

Decision No. 21782

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the )  
L. and N. FEEDING CORPORATION, INC., (a )  
corporation) for a certificate of public )  
convenience and necessity to engage in the )  
business of collection, transportation and )  
disposal of animal and vegetable refuse, )  
market refuse and cannery waste also non- )  
combustible rubbish and dead animals as a )  
common carrier by motor truck operating )  
under fixed schedule and over regular routes )  
in truck load quantities, and less, from )  
the termini of Alhambra, Glendale, Ingle- )  
wood, Long Beach, Pomona, Santa Monica, San )  
Pedro, Bakersfield, and other places named )  
into certain distribution areas located )  
within the counties of Los Angeles and )  
Orange. )

Application  
No. 21782

ORIGINAL

HARRY N. BLAIR and HUGH G. MADDOX, for  
Applicant.

McFADDEN & HOLDEN, for Harry Marks, Intervenor.

GEO. W. TRAMMEL, City Attorney, and JOSEPH B.  
LAMB, Deputy City Attorney, for the city  
of Long Beach, Protestant.

AUBREY N. IRWIN, City Attorney, by A. L. Lawson,  
Assistant City Attorney, for the city of  
Glendale, Protestant.

J. B. OGG, City Attorney, for the city of  
Alhambra, Protestant.

W. F. MENTON, District Attorney of Orange County,  
for Orange County, Protestant.

CHARLES D. SWANNER, for the California Hog Feed  
Association, Protestant.

PRENTISS MOORE and M. C. SCHERAGER, for Sun Trans-  
port Company, Kardash Trucking Company and  
George Kardashian, Protestants.

C. W. McINERNEY, City Attorney, for city of Santa  
Monica and T. D. PLUMER, Commissioner of Finance  
of city of Santa Monica, Protestants.

RAY L. CHESBRO, City Attorney, and JOHN W. HOLMES,  
Deputy City Attorney, by John W. Holmes, for the  
city of Los Angeles, Interested Party.

GEO. W. LAWRENCE, for the city of Inglewood, as an  
Interested Party.

BY THE COMMISSION:

O P I N I O N

In this application L. & N. Feeding Corporation, Inc., a California corporation, requests a certificate of public convenience and necessity for the establishment and operation of a highway common carrier service for the transportation and disposal of animal and vegetable refuse, market refuse, cannery waste, non-combustible rubbish and dead animals between various points in Southern California.

A public hearing thereon was had before Examiner Paul at Los Angeles and the matter was taken under advisement for the purpose of determining whether the proposed operation comes within the jurisdiction of the Railroad Commission.

The testimony of three public witnesses and the president of the applicant corporation was offered as proof of public convenience and necessity and in support of applicant's contention that its proposed operations are those of a highway common carrier which require certification.

Through counsel, the petition was opposed by the cities of Long Beach, Glendale, Alhambra, Santa Monica, Inglewood and Los Angeles; by Orange County, through its district attorney; and by other garbage haulers.

The three public witnesses are engaged in the hog raising business in Orange County. The larger part of their testimony concerned the difficulties which they allege they are having in obtaining sufficient garbage to feed to their stock.

Two testified that they purchase garbage from the person who makes the deliveries to their farms. One of these witnesses stated that he had had a conversation with Mr. Lyon, representing the applicant herein, during which Mr. Lyon agreed to sell to him certain excess garbage. The third witness testified that he would purchase garbage from a common carrier if the charge were reasonable.

From the testimony of G. N. Lyon, president of applicant corporation, and the record, it appears that applicant is engaged in the operation of a hog ranch in Orange County. Applicant is also engaged in the collection and disposal of garbage from various communities, a part of which it transports to its hog ranch to be used as hog feed. At Alhambra, Glendale, San Pedro, Inglewood and Pomona it collects and disposes of such garbage. The cities of Santa Monica and Bakersfield perform their own garbage collection, the disposition being made by applicant. Such disposition, as well as the collection when made, is under contracts with the several municipalities involved. It further appears from the testimony of Lyon that at Long Beach garbage is collected by a contractor who in turn sells such garbage to applicant. Pursuant to these arrangements, title to the garbage becomes vested in applicant contemporaneously with the delivery of possession to it. At the disposal or distribution points within Los Angeles or Orange Counties, the garbage in excess of that used by applicant is sold by it to hog raisers for feeding purposes, applicant receiving therefor a price which includes a reasonable charge for transportation of said garbage. However, in some cases an f.o.b. point of origin price has been

set and a transportation charge added thereto.

It was also shown that in all cases applicant performs the transportation of the property involved to destinations.

It is needless to review the record with respect to the alleged rates proposed to be charged for the transportation service or the ability of applicant to render such service. The sole question is one of jurisdiction of the Railroad Commission.

No evidence was offered to show that applicant has ever applied to the Railroad Commission for a permit to transport property for compensation as required by the Highway Carriers' Act (Statutes 1935, Chapter 223) or the City Carriers' Act (Statutes 1935, Chapter 312, as amended).

From the foregoing, as adduced in the record herein, it is clear that applicant is engaged merely in the transportation of its own property which transportation is incidental to its business of raising hogs, and the collection and disposal of garbage. The disposal of such garbage is either by sale, individual use, or other means. It has entire control of the disposition of the property which it transports and may use it for its own needs or dispose of it to others. Such an operation is one over which this Commission has no jurisdiction. In view of such conclusion no certificate nor permits are needed by, nor can they be granted to, applicant. Therefore, the application will be dismissed.

#### O R D E R

A public hearing having been had in the above-entitled proceeding, the matter having been duly submitted upon the

question of jurisdiction, and the Commission now being fully advised:

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

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

Dated at San Francisco, California, this 24<sup>th</sup> day of September, 1940.

Ray L. Rice  
Frank D. Smith  
Paul D. Babington  
W. H. Kelly  
Justus F. Casmen  
COMMISSIONERS