

Decision No. 23627 .

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of
E. R. BALL and F. E. HAYES
for Certificate of Public Convenience
and Necessity to operate a motor
freight service, restricted to certain
commodities entirely within California,
between Los Angeles and contiguous
territory and certain oil fields within
the San Joaquin Valley and in connection
therewith an unrestricted motor freight
service between Los Angeles and contiguous
territory and the foregoing territory
within the San Joaquin Valley, but
excluding between Los Angeles proper and
the towns of Bakersfield, McKittrick,
Fellows, Taft and Maricopa, also excluding
all places on the main traveled highway
intermediate between McKittrick, Fellows,
Taft and Maricopa and places less than one-
half mile interior from said highway.

E. J. D. HODGE,
Complainant,

v.

E. R. BALL and F. E. HAYES, JOHN DOE, JANE
DOE and MARY DOE, co-partners doing business
under the firm name and style of OIL WELL
EXPRESS: and OIL WELL EXPRESS, a
co-partnership,
Defendants.

MOTOR FREIGHT TERMINAL COMPANY, a corpora-
tion, and SAN JOAQUIN VALLEY TRANSPORTATION
COMPANY, a corporation,

Complainants,

v.

E. R. BALL, F. E. HAYES, E. R. BALL and
F. E. HAYES as co-partners, GENERAL TRANSIT
INC., a corporation, OIL FIELD EXPRESS, ONE
DOE, TWO DOE, THREE DOE, FOUR DOE and
FIVE DOE,
Defendants.

ORIGINAL

Application No. 16849.

Case No. 2922.

Case No. 2939.

Harry W. Blair, for applicants in Application
No. 16849, and for defendants in Cases
Nos. 2922 and 2939.

Rex W. Boston, for Asbury Truck Company, protestant in Application No. 16849; for complainant in Case No. 2922.

O'Melveny, Tuller & Myers, by Pierce Works, B. E. Ahlport and Kent Allen, for Complainant in Case No. 2939; for protestants, Motor Freight Terminal Co., and San Joaquin Valley Transportation Co. in Application No. 16849.

Edward Stern, for Railway Express Agency, Inc., protestant in Application No. 16849; Intervenor in Cases Nos. 2922 and 2939.

W. S. Johnson, for Southern Pacific Company and for Pacific Motor Transport Company, protestants in Application No. 16849, and Intervenor in Cases Nos. 2922 and 2939.

E. T. Lucey, for Atchison, Topeka and Santa Fe Railway Company, protestant in Application No. 16849; interested party in Cases Nos. 2922 and 2939.

BY THE COMMISSION:

O P I N I O N

The application of E. R. Ball and F. E. Hayes, co-partners, seeks a certificate of public convenience and necessity to operate an automobile freight service between Los Angeles and contiguous territory, and certain oil fields in the west side San Joaquin Valley.

Cases Nos. 2922 and 2939 are complaints filed against E. R. Ball and F. E. Hayes alleging that said defendants are in all respects now operating as common carriers of freight, without authority of the Railroad Commission, and praying that the Commission issue its order in each case directing said defendants to cease and desist from such unauthorized operation. Answers were duly filed by both defendants making general denial of all material allegations set out in the complaints, and particularly denying the jurisdiction of the Commission over their said operations.

Public hearings were held at Los Angeles by Examiner Gannon at the first of which it was agreed by all parties in interest that the matters be consolidated for hearing and decision.

Three truck lines, all operating under certificated authority of the Commission, appeared as complainants herein, and as protesting the application. Asbury Truck Company conducts an "on call" truck service for the transportation of oil well supplies, heavy machinery, pipe, steel and tanks between Bakersfield and McKittrick, Fellows, Taft and Maricopa, and intermediate points, with a minimum limit of 4,000 pounds per truck-load. Motor Freight Terminal Company holds an operating right for the through transportation of freight between Los Angeles and Taft, Maricopa, Fellows, McKittrick and "points in the west side oil fields." This right was later expanded to include Wheeler Ridge oil district. San Joaquin Valley Transportation Company is authorized to operate between Los Angeles and Bakersfield, and between Los Angeles and various towns in the San Joaquin Valley north of Bakersfield and as far as Fresno, the right including service in a zone five miles on each side of the highway traversed north of Bakersfield.

