

ORIGINALDecision No. 48717

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the)
 operations and practices of AUTO) Case No. 5256
 PARTS DELIVERY, INC., a corporation.)

McClellan & Petty by Robert S. McClellan, for respondent.
 Turcotte & Goldsmith by F. W. Turcotte, for Auto Purchasing
 Agency, and J. B. Robinson for Southern California Freight
 Lines and Southern California Freight Forwarders, interested
 parties. Boris H. Lakusta and Halsey L. Rixford, by Halsey L.
 Rixford, for Field Division, Public Utilities Commission of the
 State of California.

O P I N I O N

The purpose of this proceeding, which is an inves-
 tigation instituted upon the Commission's own motion, is to
 determine:

(1) Whether Auto Parts Delivery, Inc., a California
 corporation, respondent, has operated or is operating as a high-
 way common carrier, as defined in Section 2-3/4 of the Public
 Utilities Act, over regular routes or between fixed termini,
 between the City of Los Angeles and points in the vicinity
 thereof, on the one hand, and Paso Robles and intermediate
 points along U. S. Highway No. 101 on the other hand, or between
 the City of Los Angeles and points in the vicinity thereof, on
 the one hand, and Bakersfield and intermediate points along
 U. S. Highway No. 99 on the other hand, anywhere within the
 State of California, but not confined to the points and routes

above stated, without having obtained a certificate of public convenience and necessity, or having possessed or acquired a prior right so to operate, as required by Section 50-3/4 of said Act.

(2) Whether respondent should be ordered to cease and desist from operating as a highway common carrier until it shall obtain authority so to do; and

(3) Whether the permitted rights, or any of them, held by respondent should be cancelled, revoked or suspended.

Public hearing was held before Examiner Howe at Los Angeles, on May 29, 1951, and oral and documentary evidence was adduced and the matter was submitted for decision.

By stipulation it appears that respondent, a California corporation, owns, controls, operates and manages auto trucks used in the business of transportation of property over public highways of California. On August 13, 1946, this Commission issued Decision No. 39312, on Application No. 26933, granting to Charles W. Schenk, doing business as Auto Parts Delivery, a certificate of public convenience and necessity for the establishment and operation of a highway common carrier service for the transportation of commodities therein described, between an area called the Area "A" in the City of Los Angeles, bounded by Vermont Avenue, Sunset Boulevard, Macy Street, the Los Angeles River, Atlantic Avenue and Manchester Avenue, on the one hand, and, on the other hand, the surrounding area called the Area "B", described as follows:

Beginning at the intersection or junction of Sunset and Santa Monica Boulevards, thence along Santa Monica Boulevard, Beverly Glen Boulevard, Ventura Boulevard, Sepulveda Boulevard, Brand Boulevard (in San Fernando), thence southeasterly along Foothill Boulevard (through Altadena to Arcadia), thence along 1st Street (in Arcadia), Live Oak Avenue, Peck Road, Holt Avenue (to El Monte), thence southeasterly along Valley Boulevard, westerly along Garvey Avenue, southerly along Atlantic Boulevard, northeasterly following the Los Angeles River to Macy Street, westerly along Macy Street, Sunset Boulevard to its junction with Santa Monica Boulevard.

Said Decision No. 39312 also further provided that Area "E" shall include all the area within the corporate limits of the Cities of Beverly Hills, San Fernando, Arcadia, El Monte, and Monterey Park.

Pursuant to said certificate, and on or about September 3, 1946, said Charles Schenk established such service and operated as such highway common carrier, and continued to so operate until on or about July 14, 1947, when he sold and transferred his said operative rights, equipment and business to respondent Auto Parts Delivery, Inc., a corporation, pursuant to authorization contained in Decision No. 40433, on Application No. 28513, issued by said Commission on June 24, 1947. Said corporation has continuously from such sale and transfer operated as such highway common carrier to May 29, 1951, the date of said stipulation, and the above-mentioned hearing.

Aside from the authority conferred by the decisions hereinbefore referred to, respondent does not possess, and has not possessed, any right created under the laws of the State of California, whether prescriptive or otherwise, to operate as a highway common carrier within said state.

Since on or about the dates next set forth, respondent has possessed and now possesses permits issued by said Commission, bearing the numbers respectively set forth opposite said permits and dates, as follows:

<u>Kind and Number of Permit</u>	<u>Date of Issue</u>
Radial Highway Common Carrier Permit No. 19-32039	9-24-47
Contract Carrier Permit No. 19-32040	9-24-47
City Carrier Permit No. 19-39928	4-4-50

Respondent, by said stipulation, admitted that it had been duly served with a certified copy of the Order Instituting Investigation in the above-entitled Case No. 5256, and with notice of the hearing herein.

