

Decision No. 38298

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
HOLMES EXPRESS, a corporation, for an)
"in lieu" certificate of public con-)
venience and necessity to operate a)
common carrier truck service for the)
transportation of property between)
San Francisco, San Jose, Robertsville,)
Los Gatos, Permanente, Los Altos, and)
all intermediate points.)

ORIGINAL

Application No. 24511

DOUGLAS BROOKMAN, for applicant.

J. F. VIZZARD, for Highway Transport,
Inc., interested party.

BY THE COMMISSION:

O P I N I O N

Applicant Holmes Express, a corporation, is operating as a highway common carrier between San Francisco, Robertsville, San Jose, Los Gatos and intermediate points. It holds a certificate created by Decision No. 17857 authorizing service in general between these points.⁽¹⁾

In the application here considered applicant requests the Commission to issue to it a certificate in lieu of that created by said Decision No. 17857, in which its operative right "may be more

(1) That operative right was acquired by applicant from its predecessors in interest, H. E. and E. P. Holmes, partners, under authority of the Commission's Decision No. 24931, dated June 27, 1932, in Application No. 18229.

clearly defined" and made co-extensive with the operations at present being conducted by it. This would include authority to serve not only the points specifically named in the certificate now held, but, in addition thereto, all points intermediate to termini and all points within one mile laterally of the routes of operation through unincorporated territory and one mile laterally from the corporate limits of incorporated communities served excepting San Francisco. It also requests authority to extend its service to Permanente. Under the new certificate, applicant proposes to transport general commodities except used household goods, office and store fixtures, as defined in Item 40(a) of City Carriers' Tariff No. 3 and Highway Carriers' Tariff No. 4, being Appendix "A" of Decision No. 32325, when "uncrated," as defined in Item 11(p) thereof.

Public hearing thereon was held before Examiner Paul, at the conclusion of which the matter was taken under submission,

-
- (2) Decision No. 17857, rendered January 10, 1927, in Application No. 12354 (29 C.R.C. 224, 231) granted a certificate in the following language:

"The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by H. E. Holmes and H. P. Holmes, as copartners doing business under the firm name and style of Holmes Express, of an automotive truck service for the transportation of freight as common carriers between San Francisco, Robertsville, San Jose, Los Gatos, and intermediate points of South San Francisco, Daly City, Colma, Holy Cross, Baden, San Bruno, Lomita Park, Millbrae, Broadway, Burlingame, San Mateo, Beresford, Belmont, Bel Monte County Club, San Carlos, Redwood City, Atherton, Menlo Park, Stanford University, Palo Alto, Los Altos, Mayfield, Mountain View, Sunnyvale, Cupertino, Santa Clara, Meridian and Saratoga;"

- (3) Authority to serve Permanente was granted by an interim order in Decision No. 35265 and need not be further considered herein.

subject to the filing of an amendment to the application containing a description of applicant's routes of operation. This amendment has been filed. No one appeared in opposition to the application.

Applicant contends that the authority conferred by said Decision No. 17857 is co-extensive with the authority requested in Application No. 12354 on which this decision was rendered. (4) This contention is based upon certain language in the opinion of the decision, as follows:

"The territory proposed to be served is of high traffic density and should be afforded every facility for dependable public transportation in order to insure its development. We believe that the applicants have shown sufficient justification for their proposed service, consequently the application will be granted."

It also contends that under that authority it may serve all points within one-fourth mile of its routes of operation and two miles beyond the corporate limits of incorporated communities.

The vice-president of applicant described its operations and those of its predecessor since the establishment of the service pursuant to the certificate granted by said Decision No. 17857. He stated that service has been provided between the termini and all intermediate points under the belief that such authority had been granted. Service has been provided between San Francisco and San Jose over both El Camino Real and Bayshore Highway. He

(4) Application No. 12354 requested a certificate in the following language:

"Applicants do, however, request permission to establish service for the transportation of freight between San Francisco, Robertsville, San Jose, Los Gatos and intermediate points...."

