

Decision No. 19738.**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

-----oOo-----

In the Matter of the Application of)
 DAVID S. MITCHELL for certificate)
 of public convenience and necessity)
 to operate freight and express)
 service as a common carrier between)
 Susanville and Doyle, California.)

Application No. 14486.

Ben V. Curler, for the Applicant.

J. S. Ginocchio, for the Nevada-California
Transportation Company, Protestant.

BY THE COMMISSION:

O P I N I O N

The applicant holds a contract for the carrying of the United States mail between Doyle and Susanville. He has applied for a certificate to operate as a common carrier of freight between the same points. A public hearing thereon was held before Examiner Rowell in Susanville April 19, 1928.

The Nevada California Transportation Company appeared at the hearing to protest the granting of the application in so far as the proposed operations might be in competition with the freight service of protestant. Though not possessing a certificate to carry commodities of any class, the applicant for some time has transported various commodities between certain points for compensation claiming that the persons for whom he hauled were entirely dependent upon him for transportation service and that he had undertaken such services as an accomodation to

them. The protestant had previously made informal complaint to the Commission in respect to applicant's operations but at the hearing no claim was made that the applicant was unqualified to receive a certificate because of willful violation of the law.

The evidence indicates that shippers of cream and other perishable commodities require a regular transportation service between Doyle and Susanville in addition to the existing irregular freight service. The Nevada California Transportation Company offered no objection to the applicant engaging in what it termed as "express" service. It was agreed that certain commodities such as cream, dressed meats, ice, ice cream as well as small packages of all kinds might be classified as express. But regardless of any stipulation as to what one or the other might carry, it is incumbent upon us to determine generally what the public need requires, and to give due consideration to the rights of the existing carrier.

We are of the opinion that there is a public need for an additional transportation service which will enable those along the proposed route to deliver or receive such commodities which are perishable or which for other reasons may require a prompt and regular movement. The applicant's mail service demands that he operate on a fixed schedule. That service also makes him peculiarly fitted to serve the needs of numerous small shippers along his route. The service of the protestant, on the other hand, is limited to larger shipments which need not be carried on fixed schedules.

The applicant proposes to operate a one ton truck on a daily (except Sunday) schedule as set forth in Exhibit "B" attached to his application and rates will be charged in accordance with amended Exhibit "A" as filed herein.

David S. Mitchell is hereby placed upon notice that "Operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. 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.

ORDER

Application having been made as above entitled and a public hearing having been held, the matter being duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby finds that public convenience and necessity require the operation of David S. Mitchell of a motor truck service for the transportation of freight of certain classes between Doyle and Susanville and intermediate points, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to said David S. Mitchell to operate a motor truck as a common carrier of freight between Doyle and Susanville and intermediate points by way of Johnstonville, Janesville and Milford, such freight to be limited to single consignments of packages, boxed or crated goods weighing not in excess of 125 pounds each; and milk, cream, ice, ice cream, dressed meats and live stock and poultry, when crated, weighing not in excess of 200 pounds

each; said certificate to be subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.
2. Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty (60) days from the date hereof.
3. 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.
4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 9th day of May, 1928.

Leon Whitell
Ed. J. ...
Ernest ...
Thos. D. ...
Commissioners.