

ORIGINAL

Decision No. 61029

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 LADS FURNITURE FREIGHT, INC., a  
 corporation, for an in lieu certificate  
 of public convenience and necessity as  
 a highway common carrier of various  
 uncrated special commodities, between  
 points in the Los Angeles Basin Area,  
 and between points in said Area, on the  
 one hand, and on the other various  
 points in California, pursuant to  
 Sections 1063-1064 of the Public  
 Utilities Code.

Application No. 42078

Glanz, Russell and Schureman, by R. Y. Schureman, for  
 applicant.  
H. J. Bischoff, for Trojan Furniture Express; Cromwell  
Warner, for Loyd B. Turner, dba Blue Truck Lines  
 and Kleimer Van Lines, Inc., protestants.  
Sylvan N. Mack and R. C. Fels, for the Furniture  
 Manufacturers Association; A. L. Russell, for Sears  
 Roebuck and Co., interested parties.

O P I N I O N

Lads Furniture Freight, Inc., a corporation, is operating  
 under permitted authority as a radial highway common carrier, a  
 highway contract carrier and a city carrier. The applicant also  
 operates as a highway common carrier pursuant to a certificate of  
 public convenience and necessity granted by Decision No. 52831,  
 dated March 27, 1956, as amended by Decision No. 53619, dated August  
 28, 1956. This certificate authorizes the applicant to transport new  
 household, office and store furniture and fixtures loose, not in  
 boxes, crates or cartons, and uncrated new household, office and  
 store appliances, between all points and places in the Los Angeles  
 Basin Area; and between the Los Angeles Territory, as defined in  
 Item No. 270-3, Minimum Rate Tariff No. 2, on the one hand, and (1)

the San Diego Territory as defined in Item 271-3 of Minimum Rate Tariff No. 2, (2) the City of Barstow and vicinity, and (3) the City of El Centro and vicinity.

In this application, filed on March 24, 1960, the applicant requests an in lieu certificate of public convenience and necessity authorizing it to transport the same commodities from, to and between all points specified in Appendix "A" hereto, which is by this reference made a part hereof.

#### Public Hearing

Public hearings on this application were held before Examiner Edward G. Fraser in Los Angeles on July 6, 7, and 8, in San Francisco on July 15, 1960, and again in Los Angeles on August 5, 9, and 10, 1960, at which time evidence was presented by the applicant and by the various protestants who participated in said hearings. The matter was submitted twenty days after the last date of hearing to allow time for concurrent briefs to be filed. The applicant filed a brief and protestant Trojan Furniture Express filed a Petition to Set Aside Submission and Reopen Proceeding and a Memorandum of Points and Authorities in support thereof.

#### Evidence in Support of Application

The vice president of the applicant corporation testified that Lads Furniture Freight, Inc., is a furniture hauler, which transports new furniture as a certificated carrier primarily in the Los Angeles Basin Area and from the Los Angeles Territory to the San Diego Territory and as a permitted carrier north to the Santa Barbara city limits.

The applicant operates with 9 van trucks, 7 tractors and 7 van trailers. These operate out of a terminal in Los Angeles. Applicant works closely with Shelton Furniture Freight, a corporation and a contract carrier of new furniture, which is managed by the operators of the present applicant. The two corporations are almost identical in

ownership, operate out of adjoining terminals and have some joint and some separate employees. Shelton operates solely under contract from Santa Barbara north to the Santa Rosa area. Shelton operates 2 trucks, 14 tractors and 16 (40 foot) van-type trailers. This information is set out in Exhibit No. 5, which was introduced by the applicant. Applicant's vice president testified that Shelton Furniture Freight, Inc., will cease operating if this application is approved and all of Shelton's equipment will be combined with that of the applicant. The latter's drivers, office equipment and terminal will also be transferred to Lads and the joint operations will be combined.

The president of Shelton Furniture Freight testified that it was incorporated and started to operate on June 15, 1955. Shelton operates separately from the applicant and does not haul Lads freight. There was no connection between Shelton and Lads until about five months ago when the officers of Lads first became connected with Shelton. As previously indicated, Shelton operates only under contract and presently serves an area out of the certificated zone of the applicant.

The applicant presented testimony from 21 shipper witnesses and two witnesses who were representing furniture dealer associations. The shippers were from Los Angeles, Bakersfield, Hawthorne, Compton, Arcadia, Fresno, Gardena, Lynwood, San Francisco and Oakland. Fourteen of the shippers used both Shelton and Lads, three used Lads only, because they were unable to obtain Shelton contracts, and four who were located in the San Francisco Bay Area used only Shelton.