named approximately eighty receivers of shipments along Bayshore Highway between South San Francisco and San Jose, including Port of Redwood, whom his company has served since that highway was opened for traffic. About 40 per cent of these customers are located along that road at points outside towns or communities named in Decision No. 17857 which created applicant's present operative right. The witness asserted that service is provided to those establishments in response to requests and a growing need therefor, it being his opinion that his company was authorized to serve all points along said highway. Port of Redwood is on San Francisco Bay off Bayshore Highway about 1-3/4 miles northeasterly from the main portion of Redwood City. Industries at the Port include the cement manufacturing plant of Pacific Portland Cement Company, silos of Permanente Corporation for storage of bulk cement, port facilities and others. According to the witness, applicant has served the transportation needs of those establishments for general commodities excepting cement.

The witness stated that the first section of Bayshore Highway was opened for public use between South San Francisco and San Mateo during the year 1929. Sometime during 1930 this was extended to Redwood City and in 1932 to Palo Alto. The segments from Palo Alto to San Jose were opened during the period 1933 - 1940. As these sections of highway were completed and opened for traffic, his company used them to provide service to the public at all points along such highway.

The main question in this proceeding is one of construction of the language of the decision creating the operative right involved. As above stated, applicant contends that the language contained in the certificate of public convenience and necessity

is indefinite and susceptible of misinterpretation, unless it is construed in connection with the above-quoted statement made in the opinion of said decision. Under such construction it claims the right to serve not only the termini and intermediate points named in the order of the decision involved, but any and all points intermediate to the termini and all points within one-fourth mile of the highways traversed and two miles beyond the corporate limits of incorporated cities.

We are not in agreement with applicant's contention. Applicant's request may be considered as one requesting a clarification of the right involved. The Commission has heretofore stated that to clarify a decision is to correct ambiguity, obscurity or uncertainty in the language expressing the intent of the Commission--something palpable in the order itself. (Re Valley Motor Lines, Decision No. 28300, rendered October 28, 1935, in Application No. 19069.) The order there considered was held to be neither ambiguous, obscure nor uncertain as the points of operation were definitely fixed. Likewise, here we find that San Francisco, Robertsville, San Jose and Los Gatos were fixed as termini. Service at points intermediate thereto was fixed by the qualifying phrase "and intermediate points of." If the Commission had intended that applicant should have been authorized to serve all intermediate points, it would have used the qualifying phrase "and intermediate points," without

(5)
specifically naming such points.

The remaining question to be considered is whether applicant has herein shown public convenience and necessity to operate from and to intermediate points other than those specifically named in the order. We do not believe a public need has been shown. No evidence was adduced from any shipper showing such need. The only evidence in that regard was the testimony of an officer of applicant. From this it appears that over a considerable period of time applicant has so operated and served some twenty-five or thirty shippers located at points intermediate to South San Francisco and San Jose other than those certificated by Decision No. 17857. Such operation has been conducted without appropriate authority and should be discontinued unless and until a certificate of public convenience and necessity is obtained therefor.

Based upon the foregoing conclusions we are of the opinion that the application should be denied except as heretofore granted by Decision No. 35265. The order will so provide.

(5) Re J. E. Price v Pickwick (21 C.R.C. 890, 892). In this proceeding the Commission stated:

"We do not deem it essential that a certificate, to include authorization of intermediate local service, must name each and every stopping point along the route traversed to the exclusion of all other possible intermediate stops. The method most commonly used by this Commission to authorize an intermediate local service is to include in its certificate, declaring that public convenience and necessity require the operation between named termini, the qualifying phrase 'and intermediate points.' Such a certificate clearly authorizes the holder thereof to operate both the through service and such intermediate service as may be necessary to properly serve the traveling public."

O R D E R

A public hearing having been held in the above-entitled proceeding, evidence adduced, the matter submitted and the Commission being fully informed therein,

IT IS ORDERED that Decision No. 35265, heretofore rendered on April 14, 1942, is hereby ratified, confirmed and made a part hereof.

IT IS FURTHER ORDERED that the application herein in all other respects is hereby denied.

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

Dated at San Francisco, California, this 15th day of April, 1943.

Francis R. Havenner

Richard L. Locke
Thomas J. Connel
COMMISSIONERS