

ORIGINALDecision No. 66248

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Complainants,

vs.

Case No. 7663

HARRISON FREDERICK, Trustee in Bankruptcy,
 REILLEY TRUCK LINE, a corporation, and
 AMERICAN TRANSFER CO., a corporation,

Defendants.

PRELIMINARY ORDER

Complainants seek revocation of certain highway common carrier operating rights. Responsive to preliminary mailing of the complaint under procedural Rule 12, defendants submitted a statement of asserted defects and requested dismissal. Before considering the complaint and the asserted defects it is necessary to refer to a proceeding wherein the Commission authorized the transfer of such rights.

On May 7, 1963 Reilley Truck Line, by Harrison Frederick, Trustee in Bankruptcy, sought authority to transfer the rights to American Transfer Company. (App. No. 45407.) Authorization was granted July 2, 1963. (Decision No. 65633.) The ex parte decision

stated that a group of carriers (complainants in the present case) indicated by letter a wish to protest the proposed transfer upon the ground that the area is more than adequately served, and authority to transfer Reilley's suspended operating rights would result in a condition of over capacity, injurious to protestants and the public. The decision cited Stovall, 59 Cal. P.U.C. 373, to the effect that in a transfer proceeding the Commission is primarily concerned with whether the transfer "would be adverse to the public interest", and that the issue of public convenience and necessity "would constitute a collateral attack" upon prior decisions.

Petition for reconsideration, rehearing, and intervention, filed by the present complainants, was denied. (Decision No. 65935, September 3, 1963.)

The complaint herein, filed during the pendency of the above petition, alleges in substance that defendant Reilley was adjudicated a bankrupt on September 18, 1962 and defendant Frederick appointed trustee in bankruptcy. On that date defendants, without Commission authorization, discontinued all trucking operations. This cessation is a breach of utility obligation under the certificated authority and filed tariffs. The sale by defendants for a price far in excess of the book value of the operating rights is in violation of the purpose and spirit of Pub. Ut. Code section 820, prohibiting capitalization of operating authority in excess of the amount paid to the State for the grant thereof. Since Reilley discontinued operations in September of 1962, business formerly handled by Reilley has been handled by other carriers, including complainants. Service available to the

shipping public is fully adequate for the needs and convenience of the shipping public. In January of 1962 defendant American was denied a certificate between many of the points and over many of the routes included in the Reilley certificate, because public demand for American's service therein was so sporadic it could be performed under American's permitted authority. (Decision No. 63024.) Complainants will be injured by "revival" of the Reilley certificate in the hands of American, and may lose business. Complainants seek revocation of the Reilley certificate, whether in the hands of Reilley or of American.

Following preliminary mailing of the complaint under procedural Rule 12, defendants submitted a statement of asserted defects. The statement does not claim that the complaint fails to state a cause of action, but urges that filing of the complaint is equivalent to an abuse of process, and disregards decisions determining the issues attempted to be raised. Defendants assert that to consider the complaint would establish a policy making it possible to cause every transfer matter to become a subject of a formal complaint and hearing, and that such procedure should not be countenanced.

The present complaint in part alleges unauthorized discontinuance of all trucking operations in September of 1962, and seeks revocation of the Reilley certificate for this reason. The transfer decision does not mention that question. It states that hearing therein was denied because in a transfer proceeding the issue of public convenience and necessity would constitute a collateral attack upon prior decisions.

In any event, to bar complainants from being heard in the transfer proceeding, upon the basis that so to do would be a collateral attack on earlier decisions, and then to refuse to consider a complaint upon the ground that it would be a collateral attack upon the decision in the transfer proceeding, would be to foreclose complainants from ever raising the issue of unauthorized service discontinuance or possible revocation of certificate for that reason in any proceeding. Complainants are entitled to be heard on such issues.

IT IS ORDERED as follows:

1. 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.

2. 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 Reilly certificate, authorized to be transferred to defendant American Transfer Co. by Decision No. 65633 in Application No. 45407, should be revoked.

3. In all other respects Case No. 7663 is hereby dismissed.

Dated at San Francisco, California, this

5th day of NOVEMBER, 1963.

William W. Bennett
President

Robert E. Fitchell
Robert W. Long

George G. Grover

Frederick B. Holdesoff
Commissioners