

Decision No. 36824**ORIGINAL**

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 MELVIN A. PIXLEY doing business as )  
 "Furniture Freight Forwarders" for a )  
 certificate of public convenience and )  
 necessity to operate as an express ) Application No. 25830  
 corporation and as a freight forwarder )  
 of (a) uncrated new furniture and parts )  
 thereof, from, to and between various )  
 points in California, and (b) furni- )  
 ture from, to and between various points )  
 in Northern California. )

BY THE COMMISSION:

Appearances

Melvin A. Pixley and F. W. Turcotte, for applicant.  
 R. C. Fels, for Retail Furniture Association of  
 California, Inc. and Furniture Manu-  
 facturers Association, intervenors in  
 behalf of the applicant.  
 Edward Stern, for Railway Express Agency, Inc.,  
 as its interests may appear.  
 E.L.H. Bissinger and F. F. Willey, for Pacific  
 Electric Railway Company, as its  
 interests may appear.  
 Douglas Brookman, for California Motor Express,  
 Ltd. and Coast Line Express, as their  
 interests may appear.  
 Hugh Gordon, for Pacific Freight Lines, Pacific  
 Freight Lines Express, and Valley  
 Express Company, as their interests  
 may appear.

O P I N I O N

Melvin A. Pixley, an individual doing business as Furniture  
 Fast Freight, is a highway common carrier of uncrated new furniture  
 and of certain related articles between various points in California.  
 By this application he seeks a certificate of public convenience and  
 necessity authorizing him to operate also as an express corporation  
 and a freight forwarder, doing business as Furniture Freight Forwarders,  
 for transportation of the same traffic between the same points.

Public hearing was had before Commissioner Clark and Examiner Bryant at Los Angeles on November 15 and 16, 1943, and the matter is ready for decision.

The traffic involved in this application is the same as that which Pixley is now authorized to transport as a highway common carrier.<sup>1</sup> The territory includes the Los Angeles area, the San Francisco Bay area, San Diego, San Bernardino, Sacramento, Stockton, and intermediate points on the coast and inland routes. The commodities are new furniture and other designated articles (hereinafter sometimes collectively called "furniture") not wrapped, crated, or boxed. Throughout most of the territory the movement is restricted to shipments made by or consigned to furniture manufacturers, furniture retailers, furniture stores, furniture dealers, furniture brokers, furniture jobbers, hotels, auto courts, hospitals, schools or government camps. The preponderance of movement is from manufacturers located in the Los Angeles area, with a lesser movement from the San Francisco Bay area, and some traffic, principally returned merchandise, from various other points.

Pixley's operation as a highway common carrier is dedicated to the handling of new furniture without wrapping, crating, or boxing, -- a type of movement which many common carriers seek to discourage. This class of service is responsive to a need of the furniture trade which has been demonstrated in earlier proceedings, and its benefits and advantages to the manufacturers and distributors of new furniture need not be discussed here.<sup>2</sup> The question in this proceeding

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A full description of the present operative rights may be had by referring to this Commission's Decision No. 33814 in Application No. 23745; Decision No. 35453 in Application No. 24483; Decisions Nos. 34360 and 34440 in Application No. 21863; and Decision No. 36204 in Application No. 25155.

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See decisions cited in Footnote 1.

is whether public convenience and necessity require that Pixley offer and render a service generally similar, so far as the public is concerned, as an express corporation and freight forwarder.

Evidence in support of the application was introduced by Pixley; by a consulting engineer who offered a study of the estimated revenue from and the cost of the proposed service; by a spokesman for the Retail Furniture Association of California, Inc. and the Furniture Manufacturers Association of Los Angeles; and by representatives of several individual manufacturers and distributors. The witnesses testified that the available service was inadequate under existing conditions, that Pixley had been unable to handle all of the tonnage offered, and that shipments were frequently subjected to delays of several weeks or more. They stated that at times Pixley has had to close his Los Angeles terminals to receipt of shipments for days at a time in order to relieve the congestion of furniture awaiting transportation, and that shippers desiring prompt transportation have at times found it necessary to crate or pack their goods and move them via other common carriers.

Pixley testified that under present wartime conditions he found it impossible to augment his automotive fleet to meet the service need, and that his vehicles were deteriorating rapidly. The solution which he offers, as presented in this application, is to make use of the transportation facilities of other carriers, particularly the railroads. Under this plan, stated briefly, he would consolidate the shipments tendered to him, load them into rail cars at Los Angeles for movement to Oakland, Fresno and other break-bulk points, and there receive the cars, unload them, and distribute the various shipments to the consignees with his own motor vehicles. He would pay the rail carriers their published

tariff rates, based upon carload movement. He would continue to use his own vehicles for the through movement whenever it was for any reason most feasible and economical to do so, and his present service as a highway common carrier would be maintained for shippers desiring to use it. In addition to shipping by rail he would operate as an express corporation over his own highway common carrier routes, and might from time to time use other underlying carriers as they become available. He would issue a bill of lading and accept a common carrier's responsibility for transportation of the property from origin to destination, and whatever carrier or method of transportation was used the rates and charges to be paid by the shipping public would be identical with those maintained in his highway common carrier tariff.

