

Decision No. 31278

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
MELVIN ROY, doing business under the)
fictitious name and style of FLO'DEL)
CO., for a certificate of public -)
convenience and necessity to operate)
as a highway common carrier between)
San Francisco and Palo Alto, and)
intermediate points, on the one hand,)
and San Francisco and Oakland, Alameda,)
Berkeley, Piedmont, El Cerrito, Albany,)
and San Leandro, on the other.)

ORIGINAL

Application No. 21279

FELIX LAURICELLA, for Applicant

ALFRED ERESLAUER, for Bernard D. Sherman, Protestant

WILLARD L. ELLIS, for Vernon B. Bradbury, doing
business as Monlo Park - San Francisco Parcel
Delivery, Protestant

JOE ROBERTSON, for Highway Transport, Inc.,
Interested Party

B. H. HART, for Merchants Express Corporation,
United Transfer Company, Inter-Urban Express
Corporation, Kollogg Express and Draying Co.,
Haslett Warehouse Company, Peoples Express
Company, East Bay Drayage & Warehouse Co., and
West Berkeley Express & Draying Company,
Interested Parties.

BY THE COMMISSION:

O P I N I O N

In this application as amended Melvin Roy, doing business as Flo'Del Co., seeks a certificate of public convenience and necessity as a highway common carrier for the transportation of fresh cut flowers, potted plants, potted flowers, fresh floral wreaths and other fresh floral arrangements between (a) San Francisco, El Cerrito and San Leandro and intermediate points via Oakland, Berkeley, Albany, Piedmont and Alameda; (b) San Francisco

and Palo Alto and intermediate points via Burlingame, San Mateo, Redwood City and Menlo Park.

A public hearing thereon was had before Examiner Paul at San Francisco on June 3, 1938, at which time the matter was duly submitted and is now ready for decision.

Upon stipulation duly made between applicant and Joe Robertson, appearing for Highway Transport, Inc., and E. H. Hart, appearing for numerous transbay highway common carriers, that no authority was sought for the transportation of any property other than as hereinabove set forth, all protests of such parties were withdrawn.

The service proposed is a daily except Sunday service. Four public witnesses, engaged in business as florists in San Francisco, testified, in general, as to the necessity of the proposed service and that the two daily schedules offered by applicant would fill their needs for the transportation of the above named commodities between San Francisco and the points proposed to be served by applicant. The principal need, according to the testimony of these witnesses, is for a service which eliminates the rehandling of their products to the greatest possible extent. Under the present methods of common carrier transportation, flowers are shipped to destination and in most cases are then picked up by some local delivery service and finally delivered to the consignee. This rehandling of fresh cut flowers, which are highly perishable, in a great many instances results in such flowers being received in a condition not satisfactory to the consignee.

Applicant as a contract carrier picks up shipments which are loaded into a specially constructed truck and transports directly to the consignee without interchange with any other carrier, or

without transfer from line haul to pickup or delivery equipment. It appears that applicant has had considerable experience in the handling of fresh cut flowers and floral arrangements and is often called upon by said consignees upon delivery of floral shipments to lay out table decorations or to place floral wreaths or make other arrangements thereof. The applicant and his employees are trained in the handling and preservation of flowers and the proper arrangement thereof upon arrival at destination. This enables the shipper to give definite personal instructions to the driver of the truck for the proper transportation and delivery of the above commodities to the consignee and upon request therefor from such consignee any special arrangements thereof will be made by said driver.

The record shows that applicant as a contract carrier has been giving substantially the same service he herein proposes to dedicate to the public as a highway common carrier under certification.

At present applicant has four panel type trucks especially designed for the transportation of cut flowers and plants only. Two of his trucks are now being replaced by one late model truck of a similar type body.

The only opposition that developed to the granting of this application was that offered by Vernon Bradbury who holds an operating right as a highway common carrier to transport parcels, which includes cut flowers, between San Francisco and Menlo Park and intermediate points. The testimony of Bradbury shows that he has been engaged in the transportation of cut flowers

from numerous floral shops in San Francisco to points as far south as Menlo Park since acquisition of his operative rights in July 1936; that he is operating one 1937 Chevrolet panel type truck of three hundred cubic feet space with separate shelving for the transportation of fresh cut flowers; that he has had some experience in arranging table decorations although he has never had any experience as a florist; and that he has never received any complaints from any shippers or consignees using his service. The record indicates that the annual gross income of Bradbury for the year 1937 was \$2,983.15, of which amount \$731.85 was revenue received from the transportation of fresh cut flowers and plants, or approximately 25 per cent of his total revenue. Bradbury contends that there has never been a sufficient demand from the florists in San Francisco to justify the establishment of any additional schedules.

It is shown that in the past Bradbury has been, in some cases, accepting shipments of fresh cut flowers for transportation which he has generally required to be delivered by florists at the shop of competitors, or to leave at such shops requests for Bradbury to call to make pickups. This arrangement has resulted in considerable dissatisfaction to such shippers. Bradbury testified, however, that he has recently established headquarters at the market of the Campagno Poultry Company where requests for service may be left by telephone message.

It is clear from this record that the transportation of cut flowers is a highly specialized business which requires the use of special equipment and a working knowledge of the

floral business. Applicant has shown that he is well equipped to provide this special service, in fact the granting of this application would have the effect of changing applicant's status as a highway contract carrier to that of a highway common carrier. Furthermore, protestant Bradbury has not shown that he can offer a comparable service as required by this highly specialized business. Therefore, it appears that this application should be granted.

Applicant should bear in mind that in the granting of the certificate herein no authority is thereby granted for the transportation of the same commodities between the same points both as a contract carrier and a common carrier.

Melvin Roy 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.

O R D E R

A public hearing thereon having been held, the testimony adduced, the matter duly submitted and it being now ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY
DECLARES that public convenience and necessity require the estab-
lishment and operation by Melvin Roy, doing business as Flo'Del Co.,
of a highway common carrier service for the transportation of fresh
cut flowers, potted flowers, potted plants, fresh floral wreaths,
and other floral arrangements for compensation between San Francisco
and El Cerrito and San Leandro and intermediate points via Oakland,
Berkeley, Piedmont, Albany and Alameda; and between San Francisco
and Palo Alto and intermediate points over and along the Bayshore
Highway and El Camino Real, and

IT IS ORDERED that a certificate therefor is hereby
granted to Melvin Roy subject to the following conditions:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file in triplicate, and concurrently make effective on not less than ten days' notice to the Railroad 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 in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.
3. Applicant 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 days' notice to the Railroad Commission and the public, a time schedule or 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 obtained.
5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

6. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.

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

Dated at San Francisco, California, this 19th day of September, 1938.

Robert W. [unclear]
Leon [unclear]
Frederic [unclear]
Ray L. Rice

COMMISSIONERS