

Decision No. 26982

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
WILLIAM L. CARPENTER and JESSIE CARPENTER,  
doing business under the fictitious firm  
name and style of ARGONNE VAN LINES for  
certificate of public convenience and  
necessity to operate a van line service as  
a common carrier between Los Angeles, San  
Francisco, Sacramento, San Diego and  
intermediate points. ) Amended  
) Application  
) No. 18633

ORIGINAL

- C. P. Von Herzen, for Applicant.
- Reginald L. Vaughan, for Bekins Van Lines and  
Lyons Van Lines, Protestants.
- C. W. Cornell and E. W. Hobbs, for Southern  
Pacific Company and for Pacific Motor  
Transport Company, Protestants.
- E. T. Lucey and W. S. Brooks, for The Atchison,  
Topeka & Santa Fe Railway Company, Protestant.

CARR, Commissioner -

O P I N I O N

By this application, as amended, a certificate of public convenience and necessity is requested authorizing applicants to operate motor trucks for the transportation of household goods<sup>1</sup> between Los Angeles on the one hand and San Francisco, Sacramento, San Diego and intermediate points. The routes to be followed, and the rates to be charged, are set forth in Exhibits attached to the application.

Public hearings were held at Los Angeles March 30 and 31 and at San Francisco on April 21 and 24, 1933.

Applicant, William L. Carpenter, a defendant in Case No. 3227, California Interurban Motor Transportation Assn. v. Safeway Transfer Van and Storage Co. et al. 38 C.R.C. 156,

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<sup>1</sup> The term household goods as used herein also includes personal effects, furnishings, fixtures, office furniture, antiques and musical instruments.

was ordered in this proceeding to cease and desist from the transportation of household goods between various points in California.<sup>2</sup> The order has not become effective as Carpenter was given an opportunity to file an application, to permit the Commission to determine if public convenience and necessity demanded the continuation of his service.<sup>3</sup> Thereafter, on January 3, 1933, an application was filed. It was later amended to include his wife as a co-partner.

In 1920 Carpenter commenced transporting household goods in the City of Los Angeles with a small Ford truck and limited capital. From this small beginning, by diligent effort, his business gradually expanded. In 1926 he built a warehouse which is operated in conjunction with his transportation business. Later, other warehouses throughout the country were obtained. At present his property and equipment represent an investment in excess of \$200,000. At the inception of the business the transportation part was confined to local movements in the City

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Between Los Angeles and San Francisco, Oakland, Berkeley, Alameda, Emeryville, Piedmont, Albany and Richmond.

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Some latitude was allowed defendant, as the Commission found in Decision No.25261, supra:

"With the exception of a few of these defendants, no element of bad faith exists. Many of them are old and established operators, their business being on the same general nature as of 1917. Many of them, during the formative years of truck regulation, came before the Commission with their applications for certificates, which were in many cases dismissed because the character of operations disclosed were then believed to be such as not to call for certification. It cannot be said that they were trying to defeat or evade regulation \* \* \*.

"Some, it appears, may have prescriptive rights by reason of similar operations in 1917 so as to fall within the rule announced by Pacific Freight Lines vs. Lawrence Warehouse Company and Re Suspension Pacific Motor Tariff Bureau Tariff No.6. Others fall within the precedent announced in Bekins Van Lines et al. v. Griggs, 35 C.R.C. 187, and Re Griggs, 36 C.R.C. 183. Some are within both. \* \* \*. It may hardly be gainsaid that the concept both of common carrier and regular route operations is changing in the light of experience and the body of court and commission decisions and determinations made to meet the rapidly developing business of truck transportation."

of Los Angeles or to contiguous points. Gradually, the length of the hauls became greater. In 1925 an application was filed with the Commission requesting a certificate of public convenience and necessity to transport household goods within a radius of 150 miles of Los Angeles. The application was dismissed, without prejudice, for lack of jurisdiction. At that time he occasionally hauled household goods from and to more distant points, including San Francisco, which he thought he could do without obtaining a certificate of public convenience and necessity. Little by little, the long distance hauling increased, until now it is fairly regular between Los Angeles, San Diego, San Francisco and the intermediate points.<sup>4</sup>

Applicant claims that the essential characteristics of his business have not changed since 1925, except that the length of hauls are now longer.

At the hearing several witness who had used applicant's services expressed themselves as satisfied with the way their goods had been handled. Many of them used his services because of a dissatisfaction with the service, rates, or packing requirements of competing carriers. However, it cannot be said from the evidence here presented that the certificated carriers have rendered, or are rendering, an unsatisfactory service. Applicant's two main competitors are the Bekins Van Lines, Inc. and Lyon Van Lines, Inc. Both carriers<sup>5</sup><sup>6</sup>

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<sup>4</sup> Applicants also operate an interstate service into Arizona and Oregon by truck and also to other interstate points, with lift vans and other types of containers which are line-hauled by the railroads.

