

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
PIETRO RICCOMINI and RICCARDO TUNZI,
co-partners, for a certificate of
public convenience and necessity to
operate an automobile line as a
common carrier of freight between
San Francisco, Salinas, Chualar,
Gonzales, Soledad, Greenfield and
King City, California, and all points
intermediate between Salinas and King
City, including the right to serve all
the territory for a distance of seven
(7) miles on either side of the High-
way traversed between Salinas and King
City.

Application No. 10504

H. A. Encell and J. A. Miller, by H. A. Encell,
for applicant;
L. N. Bradshaw, for the Southern Pacific Company,
protestant;
E. Stern, for the American Railway Express Company,
protestant;
Fred McCargar, for Salinas Chamber of Commerce,
protestant;
Frank Sargent, for Vanderhurst Truck Company,
protestant.

BY THE COMMISSION:

OPINION

In this proceeding Pietro Riccomini and Ricardo Tunzi, co-partners, have petitioned the Railroad Commission for a certificate of public convenience and necessity authorizing them to establish an automobile service for the common carriage of freight between San Francisco on the one hand and Salinas, Chualar, Gonzales, Soledad, Greenfield and King City, on the other hand,

including the right to serve territory within a zone fourteen miles wide, extending from Salinas to King City, and lying seven miles on each side of the highway traversed. Applicants propose to use one Garford truck and trailer, and will operate two round trips weekly. A schedule of rates accompanies the application.

Public hearings were held before Examiner Austin at Salinas on April 8, 1925, and at Greenfield on May 8, 1925, when evidence was offered, the matter was duly submitted, and it is now ready for decision.

At the outset certain protestants moved for a dismissal of this proceeding on the ground that in a previous application, applicants herein had been denied substantially the same operative right as that sought here. (Decision No. 13964, dated August 27, 1924, in Application No. 9905). In that proceeding applicants herein sought permission to establish a service confined to the transportation of cheese and produce between Soledad and San Francisco, and to handle groceries, eatables and hardware from San Francisco to Gilroy, San Juan, Salinas, Gonzales and Soledad, on the return trips. The application was heard and denied on the ground that the evidence did not show any public convenience and necessity for the establishment of truck service to haul manufactured products from the Salinas Valley when moving from warehouses, factories or packing establishments to San Francisco, nor to transport general merchandise from San Francisco to Salinas Valley points. Although conceding that the evidence conclusively showed a necessity for transporting fresh cheese from various ranches and dairy farms to San Francisco, the decision held

that no certificate for this service was necessary in view of the provisions of the so-called Crittenden Amendment (Stats. 1923, Chap. 310).

In support of this motion counsel have invoked our decision in the Craig case (App. No. 6950; Dec. No. 9796) holding that where an application has once been denied, the matters presented at the hearing should be deemed finally adjudicated, and that an applicant's remedy is by petitioning for a rehearing rather than by filing a new application identical to that which was denied. Where such a subsequent application is filed, it was held, the Commission may properly refuse to hear it.

In connection with this case, it is important to consider the Supreme Court's rulings that our orders are conclusive between the same parties only for the purpose for which they were made, and are not binding upon them in subsequent proceedings in the sense that they are res adjudicata.

Motor Transit Co. v. Railroad Commission, 189 Cal. 573; 209 Pac. 586.

Stratton v. Railroad Commission, 186 Cal. 119, 126; 198 Pac. 1051.

In the instant case, applicants have alleged and proved facts and circumstances substantially different from those involved in their previous application. There they sought a limited certificate; here they have applied for a right to carry all commodities. Furthermore, the proof in the pending case is directed to present public needs, covering a period subsequent to that considered in the former application. In addition, a new situation presents itself, originating since this application was filed, due

to the Supreme Court's decision in Franchise Motor Freight Assn. v. Seavey et al., 69 Cal., Dec. 473; 69 Cal., Dec. 563; There the court declared unconstitutional the amendment of 1923 to Section 5 of the Auto Stage & Truck Transportation Act (Stats. 1923, Chap. 310; being the so-called Crittenden amendment) exempting from regulation under that act the transportation of farm products, implements and necessities between farms or between farms and loading points, warehouses or other initial points. In our previous decision we held a certificate for this type of service unnecessary; however, the court's decision requires us now to consider evidence of any public need for such a service. Since the pending application differs substantially from the former application, the motion to dismiss this application will be denied.

During the hearing at Salinas applicants called eight witnesses, and the testimony of numerous other witnesses was stipulated into the record. Applicant Riccomini described the proposed service, stating they could supply all needed equipment. Mr. L. S. Markel, called as a traffic expert, discussed applicants' proposed rates, stating they were compensatory. The rates included picking up and delivering truck-units at points off the highway such as farms, but a penalty provided by the tariff would discourage such service in respect to less than truck load shipments. Applicants are engaged in handling cheese, principally, in connection with their operations, which were formerly exempted under the Crittenden amendment. He based the need for applicants' service largely on the convenience afforded by store door pick-up and delivery. Five of these witnesses were engaged in business at

Salinas, Greenfield and Soledad. They testified generally to the convenience of store door delivery, and the saving in cartage thereby effected. At Greenfield, freight must be trucked eight miles from Soledad, the nearest town served by rail. Objection was made to the existing motor truck lines from San Francisco because of the necessity for transfers en route, no through service being afforded. This, it was stated, resulted in inconvenience and delay. A dairyman living near Soledad described the need for a direct pick-up and delivery service, not now afforded by existing facilities.

At the Greenfield hearing counsel stipulated the testimony of 11 dairymen residing near Greenfield and Soledad, within the territory proposed to be served. In the aggregate they produce about 12 tons of cheese a week which they desire shipped to San Francisco. If applicants are permitted to haul this cheese, and to bring back groceries and supplies on the return trip, it will be a great convenience.

