

Decision No. 45579

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
COAST LINE TRUCK SERVICE, INC., a)
corporation, and CLARK BROS. MOTOR)
TRANSPORT, INC., a corporation, for)
an order authorizing applicants to)
merge, and for the surviving corpo-)
ration, thereupon to issue certain)
shares of stock.)

Application No. 30953

Reginald L. Vaughan, John G. Lyons, and Harry S. Young of Young, Rabinowitz & Chouteau, for applicants.

Willard S. Johnson, for Hills Transportation Co.; Gordon & Knapp, by Wyman C. Knapp, for Pacific Freight Lines, Pacific Freight Lines Express and Western Truck Lines, Ltd.; Lloyd R. Guerra, for Western Truck Lines, Ltd.; Berol and Silver, by Bertram S. Silver, for Savage Transportation Company; Douglas Brookman, for Valley Express Company, Valley Motor Lines, Inc., California Motor Express, Ltd., California Motor Transport Company, Ltd., protestants.

INTERIM OPINION

In this application two corporations, Coast Line Truck Service, Inc. and Clark Bros. Motor Transport, Inc., seek this Commission's authority to merge, and for the surviving corporation to issue stock. Hearings have been held and the matter has been submitted. Certain protestants have filed a motion to dismiss the application on the ground that this Commission has no jurisdiction to entertain it.

The record shows that each of these carriers possesses the necessary operative rights to constitute it a "highway common carrier" within the meaning of Section 2-3/4 of the Public Utilities Act and also a "common carrier by motor vehicle" within the meaning of Section 203 (a) (14) of the Interstate Commerce Act (49 U.S.C.A.

303(a) (14)), and is therefore subject to the jurisdiction, for many purposes, of the Interstate Commerce Commission. The parties here have also filed with the Interstate Commerce Commission an application requesting authority to consolidate or merge the two corporations, which application is now pending.

In our opinion the Interstate Commerce Act confers upon the Interstate Commerce Commission exclusive jurisdiction to authorize a consolidation or merger of the kind contemplated by these applicants. Material portions of the Interstate Commerce Act are as follows:

§5 (2)(a) - (49 U.S.C.A. 5(2)(a)):

"It shall be lawful, with the approval and authorization of the Commission . . .

"(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership: . . .".

* * * * *

"(11) The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power . . . to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority; and any carriers . . . participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. . . .".

* * * * *

"(13) As used in paragraphs (2)-(12) of this section, inclusive, the term "carrier" means . . . a motor carrier subject to chapter 8 of this title; . . .".

In view of the foregoing provisions of the Interstate Commerce Act, we are of the opinion that we are precluded from entertaining that portion of the present application which requests authority to merge the two corporations. This should not be construed to imply that we are here renouncing any jurisdiction which we may lawfully exercise over the highway common carrier intrastate operations of the surviving corporation in the event the Interstate Commerce Commission should authorize the proposed merger.

The application also requests that Coast Line Truck Service, Inc., which, as contemplated by the proposed transaction, will be the surviving corporation, be authorized to issue stock.

Certain provisions of the Interstate Commerce Act confer upon the Interstate Commerce Commission jurisdiction to authorize the issuance of securities by a "common carrier by motor vehicle." However, § 214 of the Interstate Commerce Act (49 U.S.C.A. 314) contains the following proviso:

"Provided, however, that said provisions shall not apply to such carriers or corporations where the par value of the securities to be issued, together with the par value of the securities then outstanding, does not exceed \$500,000 In the case of securities having no par value, the par value for the purpose of this section shall be the fair market value as of the date of their issue."

In our opinion, this proviso reserves to the States the power to authorize a "common carrier by motor vehicle" to issue securities up to the amount stated in the proviso.

We are of the opinion, therefore, that this Commission may properly entertain, under Section 52 of the Public Utilities Act, that portion of the present application which requests authority to issue stock if the par value thereof does not exceed \$500,000.

The present application, to the extent that it requests authority to issue stock, is properly addressed to this Commission, although it is premature. The issuance of stock by a surviving corporation after a merger transaction presupposes that the merger has been lawfully consummated. The merger contemplated by the parties here can be lawfully accomplished only after proper authority has been obtained from the Interstate Commerce Commission.

Under these circumstances, we do not consider it necessary to dismiss the present application, but it would appear appropriate to set aside the submission of the present proceeding and set the matter for further hearing at a later date for the purpose of receiving evidence of the disposition made by the Interstate Commerce Commission of the application pending before it, and any other evidence that may then be appropriate.

INTERIM ORDER

IT IS HEREBY ORDERED that the submission of the above-entitled matter be and it is hereby set aside, and that said matter be set for further hearing at a time and place to be hereafter designated for the purposes described in the foregoing opinion.

The Secretary is directed to serve this order by causing a copy thereof to be mailed to all parties of record in

this proceeding.

Dated at San Francisco, California, this
17th day of April, 1951.

A. J. [Signature]
Justice J. Calves
Harold Kula
Francis L. Potter
Arthur E. Mitchell
COMMISSIONERS