclose that the testimony and evidence introduced pertaining to service now rendered by plaintiff establishes affirmatively and without question that no further additional service is needed or required. Salt Lake Transportation Company failed to present any evidence of a need to points in Summit County, particularly Park City, or in Tooele County, or to show any deficiency in the available charter bus service in the areas it sought to serve. In numerous proceedings this Court has reviewed the Orders of the Public Service Commission and has defined the law. In *Lakeshore Motor Coach Lines, Inc. vs. Bennett*, 8 Utah (2d) 293, 333 Pac. (2d) 1061, at page 1963, the Court stated:

“When a carrier applies to institute a new carrying service, the Commission must take into account not only the immediate advantage to some members of the public in increased service, and to applying carrier in permitting him to enlarge the scope of his business, but must plan long-range for the protection and conservation of carrier service so that there will be economic



stability and continuity of service. This obviously cannot be done unless existing carriers have a reasonable degree of protection in the operations they are maintaining." \* \* \* "proving that public convenience and necessity would be served by granting additional carrier authority means something more than showing the mere generality that some members of the public would like and on occasion use such type of transportation service. In any populace area it is easy enough to procure witnesses who will say that they would like to see more frequent and cheaper service. That alone does not prove that public convenience and necessity so require. Our understanding of the statute is that there should be a showing that existing services are in some measure inadequate or that a public need as to the potential of business is such that there is some reasonable basis in the evidence to believe that public convenience and necessity justify the additional proposed service. For the rule to be otherwise would ignore the provisions of the statute; and also would make meaningless the holding of formal hearings to make such determinations and render futile efforts of existing carriers to defend their operating rights."

Let us examine the record. The first witness to appear for applicant was H. Deveareaux Jennings who at the time of the hearing was assistant director of the State Tourist and Publicity Council. Mr. Jennings testified:

"A Well, I think I stated before I started that we're categorically in favor of any transportation that would improve the mobility of the tourist within the area." (Transcript p. 44) H

testimony is summed up (Transcript p. 68) with the observation: "A But, I think along these lines there may be buses all over the area available. but no one knows they are there."

The next witness to testify was Lowe Ashton, President of the Wasatch Chamber of Commerce. Mr. Ashton was asked,

"Q. Then you really don't know whether there is any need for any additional service or not do you?"

"A. I can't specifically say there is definitely yet, no; I think there is potential." (Tr. p 87).

Rulon Doman, Scout Executive Emeritis with the Great Salt Lake Council of the Boy Scouts of America, testified, with respect to the services of Lewis Bros.,

"Q. Did you find both Lewis Brothers and Lakeshore satisfactory services for you?"

"A. Yes, sir, so far as I know." (Transcript p. 102)

At page 108 Transcript, Mr. Doman further testified,

"Q. \* \* \* Well, would you agree with me, sir, that you have used two carriers and that there are four or five others authorized to perform the same service that you have never called upon?"

"A. There may be. I haven't been aware of how many others there might be."

"Q. \* \* \* and in those circumstances you don't

need any additional transportation service, do you?"

"A. Well, I don't know that we would."

"Q. You have had all the transportation you have needed up to this point, haven't you?"

"A. Yes."

Andrew R. Hurley was called as a witness for the applicant and testified generally,

"For these and other reasons we feel that additional service of any kind which will provide and promote tourism will be of benefit to Park City and the investors who have invested in the area." (Transcript p. 125)

He further testified (Transcript p. 140),

"A. Mr. Pugsley, the interest of the people in Park City is not any one single carrier. The interests of the people of Park City are purely selfish. If additional carriers can provide additional service and promote additional tourism into our community we are in favor of it." \* \* \* Peter Carleson runs bus service; Lewis Brothers runs bus service. There is all kinds of various bus services running in there."