Evidence was presented by an employee of the Commission's field division concerning the results of inspections of respondent's records, and of interviews with respondent's president and other officers and employees. Respondent's trucks operate daily Tuesday through Saturday between the Los Angeles area and Paso Robles, serving termini and intermediate points along U. S. Highway No. 101, and with the same regularity between the Los Angeles area and Bakersfield, serving termini and intermediate points along U. S. Highway No. 99. This movement consisted principally of automotive parts and equipment, and, according to the testimony of respondent's president, of tractor and farm equipment parts. The movement was predominantly outward from Los Angeles, with an occasional return of broken or unsatisfactory shipments. A summary of all non-certificated highway carrier operations of respondent during

two three-day check periods (December 5 - 7, 1950, and January 11 - 13, 1951) was received in evidence without objection.

During these three-day periods the total number of shipments was 851. The range of these shipments varied from one to 6,991 pounds. The number of persons having delivered prepaid shipments to respondent, and carried by it, during these two three-day periods was 87. The number of persons to whom collect shipments were directed was 206. A total of 164 persons during these two periods engaged the services of respondent. Each of the above numbers was arrived at after eliminating duplications. During these periods a total of 326 persons were served in respondent's operations, other than its so-called certificated service.

During the above-stated three-day periods respondent served from Los Angeles the following points by the number of shipments and days, as follows:

<u>Points</u>	<u>Shipments</u>	<u>Days</u>
Point Mugu	1	1
Port Hueneme	19	5
Oxnard	33	5
El Rio	1	1
Ventura	74	6
Carpenteria	3	1
Summerland	1	1
Santa Barbara	96	6
Goleta	10	5
Lompoc	5	2
Santa Maria	141	6
Arroyo Grande	12	6
Pismo Beach	1	1
San Luis Obispo	102	6
Atascadero	1	1
Templeton	1	1
Paso Robles	61	6
Castaic	1	1
Gorman	2	1
Bakersfield	164	6

Shipments also were made between intermediate points, and some freight was carried into Los Angeles.

The president of respondent testified that the Paso Robles operations started probably four and one-half years ago, and had been carried on continuously thereafter. The Bakersfield run was instituted in about August, 1951. He claimed about thirty contracts with shippers for the Bakersfield operation, and about the same number on the Paso Robles operation. These so-called contracts admittedly were not binding and did not purport to commit the shipper to send any amount of freight over respondent's line, and were to continue only so long as the customer was satisfied.

In view of the frequency and regularity of its operations over U. S. Highway No. 99, between Los Angeles and Bakersfield, and over U. S. Highway No. 101, between Los Angeles and Paso Robles and the intermediate points of Port Hueneme, Oxnard, Ventura, Santa Barbara, Goleta, Lompoc, Santa Maria, Arroyo Grande, and San Luis Obispo, and the volume and diversity of the shipments to and from numerous consignees and shippers with whom respondent had no contract requiring that it render them any service other than that it afforded any other customers over said well-defined routes, it is obvious, and the Commission finds as a fact, that Auto Parts Delivery, Inc., a California corporation, has operated and at the time of hearing was regularly operating auto trucks as a highway common carrier of freight over said two above-designated regular routes and between the fixed termini of Los Angeles and Bakersfield, and of Los Angeles and Paso Robles and said last above-named intermediate points within the State of California, without having obtained a certificate of public convenience and necessity, and without possessing or having acquired any prior right so to operate, as required by Section 50-3/4 of the Public Utilities Act (California Statutes 1915, Chapter 91, as amended).

O R D E R

Public hearing having been had in the above-entitled proceeding, evidence having been received and duly considered, and the matter having been duly submitted, the Commission now being fully advised and basing its order upon the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED:

(1) That Auto Parts Delivery, Inc., a California corporation, be, and it hereby is, directed and required to cease and desist and hereafter refrain from conducting, directly or indirectly, or by subterfuge or device, any operation as a highway common carrier (as defined in Section 2-3/4 of the Public Utilities Act) for compensation, over the public highways of the State of California between any point or place in the City of Los Angeles on the one hand, and Paso Robles and intermediate points along U. S. Highway No. 101 on the other hand, by operating over said U. S. Highway No. 101, or between any point or place in the City of Los Angeles on the one hand, and Bakersfield on the other hand, by operating over said U. S. Highway No. 99, unless and until and to the extent it shall have obtained from the Commission a certificate of public convenience and necessity authorizing such operations.

The Secretary of this Commission is directed to cause a certified copy of this decision to be personally served upon the

respondent, Auto Parts Delivery, Inc.

The effective date of this order shall be twenty (20) days after the date of such service.

Dated at San Francisco, California, this 16th day of June, 1953.

R. D. [Signature]
 President

James J. [Signature]

Harold [Signature]

Commissioners

Commissioner Kenneth Potter, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.