

ORIGINAL

Decision No. 44624

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 DON HEMSTED (Don Hemsted's Van and)
 Storage) for a certificate of public)
 convenience and necessity to operate)
 as a highway common carrier of house-)
 hold goods and certain other commodi-)
 ties between San Francisco Bay points)
 and the California-Oregon State Line)
 and certain intermediate points.)

Application No. 30546

J. Richard Townsend, for applicant.
Marvin Handler, for Oregon-Nevada-California Fast Freight,
 Inc. and Lyon Van Lines, Inc., and with Jackson W.
Kendall, for Bekins Van Lines, Inc., protestants.
J. W. Barker, for Calmay Van Lines, Inc., interested
 party.

O P I N I O N

Don Hemsted, by his amended application herein, requests a certificate of public convenience and necessity for the transportation of used household goods, and new furniture and household appliances not packed in accordance with the requirements of the current Western Classification, as follows:

- (a) Between San Francisco, Oakland, Alameda, San Leandro, Emeryville, Piedmont, Berkeley, Albany, El Cerrito, Richmond, Sacramento and all points on U. S. Highway 40 between San Francisco and Sacramento, on the one hand, and, on the other hand, all points on U. S. Highways 99E, 99W and 99 north of Sacramento and Davis, respectively, to the California-Oregon State Line, all points on California Highway 20 between Williams and Yuba City, and all points between Marysville and Chico on California Highway 24 between Marysville and Oroville and unnumbered highway between Oroville and Chico, including all points within five (5) miles of any of the highways hereinabove specified on either side thereof.
- (b) Between any two points hereinabove described in paragraph (a) north of Davis and Sacramento.

- (c) Except that no new furniture not packed in accordance with the requirements of the current Western Classification shall be transported between North Sacramento, on the one hand, and, on the other hand, San Francisco, Oakland, Alameda, San Leandro, Emeryville, Piedmont, Berkeley, Albany, El Cerrito, Richmond, Sacramento and any point on U. S. Highway 40 between San Francisco and Sacramento.

The routes which applicant proposes to use between the points hereinabove specified are as follows: U. S. Highways 40, 99E, 99W and 99 between San Francisco and the California-Oregon State Line, California Highway 20 between Williams and Yuba City, California Highway 24 between Marysville and Oroville, unnumbered highway between Oroville and Chico, and connecting highways between off-route points and said specified highways.

The application was opposed by Bekins Van Lines, Inc. and Lyon Van Lines, Inc. only insofar as it contemplates the movement of used household goods. Oregon-Nevada-California Fast Freight, Inc., originally a protestant, withdrew its opposition at the hearing when applicant stipulated that he would not transport new furniture and household appliances when tendered wrapped, packed, or crated in any manner whatsoever designed to afford protection against damage in transit. The application was further amended in accordance with the stipulation.

The proceeding was submitted on February 3, 1950, after four days of public hearing at San Francisco before Examiner Gregory.

Applicant, formerly an agent of Bekins Van Lines, Inc. at Redding but more recently an agent of Calmay Van Lines, Inc. in that locality, presently operates under a radial highway common carrier permit. He alleges that he has been engaged in the transportation of the commodities mentioned above for many years; that the service

of other common carriers handling these commodities between the points he seeks to serve has been insufficient to meet public needs; that the increasing frequency of his operations has made it advisable for him to seek a certificate in order to continue service on a lawful basis; and that because of the constant growth in population in the area sought to be served it is in the public interest that his operations continue to expand in order to meet the needs of the public. Applicant further alleges that, since he maintains his headquarters in Redding and has terminals at other points in Northern California, he is able to keep in closer touch with the transportation needs of the public for the type of service he proposes than are the existing common carriers serving the area whose headquarters are located elsewhere. The proposed service will not be operated pursuant to fixed time schedules.

The evidence shows that applicant commenced local household goods moving operations in and about Redding in 1934 and has since expanded his business to handle such shipments to any point in California. He testified that the demand for transportation of new furniture and household appliances has increased and that it is necessary to maintain that type of service on a fairly regular basis. He has a modern two-story concrete terminal and warehouse at Redding and also leases an adjacent building. He plans to construct a terminal at Yuba City. At Oakland, he has made arrangements for use of the Calmay Van Lines, Inc. terminal. He also has offices at Marysville and connections at Yreka, Chico, Oroville, Sacramento and San Francisco. He proposes to use the warehouses of his agents in the various cities along the route.

Applicant has 12 units of automotive equipment, including two tractors, four vans, two van semi-trailers, one flatbed semi-trailer, one low bed dray, a converter dolly and a sedan. All units, except one van semi-trailer, are 1940 or later models and seven are 1945 or later. He has seven employees and adds more personnel when needed.