The witnesses included representatives from several of the largest furniture dealers in this State. They testified that Lads' and Shelton's service were both excellent, because pickups and deliveries were on schedule, delicate furniture was cared for and delivered without damage, and claims were honored and promptly paid.

They have a need for prompt pickup because dealers do not carry a large inventory and usually sell from a catalog, which requires that delivery be made to the customer from a central warehouse.

Several witnesses testified that Lads will haul promptly any size load presented within its certificated area. Other carriers will take only full truckloads and when merchandise is received by these truckers it is retained at their terminals until a full load is accumulated regardless of the delay.

Most of the witnesses called ship into all areas the applicant seeks to cover. Several, such as Sears Roebuck and Montgomery Ward, serve their own stores by using the applicant and Shelton Furniture Freight. Some deal in office furniture, others in upholstered items, or case goods; a few in specialized types and several of the larger dealers in all kinds of furniture.

The majority of witnesses used Lads for periods from 2 to 10 years, on shipments moving from 3 to 5 days a week. Several of the shippers had used Shelton from 3 to 5 years, frequently on daily deliveries. All witnesses stated they would use the applicant's service if the requested certificate was granted.

#### The Protestants' Case

Protestant Loyd B. Turner, doing business as Blue Truck Lines, testified that he has contracted to sell his highway common carrier operating rights to Kleimer Van Lines. The president of Kleimer Van Lines stated that his company is a furniture hauler serving 15 western states. It now operates in California as a permitted carrier with 4 trucks and 16 tractors and semitrailers. It has a net worth of approximately \$91,150, with assets of \$54,000 and liabilities of \$14,000. An application has been filed for the transfer of Turner's certificates. Kleimer is protesting because the applicant has requested permission to operate in the area Kleimer Van Lines will serve if this Commission authorizes the transfer of Turner's operating rights.

An officer of Trojan Furniture Express stated that he had incorporated Trojan and that it commenced operating in California on November 1, 1959. He has been in the transportation business since 1946, but has operated in other states. The Trojan operation was purchased from the Pixley Transportation Co. and is now being paid for. Trojan is convinced that another certificated furniture hauler is not needed in the area the applicant has asked to serve, since many of the carriers now operating there are losing money.

Trojan alleged that applicant was operating as a contract carrier, through Shelton Furniture Freight, Inc., an alter ego, in an area in which the applicant requested authorization to serve as a certificated carrier. Trojan asserted that this was in violation of Section 3542 of the Public Utilities Code.<sup>1/</sup>

#### Discussion

Protestant Trojan Furniture Express failed to present any evidence to substantiate the charge of unlawful operation. Everyone is presumed to be obeying the law and to be operating legally and this presumption (1963.1 and 1963.33, C.C.P.) must weigh in applicant's favor in the absence of contrary evidence.

Trojan's charge that Shelton Furniture Freight is the alter ego of Lads cannot be sustained on the record. There has been no indication that Shelton Furniture Freight has been used to defraud or to work an injustice. The mere fact of owning or managing a corporation operating as a certificated highway common carrier and a second corporation operating as a highway contract carrier outside

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<sup>1/</sup> Section 3542. "No person or corporation shall engage or be permitted by the commission to engage in the transportation of property on any public highway, both as a highway common carrier and as a highway contract carrier or as a highway common carrier and a petroleum contract carrier of the same commodities between the same points."

the service area of the first corporation, will not justify a charge of violating Section 3542 of the Public Utilities Code (In re Robertson Drayage, 55 P.U.C., 60).

Findings and Conclusions

Upon consideration of all of the allegations of the application and the evidence adduced at the hearings, the Commission finds that public convenience and necessity require that the application be granted. We find and conclude that there is a present and prospective need for the proposed extension and that the applicant possesses the experience and equipment to extend its certificate and maintain the operations to be authorized. The Commission is of the opinion that the applicant's financial position is adequate for the purposes intended.

The "Petition to Set Aside Submission and Reopen Proceeding" filed by the protestant Trojan Furniture Express, on August 23, 1960, is hereby denied.

Applicant is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

Application having been filed, public hearings having been held and based upon the above findings,

IT IS ORDERED:

1. That a certificate of public convenience and necessity is hereby granted to Lads Furniture Freight, Inc., authorizing the establishment and operation of service as a highway common carrier as that term is defined in Section 213 of the Public Utilities Code for the transportation of property between the points and over the routes set forth in Appendix A attached hereto and made a part hereof, and subject to the conditions and restrictions of said Appendix A.