Applicant asserted that under the proposed plan he would be able to make better and more economical use of his equipment, handle more tonnage, and render a more adequate and expeditious service to the public. Shipper witnesses, including a representative of the Retail Furniture Association of California, Inc. and the Furniture Manufacturers Association of Los Angeles, declared that the proposed service, by enabling Pixley to move the uncrated furniture as offered, would meet a real transportation need and be a great convenience and advantage to them. According to this record, applicant is fully prepared and qualified financially, as well as by experience, to put the service into operation.

No evidence was offered in opposition to the application, but several common carriers participated in cross-examination and argument. These carriers did not oppose the application in its entirety, but urged that any certificate granted in this proceeding be for a freight forwarder service only, and be limited to the

duration of the present war emergency or a specified period thereafter. On the first point it was argued that the proposed operation, in so far as it involved shipping via the rail lines at their tariff rates, was that of a freight forwarder; and that no public benefit would result from the balance of the proposed operation which involved movement over highway common carrier routes at contract rates. With reference to the suggested expiration date, it was argued that any present need for the service was the direct result of a war economy, and could not reasonably be expected to continue after the war.

Applicant objected to the suggested restrictions. He declared that the authority to do business as both a freight forwarder and express corporation was necessary in order that he might offer and render a complete service without the danger of conducting an unauthorized operation. With reference to the suggested time limitation, Pixley and shipper witnesses predicted that the manufacture and shipment of furniture in California would be greatly expanded after the war, and testified that in their opinion the need for the service, although initially the result of wartime conditions, would become even greater after the termination of hostilities. Pixley argued further that he should not be expected to make the capital investment necessary to inaugurate a public service which was needed now, subject to a temporary certificate which might be terminated at any moment by unpredictable circumstances.<sup>3</sup>

It is abundantly clear on this record that public convenience and necessity require additional facilities for transportation of the traffic involved in this proceeding, and that the

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<sup>3</sup> According to the record, the proposed operation would require the use of 6,000 furniture pads, costing approximately \$15,000. This would be the principal initial investment.

transportation plan offered by applicant, subject to such restrictions as may be found necessary or desirable, would act to fill that need. The service is a highly specialized one, and Pixley is peculiarly qualified to perform it by reason of his long experience and the exclusive dedication of his facilities. An appropriate certificate will be granted, subject to limitations and conditions which will now be considered.

First, there will be no arbitrary time limit placed upon the life of the certificate. The service herein considered is, in one sense, a wartime conservation measure, since it will enable Pixley to make more effective use of his automotive equipment, tires, petroleum products, and other critical materials. When conditions are such that he is again able to obtain these materials as required, the conservation of transportation facilities will be of secondary importance, particularly in so far as the general public is concerned. However, there is a broader public interest, and that lies in the improved service which may be made possible for the longer period. The record in this proceeding is convincing that a better service to the shipping public will be possible where the carrier specializing in transportation of new furniture, uncrated and unpacked, is able to coordinate and direct the movement via rail or highway routes as circumstances may dictate. Competent witnesses predicted that with cessation of hostilities the manufacture of furniture in California would be greatly augmented rather than curtailed, and that there would be a consequently greater demand for facilities to transport it. In view of this direct evidence, we will not undertake to predict that the proposed service will no longer be required after the cessation of hostilities.

Second, we deem it unnecessary and inadvisable on this record to issue to applicant a certificate as both an express corporation and freight forwarder, thus leaving the exact nature of his rights and responsibilities open to possible question. Such a grant would place a multiplicity of operative rights under a single ownership, and no reason appears from the evidence adduced in this proceeding why the required service may not be rendered under a single additional certificate. However, the certificate will not be for a freight forwarder operation, but on the contrary will authorize operation as an express corporation. The circumstances and the type of operation involved in this proceeding are peculiar if not unique. We do not subscribe to the contention of one of the protestants that as an express corporation Pixley may not compensate his underlying carriers at their tariff rates, and under all of the circumstances appearing on this record we are satisfied that an express certificate should be granted.

Third, the certificate will be subject to the condition that it may not be sold or transferred apart from the highway common carrier rights now held by Pixley. The reason for the restriction will be readily apparent. The need, as it has been shown on this record, is not for another common carrier to parallel Pixley's highway routes with an express service, but for expansion and improvement of the present service by permitting Pixley to operate by additional methods. Obviously this clear purpose would be defeated if the owner were permitted at any time in the future to dispose of either class of certificate while retaining the other. Therefore, in order to insure that the service to the public will continue to be in fact a single coordinated operation, the certificate granted hereinafter will be inseparable from the highway

common carrier certificates, so that they will be held now and hereafter by a common owner.

