

ORIGINAL

Decision No. 72039

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
LEONARD A. KINZEL, an individual,)
of Burbank, for a certificate to)
operate as a cement carrier)
(Application No. T-68, 883 CMT-G),)
Los Angeles County, et al, (File)
No. T-68,863).

Application No. 46530
(Filed July 23, 1964)

In the matter of the application of)
LEONARD A. KINZEL, an individual,)
to sell, and GORDON W. SHAW)
ENTERPRISES, doing business as)
CALIFORNIA MATERIAL CO., a)
corporation of Hawthorne, to)
purchase a cement carrier operating)
right for the transportation of)
cement pursuant to Section 851-853)
of the California Public Utilities)
Code.

Application No. 48197
(Filed January 20, 1966)

In the matter of the application)
of Gordon W. Shaw Enterprises,)
dba California Material Co., a)
corporation of Hawthorne, for a)
permit to operate as a cement)
contract carrier (Application)
No. 19-57998-cc) in Los Angeles,)
et al., Counties, (File No. T-77,)
272).

Application No. 46960
(Filed September 2, 1964)

Milton W. Flack, for applicants.
Russell & Schureman, by R. Y. 1/
Schureman, for protestants.
Douglas C. Quinlan, for the
Commission staff.

O P I N I O N

No. 46530 is the original application of Leonard A. Kinzel
for a cement carrier certificate. No 46960 is the original

1/ Max Binswanger Trucking, MATICH Transportation Co., Phillips
Trucking, Daniel Lohnes Trucking Co., Valley Transportation
Co., More Truck Lines.

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application of Gordon W. Shaw Enterprises, a corporation, for a cement contract carrier permit. No. 48197 is an application to sell Kinzel's cement common carrier certificate to Shaw for \$150.

Kinzel's certificate originally granted by Resolution No. 13821, Sub. No. 29, dated June 23, 1964, was limited to Los Angeles and Orange Counties. By Decision No. 67742, dated August 25, 1964, San Diego County was added. The certificate authorizes service to points in the three counties and within such counties.

The certificate was suspended on April 28, 1965 for failure to have on file requisite evidence of liability insurance. On June 8, 1965, the suspension was indefinitely extended because, in the meantime, Kinzel's tariff agency had cancelled his participation in its tariffs. The certificate was conditionally revoked by Decision No. 69940 of November 9, 1965. The condition read: "unless before such effective date there shall have been filed with this Commission a written request for public hearing." Such request was filed both by telegram and by mail in time to stay the revocation. Application No. 48197 was filed January 20, 1966.

A public hearing on all three applications was held on a consolidated record in Los Angeles before Examiner Power on September 15, 1966 and the matters submitted.

Section 3542.1 of the Public Utilities Code provides:

"No person or corporation shall engage or be permitted by the commission to engage in the transportation of portland or similar cements on any public highway, both as a cement carrier and as a cement contract carrier."

In the event the transfer of the Kinzel certificate to J-8 Truck Lines, Inc. is authorized, Section 3542.1 precludes the granting of Application No. 46960.

The other two applications have to do with the Kinzel certificate. The sense of Kinzel's testimony was to the following effect. At the time of his certification, his equipment was antiquated. As a result, he fell into financial difficulties. In time, he found himself unable to pay his tariff agent or his insurance broker, and both cancelled him out. Absence of a tariff and insurance coverage led to the suspension of his authority.

Gordon W. Shaw Enterprises, since the hearing, has changed its corporate name to J-8 Truck Lines, Inc. It is engaged in several lines of business. Trucking has, in the recent past, accounted for about one-sixteenth of its gross revenues. Under file No. T-77272, it possesses Radial Highway Common Carrier Permit No. 19-57096. Headquartered in Hawthorne, it operates within 400 miles of Los Angeles. It transports general commodities with the usual exceptions. As of June 30, 1966, it had assets of \$387,805, capital of \$78,000 and earned surplus of \$146,476. It has ten pieces of equipment registered with this Commission for its for-hire carrier operations. Twelve other pieces are used in its own operations.

