

Decision No. 29042

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

**ORIGINAL**

In the Matter of the Application of )  
 O. R. BENEDICT and E. T. BROWN, )  
 co-partners, for a certificate of pub- )  
 lic convenience and necessity to )  
 operate a specialized automotive )  
 transportation service for the trans- )  
 portation of new furniture between )  
 Los Angeles and Huntington Park on )  
 the one hand, and San Diego on the )  
 other hand serving intermediate points )  
 including Anaheim, Santa Ana and )  
 Oceanside. )

Application No. 19880

Rex W. Boston, for applicant.

Wallace K. Downey, for Motor Freight Terminal Co.,  
 protestant.

Phil Jacobson, for Ace Transportation Company,  
 interested party.

Ellis Brown, for Triangle Transfer & Storage Company,  
 protestant.

C. P. Von Herzon, for Certificated Highway Carriers,  
 protestants; also Argonne Van Lines, protestant.

Robert Brennan and Wm. F. Brooks, by Wm. F. Brooks,  
 for The Atchison, Topeka & Santa Fe Railway Co.  
 protestant.

H. J. Bischoff, for Southern California Freight Lines,  
 protestant.

Floyd Bekins, for Bekins Van Lines, protestant.

BY THE COMMISSION:

O P I N I O N

By this application as amended O. R. Benedict and  
 E. T. Brown, co-partners, petition for a certificate of public  
 convenience and necessity to operate a specialized automotive  
 trucking service as a highway common carrier for the transportation

of new furniture, including household furnishings, between Los Angeles and Huntington Park on the one hand, and San Diego on the other hand, via the following route: Atlantic Boulevard, Firestone Boulevard and State Highway to Buena Park and Anaheim, thence via U. S. Highway 101 through Santa Ana, Tustin and San Juan Capistrano, serving intermediate points.

Public hearings were held before Examiner Geary at San Diego May 10 and at Los Angeles May 28, 1935. Briefs were filed and the issues are now submitted for a decision.

Applicant copartnership is operating as a highway common carrier of property between Los Angeles, Cudahy, Watts and intermediate points by virtue of operating rights acquired by it in Decision No. 27049, dated May 14, 1934 on Application No. 19429. The instant application, while augmenting those operations and using in part the facilities already dedicated to the public, would install an entirely new highway common carrier service.

The application recites that it is proposed to establish and maintain a specialized service for the transportation of crated and uncrated new furniture moving from manufacturing and wholesale furniture establishments in and about Los Angeles to the retailers in and about San Diego, Oceanside, Santa Ana and Anaheim; that due to present day buying methods there are many small furniture shipments requiring an expedited and economical handling in the custody of men having a particular knowledge and skill not now available within the territory served by the existing facilities. Tonnage northbound will consist entirely of furniture, faulty in character, returned to the Los Angeles manufacturers or jobbers.

A number of witnesses were called on behalf of the applicant; among those testifying were representatives from each of

the following companies: Standard Furniture Company, Globe Outfitting Company, Benbough Furniture Company, Leighton and Company and the secretary of the Retail Furniture Association of Los Angeles, with a membership of 21 furniture dealers. In addition to this group of interested shippers, counsel stipulated that witnesses who would testify to the same facts could be placed on the stand on behalf of the Grand Rapids Furniture Company, Superior Furniture Company, Davidson Furniture Company, Anderson Furniture Company, Hammone Furniture Company, University Avenue Furniture Company, Lyde Furniture Company, Swaine-Cole Furniture Company and Crescent Furniture Company. The witnesses testified to the effect that they received at San Diego new furniture and household furnishings from dealers, manufacturers and jobbers at Los Angeles; that it is more convenient and economical to transport the goods uncrated than to crate or otherwise pack the commodities; that a specialized service under the control of experienced packers is necessary for the safe movement; and that the crating of furniture is expensive and must be paid for by the buyer.

