

Decision No. 33807

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of C. N. HERINGTON, dba HERINGTON DELIVERY, for a certificate of public convenience and necessity authorizing the transportation of motion picture films, theatre supplies and accessories between Los Angeles, California, on one hand and East Los Angeles, Montebello and Whittier, California, and theatres located within two miles on either side of route on the other hand.

ORIGINAL

Application No. 27093

FRANK W. TURCOTTE, for applicant;
PHIL JACOBSON, for G.F.D. Lines, Inc.;
I. L. Longworth, for Southern California Freight Lines, and Southern California Freight Forwarders; ED HUNTER, for Gilbey Co. of Los Angeles, Protestants.

HULLS, COMMISSIONER

O P I N I O N

C. N. Herington, doing business as Herington Delivery, requests a certificate of public convenience and necessity under Section 50 3/4 of the Public Utilities Act, to operate as a highway common carrier for the transportation of motion picture films, theatre supplies and accessories between Los Angeles on the one hand and East Los Angeles, Montebello and Whittier and theatres located within two miles on either side of the proposed route on the other hand, and offers to dedicate his service to the shipping public.

A public hearing on this application was held at Los Angeles on December 11, 1945, at which time the matter was submitted and is now ready for decision.

Applicant alleges that at the present time he is engaged in the drayage business at Whittier and in addition is oper-

ating a motor truck service for the transportation of motion picture films, theatre supplies and accessories between Los Angeles and East Los Angeles, Montebello and Whittier as a Radial Highway, Common, Contract and City Carrier.

In support of his proposed service, applicant contends that a number of motion picture theatres are located in the unincorporated area lying immediately east of the City of Los Angeles and generally known as East Los Angeles or Belvedere Gardens, as well as in the cities of Montebello and Whittier; that G.F.D. Lines, Inc. possesses a certificate as a highway Common Carrier to transport motion picture films, etc. between Los Angeles and Montebello and Whittier and that due to the schedules maintained and the type of service offered the various theatres located in the area involved do not utilize the services of that company; that transportation of motion picture films, etc. to the theatres involved is being rendered by permitted carriers and that he has had considerable experience in the field of motor truck transportation and particularly in the specialized field of transporting motion picture films, supplies and accessories, so as to enable him to render the special and personalized type and character of service demanded by the theatre operators.

Five theatre owners or managers representing ten theatres testified as to a need for a transportation service similar to that proposed by applicant and that they would use the proposed service if authorized by the Commission.

Mr. Earl Goldberg, officer and part owner of G.F.D. Lines, Inc. testified that most of the theatres involved were located on the route traversed by his trucks each day but he was unable to secure the transportation business as his trucks left Los Angeles at night which was not suitable and these theatres desired

service the same morning of the day on which the film is to be shown, as well as Sunday service, and that it would not be profitable to his company to attempt to render a special service for these theatres at the rates proposed.

Mr. Ed. Hunter, a partner of Gilboy Company of Los Angeles, which company is engaged in transporting motion picture films, supplies and accessories in and about Los Angeles, testified that in 1943 his company took over the Los Angeles city delivery of films from G.F.D. Lines, Inc., as well as service to certain theatres in the East Los Angeles area, with the understanding that G. F.D. Lines, Inc. would not render service in the East Los Angeles area and that his company now has on file with the Commission an application for authority to render service for the transportation of motion picture films to the East Los Angeles territory as far East as Atlantic Avenue.

The record shows that applicant is transporting film to three Fox West Coast theatres in the East Los Angeles area as a subhauler under highway contract carrier's permit for Albert L. Webb, a highway contract carrier, for which he receives \$8.00 per week. Applicant has agreed, provided the certificate sought is granted, to pay Webb \$936 for the privilege of serving the three above-mentioned theatres. The \$936 represents the total revenue for a period of one year which would be derived by applicant for transporting the films to these three theatres.

Operative rights to render public service as a highway common carrier are limited only by the state, through certificates of public convenience and necessity as provided in the Public Utilities Act of California, and are not to be limited in any degree by private agreements or contracts between individuals. If the

applicant in this proceeding chooses to pay any sum to Webb for a "right" which is not Webb's to grant, he must understand that the payment is not approved by this Commission, that the right hereinafter granted is in no respect affected by the payment or non-payment, and that no part of such payment may be capitalized or treated as an expense of operation.

Applicant requests authority to serve the territory two miles laterally on either side of his proposed route. The evidence indicates that the theatres which applicant proposes to serve, or which indicate a need for applicant's service, are located along the suggested route with one exception, the Bonita Theatre, located at Ford Boulevard and First Street. The need for applicant's service by this one theatre would not justify the granting of a two-mile lateral right as applicant could continue to serve said theatre under a Highway Contract Carrier's permit.

After carefully considering all of the evidence in this proceeding, we hereby conclude that public convenience and necessity require the operation by applicant of motor truck service as a highway common carrier between Los Angeles on the one hand and Whittier and intermediate points on the other hand, but does not require the service to be rendered laterally two miles on either side of the proposed route.

The tariff proposed by applicant contains several infirmities such as a lack of definiteness as to the number of deliveries per week for the rates named. The order herein will provide that applicant file a tariff satisfactory to the Commission and before such filing is made, applicant should give consideration to necessary amendments thereto.

C. N. Horington is hereby 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

Application having been made as above entitled; a public hearing having been held; and it having been found that public convenience and necessity so require,

IT IS HEREBY ORDERED AS FOLLOWS:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to C. N. Herington, an individual, doing business as Herington Delivery, authorizing the establishment and operation of service as a highway common carrier, as defined by Section 2 3/4, Public Utilities Act, for the transportation of motion picture films, theatre supplies and accessories between Los Angeles and Whittier and intermediate points, including East Los Angeles and Montebello.

(2) That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- (a) Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days from the effective date hereof.

(b) Applicant shall comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective appropriate tariffs and time schedules within sixty (60) days from the effective date hereof and on not less than 5 days' notice to the Commission and the public.

(c) Subject to the authority of this Commission to change or modify it by further order, applicant shall conduct operations pursuant to the certificate herein granted, over and along the following routes:

Leaving Los Angeles easterly along Washington Boulevard, to Grand Vista, thence northerly on Grand Vista to Olympic Boulevard, thence easterly on Olympic Boulevard to Ford Boulevard, thence northerly on Ford Boulevard to Whittier Boulevard, and thence easterly on Whittier Boulevard to City of Whittier and returning via reverse route.

For all other purposes the effective date of this order shall be twenty (20) days from and after the date hereof.

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

Dated at San Francisco, California, this 2nd day of April, 1946.

David Anderson
James F. Casper
Francis J. ...
Wm. H. ...
Harold P. ...
Commissioners

Certified as a true copy

Secretary, Railroad Commission
of the State of California.