2. That, in providing service pursuant to the certificate herein granted, applicant shall comply with and observe 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. 99 and insurance requirements of the Commission's General Order No. 100-A. 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 Orders Nos. 99 and 100-A, 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 ten days' notice to the Commission and to the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.

3. That the operating authority granted by Decision No. 52831, as amended by Decision No. 53619, is hereby canceled, said cancellation to become effective concurrently with the effective date of

the tariff filings required by paragraph 2(b) hereof.

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

Dated at San Francisco, California, this 7th day of November 1960.

[Signature] President  
[Signature]  
[Signature]  
[Signature]  
Theodore J. Dennis Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.



Lads Furniture Freight, Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport new household, office and store furniture and fixtures loose, not in boxes, crates or cartons, and uncrated new household, office and store appliances, between the points and places, and over the routes specified, including intermediate points as well as all off-route points hereinafter named, as follows:

- A. BETWEEN ALL POINTS IN THE LOS ANGELES BASIN AREA described as follows (See Restrictions in Paragraph D hereof):

Beginning at the intersection of the westerly boundary of the City of Los Angeles and the Pacific Ocean, thence along the westerly and northerly boundary of said city to its point of first intersection with the southerly boundary of Angeles National Forest, thence along the southerly boundary of Angeles and San Bernardino National Forests to the point of intersection of the southerly boundary of the San Bernardino National Forest and the San Bernardino-Riverside County Line, thence in a southerly and westerly direction along said county boundary to a point thereon distant 5 miles east of the intersection of said county line and State Highway 18, thence generally southerly, southwesterly and southeasterly, along a line generally paralleling and distant 5 miles from State Highway 18, State Highway 55 and U.S. Highway 101 to its intersection with an imaginary prolongation of the southerly city limits of San Clemente, thence westerly along said imaginary line to the Pacific Ocean, thence northerly and westerly along the coast line of said Pacific Ocean to the point of beginning.

- B. BETWEEN ALL POINTS IN THE LOS ANGELES BASIN AREA AND THE FOLLOWING DESCRIBED CITIES AND TERRITORY, WITH SERVICE TO, FROM AND BETWEEN SAID TERMINI, INTERMEDIATE AND OFF-ROUTE POINTS (See Restrictions in paragraph D hereof):

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1. The City of Barstow, serving all intermediate and off-route points within a lateral of 15 miles of U.S. Highway 66 between the Los Angeles Basin Area and Barstow, and the additional off-route points of Lancaster and Palmdale.
  2. The City of El Centro, serving all intermediate and off-route points within a lateral of 20 miles of U.S. Highways 60 and 99 between the Los Angeles Basin Area and El Centro.
  3. The San Diego Territory as described in paragraph B4 hereof, serving all intermediate and off-route points within a lateral of 15 miles of U.S. Highway 101 between said areas.
  4. The San Diego Territory includes that area as embraced by the following imaginary line starting at the northerly junction of U.S. Highways 101E and 101W (4 miles north of La Jolla); thence easterly to Miramar on U.S. Highway 395; thence southeasterly to Lakeside on the El Cajon-Ramona Highway; thence southerly to Bostonia on U.S. Highway 80; thence southeasterly to Jamul on State Highway 94; thence due south to the International Boundary Line, west to the Pacific Ocean and north along the coast to the point of beginning.
- C. BETWEEN ALL POINTS IN THE LOS ANGELES BASIN AREA AS DESCRIBED IN PARAGRAPH A HEREOF ON THE ONE HAND, AND ON THE OTHER, THE FOLLOWING POINTS (See Restrictions in paragraph D hereof):
1. The City of Santa Rosa, serving all intermediate and off-route points within a lateral of 15 miles of U.S. Highways 101, 101 Alternate and 101 Bypass, between the Los Angeles Basin Area and Santa Rosa.
  2. The City of Sacramento, serving all intermediate and off-route points within a lateral of 15 miles of U.S. Highway 99, between the Los Angeles Basin Area and Sacramento.
  3. Intermediate and off-route points within a lateral of 15 miles of U.S. Highways 40 and 50 and State Highway 24, between U.S. Highways 101 and 99.

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D. RESTRICTION AGAINST LOCAL SERVICE:

1. Applicant shall not provide any local service between points located west of the western boundary of Los Angeles County or north of the northern boundaries of Los Angeles and San Bernardino Counties.
2. Local service is defined as service between any two points, both of which are located in the area to the west of Los Angeles County or to the north of Los Angeles and San Bernardino Counties.

End of Appendix A

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