This Court considered a Commission order in *Lake Shore Motor Coach Lines, Inc. v. Bennett*, 8 Utah 2d 293. At page 297 it stated:

"the import of applicant's witnesses was that it would be convenient and desirable to them to have another carrier available for quick transportation service, including pickup and delivery

It is obvious, as they without exception admitted, that their self interest would be served by having more carriers with more frequent schedules. In short, the speediest and cheapest transportation possible, which purpose an additional carrier would tend to serve. In other words, from their point of view, the more carriers the better. This is quite understandable because they were in no way concerned with the long range planning hereinabove referred to, nor with keeping existing carriers solvent and in operation."

And, at page 153 Transcript, Mr. Hurley testified,

"Q. Are you aware of any inadequacy in their equipment or their facilities at the present time which would make it impossible for them to render this type of service to Park City?" (reference to Lewis Bros Stages)

"A. No, Miss Warr."

Murray M. Moler, who was Chairman of the Utah Travel Council at the time of the hearing testified,

"Com. Wilkins: When you say you support the expansion of the transportation facilities, has the council made a study of the transportation facilities within the State?"

"A. We have not."

"Com. Wilkins: Do you know whether or not the present facilities are adequate?"

"A. We have no facts or figures whatsoever about the adequacy or inadequacy of any existing service." (Transcript p. 169)

The next witness to appear for applicant was F. C. Koziol, Director of the Utah Park and Recreation

Commission. His testimony is summarized at Transcript p. 185,

“Q. And, one further thing, you don't know of any actual problems that presently exist of transportation?”

“A. I am not familiar with that problem at all.

Henry Cameron, President of the Granger-Hunter Chamber of Commerce, testified (Transcript p. 192).

“Q. Then, Mr. Cameron, I take it you are not familiar with the charter authority or other services Lewis Brothers has?”

“A. No.”

Frank C. Burns, President of the Kearns Club appeared as a witness for applicant. He testified (Transcript p. 198),

“Q. Sir, if the companies we have just been discussing could provide you the service, that would meet your needs, would it not?”

“A. Definitely.”

Ted Covington, a member of the Board of Directors of the Kearns Chamber of Commerce, testified generally (Transcript p. 293),

“A. In answer to your question, it is our belief that anything that creates a facility of that nature that is available for the people in our community is an asset to the community itself, and it is also a belief that anything that is made on a competitive basis is to the interest of the people of the community.

“ \* \* \* Q. Have you ever used, by any chance, Lewis Brothers?”

“A. I am certain that there have been uses of them in the area.”

“Q. But, have you any personal knowledge of these uses?”

“A. I have no personal knowledge of it.” (Tr. p. 294)

Mr. Covington further testified at p. 296,

“Q. Aside from the fact that you like competition, then I suppose you have no particular reason for supporting the application of any particular carrier?”

“Mr. Worsley: That is as to charter?”

“Miss Warr: As to charter.”

“A. I would say other than the competition and the service available, I have none.”

Ira Beesley, on the Board of Directors of the Chamber of Commerce of Davis County, testified regarding service in that County, which is not within the authority served by Lewis Bros. Stages, but of interest he stated (Tr. page 306),

“Q. You are aware of the fact that Lakeshore has numerous schedules going in and out and serving you daily?”

“A. Yes; transportation through, yes.”

“Q. Now, would you have any objection to using one of those buses for a tour to a particular place?”

“A. None at all.”

Mr. Lee Bronson, owner and manager of the Rustler Lodge at Alta, Utah, testified for the applicant (Tr. p. 326),

“Q. Now, if Lewis Brothers could provide that service which originated in Park City to Alta and return, would this satisfy your needs?”

“A. For that particular point, yes.”

Dr. William L. Orris, President of the Park City Chamber of Commerce, appeared as a witness for appellant Lewis Bros. Stages. He testified (Tr. p. 360),

“Q. Did Mr. Anderson represent to you that if the authority here sought were granted it would not in fact be competitive with Lewis Brothers Stages service?”

“A. It was my impression it would not be competitive.”

He further testified, (Tr. page 365),

“A. As President of the Chamber of Commerce I feel that it is very important for us to protect the interests of those businesses which have been promoting Park City and which have come up and exposed themselves to the danger of bankruptcy pioneering, as were.”