Prior to using the facilities of this applicant, the furniture was moved very largely either in the sellers' own equipment or by trucks operating on behalf of the Furniture Manufacturers Association located at Los Angeles, which latter functioned under the provisions of the N.R.A. Code. The rates charged were materially lower than those proposed by this applicant and since the Code activities ceased, the Association has not performed the hauling to its customers.

E. T. Brown, one of the applicants herein, testified that the operation between Los Angeles and San Diego was instituted during September 1934 and continued to date in good faith as a private carrier under "contracts". These "contracts" consisted of

verbal agreements to transport new furniture and did not cover a definite period of time nor did they fix the amount of tonnage to be hauled at any agreed rate. The witness further testified that no uniform charges were made, that special rates for different shippers were made depending upon the volume of business offered. Cross examination of this witness developed that about twenty firms in San Diego had received freight hauled by the trucks of the applicant, the charges in most cases being paid by said firms. This application was filed on the advice of counsel after it became apparent that the operation was such as required certification.

Protestants described their services, rates and financial results and contended that the operations of this applicant would further deplete their revenues and also that applicant could not secure sufficient revenue at the rates proposed to make the services profitable.

Protests against the granting of the application were entered by Triangle Transfer and Storage Company (Ellis Brown and P. M. Follensbee), Motor Freight Terminal Company (now Pacific Freight Lines), Southern California Freight Lines, Bekins Van Lines, Inc., Argonne Van Lines, and The Atchison, Topeka and Santa Fe Railway Company.

Mr. W. K. Downey testified as to the service of Motor Freight Terminal between Los Angeles and San Diego.

Mr. H. P. Merry on behalf of Southern California Freight Lines testified in regard to the service given by his company which is similar to that of Motor Freight Terminal Company.

Mr. Ellis Brown and Mr. P. M. Follensbee, a copartnership doing business as Triangle Transfer and Storage Company possess a certificate of public convenience and necessity for the transportation of new as well as used, crated or uncrated office,

store and household furniture and other household goods between Los Angeles and San Diego. Mr. Brown and Mr. A. W. Follensbee, manager of the Company, each protested the granting of the application and in support of such protest stated that for many years the Company has specialized in the transportation of uncrated, new furniture and alleged that approximately 80 per cent of its tonnage between Los Angeles and San Diego consists of such furniture. Mr. Brown stated that his Company has enough equipment available to handle five times the amount of business done during the year 1934 and further that even though P.S. license plates were available at no charge his Company did not take out licenses for two trucks because of a lack of available tonnage which has caused a considerable depletion of revenues.

None of applicant's witnesses had any complaint as to the adequacy of existing service between Los Angeles and San Diego. There was complaint, however, as to the rates charged by Triange Transfer and Storage Company although no testimony was adduced as to the unreasonableness of such rates.

There are at present a number of certificated highway common carriers as well as one railroad operating between Los Angeles and San Diego. Three of the highway common carriers specialize in the transportation of uncrated household and office furniture. Only one of these, however, is authorized to handle new as well as used furniture.

A careful review of the entire record leads to the conclusion and we hereby find as a fact that the granting of the authority herein sought will not be in the public interest, and will not meet a necessity not being met by certificated common carriers.

The application should and, in the order herein, will be denied. The record discloses ample proof that applicant is now operating a highway common carrier service between Los Angeles and San Diego without having been certificated by the Commission. It is readily apparent, that in view of a denial of such certification, the service as now conducted should be immediately discontinued. This Commission has repeatedly and consistently held that the mere filing of an application may not be considered by the applicant as authority to operate and it has many times held that the operation of a service in anticipation of certification is good and sufficient grounds for denial of the application.

O R D E R

A public hearing having been held in the above entitled proceeding, the matter having been submitted and being now ready for decision,

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

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 17<sup>th</sup> day of August, 1936.

Leon Whittell

W. D. Cum

W. H. ...

Frank ...

Commissioners