

Decision No. 11394

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of)
 CHAS. D. BOYNTON, individually, and)
 CHAS. D. BOYNTON and GEO. H. SPOONER,)
 as co-partners, both doing business)
 under the fictitious firm name and)
 style of Boulevard Express, and)
 BOULEVARD EXPRESS, INC., a corporation,)
 for the transfer of an automobile)
 freight franchise between San Diego)
 and Los Angeles, California, to said)
 corporation, and the issuance of a)
 certificate of public convenience and)
 necessity for the operation of the same)
 by said corporation.)

ORIGINAL

Application No. 8156.

Warren E. Libby and H. N. Blair, for the Applicants.
 H. J. Bischoff, for the Coast Truck Line.

BY THE COMMISSION:

O P I N I O N

Applicants Chas. D. Boynton, individually, and
 Chas. D. Boynton and Geo. H. Spooner, co-partners, both doing
 business under the firm name of Boulevard Express, and Boulevard
 Express, Inc., a corporation, have petitioned the Railroad Com-
 mission for an order approving the sale and transfer of a cer-
 tain freight truck operative right between Los Angeles and
 San Diego, now possessed by applicant Chas. D. Boynton, individ-
 ually, to applicant Boulevard Express, Inc., a corporation.

A public hearing on this application was conducted by
 Examiner Satterwhite at San Diego; the matter was duly submitted,
 and is now ready for decision.

The franchise proposed to be transferred is the oper-
 ative right of Chas. D. Boynton for the transportation of freight

between the cities of Los Angeles and San Diego, California, serving as intermediate points the city of Vernon and the military reservation at Camp Kearney, together with limited authority to receive certain freight and express at other intermediate points authorized by this Commission in its Decision No. 6588 in Application No. 4754.

Coast Truck Line, a corporation, which owns and operates certain freight truck franchises in the territory between Los Angeles and San Diego, opposed the granting of this application, and in a written protest alleges substantially that said Chas. D. Boynton has forfeited his operative rights herein sought to be transferred because of wilful failure to personally operate them and by allowing said franchise to be operated by the co-partnership consisting of himself and said Geo. H. Spooner without the approval of this Commission.

It has been deemed advisable, in view of all the circumstances surrounding this proposed transfer, to review to some extent the record. Chas. D. Boynton and Geo. H. Spooner were the chief witnesses who testified in support of this application. The testimony shows that Chas. D. Boynton has agreed to sell said franchise to said Boulevard Express, Inc., a corporation, in consideration of the issue of five shares of the corporate stock of said corporation of the par value of One Hundred Dollars (\$100.00) per share, and it was shown that the actual cost of obtaining said franchise from this Commission exceeded the sum of Five Hundred Dollars (\$500.00), said items of cost including attorneys' fees, traveling expenses and other miscellaneous items of expense.

The said co-partnership of Chas. D. Boynton and Geo. H. Spooner owns all the equipment and assets which have been used in the operation of said franchise, and said co-partnership has agreed with said applicant, Boulevard Express, Inc., a corporation,

in the event this application is granted, that they and each of them will join in an application to this Commission for the transfer of all the equipment and assets of said co-partnership to said corporation in consideration of the issuance of stock in said corporation to said co-partners for such amount as this Commission may decide upon as fair and reasonable and representing the value of said assets. Since the submission of this matter said applicants have filed with this Commission such an application which is now receiving attention.

Boulevard Express, Inc., is a corporation composed of Chas. D. Boynton, Geo. H. Spooner and Warren E. Libby, and was organized for the express purpose of taking over and operating the business of Chas. D. Boynton and the said co-partnership of Chas. D. Boynton and Geo. H. Spooner.

Three director's shares of stock have been issued, and all of the stock of said corporation is common stock, amounting to \$100,000.00, which is divided into one thousand shares of the par value of One Hundred Dollars (\$100.00) each.

It appears that prior to the granting of the operative rights now sought to be transferred, Chas. D. Boynton was the owner and operator of an automobile freight franchise between San Diego and the town of Boulevard. Geo. H. Spooner became a silent partner in the equipment and proceeds of the operation of this franchise, but the entire business was managed and controlled by, and the assets of this operation between San Diego and Boulevard were under the complete supervision of, Chas. D. Boynton. The record shows that Chas. D. Boynton, with the full consent of Geo. H. Spooner, subsequently applied to this Commission for the franchise now sought to be transferred, and upon the granting of the same, as herein indicated, Chas. D. Boynton became the sole owner of the same. It was agreed, however, that all the equipment and assets of the co-partnership could be used by Chas. D. Boynton, and were, as a matter of fact, placed under his complete

control. The principal place of business of operations under this franchise was San Diego, and all of the business was in the entire charge of Chas. D. Boynton. Geo. H. Spooner was placed in charge of the operations of this certificate right at Los Angeles.

