

Decision No. 2839

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Aero Mayflower Transit Co., a California Corporation, for a Certificate of Public Convenience and Necessity to operate a motor truck van line service as a common carrier between points and over routes in the State of California as more particularly set forth in this Application, and for permission to issue stock.

Application No. 19997.

ORIGINAL

Phil Jacobson, for applicant.

W. K. Downey, for Pacific Freight Lines, protestant.

R. E. Wedekind, E. W. Hobbs and R. S. Meyers, for Southern Pacific Company, Pacific Motor Transport Company and Pacific Electric Railway, protestants.

Robert Brennan and W. F. Brooks, for Atchison, Topeka & Santa Fe Railway, protestant.

H. J. Bischoff, for Southern California Freight Lines and Triangle Transfer of San Diego, protestants.

G. C. Foster, for Western Truck Lines, protestant.

W. L. Carpenter, for Argonne Van and Storage Company, protestant.

Floyd Bekins, for Bekins Van Lines, Inc. protestant.

C. P. Herzen, for Baker Transfer and Storage Co., Griggs Van Lines and Lyon Van Lines, protestants.

BY THE COMMISSION:

OPINION AND ORDER

Applicant corporation seeks a certificate of public convenience and necessity authorizing it to establish and maintain automotive service as a common carrier of property between various termini and practically covering the State over all state highways.

Public hearings thereon were conducted by Examiner Williams at San Francisco and Los Angeles.

The offer of service by applicant is as follows:

To establish service as a common carrier for the transportation of household goods, personal effects, furniture, fixtures, office furniture, antiques, musical instruments, and other household and office equipment:- packed, crated, and unpacked, between all points on Highways #101 and #99, between the Oregon border on the north, and San Diego and El Centro on the south, serving all intermediate points; and between San Francisco and Oakland, and the border of California-Nevada via Highways #40 and #50, serving all intermediate points; and between Los Angeles and the Nevada-California border via Highway #91, serving all intermediate points; between Los Angeles and the Arizona-California border via Highway #66, serving all intermediate points; and via Highways #60 and #99, serving all intermediate points; and between San Diego and the Arizona-California border via Highway #80, serving all intermediate points, and within a radius of thirty (30) miles on either side of said highways and thirty (30) miles beyond the city limits of incorporated cities in said area on said routes, as said routes are more particularly shown on the Map attached hereto and marked Exhibit "E" and made a part of this Application.

The corporation has been formed and incorporated by W. J. Norton, Alice Norton and Adeline Greenberg. Its capital stock is fixed at \$25,000. The corporation is to facilitate a mutual enterprise of twelve furniture warehousing companies, all of whom will become stockholders; twelve others will be merely agencies. The twelve stockholding companies are:

Norton Van and Storage Company, Los Angeles
Pasadena Transfer, Pasadena
Redman Storage Company, Santa Monica
Penn Transfer, Santa Ana
Hayden Transfer, San Diego
J. R. Zimmerman, Long Beach
Valley Van and Storage Co., Fresno
Security Ice and Cold Storage Co., San Jose
Miller Van & Storage Co., San Francisco
Wells Van & Storage Co., Alameda
Western Transfer & Storage Co., Berkeley
Lawrence Warehouse Co., Sacramento

They are organized as affiliates of the Aero Mayflower Transit Company of Indianapolis, an interstate carrier of the same commodities, and operating 135 moving vans in 48 states, according to the testimony of Burnside Smith (since deceased), its President. The mutual purpose is to provide for their own

businesses an intrastate carrier which, while not in any way connected with the interstate company, would supplement its services where consolidated loads move to destinations in California not served by the interstate carrier. In addition it would perform service between the membership warehouses and for the public. The rolling stock (starting with five trucks) would be acquired from corporation capital and a number of vehicles, now owned by members, is under purchase arrangement. It is clear from the testimony of J. Robert Zimmerman, one of the organizers of the corporation, and an experienced truck operator under authority of this Commission for 15 years, that the applicant has devised a practical method of operation, in all respects (except as to new routes and points served) identical with the services maintained, under certificate of this Commission, by Bekins Van Lines, Lyon Van Lines and Argonne Van Lines - identical even in rates. Bekins Van Lines is a subsidiary of Bekins Van and Storage Company and Lyon Van Lines of Lyon Warehouse and Storage Company.

With three carriers now authorized to transport furniture over practically State wide routes, it well may be asked, what need of a fourth? Applicant's answer is that a fourth is needed because two of the existing carriers are subsidiaries of warehouse chains, while the third operates for a different alignment of warehouses, and that thus each chain or alignment possesses its own special transportation service; that "independent" warehouses "lose their identity" when using such services and that accounts once tendered to carriers for competing chains or associates are never recovered. Further, they assert, the certification of applicant will permit assimilation

of cargoes now hauled by contract carriers and also the long distance hauling of the Aero membership which has been performed by them sporadically. Above all it will not mix the business of the Aero membership with the competitive chains of carrier owned warehouses and by such mingling, facilitating capture of customers by rivals.

