

Decision No. 56302

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of  
PAUL DILLINGHAM and JACK SCHIPP, co-  
owners, DBA CITRUS BELT LINES:  
Paul Dillingham, as an individual,  
to sell his half interest in Citrus  
Belt Lines to Jack Schipp, as an in-  
dividual, the latter to buy the same.

Application No. 38498

Jack Schipp and C. E. Crowley, his attorney, for  
Jack Schipp, applicant. Paul Dillingham and  
Loren W. Smith, his attorney, for Paul Dillingham,  
protestant. Lynn Kloepfer for City of Ontario;  
Ford Seward for Association of Commerce and In-  
dustry of Ontario, interested parties. Fred C.  
Ballenger for the Commission's staff.

O P I N I O N

On October 8, 1956, this application was filed by  
Jack Schipp, one of the two partners of Citrus Belt Lines, request-  
ing an order from this Commission authorizing the sale and transfer  
to him of the other partner's, Paul Dillingham, half interest in the  
business. On November 7, 1956, Paul Dillingham filed a protest to  
the application and asked that the Commission deny said application  
and make an audit of the company's books.

At a hearing held at Los Angeles on January 9, 1957, before  
Examiner Mark V. Chiesa, it developed that the Superior Court of  
San Bernardino County had, in the Case of Paul B. Dillingham vs Jack  
Schipp (Superior Court No. 80397), rendered a judgment in favor of  
the defendant Jack Schipp which judgment, among other things, held  
that by reason of prior contracts between the said parties, said  
Jack Schipp was entitled to the franchise (certificate) and

equipment of the utility subject to the approval of this Commission, and requiring both parties to appear before this Commission or give their consent that said transfer be completed.

Said judgment having been appealed to the District Court of Appeal (Fourth District, Case No. 5545) and said appeal being then pending, the matter was taken off calendar to be reset for further hearing on a day subsequent to the completion of the court proceedings.

On October 21, 1957, the District Court of Appeal affirmed the judgment of the Superior Court in favor of the defendant and, in its opinion, said in part as follows (Dillingham vs. Schipp, 154 A.C.A. 604):

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"At the trial it was stipulated that both parties knew that the proposed agreements should be submitted to the Commission for approval. The trial of the case proceeded upon the assumed basis of the continued existence of the partnership, and upon the issues as to whether the agreements in question were void in their entirety or whether they were executory in nature and valid as between the parties. At several points the attorney for the plaintiff objected to testimony with relation to various amounts paid, on the ground that he was interested in the contracts rather than in an accounting. In deciding the case the court expressed the opinion that these contracts were valid as to their executory portions in determining the rights of the parties among themselves, and subject to the approval of the Commission; that the purposes and effects of these contracts may be accomplished in a legal manner by approval of the Commission; and that there is nothing to indicate that the parties intended to carry out their obligations in an illegal manner.

"The court found, in part, that each of the parties was well aware that the transfer and operation of this business was subject to regulation by the Commission, and was well informed as to the conditions under which a legal transfer of the franchise and equipment of this utility could be made; that under the agreement of October 6, 1952, the plaintiff took exclusive charge of the business and its equipment and operated the same until September 28, 1954, when the parties entered into the second of these agreements; that since that date the defendant has been in possession and full charge of the operation of this business; that each of these agreements was entered into by each of the parties in good faith, and no

"fraud on the part of either party was involved; that said agreements and each of them were binding upon the parties as between themselves, subject to the approval of the Commission; that under the agreement of September 28, 1954, the defendant has been entitled to operate said bus lines as he has operated them; that said agreement is the only one of said agreements now in force and it is subject to the conditions that the defendant comply with its terms, and that before the actual transfer of title to the franchise and equipment of the utility involved the Commission must approve such transfer; that after said approval the defendant will be entitled to have said Citrus Belt Lines and all its equipment and franchise transferred to him; that no fraud was perpetrated on either party by the other party; and that, since the partnership between the parties was limited to the operation of this utility, upon approval of the transfer by the Commission the settlement between the parties will be complete and will then effect a dissolution of the partnership without further procedure. Judgment was entered in accordance with the findings, providing that no actual transfer of said Citrus Belt Lines, its franchise and equipment, can or will be fully completed without and until the approval of the Commission has been obtained; that both parties are required to appear before the Commission or give their consent that said transfer be completed; that as between themselves and pending the completion of said sale the contract of September 28, 1954, is in full force and effect, subject to the conditions above stated; and that pending the time when the approval of the Commission has been obtained the defendant is entitled to continue in the possession of the bus system, its equipment and franchise, and to continue to operate the same for the public service.

"The plaintiff has appealed from this judgment. It is conceded in the briefs that after notice of appeal was filed the respondent filed an application with the Commission for an order transferring the franchise to himself and for an approval of the sale agreement. The appellant filed a protest based on the fact that this appeal was pending before this court. The examiner for the Commission ordered the matter off calendar until this appeal has been decided."