Applicant's balance sheet, as of December 31, 1949, shows assets and liabilities of \$114,760.74 and a net worth of \$83,075.56. His income and profit and loss statement for the year ending December 31, 1949, indicates total operating revenues for transportation and storage amounting to \$61,163.89, total operating expenses of \$56,973.39, net operating profit of \$4,190.50, and net profit for the year, including a balance of other income and expense, totaling \$7,955.78. Approximately 20% of applicant's revenue in 1949 was derived from the movement of interstate shipments of household goods.

Applicant's proposed method of operation contemplates moving loaded vans from Oakland to Redding and local distribution from the latter point. Southbound movements from Oroville or Chico would be picked up by local agents at those points and held for applicant's vehicles, or would be picked up directly by applicant. New furniture and appliances would be blanket wrapped and handled in the same vans with household goods. A van is now stationed at Marysville and it is proposed to station a pickup tractor at Oakland. Additional equipment would be added as needed. Applicant's drivers and helpers, many of whom have been with him for several years, are trained as helpers and local drivers for at least four months before being entrusted with linehaul movements. About one round trip per

week would be operated between Redding and the San Francisco Bay area.

Rates proposed for long distance transportation of used household goods are at the level of those maintained by Bekins, Lyon and Calmay in their van line operations. Rates for the movement of new furniture and household appliances are on a mileage basis, subject to minimum weights of 1000, 2000 and 4000 pounds and to specified minimum charges for shipments of various articles weighing less than 1000 pounds.

The evidence shows that in 1948 and 1949 applicant transported a total of approximately 360 intercity shipments of used household goods, ranging in weight from 100 to 10,020 pounds, between a substantial number of the communities he now seeks to serve as a certificated highway common carrier. ⁽¹⁾

The application was supported by witnesses from Redding, Chico, Oroville, Oakland and San Francisco. The witnesses included two real estate men from Redding; two owners of retail furniture and appliance stores at Redding and other points in the territory north of that city; the regional traffic manager for a large mail order house with branches throughout the territory; the owners of three household goods storage and moving concerns located at Oroville, Chico and San Francisco, all prospective agents of applicant at those points; and by representatives of the Redding

(1) A few of these shipments, in the latter part of 1949, originated with or were delivered by Calmay Van Lines, Inc., or Armor Truck Lines, with applicant performing a portion of the transportation. Calmay is a certificated highway common carrier of used household goods between San Diego and Sacramento and various intermediate points. It was formed in 1947 by a group of radial highway common carriers who are agents in California of Aero Mayflower Transit Co., a nationwide moving concern. Applicant is a stockholder of Calmay. Armor is a local carrier at Alturas.

and Chico Chambers of Commerce. The general manager of Calmay Van Lines, Inc., outlined for the record a general account of the relationships existing between his organization and Aero Mayflower Transit Company and between his company and its agents. He stated that Calmay Van Lines, Inc., had no desire, "in the foreseeable future", to acquire operative rights in the territory on its own account, or by purchase from Hemsted if the latter is granted a certificate.

The record establishes that Redding and its surrounding area have experienced a substantial industrial and population growth in recent years and that further development is in prospect. There appears to be a rising demand for the movement of new furniture and appliances from bay area points to dealers in Northern California by means of the so-called "blanket wrap" method. Also, the representative of the mail order firm testified that such service would be useful for transfers of certain items between branch stores. ⁽²⁾ He stated he had used the service of Bekins and Lyon, as well as that of applicant, for movement of used household goods and that all three services had been generally satisfactory. On Bekins' Sacramento Valley service, however, he had experienced some delays in connection with shipments offered to Bekins' agents.

With particular reference to the transportation of used household goods, the evidence shows that applicant has rendered service satisfactory to his customers for a number of years in

(2) Bekins and Lyon do not possess operative rights for the transportation of new household goods, fixtures, or equipment, when intended for resale. (Dec. 33013, April 16, 1940, App. 22480 - Bekins; Dec. 33006, April 16, 1940, App. 22588 - Lyon.) As stated above, these carriers do not object to applicant's proposal to transport new furniture and appliances.

connection with movements between San Francisco Bay points and the Redding area, as well as between various intermediate points. The two real estate men who testified in support of the application stated they usually recommend applicant's service to their clients and that they had not heard of any complaints. One of these witnesses stated that he recommended applicant because he believed he was best equipped to give service.

The local carriers from Oroville and Chico, both former Bekins agents in those cities, testified that they had severed relations with Bekins because of inability to get prompt service and unsatisfactory experience on claims. Hemsted's service, they said, was prompt and satisfactory. They both testified that Lyon did not provide service of sufficient frequency to meet their needs.