The applicants, whose principal place of business is in Los Angeles, describe their present operation as an "anywhere for hire motor freight hauling business on demand, specializing in the hauling of certain commodities incidental to the oil well supply business." This operation they now desire to place on a scheduled service under the jurisdiction of the Railroad Commission, and in addition seek an enlargement of their activities in the same territory by the inclusion of an unrestricted service for the transportation of all general merchandise commodities, but excluding from this type of transportation, service between Los Angeles and Bakersfield, McKittrick, Fellows, Taft and Maricopa and points intermediate between McKittrick, Fellows, Taft and Maricopa, and points less than one-half mile from the main traveled highway.

Specifically, applicants seek authority for a scheduled service between Los Angeles and some twenty-seven other points in the vicinity thereof, and the following oil fields in the San Joaquin Valley: Coalinga, Kettleman Hills, Devils Den, Lost Hills, Belridge, Temblor, McKittrick, Buttonwillow, Elk Hills, Midway, Sunset, Wheeler Ridge, Union Avenue, Fruitvale, Kern River, Round Mountain and Mt. Poso; also points intermediate, and from points on the highway ten miles interior therefrom.

E. R. Ball, who appears as applicant and defendant in these proceedings, testified that he was at one time in the employ of General Transit, Inc. as freight solicitor. He became the owner of some 1500 shares of preferred and 3000 shares of common stock and was made secretary and treasurer of the corporation. As such, he was presumed to have had full knowledge of any and all orders of the Railroad Commission affecting said corporation. The business of General Transit, Inc. did not prosper, however, and one of the partners withdrew. Ball had associated with him F. E. Hayes, his co-applicant and co-defendant herein, and together they took over what was left of General Transit and established a general trucking business of their own, using the fictitious name of Oil Well Express. This was early in July, 1930, at which time apparently the applicants were operating as hereinabove described. The present application was filed on August 25, 1930.

General Transit, Inc. has recently been before the Commission as defendant in an action alleging unlawful operation. In our Decision No. 23012 (Case 2888, decided October 27, 1930, 35 C.R.C. 352) we found that General Transit Inc. had been operating a common carrier truck service over the highways of this state, particularly between Los Angeles and Bakersfield, Taft, Fellows, McKittrick, Kettleman Hills, Coalinga, Poso Creek and Avenal,

without having secured from the Railroad Commission a certificate of public convenience and necessity as required by the statute. An order was issued requiring said General Transit, Inc. to forthwith cease and desist from such unlawful operation.

E. R. Ball was an officer and stockholder of General Transit, Inc. at the time the complaint was filed in Case No. 2888 and the present application was filed three days before the hearing of said complaint. Ball unquestionably had knowledge of the cease and desist order against General Transit, Inc. because he was the principal owner and directing factor of that concern. There was merely a substitution of names, "Oil Well Express" for "General Transit, Inc.", but the management remained the same. Oil Well Express continued to operate precisely as had General Transit, Inc. and this record contains abundant evidence in the way of exhibits and testimony to substantiate the allegations of complaints herein.

We are of the opinion, and so find, that the application of Ball and Hayes should be denied, and we further find as a fact that said E. R. Ball and F. E. Hayes, co-partners, operating under the firm name and style of Oil Well Express, are engaged in operating an automobile truck service as a common carrier of property, for compensation, without having secured from the Railroad Commission a certificate of public convenience and necessity, in violation of Statutes 1917, chapter 213, as amended.

ORDER

Public hearings having been held in the above entitled application and complaints and the matters having been duly submitted,

IT IS HEREBY ORDERED that Application No. 16849 be and it hereby is denied, and

IT IS HEREBY FURTHER ORDERED that defendants E. R. Ball and F. E. Hayes, co-partners operating under the fictitious name of Oil Well Express, immediately cease and desist from the operation of an automobile truck line as a common carrier of property in this State, and specifically between Los Angeles and contiguous territory, and certain oil fields in the San Joaquin Valley, and

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission be and he hereby is directed to forward a copy of this order by registered mail to the District Attorneys of the Counties of Los Angeles, Kern, Tulare, Kings and Fresno.

Dated at San Francisco, California, this 27th day of April, 1931.

C. C. [Signature]
Leon Whitell
W. A. [Signature]
W. B. [Signature]
Fred G. [Signature]
Commissioners.