

ORIGINALDecision No. 55728

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 LYLE V. SCOTT, doing business as) Application No. 36350
 SCOTT TRANSPORTATION COMPANY, to)
 operate a highway common carrier)
 service.)

OPINION AND ORDER

Desert Express and Victorville-Barstow Truck Line, herein-
 after called petitioners, have filed in this proceeding two petitions
 entitled:

- (1) "Petition of protestants Desert Express and Victorville-Barstow Truck Line for (a) reconsideration of Decision No. 54518 and Decision No. 51748 (b) further hearing before the Commission en banc for purposes of oral argument."
- (2) "Petition of protestants Desert Express and Victorville-Barstow Truck Line for further hearing upon notice and order to show cause issued to applicant and thereafter for order rescinding the orders of this Commission in the within proceeding contained in Decision No. 51748, dated July 26, 1956 and in Decision No. 54518, dated February 11, 1957."

Contemporaneously, petitioners filed with this Commission a complaint against the certificate holder, Lyle V. Scott, doing business as Scott Transportation Company, hereinafter referred to as Scott, and presented to this Commission a document entitled:

"In the Matter of the Application of Desert Express and Victorville-Barstow Truck Line, for an Investigation by the Public Utilities Commission pursuant to the provisions of Section 1708 of the Public Utilities Code with respect to the rescission of orders of the Commission heretofore issued in Decision No. 51748 and Decision No. 54518 in connection with the Application of Lyle V. Scott in Application No. 36350."

All of the documents mentioned above deal with the same subject matter. Petitioners frankly concede that they constitute

a group of procedural maneuvers; each one seeking the same relief. The complaint filed by petitioners against Scott was dismissed "for failure to state a cause of action" in Decision No. 55334 dated July 30, 1957. The document purporting to be an application to have this Commission on its own motion conduct an investigation into the matters therein alleged amounts to no more than a request addressed to the discretion of this Commission. (In re Market Street Railway Company 40 P.U.C. 287; Sale v. Railroad Commission, 15 Cal. 2d 612, 618-19). The document has not been filed. It is noted in passing that the contents of this petition have been carefully examined and it is concluded that the investigation sought therein is not warranted.

The two petitions filed in this proceeding by petitioners will now be considered. A partial chronology will be helpful in disposing of the issues presented.

The record discloses that on November 15, 1954, Scott filed his application seeking the certificate of public convenience and necessity here involved. The certificate was sought under the terms of "policy decision" No. 50448 in Case No. 5478 filed on August 17, 1954. On November 9, 1954, prior to the filing of the application, Scott transmitted by registered mail a copy of the application to petitioner Victorville-Barstow Truck Line. The application was amended on February 7, 1955. The record before this Commission in Case No. 5478, of which we may take notice (Rule 64; General Order No. 66-A; in re Golden Gate Ferry Co., 28 C.R.C. 638, 640; Cantrell v. Board of Supervisors, 87 Cal. App. 2d 471, 477; Benton v. Industrial Acc. Com., 74 Cal. App. 411, 415), indicates that on March 15, 1955, this Commission mailed to each of the petitioners a list of all those, including Scott, seeking common carrier certificates under Decision No. 50448 together with the following notice:

"This is to notify you that the applications, shown on the attached list, have been filed with this Commission for authority to operate as highway common carriers between the points indicated. Such applications were filed following the issuance by the Commission of Decision No. 50448 in Case No. 5478 and are open to public inspection at both the San Francisco and the Los Angeles offices of the Commission. You may have until May 2, 1955, to file with this Commission any representation you may wish to make respecting any of the applications on such list. The representations must be in writing and must be verified. An original and 12 copies must be filed with the Commission and the original must contain an affidavit showing that service of a copy of each representation has been made upon the party or parties concerned."

Representations were filed in connection with Scott's amended application prior to May 2nd, 1955 by some common carriers. Neither petitioner filed a representation. On July 26, 1955, this Commission entered its Decision No. 51748 which held that:

"Notice of filing of the application was given all common carriers subject to the jurisdiction of this Commission.

"Upon consideration of the allegations of the application and the representations filed pursuant to the above-mentioned notice, the Commission finds that public convenience and necessity require that the application be granted as set forth in the ensuing order. It appears that applicant possesses the experience, equipment, personnel and financial resources to institute and maintain the operation herein authorized. A public hearing is not necessary."

The decision ordered that a certificate of public convenience and necessity be awarded Scott; that the order was to become effective ninety days after the date thereof; and that Scott, within thirty days after said effective date file with this Commission a written acceptance of the certificate.

On October 13, 1955, seventy-nine days after the aforementioned decision was entered and eleven days before the effective date of the order therein, petitioner Desert Express filed with this Commission a:

"Petition for hearing and for reconsideration by the Commission of its findings and order in the within proceeding in Decision No. 51748 dated July 26, 1955."

That petition in substance contained naked allegations that: (1) Desert Express had no notice of Scott's application and was entitled to a hearing in connection therewith, and that (2) some of the allegations contained in the petition, upon which the certificate issued, were not true. The petition was denied by an order of this Commission dated October 25, 1955.

On November 21, 1955, petitioner Desert Express filed a:

"Second and supplemental petition for hearing and for reconsideration by the Commission of its findings and order in the within proceeding in Decision No. 51748 dated July 26, 1955, and to reconsider, vacate and set aside order denying rehearings in Decision No. 52146 dated October 25, 1955."

