

Decision No. 26374

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of FRANK MC MANN, JR., an individual, for a certificate of public convenience and necessity authorizing the operation by him of an automobile truck line as a common carrier of property over the public highways of the State of California between San Francisco, Oakland, Alameda, Emeryville, and Berkeley on the one hand, and Concord, Clayton, Byron, Antioch, Pittsburg, and Clyde on the other hand, and the intermediate points.

Application  
No. 18395

- T. C. Mc Gettigan, for Applicant.
- L. N. Bradshaw, for Sacramento Northern Railway and Bay Point & Clayton Railroad Company.
- Roy G. Hillebrand, for Southern Pacific Company and Pacific Motor Transport Company.
- Edward Stern, for Railway Express Agency, Inc.
- Wm. F. Brooks and Robert Brennan, by Wm. F. Brooks, for The Atchison, Topeka & Santa Fe Railway Co.
- J. E. Anderson, for The River Lines.
- Wallace K. Downey, for Merchants Express & Draying Co.
- E. H. Hart, Agent, Pacific Motor Tariff Bureau.

BY THE COMMISSION -

OPINION

Frank Mc Mann, Jr., the applicant herein, asks for a certificate of public convenience and necessity authorizing a trucking service from the metropolitan district of the County of Alameda and the City and County of San Francisco to most of the points and villages of Contra Costa County situate easterly and southerly from the City of Martinez, including the communities of Moraga Valley, the Valley of San Ramon and the communities of upper Suisun Bay.

Quite a number of hearings took place before Examiner Johnson in Pittsburg, Walnut Creek and San Francisco. Ample evidence was introduced at the hearings to demonstrate that there is a public demand for the proffered truck service, especially in the communities of Walnut Creek, Concord and Lafayette.

The chain stores operating their own trucks have placed the independent merchants, depending upon scheduled public carrier service, at a serious disadvantage. On the other hand, existing common carriers lawfully serving the territory in question vigorously protested the application upon the ground that the territory was adequately served by the following transportation companies: Sacramento Northern Railway, Bay Point & Clayton Railroad Company, Southern Pacific Company, Pacific Motor Transport Company, Railway Express Agency, Inc., The Atchison, Topeka & Santa Fe Railway Company and The River Lines.

It seems that the rail lines do offer a daily service to Pittsburg, Antioch, Brentwood, Byron, and such points upon their main lines, but the tri-weekly service offered to points westerly and southerly thereof are insufficient to meet the public demands for a speedy and adequate service. The service offered by applicant is a daily pick-up and delivery service between San Francisco and East Bay Cities on the one hand, and Contra Costa towns on the other hand. Applicant proposes both a delivery the same afternoon from Bay city wholesalers and delivery early the next morning for the later pick-ups at Oakland and San Francisco. Also, the applicant proposes a morning and afternoon return service from Contra Costa towns to Alameda county cities.

There is now no common carrier truck service available from Alameda county to these Contra Costa towns, as it appears this Commission has never issued such a certificate. This territory would seem to require the convenience of motor truck transportation as most of the mercantile houses are small, buy supplies in small quantities, and depend naturally upon the proximity of the wholesalers of the Bay district distant therefrom only 15 to 40 miles. This Contra Costa territory is naturally tributary to Oakland and may be said to be fundamentally suburban in character. It has grown more truly suburban

since the completion of the new Claremont Highway and will be even more so with the finishing of the Broadway low level tunnel. Both retail merchants and wholesalers testifying at these hearings gave evidence that a daily service was demanded to these suburban towns, a pick-up and delivery service was also required and a speedy service was necessary, all of which is offered by this applicant.

It even appeared from the testimony in this case that if the Commission denied this application and there were no certificated truck carriers in this territory and the communities were required to depend upon the inadequate service offered by the rail lines or the uncertain operations of wildcatters, either the wholesalers or retail merchants would use their own equipment to do their hauling from Oakland. It is almost the unanimous testimony of the witnesses at this hearing that the granting of the application herein would not take away any business now being given to rail carriers and river line. Some points proposed to be served by the applicant had no rail service at all, so that they would have to call for their goods at a depot some miles distant. It seems quite clear that there is a definite need for a direct and speedy transportation service to points in the Moraga Valley and the San Ramon Valley but so far as Pittsburg, Antioch, Brentwood and Byron are concerned, the testimony showed that the rail lines and the river steamers furnished sufficient transportation to meet the present public demand. It being clearly and well established that there is need for a truck service in this territory, an order covering points only where this need has been established will be made granting applicant a certificate in the territory that is now needing such truck transportation.

Frank Mc Mann, Jr. 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

The above entitled matter having been heard and submitted and the Commission being fully advised in the premises,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment of auto truck service for the transportation of property between Oakland, Alameda Emeryville and Berkeley on the one hand, and Walnut Creek, Concord, Clayton, Lafayette, Alamo, Danville and San Ramon and all intermediate points and no other service or points, provided, no local service shall be established or maintained between Oakland and Oak Villa, excluding Oak Villa, over and along the following routes:

(a) Between Oakland and points above named and intermediates thereto, via Tunnel Road and/or Orinda Road and/or Claremont Road and main State highway via Lafayette, Walnut Creek and Concord, serving Moraga and St. Mary's by divergence;

(b) Between Walnut Creek and Diablo via San Ramon Valley highway;

(c) Between Concord and Clayton via Marsh Creek Road, and to Avon, Clyde and Nichols via main highway between Concord and Port Chicago; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted to Frank Mc Mann, Jr., applicant herein, subject to the following conditions:

1- Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.

2- Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days from the date hereof, on not less than ten days' notice to the Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application insofar as they conform to the certificate herein granted.

3- Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from date hereof, on not less than five days' notice to the Commission and the public, time schedules covering the service herein authorized, in a form satisfactory to the Railroad Commission.

4- 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.

5- 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.

IT IS HEREBY FURTHER ORDERED that, in all other respects, the application be and the same hereby is denied.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 9<sup>th</sup> day  
of October, 1933.

C. C. [Signature]  
L. [Signature]  
M. A. [Signature]  
M. B. [Signature]  
[Signature]  
COMMISSIONERS.