

Decision No. 38124

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of BEN)
 L. BLANKENSHIP, an individual doing)
 business as KINGMAN-LOS ANGELES EXPRESS,)
 for certificate of public convenience)
 and necessity to operate a common)
 carrier truck service between Los Angeles)
 County and Huntington Beach, Calif., on)
 the one hand, and Needles, California, on)
 the other hand, serving off route points)
 within a radius of twenty-five miles of)
 Needles, Calif. and to, from and between)
 intermediate points on U. S. Highway 66)
 east of Daggett.)

ORIGINAL

Application No. 24470

Appearances at Original Hearing:

ARTHUR GLANZ, for applicant.

EDWARD P. FOGG, for Joe West, protestant.

WM. F. BROOKS, for The Atchison, Topeka & Santa Fe Railway Company and Santa Fe Transportation Company, protestants.

W. J. MARTINDALE, for Railway Express Agency, Incorporated.

Appearances at Reopened Proceeding:

DEWITT MORGAN MANNING, for R. E. McComas and E. Van Bogaert, petitioners for substitution in place of applicant.

H. P. MERRY, for Southern California Freight Lines and Southern California Freight Forwarders, protestants.

ROBERT W. WALKER, for The Atchison, Topeka & Santa Fe Railway Company and Railway Express Agency, Incorporated, protestants.

CRAEMER, Commissioner:

O P I N I O N

Ben L. Blankenship sought a highway common carrier certificate between Needles and points within a radius of 25 miles thereof, on the one hand, and all points in Los Angeles County, and

Huntington Beach, on the other hand. Hearing thereon was held and the matter submitted. Thereafter, the Commission determined that on the present record the matter could not be decided on the merits and, accordingly, on May 22, 1945, ordered that submission thereof be set aside and the proceeding reopened for further hearing. Such hearing was had at Los Angeles on July 6, 1945.

At the latter hearing it was developed that Ben L. Blankenship had joined the military forces during the year 1943, having appointed his father L. M. Blankenship as his attorney in fact to continue his trucking business. Thereafter, acting under such appointment, L. M. Blankenship entered into an agreement with R. E. McComas by the terms of which all the business of Ben L. Blankenship would be sold to R. E. McComas. Such transfer included Interstate Commerce Commission operative rights, equipment and whatever rights Ben L. Blankenship had under the application here considered. Thereafter McComas in turn entered into an agreement to lease such interstate operative rights to E. Van Bogaert, doing business as Columbia Freight Lines. A subsequent arrangement was made by these parties to include any Railroad Commission certificate which might be issued to Ben L. Blankenship. The term of this lease was 10 years, ending December 31, 1954. During the term of the lease, the lessee is to pay 3½ per cent of his gross operating income to the lessor. At the end of such period, if the lessee be not otherwise in default, all the rights would be transferred by the payment of \$1.

The Commission is now asked to permit the substitution of R. E. McComas in the place and stead of Ben L. Blankenship, and if a certificate is issued as sought, to authorize said McComas in turn to lease said operative right, without any equipment, to

E. Van Bogaert. The matter was taken under submission for the purpose of determining this question. Protestant The Atchison, Topeka and Santa Fe Railway Company took the position that the application of Blankenship should be dismissed.

From the record developed in the reopened proceeding, it is clear that applicant Blankenship no longer has an interest in the application. McComas does not propose to establish an operation even though certificated. His only interest is for substitution in the place of Blankenship to obtain a certificate and for authority to lease it to Van Bogaert. From this arrangement McComas would derive a rental income. Such an arrangement would not be in the public interest. Certificates are issued for the purpose of authorizing the operation of a service needed by the public, not to provide an opportunity for the grantee to create an income for himself while rendering no service. If there is a public need for a highway common carrier service between the points involved, a new application should be filed by the applicant who desires to and would be willing to conduct the service. Moreover, the present public need cannot be determined upon the record heretofore made which related to conditions existing in 1942 and 1943. In our judgment the petition for substitution should be denied and the application of Ben L. Blankenship should be dismissed. Such will be the order.

O R D E R

Good cause appearing,

IT IS ORDERED that the request of R. E. McComas for substitution in the place and stead of Ben L. Blankenship; as

applicant herein, is hereby denied, and Application No. 24470 is hereby dismissed.

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

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Commission.

Dated at San Francisco, California, this 14th day of August, 1945.

Harold Calver
Justice F. Cressner
Richard Kasper
Frank W. Cron
Ernest L. Duce
COMMISSIONERS