

Decision No. 28187

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of THOMAS KELLER, doing business under the fictitious name and style of Automotive Purchasing Co., for a certificate of public convenience and necessity to operate a purchasing and delivery and a purchasing and shipping service, as a common carrier by truck, between (1) San Francisco, Oakland, and San Jose and intermediate points, (2) San Francisco, Oakland, and return, and intermediate points via Oakland, Dublin Junction, Livermore, Altamont, Tracy, Stockton, Lodi, Galt, Sacramento, Davis, Dixon, Vacaville, Fairfield, Napa, Vallejo, and (3) San Francisco and return, and intermediate points via San Mateo, Hayward, Livermore, Tracy, Stockton, Lodi, Galt, Sacramento, Davis, Dixon, Vacaville, Fairfield, Napa, Vallejo, and Oakland.

Application No. 20059.

ORIGINAL

Harry A. Encell, for applicant.
H. W. Hobbs, for Southern Pacific Company, Pacific Motor Transport Co. and Pacific Motor Trucking Co., protestants.
L. I. McKim and H. W. Hobbs, for The River Lines, protestant.
J. E. Monroe, for Sacramento Motor Transport Co., protestant.
Edward Stern, for Railway Express Agency, Inc., protestant.
C. E. Brown, for San Francisco, Napa & Calistoga Ry. and Napa Valley Bus Company.
Edwin G. Wilcox, for Oakland Chamber of Commerce.
W. G. Stone, for the Sacramento Chamber of Commerce, as its interests may appear.
Robert Brennan and William F. Brooks, for The Atchison, Topeka & Santa Fe Railway and Central California Traction Co., protestants.
L. N. Bradshaw and J. L. Amos, for Western Pacific Railroad Company and Sacramento Northern Railway.

CARR, Commissioner:

O P I N I O N

Thomas Keller, doing business under the fictitious name of "Automotive Purchasing Co.," seeks certification (a) to perform both a transportation and a freight forwarding service as ancillary

to an automotive parts shopping and purchasing business and (b) to perform a transportation service in respect to yeast cakes. The routes and points as to which he seeks certification are:

1. Between San Francisco and Oakland on the one hand and San Jose on the other, serving the intermediate points of South San Francisco, Burlingame, San Mateo, Beresford, Belmont, San Carlos, Redwood City, Atherton, Menlo Park, Palo Alto, Mayfield, Sunnyvale and Santa Clara. The highways proposed to be followed are U. S. Highway 101 and Bay Shore Boulevard with lateral connections between the two at Burlingame, Redwood City, Palo Alto and Sunnyvale.

2. A loop route "with San Francisco and/or Oakland" as the origin and destination and touching in its course Livermore, Altamont, Tracy, Stockton, Lodi, Galt, Sacramento, Davis, Dixon, Vacaville, Fairfield, Napa and Vallejo. Between origin and Livermore alternate routes via Dublin Canyon and San Mateo Bridge are sought. The highways to be followed (except for the alternative portion of the route) are specified as follows: U. S. Highways 50 and 99 to Stockton and Sacramento; U. S. Highway 40 to Napa Junction, Main Highway to Napa and return, and U. S. Highway 40 to Vallejo and destination.

No local service between San Francisco and Oakland is proposed. Nor is Hayward a point to be served.

A public hearing was had on August 14, 15, 16 and 17 and the application submitted.

The application so far as it seeks certification to transport yeast cakes is not supported by the testimony. Handling of yeast at best is a side line not consistent with the principal

service sought to be certificated. So far as the evidence indicates yeast cakes can be handled without difficulty by existing carriers. Its transportation is not so intricately involved with a personal service as to call for special treatment.

A different picture is presented in respect to automotive parts. As to these the applicant has developed a highly specialized service, asserted to be purely private in cast, which so far as it involves transportation or freight forwarding, he now desires to convert into a public operation. This service is now actually conducted by applicant as far south as San Jose and also over the Stockton-Sacramento loop. In the repair and servicing of automotive equipment many thousands of parts are involved. Because of their great number they are obtainable mostly at the supply centers of San Francisco and Oakland. When parts are needed the demand for them is of varying degrees of intensity. Time is always an important element. Frequently a considerable amount of shopping about for parts is necessary. At times old parts must be matched and duplicated. Against the background of demand Keller has developed a substantial business consisting primarily of a well organized and efficient shopping service in San Francisco and Oakland but supplemented by a delivery service and in small part by a freight forwarding service.

It was first developed by him down the peninsula, both as to shopping and delivery, but about two years ago it was extended as to its shopping feature to Stockton, Sacramento and Napa and about a year ago as to both shopping and delivery.

Orders for parts are transmitted by mail, by telephone, by teletype, and are picked up in the course of delivery. Keller in his San Francisco headquarters has arranged for special wire service to the various bay supply houses. Unusually prompt and complete service is thus accomplished. Deliveries down the

peninsula are made in the early afternoon. Along the Stockton-Sacramento loop they are made during the night so that the desired parts are available for use when business starts in the morning. Occasionally deliveries may be made by Pacific Greyhound Stages or other public transportation agencies before the regular deliveries by Keller. Parts purchased are thus shipped when requested by the customer.

This service is now being rendered by Keller to some 60 supply houses and garages. It is compensated for by a flat monthly rate or payment, dependent upon the volume of orders. That it is highly esteemed by the trade is clear from the testimony. Patrons of the automobile houses have been educated to the prompt and efficient service thus rendered possible. No question, indeed, was raised respecting the need and necessity for what is termed the purchasing and shipping part of the Keller business, the protest being confined entirely to its delivery feature.

