

**ORIGINAL**

Decision No. 58842

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CHARLES ROBERT COYNER and ROY STACY, doing business as COYNER and STACY TRUCKING COMPANY for a Certificate of Public Convenience and Necessity to operate as a highway common carrier between various points in Central California.

Application No. 36313  
(Amended)

Willard S. Johnson, for applicant.  
Daniel W. Baker, for Lodi Truck Service; Robert W. Walker and Matthew H. Witteman, by Matthew H. Witteman, for The Atchison Topeka and Santa Fe Railway Co. and Santa Fe Transportation Co.; Frederick W. Mielke, for Delta Lines, Inc., California Motor Transport Co., Ltd., California Motor Express, Ltd., Valley Motor Lines, Inc., Valley Express Co., protestants.

O P I N I O N

This application was filed by Charles Robert Coyner and Roy Stacy, doing business as Coyner and Stacy Trucking Company. On April 13, 1959, these applicants filed with the Commission a request that Charles Robert Coyner, doing business as Coyner Trucking Company, be substituted as the sole applicant herein. The request averred that Coyner had purchased the partnership interest of Stacy in the business previously conducted by them. Therefore, good cause appearing, it is directed that Charles Robert Coyner, doing business as Coyner Trucking Company, be substituted as applicant herein.

Notice of filing of the application was given all common carriers subject to the jurisdiction of this Commission. A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis on April 13, 1959, at San Francisco.

Applicant is engaged in the transportation of property in California pursuant to permits issued by this Commission. Applicant seeks an order authorizing him to conduct service as a highway common carrier for the transportation of general commodities, with limited exceptions, between various points in the State of California.

This application was filed pursuant to Decision No. 50448 in Case No. 5478, dated August 17, 1954. In that decision, the Commission enunciated a policy under which it may consider operation as a highway permit carrier up to and including September 10, 1953, as evidence of public convenience and necessity, if it appears that such operation may be found to constitute common carriage under the terms of the Nolan decision (Nolan v. Public Utilities Commission, 41 C (2nd) 392). The allegations of the amended application, representations filed in this matter and the evidence of record indicate, however, and the Commission finds that as of September 10, 1953, applicant was conducting operations within the scope of the permits heretofore issued by this Commission. Such operations not having constituted highway common carriage, the sought certificate of public convenience and necessity is not a requisite for continuance of applicant's operations as conducted on the said date; and the application will be denied.

The applicant is hereby placed on notice that the Commission, by this decision, makes no finding and expresses no opinion as to whether applicant has or has not been conducting his operations within the scope of his permitted authority since September 10, 1953; and that the provisions of Section 1063 of the Public Utilities Code will be strictly enforced.

O R D E R

A public hearing having been held, and based upon the evidence therein adduced, the application and representations filed herein,

IT IS ORDERED that Application No. 36313 is denied.

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

Dated at San Francisco, California, this 4th day of August, 1959.

[Signature]  
President

[Signature]

[Signature]

[Signature]

Commissioners

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