Bill Kouris testified for Lewis Bros. Stages (Tr. p. 372),

“Q. Has Lewis Brothers given you adequate service?”

“A. Yes, ma'am, very much so.”

“Q. And do you feel that there is a need for any further carrier service in this area?”

“A. I don't know what they would do.”

David Robert Jackson, manager and part-owner of the Chateau Apres' Lodge, Park City, Utah, testified for Lewis Bros Stages, Inc. (Tr. p. 379),

“Q. And in this connection have you had occasion to become familiar with the bus service offered to your community by Lewis Brothers Stages?”

“A. Yes, I have.”

“Q. And have you become acquainted with their business agent, Mr. Sane?”

“A. Yes, I have.”

“Q. And has Mr. Sane worked with you in the development of business for your area?”

“A. Very much.” \* \* \*

“Q. And so far as you know, has the service of Lewis Brothers Stages been adequate?”

“A. I think so.”

Joe Walsh, General Manager of the Treasure Mountain Inn at Park City, testified for Lewis Bros. Stages, Inc. (Tr. p. 389),

“Q. Have you had occasion to have passengers arrive by way of the Lewis Brothers limousine service to Park City?”

“A. Yes, quite often.”

“Q. And do you feel that this is a valuable service to your hotel facility?”



“A. Yes, because I can call Lewis Brothers and tell them to pick up a certain passenger at a certain time at the airport, and they haven't let me down yet.”

“Q. You feel that their service has been adequate?”

“A. Yes, un-huh.”

With a careful evaluation of the record in this matter, one must ask wherein has the defendant Salt Lake Transportation Company met its burden of proof

“An applicant desiring to enter a new territory or to enlarge the nature or type of the service he is permitted to render must therefore show that from the standpoint of public convenience and necessity there is a need for such service; that the existing service is not adequate and convenient, and that his operation would eliminate such inadequacy and inconvenience. He must also show that the public welfare would be better subserved if he rendered the service than if the existing carrier were permitted to do so. The paramount consideration is the benefit to the public, the promotion and advancement of its growth and welfare. Yet the interests of the existing certificate holder should be protected so far as that can be done without injury to the public, either to its present welfare or hindering its future growth and development and advancement.” *Mulcahy v. Public Service Commission*, 101 Utah 245, Page 262.

## POINT II

THE ACTION OF THE COMMISSION IS CAPRICIOUS AND ARBITRARY INsofar AS IT AFFECTS THESE PLAINTIFFS, AND IN GRANTING SUCH AUTHORITY THE COMMISSION IGNORED THE ADVERSE EFFECT ON EXISTING TRANSPORTATION SERVICES.

Joseph M. Lewis testified for these plaintiffs and exhibits were introduced which established that these carriers have adequate equipment; that they are financially responsible; that they have been and are rendering service within the scope of their authority, and are actively soliciting the type of traffic applicant was proposing to serve. (Tr. 428-442). He also testified that 75 and 80 per cent of his company's gross revenue was derived from charter operations. At page 436, Tr. :

“Q. Now, Mr. Lewis, do you have an opinion about the effect the granting of this application would have on your operation?”

“A. Well, any loss of revenue which additional competition might create would, of course, create a problem for us. Our profit picture is not the best. The portion of our income provided by charter is so great and this is the feeling where the competition might increase - - - and it is very possible that it would have a very undesirable effect on our financial picture.”

The defendant Commission, through its Report and Order, has reduced or eliminated sources of revenue, which in turn reduces or eliminates plaintiff's ability to serve the public. The Commission has thus disregarded and failed to consider its duties and obligations to service and regulate transportation, having in mind the convenience, necessity, welfare and needs of the public, as well as the interests of common carriers who must look to the Commission for the protection and consideration necessary to allow them to compete for and provide service in the communities now served.

It is respectfully submitted that the Order of the Public Service Commission, so far as it affects these plaintiffs, should be set aside.

Respectfully submitted,

**IRENE WARR**

Attorney for Plaintiffs