

**ORIGINAL**

Decision No. 59438

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application

of

WESTERN AIR LINES, INC.

for an order of exemption.

Application No. 41786

OPINION AND ORDER

Western Air Lines, Inc., applicant herein, is a Delaware corporation engaged in the business of transporting persons, property and mail by air in interstate and foreign commerce under certificates of public convenience and necessity issued by the Civil Aeronautics Board of the United States Government pursuant to applicable provisions of the Civil Aeronautics Act of 1938, as amended. It also engages in intrastate commerce within the State of California. In this application it seeks an order exempting it from the provisions of Article 6, Chapter 4, Part 1, Division 1 of the California Public Utilities Code. Said Article 6 defines the jurisdiction of the Commission over the transfer or encumbrance of utility property by public utilities. Section 853 of the article reads as follows:

"The provisions of Sections 851 and 852 shall not apply to any person or corporation which transacts no business subject to regulation under this part, except performing services or delivering commodities for or to public utilities or municipal or other public corporations primarily for resale or use in serving the public or any portion thereof but shall nevertheless apply to any public utility if the commission finds, in a proceeding to which the public utility is or may become a party, that the application thereof is required by the public interest. The commission may from time to time by order or rule and subject to such terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from the provisions of Sections 851 and 852 if it finds that the application thereof with respect to such public utility or class of public utility is not necessary in the public interest."





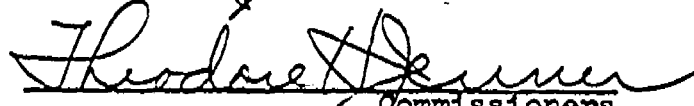
Carriers by air are not public utilities as defined in the Public Utilities Code and the Commission consequently has not asserted jurisdiction over the transfer or encumbrance of utility property by said carriers. However, Article XIII of the Constitution of the State of California confers jurisdiction on the Commission with respect to rates charged by transportation companies. Transportation companies include air carriers. Because of the jurisdiction thus conferred, some question has been raised with respect to the regulatory authority of the Commission over the transfer or encumbrance of utility property by carriers by air. It is in order to clarify the matter that applicant has filed the present application.

The Commission has considered the application of Western Air Lines, Inc., without a hearing and is of the opinion that it has no jurisdiction over the transfer or encumbrance of utility property by a common carrier by air, but being of the opinion that an order of exemption, if and to the extent this Commission has or might have jurisdiction, will be in the public interest; therefore,

IT IS HEREBY ORDERED, if and to the extent that this Commission has jurisdiction, that Western Air Lines, Inc., be and it is hereby exempted from the provisions of Article 6, Chapter 4, Part 1, Division 1 of the California Public Utilities Code.

This order is effective on the date hereof.

Dated at San Francisco, California,  
this 29<sup>th</sup> day of December, 1959.

  
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President  
  
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Commissioners