This petition restated the allegations of the October 13th petition and, in addition, contained detailed statements of alleged facts together with affidavits and exhibits in support thereof. This Commission on December 20, 1955, entered an order granting a hearing. Prior to the entry of said order granting the hearing, Scott filed, on December 5, 1955, a written acceptance, dated and verified on November 28, 1955, of the certificate of public convenience and necessity awarded to him.

A public hearing in this matter was held on August 29, 1956. Petitioners received notice of said hearing and actively participated therein by counsel. Conflicting oral and documentary evidence was received and the matter submitted. On February 11, 1957, this Commission entered an order which provided in part that:

"...a public hearing was held before Examiner John Power at Los Angeles on August 29, 1956; that at said hearing evidence both oral and documentary was received and the matter submitted; and

"It further appearing that the Commission has considered this matter, and basing its decision upon the pleadings and the evidence adduced herein it finds and concludes that the record does not disclose evidence sufficient to require the revocation or cancellation of the certificate hereinabove referred to; and good cause appearing,

"IT IS ORDERED that Decision No. 51748 issued herein on July 26, 1955 be, and it is, reaffirmed."

The order of February 11, 1957, became effective on Monday, March 4, 1957. (Rule 74). No petition for rehearing was filed by petitioners prior to the effective date of said order or at any other time.

We are of the opinion that petitioners are bound by the order of February 11, 1957, and concluded from presenting the motions herein involved.

The question of whether the doctrine of res judicata applies to administrative agencies has long provoked controversy among legal scholars. An excellent analysis of this question may be found in Chapter 14 of Professor Davis' work on "Administrative Law" wherein he concludes:

"The common-law doctrine of res judicata, including the subsidiary doctrine of collateral estoppel, is designed to prevent the relitigation by the same parties of the same claims or issues. The doctrine applies to the administrative process whenever the circumstances are substantially similar to those of ordinary litigation in court. But when the circumstances are different, so that application of the doctrine in all its rigor is inappropriate, the doctrine may be relaxed in any desired degree without destroying its essential service. The doctrine need not be applied altogether or rejected altogether." (Davis, Administrative Law, p. 612).

Complex situations are presented because this Commission acts legislatively as well as judicially and has continuing jurisdiction of certain matters.

There are remarks in two California Supreme Court opinions that the doctrine of res judicata as such does not apply to decisions of this Commission. (Motor Transit Co. v. Railroad Commission, 189 Cal. 573, 586; Sale v. Railroad Commission, 15 Cal. 2d 612, 616; but see Forsyth v. San Joaquin Light and Power Corp., 208 Cal. 397, 403-04; People v. Western Air Lines, Inc., 42 Cal. 2d 621, 630; and the language in the Sale case that Commission decisions and orders "ordinarily become final and conclusive if not attacked in the manner and within the time provided by law." 15 Cal. 2d 616).

The question, however, appears to be primarily one of semantics, for, there is an unbroken line of judicial decisions in this State holding various decisions of this Commission "conclusive" or "binding." (People v. Lang Transportation Co., 217 Cal. 166, 170; Goodspeed v. Great Western Power Co., 33 Cal. App. 2d 245, 264-65; Sacramento Municipal Utility District v. Pacific Gas and Electric Co., 72 Cal. App. 2d 638, 648; City of Oakland v. El Dorado T. Co., 41 Cal. App. 2d 320, 326; Carpenter v. L. A. Gas and Electric Corp., 41 Cal. App. 2d 369, 373-79; see also People v. Western Air Lines, Inc., 42 Cal. 2d 621, 630; French v. Rishell, 40 Cal. 2d 477, 480; Benton v. Industrial Accident Commission, 74 Cal. App. 411, 414).

As heretofore indicated, petitioners had the opportunity to make representations against the issuance to Scott of the certificate in question. Neither of them availed themselves of this opportunity. Petitioners were further afforded a full hearing upon the issues they again seek to raise in the motions here involved. Petitioners did not seek a rehearing or judicial review of the order entered on February 11, 1957. There is a strong similarity to their present position and that of the plaintiff in Young v. Industrial Accident Commission, 63 Cal. App. 2d 286, wherein the court observed at pages 291-92; "Having

failed to apply for a rehearing within the time limit fixed by the code he cannot accomplish the same purpose by a petition to reopen, that petition differing in form only, not in substance, from a petition for a rehearing."

There must be an end to litigation. Petitioners are precluded from attacking herein the order of February 11, 1957. (In re Foothill Ditch Co., 47 Cal. P.U.C. 754, 756;) Burke v. Thompson (La.), 10 P.U.R. 3d 111).

IT IS ORDERED:

(1) That the petition of protestants Desert Express and Victorville-Barstow Truck Line for (a) reconsideration of Decision No. 54518 and Decision No. 51748 (b) further hearing before the Commission en banc for purposes of oral argument, and

(2) That the petition of protestants Desert Express and Victorville-Barstow Truck Line for further hearing upon notice and order to show cause issued to applicant and thereafter for order rescinding the orders of this Commission in the within proceeding contained in Decision No. 51748, dated July 26, 1956 and in Decision No. 54518, dated February 11, 1957, are hereby dismissed.

Dated at San Francisco, California, this 22nd day of October, 1957.

[Signature]
President
[Signature]
[Signature]
[Signature]
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Commissioners