<sup>5</sup> The railroads and steamship lines also compete to some extent. Their service, however, is not generally desired because of the rather drastic packing requirements.

<sup>6</sup> These lines operate under the jurisdiction of the Commission but both maintain subsidiary companies which are unregulated. The subsidiary companies operate between substantially the same points as the present companies. They are used to obtain business in competition with other unregulated carriers of household goods at rates less than those maintained by the parent companies.

operate a bi-weekly service between Los Angeles and San Francisco. Their equipment is not operated to its full capacity. They claim they could, without additional equipment, carry all the household goods moving between the points which applicants propose to serve. The record, however, does not substantiate this claim.

Briefly, these are the facts upon which the Commission is asked to grant a certificate of public convenience and necessity. Applying the usual standards to test public convenience and necessity would probably warrant a denial of the application. At best the showing is weak. But the Commission should view this application in a broader light. In no line of transportation is it so difficult to differentiate between the carrier subject to regulation and the purely casual on-call operator, as it is with the carrier of household goods. The first impression of this business seems to exclude it from the provisions of the Auto Truck Transportation Act (Chapter 213, Statutes of 1917), because inherently the service is irregular in the sense that the points of destination constantly shift with the demands of the shippers. Indeed, the first hauling done by this type of carrier is usually irregular and not between fixed termini or over regular routes. But with the growth of business the hauling becomes more regular between the larger cities and soon the carrier, unwittingly in most instances, steps over the line separating the carrier subject to regulation and the carrier which the Auto Truck Transportation Act does not include. So it has been with these applicants. There is no element of bad faith in their gradual evolution to a carrier subject to regulation. Nor should any stigma be attached to them, for in the light of experience the concept of a common carrier subject to <sup>been</sup> the Auto Truck Transportation Act has //and is changing. (See California Interurban Motor Transportation Assn. v. Yellow Vans, supra; In Re Application of Garcia, Decision No.26505, (November 6, 1933); compare In Re Application of Bon Moore; 27 C.R.C. 388,

with In Re Application of River Lines, Decision No.26784,  
of February 6, 1934.

Under the peculiar circumstances here present a certificate of public convenience and necessity should be granted.

Applicants William L. Carpenter and Jessie Carpenter are 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.

#### O R D E R

The above entitled application, as amended, having been duly heard at a public hearing and being duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation for compensation as a common carrier of an auto truck service for the transportation of second-hand (used) household goods and office furniture, fixtures and equipment, packed or unpacked, trunks, boxes, barrels, crates or bundles containing household goods or personal effects, musical instruments, radios and other household equipment between Los Angeles and San Diego, San Francisco and Sacramento, and all intermediate points - which routes are as follows:

- 1- Between Los Angeles and San Diego, via State Highway, via Whittier, Santa Ana, San Juan Capistrano, Oceanside and Del Mar.

2- Between Los Angeles and San Francisco, via Coast Highway (Highway No.101), via Cahuenga Pass, Calabasas, Oxnard, Santa Barbara, San Luis Obispo, San Jose and Palo Alto; and

Via Valley route (Highway No.99), via Pasadena, San Fernando, Castaic, Ridge Route, Bakersfield, Fresno and Manteca, with diversion therefrom between Delano and Goshen to serve Richgrove, Porterville, Lindsay, Exeter and Visalia etc. and diverting therefrom at San Fernando via Chatsworth and Santa Susana, Moorpark, Somis and Oxnard and/or Ventura; also diverting therefrom at Castaic via Fillmore, Sespe and Santa Paula, Saticoy and Ventura.

3- Between San Jose and Oakland via Highway 101 E; between Oakland and Sacramento via Vallejo (Carquinez bridge), Suisun-Fairfield and Davis; also between Oakland and Manteca, via Hayward and Tracy.

4- Between Manteca and Sacramento via Highway No.99, via Lathrop and Stockton, or direct between Manteca and Stockton;

5- Said routes set forth above to constitute through routes for the movement of commodities between any two points; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted to William L. Carpenter and Jessie Carpenter, subject to the following conditions:

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

2. Applicants shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than ten (10) 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. Applicants shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five (5) 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 applicants herein unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

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

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

Dated at San Francisco, California, this 30th day of April, 1934.

W. L. Seaver  
Leon Williams  
W. H. Cunn  
W. B. Howard  
W. H. Cunn  
COMMISSIONERS.