

Decision No. 66009**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DELTA LINES, INC., CALIFORNIA MOTOR
 TRANSPORT CO., DI SALVO TRUCKING
 COMPANY, FORTIER TRANSPORTATION COMPANY,
 MERCHANTS EXPRESS OF CALIFORNIA, OREGON-
 NEVADA-CALIFORNIA FAST FREIGHT AND
 SOUTHERN CALIFORNIA FREIGHT LINES,
 PACIFIC MOTOR TRUCKING COMPANY, STERLING
 TRANSIT CO., INC., VALLEY MOTOR LINES,
 INC., AND WILLIG FREIGHT LINES,

Complainants,

vs.

TODD FREIGHT LINES, INC., AND JACK
 A. ULRICH, Trustee,

Defendants.

Case No. 7695

PRELIMINARY ORDER

Complainants seek to enjoin an announced bankruptcy sale of highway common carrier operative rights. Defendants are a carrier and its trustee in bankruptcy.

Summary of complaint. Todd Freight Lines was issued a certificate in 1960 and an enlarged certificate in 1962. Since expansion of its operating authority it has experienced financial difficulty and is now bankrupt. "For some time" Todd's operations have ceased, without Commission authority, and its rights "are now dormant." Continued failure to operate "for a substantial period" is a breach of utility obligation. Announcement has been made that on September 18, 1963 the trustee in bankruptcy will sell Todd's rights to the highest bidder. Since Todd ceased operating, its former traffic has been handled by complainants and other carriers. There is a lack of public need for Todd's extended certificate in the area covered. Revival of the "dormant" rights

in the hands of another carrier would not serve the public interest. The rights should be revoked. If the sale proceeds, the rights will be the subject of a conditional sale. The Commission might be reluctant to deny transfer authorization after bidding has taken place in good faith. The practical remedy is for the Commission "to direct defendants to withdraw their call for bids, and to cancel their proposed sale." Thereafter, if the complainants' allegations are proved, the Commission will be in a position to revoke the Todd certificate without causing hardship to the public.

Complainants request issuance of a temporary restraining order, directing defendants to cancel the proposed sale, together with an order to show cause why such a temporary order should not be made permanent.

A statement of asserted defects, submitted by counsel for the trustee in bankruptcy (Blewett, Blewett & Garretson, 141 East Acacia Street, Stockton, California), following preliminary mailing under procedural Rule 12, is as follows:

"Mr. Jack Ulrich, the duly appointed, qualified and acting Trustee in bankruptcy of the estate of Todd Freight Lines, Inc. has just turned over to this office your letter of August 29, 1963 in the above matter. We are returning herewith a copy of the complaint pursuant to your request. The undersigned, as attorney for the Trustee, will be representing him in the future in this matter.

"In reference to the complaint complainants are seeking in effect an order of the Public Utilities Commission of the State of California and are seeking both a temporary restraining order and a permanent restraining order against the action of the United States Government acting by and through the duly appointed Trustee in bankruptcy pursuant to an order of the Referee in Bankruptcy of the United States District Court pursuant to the bankruptcy laws of the United States. We do not feel that the request for such relief is proper nor that the complaint seeking such relief can state a cause of action against the United States Government, its courts, officers and agents, in carrying out the requirements of the Federal Bankruptcy Act pertaining to liquidation of assets in a bankruptcy proceedings."

The request for a restraining order will be denied.

Complainants also seek revocation of the Todd certificate, alleging in effect that there has been an unauthorized discontinuance of public utility operation. Complainants are entitled to be heard on this issue.

IT IS ORDERED as follows:

1. The request for a restraining order is denied.
2. The Secretary of the Commission is directed to cause to be served upon defendants copies of this order, together with copies of the complaint herein.
3. Defendants are directed to answer the complaint within ten days after service thereof, but only as to two issues,
 - (a) Whether or not there has been an unauthorized discontinuance of public utility operation, and
 - (b) Whether or not, for such reason, the Todd certificate should be revoked.
4. In all other respects Case No. 7695 is hereby dismissed.

Dated at San Francisco, California, this 17th day of SEPTEMBER, 1963.

William H. Bernard
President

Carl S. Bristell

Carroll W. Leary

George A. Grover

Frederick B. Hallock
Commissioners