It appears that at no time have there been any written contracts or agreements between these two partners. All arrangements were entirely oral, and in accordance therewith, Chas. D. Boynton at all times was to operate said franchise and be the exclusive manager of the same; but it was agreed that the proceeds from said operations were to be divided between them. There has never been, at any time, any actual transfer of any right, title or interest in said franchise from Chas. D. Boynton to Geo. H. Spooner or to any other person. It had been, for some time, the intention of Chas. D. Boynton and the said co-partnership to form a corporation to take over the said franchise, as requested in this proceeding, but the success and stability of said operations have been more or less menaced and made uncertain by reason of active competition of illegal operators as well as private contract carriers in and along the territory between San Diego and Los Angeles, and said applicants therefore delayed the filing of this petition.

It appears that Chas. D. Boynton always employed and relied upon the advice and professional services of his attorneys in his proceedings before this Commission, and depended upon his attorneys for the legality of such proceedings, and at no time was he advised by any of his attorneys that any operations conducted by him in connection with said franchise were not in accordance with the law or in pursuance of the regulations of this Commission. The testimony shows that Chas. D. Boynton believed in good faith that his interest in the partnership and equipment gave him such a proprietary control thereof as would lawfully permit his operations of the said franchise under the arrangements

with Geo. H. Spooner, as shown by the record in this proceeding. There is nothing in this record to justify this Commission in concluding that there was any wilful or deliberate purpose to deceive the Commission or violate any of its regulations.

This Commission is concerned less with technical failures to observe its rules and regulations than with those wilful violations which result in actual cessation of operations, either periodic or permanent, or abandonment of service or poor or inefficient service to the public.

In other proceedings before this Commission, including the cases cited in this matter by the protestant, operative rights have been cancelled and declared forfeited, but the records in such other cases show either actual cessation of service for a short or considerable period of time or deliberate abandonment of operation by the legal owner with no attendant responsibility, or poor, inefficient or unsatisfactory service to the public. Under all the facts and circumstances as shown in this proceeding this Commission will not penalize the legal owner of an operative right by forfeiture thereof, when such owner has at all times taken personal charge of, as well as full responsibility for, the operation of the certificate right, has never permitted said operations to lapse or fail at any time, has rendered an adequate and satisfactory service to the public, and has, in good faith, believed said operations were not in violation of any law or regulation of this Commission.

O R D E R

A public hearing having been held in the above entitled proceeding, testimony having been received and briefs filed, the matter having been duly submitted, and the Commission being now fully advised, hereby finds: as a fact that the operation heretofore conducted by Chas. D. Boynton, under the fictitious name of Boulevard Express, has been conducted by him in good faith and

in an endeavor to comply with the provisions of the statutory law and the regulations of this Commission, and basing its order on such finding of fact,

IT IS HEREBY ORDERED,

1. That the Railroad Commission hereby approves the sale and transfer from Chas. D. Boynton to Boulevard Express, Inc., a corporation, of the operative rights specifically set forth in the preceding opinion in consideration of the issuance by said Boulevard Express, Inc., to said applicant, Chas. D. Boynton, of five shares of its capital stock, which issue of stock is hereby authorized.

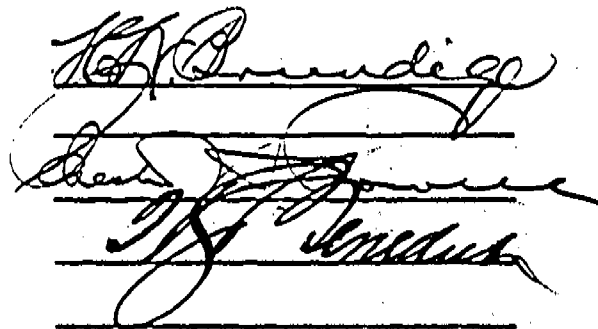
2. That applicant Chas. D. Boynton shall be required to immediately cancel all tariffs and time schedules now on file with this Commission, and applicant Boulevard Express, Inc., a corporation, shall be required to immediately file with this Commission its tariffs and time schedules or to adopt as its own the tariffs and time schedules as heretofore filed by applicant, Chas. D. Boynton. All tariffs to contain the same rates as heretofore in effect and as covered by tariff filings of said applicant, Chas. D. Boynton.

3. That no vehicle may be operated under this authority for transfer, by Boulevard Express, Inc., a corporation, unless such vehicle is owned by such applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

4. That the transfer of the operative rights herein above authorized and the required cancellation of tariffs and time schedules by Chas. D. Boynton, and the filing of new tariffs by applicant, Boulevard Express, Inc., a corporation, shall be made not later than thirty (30) days from the date of the order herein.

5. That Boulevard Express, Inc., a corporation, file with the Railroad Commission within thirty (30) days after the issue of the stock herein authorized, a report as required by the Commission's General Order No. 24.

Dated at San Francisco, California, this 17^d day of December, 1922.



Commissioners