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"The appellant argues that any sale or attempted sale or transfer of a public utility is void from the beginning unless the approval of the Commission is first obtained, and that in applying for the approval of such a sale or transfer the parties must submit to the Commission a "proposal" showing the terms of the proposed transaction but may not enter into an agreement in advance of the Commission's approval. One of the rules of the Commission provides for the submission, in connection with such an application, of a copy of "each plan or agreement for purchase," if there is one. The proposal made to the Commission may be in the form of an executory agreement, and the validity of such an agreement, as between the parties, has been upheld in this state. <sup>1</sup> In *Bartlett v. Rogers*, 103 Cal.App.2d 250 229 P.2d 434<sup>7</sup> the court said:

"As between individuals or other entities such as corporations a transfer or sale of the assets of a public utility is void unless and until the Public Utilities Commission issues its order of approval. However, that fact does not bar parties from entering into contracts for the sale or transfer of the assets of a public utility."

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"The agreement here complied with the rule there stated and it is merely an executory agreement which was subject to the approval of the Commission, as found and held by the court. The agreement of September 28, 1954, is still subject to the approval of the Commission, it was entered into by the parties with that understanding, and the court correctly held it to be valid and binding as between the parties subject to the conditions named in the judgment.

"Whether this was a valid contract as between the parties themselves was a question for the court and not for the Public Utilities Commission. (Bartlett v. Rogers, supra.) If the transfer of the property proposed in that contract is approved by the Commission the settlement and agreement between the parties will then be complete, and will effect a dissolution of the partnership without further procedure. One of the conditions of the judgment is that the respondent perform the terms of the agreement of September 28, 1954, which are to be performed by him. Any further question as to whether he has fully performed, in the event the transfer is approved by the Commission, will arise in connection with the rights of the parties under that contract and will not be in the nature of an accounting in a partnership proceeding.

"The judgment is affirmed."

On November 13, 1957, the said District Court of Appeal denied plaintiff's petition for rehearing, and on December 17, 1957, the Supreme Court of this State also denied plaintiff's petition for a hearing.

The matter was reset for hearing at Los Angeles on January 14, 1958, before Examiner Mark V. Chiesa. Both parties appeared with their attorneys.

After the legal proceedings hereinabove referred to were made a part of the record, protestant's attorney requested an opportunity to examine the financial condition of Jack Schipp and Citrus Belt Lines, which request was denied by the examiner upon the grounds that the financial condition of applicant was not at issue. Citrus

Belt Lines has been in continuous operation, and a financial statement filed with the application does not indicate that the business is in jeopardy.

The parties having no further evidence to offer, the matter was submitted for decision. The Commission having considered the matters of record finds the proposed transfer is not adverse to the public interest and it will be authorized. The examiner's ruling is affirmed.

O R D E R

A public hearing having been held, the Commission being fully advised in the premises and good cause appearing,

IT IS ORDERED:

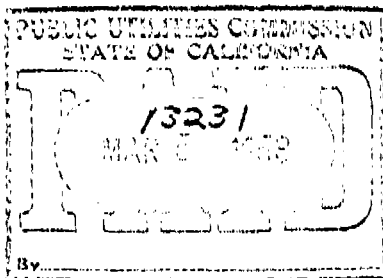
(1) That Paul B. Dillingham may sell and transfer, on or before thirty days after the effective date of this order, to Jack Schipp all of his interest in and to the certificate of public convenience and necessity and property hereinabove referred to, said sale to be made upon the terms and conditions set forth in the judgment of the District Court of Appeal in the Case of Paul B. Dillingham vs. Jack Schipp, reported in 154 A.C.A. at page 604, and Jack Schipp may acquire said right and property and shall continue to operate a transportation service as heretofore authorized by this Commission. Jack Schipp may incur the long-term obligation as set forth in Exhibit B filed in this proceeding.

(2) That within sixty days after the effective date hereof, and on not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicants shall supplement or reissue the tariffs or timetables on file with the Commission, naming fares, rules, regulations and schedules governing the passenger stage operation herein involved to show that Paul Dillingham and Jack Schipp, co-owners, dba Citrus Belt Lines, have withdrawn or canceled and that Jack Schipp has adopted or established as his own, said fares, rules, regulations and schedules. The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 79.

(3) That in the event the authority herein granted is exercised, Jack Schipp shall notify the Commission in writing of the fact within thirty days after the date of transfer.

(4) That the effective date of this order shall be when Jack Schipp has paid to this Commission a fee as prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$25.

Dated at Los Angeles, California,  
this 3<sup>rd</sup> day of MARCH, 1958.



[Signature]  
President  
[Signature]  
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Commissioners