The granting of this application was protested by Southern Pacific Company, American Railway Express Company, the Salinas Chamber of Commerce and Vanderhurst Truck Company.

On behalf of protestants Southern Pacific Company and American Railway Express Company, three witnesses were called, all of whom were engaged in business at Salinas and were substantial shippers of freight. They expressed approval of the daily rail freight service, preferring it to the bi-weekly service offered by applicants. In their judgment the present rail freight and express facilities are adequate for their needs; however, two of them would find a daily truck service convenient. The American Railway Express Company also offered

in evidence its time and rate schedules. In general its rates are lower than those proposed by applicants. In connection with the Southern Pacific passenger trains, there are four express schedules daily from San Francisco to Salinas, Gonzales, Soledad and King City, and an additional schedule to Salinas; in the opposite direction there are two schedules daily from all these points to San Francisco, and an additional schedule from Salinas. The running time ranges from four to seven hours between San Francisco and King City.

Mr. J. K. Vanderhurst, of the Vanderhurst Truck Company, testified he was operating a motor freight line between Salinas and King City and intermediate points using three trucks and a trailer. At Salinas he connects with the Service Motor Transportation Company, operating an automotive freight line from San Jose. His service, he stated, has been indorsed by business men and he believed no additional service necessary. At present, he admitted, freight moving by truck from San Francisco to King City must be transferred at San Jose and again at Salinas, resulting in delay. Moreover, the combination of rates is quite high.

This protestant also called Mr. M. E. Revallier of Service Motor Transportation Co., who testified that in connection with its operations between San Jose and Salinas it had sufficient equipment to furnish all required service, and no additional facilities were needed. He stated that an application is now pending before the Commission to consolidate the operative rights of Service Motor Transportation Company south of San Jose with those of Highway Transport Company between San Francisco and San Jose (App. No. 10938), and if this is granted, there will be a through service between San Francisco and Salinas and points south, eliminating the transfer at San Jose. He admitted that

under the present service the combination rates were quite high, and considerable delay ensued from the transfers en route.

The record indicates that the towns and communities along the route proposed to be served by applicants are now amply provided with transportation facilities by railway freight and express and by motor truck, although by the latter mode of transportation, two transfers are now necessary, i.e., one at San Jose and another at Salinas. This fact alone does not warrant the granting of a certificate to another line to conduct a through service.

The evidence, however, shows a need for a service devoted to the transportation of cheese and other dairy products from the farms and ranches along the proposed route between Salinas and King City, to San Francisco, and for hauling supplies back to these farms. This service is not now accorded by the existing carriers, nor do they appear to be in a position to fill this need. Applicants have been engaged in conducting such a service, under the terms of the Crittenden Amendment, and should be permitted to continue to do so. A limited certificate will therefore be granted. In view of our decision, it will be necessary for applicants to amend the proposed tariff accompanying their application.

Upon full consideration of the evidence we are of the opinion and hereby find as a fact that public convenience and necessity require the operation by Pietro Riccomini and Riccardo Tunzi, as co-partners, of an automotive truck service for the transportation of cheese, canned milk, cream, dairy products, and meats, from all farms, dairies and ranches lying within a zone extending laterally for a distance of seven (7) miles on either side of the main traveled State Highway extending from Salinas to King City, via Chualar, Gonzales, Soledad and Greenfield, (excepting and excluding therefrom all territory

within the corporate or town limits or areas of said cities or towns of Salinas, Chualar, Gonzales, Soledad, Greenfield and King City) to San Francisco; and for the transportation from San Francisco to all of said farms, dairies and ranches lying within the zone hereinabove described (excepting and excluding therefrom all territory within the corporate or town limits or areas of said cities or towns of Salinas, Chualar, Gonzales, Soledad, Greenfield and King City) of groceries, hardware, farm implements and farm supplies.

An order will be entered accordingly.

O R D E R

A public hearing having been held in the above entitled application, the matter having been duly submitted, the Commission being now fully advised, and basing its order on the findings of fact appearing in the opinion which precedes this order,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby declares that public convenience and necessity require the operation by Pietro Riccomini and Riccardo Tunzi, as co-partners, of an automotive truck service for the transportation of cheese, canned milk, cream, dairy products, and meats, from all farms, dairies and ranches lying within a zone extending laterally for a distance of seven (7) miles on either side of the main traveled State Highway extending from Salinas to King City, via Chualar, Gonzales, Soledad and Greenfield, (excepting and excluding therefrom all territory within the corporate or town limits or areas of said cities or towns of Salinas, Chualar, Gonzales, Soledad, Greenfield and King City) to San Francisco; and for the transportation from San Francisco to all of said farms, dairies and ranches lying within the zone hereinabove described (excepting and excluding therefrom all territory within the corporate or town limits or areas of said cities or towns of Salinas, Chualar, Gonzales, Soledad, Greenfield and King City) of groceries,

hardware, farm implements and farm supplies.

IT IS HEREBY ORDERED, that a certificate of public convenience and necessity be and the same is hereby granted to said Pietro Riccomini and Riccardo Tunzi, as co-partners, subject to the conditions hereinafter set forth:

1- Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof; shall file, in duplicate, tariff of rates and time schedules in a form satisfactory to the Commission within a period of not to exceed twenty (20) days from date hereof; and shall commence the operation of the service herein authorized within a period of not to exceed thirty (30) days from date hereof.

2- The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

3- No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

4- For all purposes, other than hereinabove stated, the effective date of this Order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 7th day of December, 1925.

W. R. Anderson
C. S. Lewis
George D. Tamm

COMMISSIONERS.