Applicant produced twelve oral witnesses all interested in the warehouses promoting the applicant corporation or an affiliate agency. The foregoing paragraph represents their testimony in general. Eight of these witnesses were from Southern California (Los Angeles, Pasadena, El Centro, Riverside, Santa Ana, Santa Monica and San Diego) and four from San Jose and San Francisco. The testimony of four witnesses from Fresno, Alameda, Berkeley and Sacramento was stipulated as cumulative of other northern witnesses.

Protestants presented only warehousemen or transportation operators. Their testimony, in brief, concerned not only the certificated truck operations of the three carriers between north and south, but witnesses for short distance hauling both by truck and rail, all under the jurisdiction of the Commission. General freight truck lines were particularly opposed to certification of any new carrier of new or crated furniture, etc., holding that truck facilities are adequate for such movements. Rail carriers took the same attitude.

It was the almost unanimous opinion of applicant's witnesses that, when they used the services of rivals for clients, the clients' business never returned. The conclusion of witnesses is that, due to transportation contact and solicitation, the

carriers owned by chain warehouses, absorb the business turned over to them.

We have sought basis in fact for this contention in the record without success. At least 75 per cent of furniture movements do not "repeat"; other estimates were as high as 90 per cent. Ordinarily a householder does not move from one community to another oftener than once in a decade. Those who are attached to scattered business as railroads, oil fields, etc. are usually moved to and from points of employment, when moved by truck, by contract made by the employer. The record shows, particularly in the exhibits of applicant showing movements of Aero member warehouses, that the movements are distinctly separate and in only a few instances, constitute so-called "repeats." And, too, the exhibits show what has long been held to be radial operation and not until now¹ requiring permit and regulation as to rates; or, otherwise, contract hauling over the public highways, other than between fixed termini and/or over regular routes.

For the regular movements between fixed termini and over regular route there now are three certificated carriers. The State of California is well covered by these certificates in its most populous portions. There is established service between San Diego and Redding and practically all intermediate points by these carriers. The record shows that weekly schedules performed by them, do not carry more than 50 to 70 per cent of truck capacity. Each operator has equipment to carry large tonnage if obtainable, with added expedition and schedules. Approximately 75 per cent of all movements is

¹

See Chap. 223, Acts of 1935. See also in re Ben Moore, 27 C.R.C. 388.

between warehouses. Applicant proposes to serve the Redwood Highway, the Truckee route, Imperial Valley and the routes east of Barstow, in addition to the services over routes now maintained by other authorized carriers. Admittedly, this is part of a plan to cooperate by interline business with the interstate carrier bearing the same name as applicant, but the record does not disclose any public need for such routings in addition to the rail or truck services now available to each or part, for intrastate transportation.

Applicant's chief demand is that the warehousemen, members of the corporation and their agencies or affiliates, have a carrier of their own. They urge that by some law of gravitation, not clearly discernible in the record, patronage of the existing carriers is a sacrifice by the "independents" of their identity and results in the assimilation of their warehouse businesses by existing carriers. Frankly, we cannot agree with them on their own testimony. The vices, if any, appear in the furniture warehouse competitive business rather than the public means of transportation. If the certificated carriers are indulging in unlawful preferential practices, such practices should be met with proper complaint. To add to the number of carriers is not the remedy. Such action would open the door to similar demands from many affiliated business in California and so divide the traffic that none could function economically and the public would be subjected to high rates.

Applicant's members estimate that the bulk of their transportation business will accrue from present contract operations and radial operations. The exhibits filed by applicant indicate radial operation by individual members and each testi-

fied that radial operations would be reserved by them from applicant. The exhibits also indicate a substantial volume of long distance hauling under specific contract. Under Chapter 223, Acts of 1935, it is apparent that much of these two types of transportation could, and according to the record, would continue to be performed by applicant's members. The law seems to have been designed to include many of such operations. The remaining transportation type - common carrier between fixed termini - capable of hauling in both directions now has three certificated operators. The record does not show inadequacy of either service. That the rates are not held unreasonable by applicant is shown by their adoption by applicant.

The showing of applicant is based largely on facts and reasoning extraneous to questions of public necessity and convenience. While the competitive situation in which the so-called "independents" find themselves may be parlous, the proposed solution by an additional carrier for them is not justified by public convenience and necessity nor by inadequacy of existing facilities, either truck or rail.

The application will be denied by appropriate order.

O R D E R

Aero Mayflower Transit Co., a corporation having made application, as above entitled, for a certificate of public necessity and convenience for the transportation of new and used furniture, etc. over various routes, a public hearing having been held and the matter having been duly submitted,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
HEREBY DECLARES that public necessity and convenience do not

require the establishment of automotive transportation service as herein proposed; and

IT IS HEREBY ORDERED that the application be and the same hereby is denied.

Dated at San Francisco, California, this 28th day of October, 1935.

M. A. Carr

M. B. Harris

M. J. [unclear]

Frank R. [unclear]

COMMISSIONERS.