

ORIGINAL

Decision No. 57690

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of JACK SCHIPP and PAUL DILLINGHAM copartners doing business as CITRUS BELT LINES, for consolidated certificate of public convenience and necessity covering existing certificates and including extension of service between Upland and Ontario, California, and certain modifications of route.

Application No. 27766

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 individual, the latter to buy the same.

Application No. 38498

OPINION AND ORDER REOPENING
PRIOR PROCEEDINGS AND REVOKING
PRIOR DECISIONS

By Decision No. 39622, issued on November 15, 1946, in Application No. 27766, the Commission granted to Jack Schipp and Paul Dillingham, doing business as Citrus Belt Lines, an in lieu certificate of public convenience and necessity authorizing them to operate a passenger stage line between Pomona and Chino and between Ontario and Upland, as more specifically set forth in said decision. ^{1/}

On April 13, 1956, the Superior Court of the County of San Bernardino issued a judgment in an action entitled Paul B. Dillingham vs. Jack Schipp (No. 80397) finding and adjudging that said

^{1/} Decisions Nos. 41320, 47243 and 50681 were subsequently issued enlarging and/or revising the operation of Citrus Belt Lines.

Dillingham and Schipp had, on September 28, 1954, entered into an agreement whereby said Dillingham "agreed to sell his interest in all of said Citrus Belt Lines and his franchise and equipment" to said Schipp; that the parties knew that the approval of the Commission was required before such a transfer became finally effective; that said Schipp was in possession of and was operating all equipment of said Citrus Belt Lines, and had fully complied with those terms of said agreement to be performed by him up to the time of the commencement of said action; that no transfer of said Citrus Belt Lines could be completed without the approval of the Commission; that pending such completion the contract was in full force and effect as between the parties themselves; and that pending such approval by the Commission said Schipp was entitled to continue in exclusive possession of all the property of said Citrus Belt Lines.

On October 8, 1956, a document was filed which in form was an application by both Dillingham and Schipp requesting that the Commission authorize the transfer to Schipp of Dillingham's half interest in the property of said Citrus Belt Lines. This application, however, was signed only by Schipp. Attached thereto was an affidavit stating that affiant had served a copy of the application upon Dillingham and asked for his signature thereon, but that Dillingham had refused to sign without the advice of counsel; and that affiant then called Dillingham's attorney, Loren Smith of Ontario, California, who stated that he advised Dillingham not to sign the application. This document was filed as Application No. 33498.

On November 7, 1956, Dillingham, by his attorney, Loren W. Smith, filed a document protesting the application, alleging that

an appeal from the judgment of the Superior Court was pending in the District Court of Appeal, and requesting that the application be denied.

The application was removed from the Commission's calendar pending disposition of this appeal. On October 21, 1957, the District Court of Appeal affirmed the judgment of the Superior Court (Dillingham vs. Schipp, 154 CA2 553).

On December 17, 1957, the Supreme Court of California denied Dillingham's petition for a hearing in that Court.

Thereafter, Application No. 38498 was reset for hearing before the Commission, and such hearing was had on January 14, 1958. On March 3, 1958, the Commission issued Decision No. 56302 in which the Commission found that the proposed transfer was not adverse to the public interest, and authorized the transfer in an order as follows:

"(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."

The effective date of this order was March 5, 1958. On May 2, 1958, upon Schipp's petition filed in the above described action in the Superior Court of San Bernardino County, the Court ordered:

"That the plaintiff, Paul B. Dillingham shall forthwith join with the defendant Jack Schipp in the application of the latter to the Public Utilities Commission of the State of California, in proceeding No. 38498, for the

"transfer to him of the certificate under which the bus transportation system involved in this action and known as the Citrus Belt Lines, is now being operated, as prayed for by the defendant.

"That in event the plaintiff Paul B. Dillingham shall fail, neglect or refuse to join with the defendant in his said application for transfer of said franchise to defendant, as above ordered, then said certificate shall be transferred to the defendant Jack Schipp by said commission, without the signature of plaintiff Paul B. Dillingham, in accordance with the rules and procedure of said Commission, in such cases made and provided."

On August 25, 1958, Schipp filed, in Application No. 38498, a petition for modification of Decision No. 56302, alleging that Dillingham had refused to join in Schipp's application for authority to transfer, and praying for "an adjustment for this transfer".