The service rendered by Bekins and Lyon in the territory was described by operating officials and agents of the two carriers. In 1946, according to the testimony of Bekins' Sacramento manager, that carrier operated 145 trips north of Sacramento and in the foothill district in its so-called "Valley Local" service and 289 trips out of Sacramento to the Oregon border. He stated, however, that the number of trips had decreased since 1946 due to falling off of general business and loss of traffic to former agents in the area. At present, he said, Bekins usually makes two or more trips per week into the territory and will send special trucks to take care of large shipments when necessary. The Bekins agent at Redding, who also hauls general freight in the area, testified that in 1949 he originated 22 and received 23 shipments handled by his principal, about half of which were to or from points in California. Bekins also picks up and delivers shipments directly in Redding and vicinity.

Lyon's San Francisco manager testified that his firm ran approximately three trips per week in each direction between San Francisco and Northern California on interstate runs, and also made a local loop trip out of Sacramento about every 10 days as far as Yreka and vicinity. He indicated that his vans frequently had space for additional tonnage. The Lyon agent at Redding, who was formerly Bekins' agent at Red Bluff, testified that Lyon handled from two to eight shipments per month through the agency. Both the Redding and Oakland agents expressed satisfaction with Lyon's service between those points.

We have concluded, upon a careful consideration of the record, that applicant has established that public convenience and necessity require the service he offers to render. Applicant, from a modest start in 1934, has built a successful and dependable transportation service centered in an important and growing community. The advantage to business firms and the general public of having available a locally established concern cannot be readily dismissed. The growing dependence of retailers in Northern California upon regular movements of uncrated new furniture and appliances from manufacturers in the San Francisco Bay region makes the proposed service for those commodities desirable; in fact, such a service is not presently available by existing highway common carriers except when those items are not intended for resale.

As for used household goods, the record indicates that applicant's service is now on a considerably broader basis than when he first started and that he will accept shipments at Redding for any point in California. During 1948 and 1949, however, the pattern of his operations over the routes proposed in this application reveals, roughly, about one round trip per week between

Redding and points north and south thereof, on the one hand, and San Francisco Bay points, on the other hand, with a substantial movement occurring between points north of Sacramento and Davis. It is this general pattern of used household goods movements, now conducted under permits, that applicant seeks to have certificated along with the transportation of uncrated new furniture and appliances. We do not believe that the issuance of a certificate to applicant to continue such operations as a highway common carrier, in the circumstances shown by this record, will have an undue adverse effect on the operations of existing common carriers in the territory.

The certificate will be granted.

Don Hemsted is hereby placed on 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 on the above entitled and numbered application, as amended, evidence having been received and considered, the matter having been submitted, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED:

(1) That Don Hemsted, doing business as Don Hemsted's Van and Storage, be and he hereby is granted a certificate of public convenience and necessity authorizing the establishment and operation of service as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, as amended, for the transportation of used household goods, new furniture and household appliances between the following points and places:

- (a) Between San Francisco, Oakland, Alameda, San Leandro, Emeryville, Piedmont, Berkeley, Albany, El Cerrito, Richmond, Sacramento and all points on U. S. Highway 40 between San Francisco and Sacramento, on the one hand, and, on the other hand, all points on U. S. Highways 99E, 99W and 99 north of Sacramento and Davis, respectively, to the California-Oregon State Line, all points on California Highway 20 between Williams and Yuba City, and all points between Marysville and Chico on California Highway 24 between Marysville and Oroville and unnumbered highway between Oroville and Chico, including all points within five (5) miles of any of the highways hereinabove specified on either side thereof;
- (b) Between any two points hereinabove described in paragraph (a) north of Davis and Sacramento;
- (c) Except that no new furniture not packed in accordance with the requirements of the current Western Classification shall be transported between North Sacramento, on the one hand, and, on the other hand, San Francisco, Oakland, Alameda, San Leandro, Emeryville, Piedmont, Berkeley, Albany, El Cerrito, Richmond, Sacramento and any point on U. S. Highway 40 between San Francisco and Sacramento;

subject, however, to the following proviso:

Except as provided in subparagraph (c) above, applicant shall not accept for transportation, or transport, any shipment of new furniture or household appliances when such shipment is tendered wrapped, packed, or crated in any manner whatsoever designed to afford protection against damage in transit.

(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) Within 60 days from the effective date hereof and on not less than 5 days' notice to the Commission and the public, applicant shall establish the service herein authorized and 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 tables.
- (c) Subject to the authority of this Commission to change or modify them by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the following routes:

Via U. S. Highways 40, 99E, 99W and 99 between San Francisco and the California-Oregon State line;

California Highway 20 between Williams and Yuba City;

California Highway 24 between Marysville and Oroville;

unnumbered highway between Oroville and Chico, and connecting highways between off-route points and said specified highways.

This order shall become effective twenty (20) days after the date hereof.

Dated at San Francisco, California, this 8th day of August, 1950.

Justin F. Cooney
Grant F. Powell
Harold P. Hulse
Herbert P. Lott
COMMISSIONERS