Various witnesses testified to the need of the service and were interrogated particularly as to the need of Keller supplementing his purchasing business by daily deliveries of the purchased parts. ⁽¹⁾ Naturally enough they regarded the service as a whole. They desired its continuance, and objected strongly to the ancillary delivery feature being separated from the balance. Various reasons, more or less persuasive in nature, were advanced by them in support

(1) Besides Keller and his manager Rowley the following witnesses testified as to the need of the service: Thomas J. Callahan, a wholesale and retail auto jobber at San Jose; Arthur C. Manson, a San Jose auto parts wholesaler; Roger Roberts of the Standford Auto Company of Palo Alto; Wm. E. Tennant of Patterson Parts, Inc., with stores at San Francisco, Oakland, San Jose and Sacramento; J. A. Fisher of Fisher Auto Parts, Inc. of Stockton; Donald L. Morris, who has automotive parts business at both Burlingame and Palo Alto; Geo. Wenger, an automotive parts dealer at Vallejo; Thomas A. Davies of the Davies Auto Co. of Redwood City, and P. M. Quien, an automotive parts dealer of Napa. The testimony of various other proposed witnesses was covered by appropriate stipulation.

of this position. From all the testimony it is fairly deducible that this highly developed, very specialized service, embracing features and characteristics highly desirable in the automotive parts trade, not alone in its main feature of shopping and purchasing but in its ancillary feature of delivering, has become such a need as to justify its certification.

Because of the nature of this specialized service the applicant experienced some difficulty in framing his tariffs. In general he proposes a monthly charge for the purchasing and shopping service graduated according to number of orders. For the ancillary delivery service specific rates are proposed which while not identical with prevailing rates are not out of line with them. Various criticisms of the form of applicant's proposal were met by offers to limit the service and amend the tariffs tendered. The dedication was, for instance, to be confined to that portion of the shipping public consisting of automotive parts houses, garages and service stations. The list of articles to be transported admittedly was unduly broad. The tariff did not satisfactorily cover the case of a purchase and delivery for a customer not on a guaranteed monthly minimum. Hence it will be necessary for applicant to submit a revised and amended tariff to conform to the certificate herein granted and his various tendered amendments. Before the certificate becomes effective this tariff should be approved by supplemental order. When submitted to the Commission it should be accompanied by proof that it has been served on the protestants so that they may make any informal criticisms they desire as to its construction.

Thomas Keller, doing business under the fictitious name of "Automotive Purchasing Co." 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 determin-

ing 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.

I recommend the following form of findings and order:

FINDINGS AND ORDER

Thomas Keller, doing business under the fictitious name of "Automotive Purchasing Co." having made application as above entitled, a public hearing having been held and the matter having been duly submitted,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FINDS AND DECLARES that public convenience and necessity require the establishment and operation by Thomas Keller, doing business under the fictitious name of "Automotive Purchasing Co.," as ancillary to the business of the shopping for and purchasing of automotive parts, accessories and supplies necessary for and used in the building, maintenance, operation, repair and servicing of automotive equipment of

(a) a delivery service by auto truck as a transportation company between the following points and over the following routes and limited to service to auto parts houses, garages and service stations:

Route 1. Between San Francisco and Oakland on the one hand and San Jose on the other, serving the intermediate points of South San Francisco, Burlingame, San Mateo, Belmont, San Carlos, Redwood City, Atherton, Menlo Park, Palo Alto, Mayfield, Sunnyvale and Santa Clara, over U.S. Highway 101 and Bay Shore Boulevard with lateral connections between the two at Burlingame, Redwood City, Palo Alto and Sunnyvale.

Route 2. A loop route with San Francisco and Oakland as its starting and terminating point and touching in its course and serving Livermore, Altamont, Tracy, Stockton, Lodi, Galt, Sacramento, Davis, Dixon, Vacaville, Fairfield, Napa and Vallejo over U. S. Highways 50, 99 and 40 and the main highway Napa Junction to Napa and return, with the right to use alternative routes between San Francisco and Oakland and Livermore either via Dublin Canyon or via the San Mateo Bridge.

and

(b) a service as a freight forwarder between the points specified in (a).

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such services be and the same hereby is granted to Thomas Keller, doing business under the fictitious name of "Automotive Purchasing Co.," subject to the following conditions:

1. The applicant shall file in triplicate within not to exceed thirty (30) days from the date hereof a tariff constructed in accordance with the Commission's general orders and containing rates corresponding to the rates proposed in the application and with commodity descriptions and rules and regulations consistent with the offers and amendments proposed at the hearing and with this order, (copies of such tariffs to be served upon the various protestants) this order not to be effective until twenty (20) days after such tariff is approved by supplemental order of the Commission.
2. Applicant shall file his written acceptance of the certificate herein granted within fifteen (15) days from the date of the supplemental order approving his tariff.
3. 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.

4. 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 FURTHER ORDERED that in all other respects the application be denied.

Except as otherwise herein provided, the effective date of this order shall be twenty (20) days from the date hereof.

The foregoing opinion, findings and order are hereby approved and ordered filed as the opinion, findings and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of August, 1935.

Leon A. White
M. J. Linn
Paul R. Linn
Paul R. Linn
Commissioners.