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Decision No. 10954

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of)
 AL. G. WITT for certificate of public)
 convenience and necessity to operate : Application No. 7940
 auto freight service between San)
 Francisco and San Jose.)

Chas. H. Haswell by J.J. McAtee for Applicant
 Spencer G. Prime for San Francisco and San
 Jose Fruit and Produce Transportation Com-
 pany, Protestant
 C. S. McLanegan for C. B. McLanegan & Son and
 Pioneer-Gibson Express Company, Protestants
 C. H. Harper for Highway Transport Company,
 Protestant.

MARTIN, Commissioner:

O P I N I O N

Al G. Witt has made application to the Railroad Com-
 mission in which he petitions for a certificate of public con-
 venience and necessity authorizing the operation of an automobile
 truck line as a common carrier of fruit and produce between San
 Jose and San Francisco and certain intermediate points.

A public hearing in the above entitled application
 was held on August 14th, 1922, at San Francisco at which time the
 matter was submitted and it is now ready for decision.

It appears from testimony of applicant and other
 witnesses called in his behalf that he has been operating service
 as herein proposed for a considerable period of time prior to
 May 10th, 1917 and continuously since that date. This testimony
 is further supported by some five affidavits filed in connection
 with the present application.

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The protest of the Pioneer-Gibson Express and C. B. McLenagan and Son and Highway Transport was directed only to the objection which they maintained against the granting of a certificate which would permit applicant to haul general freight or merchandise other than fresh fruits, vegetables and produce of a similar nature destined from ranches and farms to commission houses in San Francisco.

The objection of the San Francisco and San Jose Fruit and Produce Transportation Company was not directed towards the application insofar as it sought to continue service in the transportation of fruit and produce to points which applicant heretofore has been continuously serving. They contended, however, that applicant proposes to render service to various communities which had not heretofore received such service. From a map attached to the application herein, it would appear that applicant intends to serve territory running from Mountain View to Alviso, Milpitas and San Jose to Santa Clara, Agnew, Sunnyvale to Mountain View, including all intermediate territory, together with the town of Saratoga. Fruit and vegetables ^{are} to be picked up in the territory hereinabove described and transported to commission houses at San Francisco.

Applicant testified that his transfer business was confined to the transportation of fruit and produce, but that he had on occasions transported on back haul oil at 25 cents per hundred pounds and ammonia tanks at \$1.50 each. His exhibit, quoting rates, however, contains no provisions whatever for the transportation of any commodities other than fruit and vegetables.

As no general showing was made justifying the issuance of a certificate authorizing the transportation of other than fruit and vegetables, the certificate must be so limited.

Applicant is unquestionably entitled to a certificate authorizing the continuance of operation as heretofore engaged in prior to the effective date of Chapter 213, Statutes of 1917. Due to the very nature of the business in which he is engaged, that is the season movement of different kinds of fruit and vegetables, there was considerable dispute as to whether or not he had been rendering service to certain of the communities included in the present application. The order herein, I believe, will confine the service to such points as the testimony shows have been continuously served by applicant.

I submit the following form of order.

ORDER

A public hearing having been held upon the above entitled application, evidence submitted, and the Commission being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by Al G. Witt of an automobile truck line as a common carrier of fruits, vegetables and farm produce, only, from truck gardens, farms and ranches in the vicinity of Milpitas, Alviso, Agnew, San Jose, Saratoga, Cupertino, Mountain View, Los Altos, Mayfield, Palo Alto and Redwood City to San Francisco.

It will be distinctly understood that the certificate herein granted in no way authorizes the transportation of any commodity whatsoever from San Francisco, south, with the exception of returning empties.

IT IS HEREBY ORDERED that applicant shall file within a period of not to exceed ten (10) days from date hereof his written acceptance of the certificate herein granted; shall file within a period of not to exceed twenty (20) days from date hereof tariff of rates and time schedules, in duplicate, identical with those filed as Exhibits "A" and "B" attached to the application herein; and shall commence operation of the service herein authorized within a period of not to exceed thirty (30) days from date hereof.

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.

That 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 foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of California.

Dated at San Francisco, California, this 7th day of September, 1922.

H. B. Brundage
Waring Martin
J. F. Pennington
Commissioners