Fourth, and most important, the Commission will require in granting the express certificate that Pixley discontinue his highway common carrier operation so far as direct service to the public is concerned. Under Pixley's proposal, as presented in this application, his highway common carrier operation would continue under the fictitious name of Furniture Fast Freight; the express operation would be conducted as Furniture Freight Forwarders. The same terminals would be used, and the choice of carrier would depend on whether the shipment was tendered to Furniture Fast Freight or to Furniture Freight Forwarders. Both operations would be maintained concurrently, would observe the same rates, and would offer identical transportation service. It is apparent that such a duplication of service, with similar names and identical ownership, would result only in needless confusion to the shipping public, without compensating benefit. Shipments tendered to Pixley as Furniture Fast Freight could not lawfully be loaded into rail cars, and many of the benefits of a coordinated service would be lost. This undesirable situation may be avoided if the grant hereinafter made is subject to the condition that the highway common carrier operation be maintained only as an underlying carrier for the express corporation. Discontinuance of direct service to the public as a highway common carrier will not in practice result in any curtailment whatsoever, inasmuch as the identical service will be made available by Pixley doing business as the express corporation. Thus the public will at all times deal with Pixley as Furniture Freight Forwarders.

Technically, Pixley's highway common carrier operative rights are not directly involved in this proceeding. He will therefore be expected to file promptly an appropriate application for the authority to limit his highway operations to the transportation of property tendered by Furniture Freight Forwarders, in accordance with conclusions reached in paragraph immediately preceding. That application, if in satisfactory form, may be granted without the necessity of further hearing. It does not appear that any harm may be expected from the short time interval which may thus occur between inauguration of the express service and discontinuance of highway common carrier service directly to the public.

Upon careful consideration of the record in this proceeding we hereby find as a fact that public convenience and necessity require and will require the establishment and operation of a service as an express corporation, as that term is defined in Section 2(k) of the Public Utilities Act, for transportation of the traffic involved in this application, subject to the conditions hereinafter specified. In lieu of a detailed description here, it is to be understood that as to commodities, packing requirements, classes of shippers, points, intermediate points, and territories, the certificate hereinafter granted will conform in all respects to the operative authority now held by Melvin A. Pixley as a highway common carrier under and by virtue of Decisions Nos. 33814, 35453, and 36204, supra.

Melvin A. Pixley is placed upon notice that "operative rights" as such do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the state as

the consideration for the grant of such rights. 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

Public hearing having been held in the above entitled application, the matter having been submitted, and the Commission being fully informed,

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and it is hereby granted to Melvin A. Pixley, doing business as Furniture Freight Forwarders, for the establishment and operation of a service as an express corporation for the transportation of traffic identical in all respects to that which he is now authorized to transport as a highway common carrier under and by virtue of Decisions Nos. 33814, 35453, and 36204, supra, but subject to the following conditions:

(a) This certificate may not be sold, leased, transferred or assigned except upon condition that the highway common carrier certificates now owned by applicant be conveyed at the same time to the same transferee, nor may any such sale, lease, transfer, or assignment be made in the absence of written consent of this Commission.

(b) Melvin A. Pixley shall, within thirty (30) days after the effective date hereof, file with the Commission an application for authority to restrict his highway common carrier operative rights to transportation performed as an underlying carrier for Melvin A. Pixley, an express corporation doing business as Furniture Freight Forwarders; that he shall accept any authorization granted under such application; and that he shall thereafter, without undue delay, put such restriction into effect.

(c) The authority herein granted is subject to the provisions of Section 52(b) of the Public Utilities Act and further to the condition that Melvin A. Pixley, his successors or assigns, shall never claim before this Commission, or any court or other public body, a value for the operative right herein granted or claim as the cost thereof an amount in excess of that paid to the state as the consideration for such right.

IT IS HEREBY FURTHER ORDERED that in the operation of said express service pursuant to the foregoing certificate, Melvin A. Pixley shall comply with and observe the following service regulations:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days after the effective date hereof.
2. Applicant shall reduce to writing and file with the Commission in triplicate, on or before the effective date thereof, a true copy of any and every contract entered into with any common carrier for the transportation of property at rates less than or different from those provided in the established tariff or tariffs of said common carrier.
3. Before instituting the transportation service herein authorized applicant shall file with the Commission, in triplicate, a tariff or tariffs satisfactory to the Commission, in substantially the form followed in Exhibit No. 6 in this proceeding, effective on not less than two (2) days' notice to the Commission and to the public.

The effective date of this order shall be fifteen (15) days from the date hereof.

Dated at Los Angeles, California, this <sup>18<sup>th</sup></sup> day of January, 1944.

*Richard L. ...*  
*Justice F. ...*  
*Tracy R. ...*  
*... W. ...*  
 Commissioners