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ORIGINAL

Decision No. 62337

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SUNSET TRANSFER SERVICE, a corporation,)
of San Diego, for a permit as a highway) Application No. 44128
contract carrier (Appl. No. 37-4926-H),)
for the transportation of property,)
California. (File No. T-71,894).)

Bruce R. Geernaert, for applicant.
Elmer Siostrom, for the Commission staff.

O P I N I O N

By this application, as amended, Sunset Transfer Service, a corporation, requests the issuance of either a highway contract carrier permit or a radial highway common carrier permit or that it be authorized to acquire the highway contract carrier permit presently held by California Motor Transport Co.

A public hearing was held before Examiner Daly on March 20, 1962, at San Francisco.

Applicant and California Motor Transport Co., a corporation, are wholly owned subsidiaries of City Transit System. All officers of California Motor Transport Co. are also officers of applicant. California Motor Transport Co. is a certificated highway common carrier operating extensively throughout the state.

Applicant proposes to operate with equipment and personnel of the common carrier. Applicant requests permitted authority primarily to meet temporary competitive situations by charging rail-competitive rates lower than those in the tariff of California Motor Transport Co. while the latter is preparing to publish such lower

rates. After the lower rates became effective, the service would be provided by the common carrier, California Motor Transport Co. Applicant also proposes to use the permits to transport split pickup and split delivery shipments when some of the points of origin or destination are on the routes of the common carrier and other such points are not.

Applicant's counsel referred in broad terms to a general investigation in which he understood the Commission would receive evidence on the question whether or not a highway common carrier may operate, through an affiliate company, a permitted operation such as proposed herein and such as California Motor Transport Co. assertedly had done for some 24 years prior to 1961 when the permits of the affiliate were acquired by the common carrier through corporate mergers made for tax advantages.¹ He stated that there would be no objection by California Motor Transport Co. to being treated in the same manner as other members of the transportation industry, but that it would be unfair and discriminatory to deny the permits to applicant while other highway common carriers are conducting operations of a permitted nature in affiliate companies. He suggested that if the Commission were reticent to issue the sought permits it might limit them to a year-to-year termination date, so that whatever the Commission may decide in its general investigation on an industrywide basis could be applied to this applicant.

¹ Presumably counsel's allusion was to Case No. 7158, an investigation into the operations, services, rates, and charges of all carriers of passengers or property in California. No evidence on the question as stated by counsel was introduced in Case No. 7158.

It is fundamental that no common carrier may deviate from its tariff schedules (Sec. 494, Public Utilities Code); nor may any person or corporation transport, both as a highway common carrier and as a highway contract carrier, the same commodities between the same points (Sec. 3542). Similarly, a radial highway common carrier permit cannot be operative with respect to traffic for which the holder possesses a highway common carrier certificate.² With respect to split-pickup and split-delivery shipments to points on and off the common carrier routes, the Commission heretofore has determined that under the existing statutes a carrier may not handle property as a single shipment, part of which is for delivery at a point authorized to be served under its common carrier certificate and part at a point or points not authorized to be served under the certificate (Decision No. 61265 dated December 28, 1960, unreported, in Case No. 6186).

With reference to any and all of the statutory restraints referred to in the preceding paragraph, it is axiomatic that a highway common carrier may not do through its alter ego that which it cannot lawfully do directly.³

² See People v. Geisbeek, August 16, 1957, 153 C.A. 2d 300. In recent years all permits issued by the Commission to operate as a highway contract carrier or radial highway common carrier have included the condition: "Said Carrier shall not engage in the transportation of property over the public highways under this permit when such transportation is covered by said Carrier's Highway Common Carrier operative authority."

³ See Decision No. 50924 dated December 30, 1954, in Application No. 35927, Direct Delivery System, Ltd., 53 Cal.P.U.C. 761.

The Commission finds that applicant and California Motor Transport Co. are the alter ego of each other, and that if the requested permits were issued applicant could not lawfully use them for the purposes intended. The Commission concludes, therefore, that the permits should not be issued. The application will be denied.

As hereinbefore indicated (footnote 1), the Commission does not have before it any general investigation related to the subject matter of this application. The law is settled that a common carrier may not deviate from its tariff schedules. Regardless of competitive or other compulsions, any undertaking by a common carrier to do so directly or indirectly must be condemned as unlawful. The Commission will direct its Transportation Division staff to bring to the Commission's attention any evidence of such operations in order that the permits may be terminated or made subject to such additional terms and conditions as are required.

O R D E R

IT IS ORDERED that this application is hereby denied.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 3rd day of June, 1964.

William L. Brundage

President
Robert E. Mitchell

Robert A. Tracy

I concur in the order.

George L. Grover

Commissioners

I dissent. I will express my views later.

Frederick B. Holshoff