We have heretofore found and we reaffirm that the proposed transfer is not adverse to the public interest. Although ordered by the Superior Court to do so, Dillingham has refused to join in the application. Under the circumstances, we conclude that justice requires that the transfer be consummated. For the purpose of clarification we shall revoke the certificate of public convenience and necessity formerly issued by Decision No. 39622 in Application No. 27766 to Jack Schipp and Paul Dillingham, as copartners, doing business as Citrus Belt Lines, and issue an in lieu certificate to Jack Schipp.

We find and conclude that public convenience and necessity require that Jack Schipp operate as a passenger stage corporation between the same points as those formerly served by him and Paul Dillingham as partners, as such service was subsequently amended by Decisions Nos. 41320, 47243 and 50681, and we construe his petition for modification of Decision No. 56302 as tantamount to a request for such a certificate.

It appears that the authority granted by Decision No. 56302 has expired by the lapse of time. It does not appear to be necessary or expedient to grant any extension of time within which such authority may be exercised.

O R D E R

Application having been made, and good cause appearing,
IT IS ORDERED:

- (1) That Application No. 27766 and Application No. 38498 are hereby reopened.
- (2) That Decision No. 39622, issued in Application No. 27766 on November 15, 1946, the certificate of public convenience and necessity granted thereby, and Decisions Nos. 41320, 47243 and 50681, supplementing and amending said certificate, be, and they hereby are, revoked.
- (3) That a certificate of public convenience and necessity be, and it hereby is, granted to Jack Schipp, an individual, doing business as Citrus Belt Lines, authorizing the establishment and operation of service as a "passenger stage corporation", as defined in Section 226 of the Public Utilities Code, for the transportation of persons and their baggage or express between the points and along the routes as set forth in Appendix A, attached hereto and made a part hereof, subject to the conditions and restrictions, if any, as set forth in said Appendix A.
- (4) That in providing service pursuant to the certificate herein granted there shall be compliance with the following service regulations:

- a. Within thirty days after the effective date hereof applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 98. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Order No. 98, may result in a cancellation of the operating authority granted by this decision.
- b. Within sixty days after the effective date hereof, and on not less than five days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs and time tables satisfactory to the Commission.

The effective date of this order shall be ten days after the date hereof.

Dated at Los Angeles, California,
this 9th day of December, 1958.

E. L. Fox
President

W. E. Apple

Paul J. L. ...

Matthew ...

Theodore Jenner
Commissioners

Jack Schipp, an individual, doing business as Citrus Belt Lines, by certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport persons and their baggage or express between Pomona and Chino, and intermediate points, and between Ontario and Upland, and intermediate points, along the routes as hereinbelow described, subject to the conditions and restrictions as follows:

Pomona-Chino Route

Commencing at the intersection of Fourth Street and Garey Avenue (Pomona), thence via Garey Avenue, Fifth Avenue, Kadota Avenue, Grand Avenue, East End Avenue, Riverside Drive, Fifth Street, "D" Street, Central Avenue (Chino) to Merrill Avenue (entrance to California Institution for Men).

Return via Central Avenue, "D" Street, Sixth Street, and Riverside Drive to Fifth Street, thence via the reverse of the going route.

Ontario-Upland-Euclid Avenue Route

Commencing at Emporia Avenue and Euclid Avenue (Ontario), thence via Euclid Avenue, Ninth Street, Second Avenue to "D" Street (Upland).

Return via the reverse of the going route.

Issued by California Public Utilities Commission.

Decision No. 57690, Applications Nos. 27766 and 38498.

(Continued)

Ontario-Upland-Campus Avenue Route

Commencing at the intersection of Ely Street and Euclid Avenue (Ontario), thence via Euclid Avenue, "D" Street, Campus Avenue, Ninth Street, Third Avenue, "C" Street (Upland), Second Avenue, Eleventh Street, Fifth Avenue, Pine Street, to Campus Avenue.

Return via Campus Avenue, Washington Boulevard, "C" Street, Second Avenue, "D" Street, Third Avenue, Ninth Street, Campus Avenue, "D" Street, and Euclid Avenue to Ely Street.

Also, from the intersection of "D" Street and Euclid Avenue via "D" Street, Palm Avenue, and "C" Street to Euclid Avenue.

That the transportation of baggage and/or express shall be incidental to the transportation of passengers, shall be performed only on passenger-carrying vehicles, and each shipment shall be limited to a maximum of 100 lbs.

Applicant is authorized to turn its motor vehicles at termini and intermediate points, in either direction, at intersections of streets or by operating around a block contiguous to such intersections, or in accordance with local traffic rules.

End of Appendix A.

Issued by California Public Utilities Commission.

Decision No. ~~5269~~ Applications Nos. 27766 and 38498.