The Commission does not usually favor revocation of certificated authority unless there is present some voluntary act in defiance of our statutes, Commission orders, etc. Nothing in this record shows that Kinzel so conducted himself. Kinzel's authority, created by resolution, should, however, be revoked and an appendix-type certificate issued in its place.

The Commission finds that:

1. The suspension of Leonard A. Kinzel's authority to conduct operations as cement common carrier should be terminated.

2. Leonard A. Kinzel did not abandon the operating right created by Resolution No. 13821, Sub. No. 29, as amended by Decision No. 67742.

3. The transfer proposed in Application No. 48197 would not be adverse to the public interest.

4. J-8 Truck Lines, Inc., has the financial resources, facilities, equipment and personnel to transport cement to and within Los Angeles, Orange and San Diego Counties from any and all points of origin.

5. J-8 Truck Lines, Inc., is affiliated with Matspor, Inc., Shaw's Sporting Goods and California Material Co.

6. Public convenience and necessity require that a certificate be granted to J-8 Truck Lines, Inc., to transport property as a cement carrier to and within the Counties of Los Angeles, Orange and San Diego from any and all points of origin.

The Commission concludes that:

1. The sought transfer should be authorized.
2. The present operating authority of Leonard A. Kinzel should be revoked upon consummation of the transfer.
3. A certificate of public convenience and necessity as a cement carrier should be granted to J-8 Truck Lines, Inc., as provided by the following order.

4. It having authorized the transfer here involved, Section 3542.1 prohibits the issuance of a cement contract carrier permit to J-8 Truck Lines, Inc., and Application No. 46960 should be denied.

J-8 Truck Lines, Inc., a corporation, 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.

The authorization herein granted shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before June 1, 1967, Leonard A. Kinzel may sell and transfer, and J-8 Truck Lines, Inc., may purchase and acquire, the cement carrier certificate of public convenience and necessity referred to in the application, in accordance with the terms set forth in the application, but subject to the terms of this order.

2. Within thirty days after the consummation of the transfer herein authorized, J-8 Truck Lines, Inc., shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

3. J-8 Truck Lines, Inc., shall file tariffs in triplicate with the Commission, naming rates, rules and regulations governing the common carrier operations authorized herein. The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the

transfer herein authorized. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 117.

4. Concurrently with the effective date of the tariff filings required by ordering paragraph 3 hereof, the operative rights granted by Resolution No. 13821, Sub. No. 29, dated June 23, 1964, as amended by Decision No. 67742, dated August 25, 1964, is revoked and, in place and stead thereof, a certificate of public convenience and necessity to operate as a cement carrier is granted to J-8 Truck Lines, Inc., as particularly set forth in Appendix A attached hereto and made a part hereof.

5. Whenever J-8 Truck Lines, Inc., engages other carriers for the transportation of property of Matspor, Inc., California Material Co., Shaw's Sporting Goods, J-8 Truck Lines, Inc., or customers or suppliers of said companies or corporations, J-8 Truck Lines, Inc., shall not pay such other carriers rates and charges less than the rates and charges published in J-8 Truck Lines, Inc.'s tariffs on file with this Commission.

6. Concurrently with the effective date of the tariff filings required by ordering paragraph 3 hereof, the suspension provided

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for in Decision No. 69212, dated June 8, 1965, in Application No. 46530, is terminated.

7. Application No. 46960 is denied.

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

Dated at San Francisco, California, this 21st day of FEBRUARY, 1967.

[Signature]
President
[Signature]
Attorney
[Signature]
[Signature]
Commissioners

EC/AB

APPENDIX A

J-8 TRUCK LINES, INC.
(a corporation)

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J-8 Truck Lines, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin is authorized to conduct operations as a cement carrier to and within the Counties of Los Angeles, Orange and San Diego from any and all points of origin.

RESTRICTION: Whenever J-8 Truck Lines, Inc., engages other carriers for the transportation of property of Matspor, Inc., or California Material Co. or Shaw's Sporting Goods or J-8 Truck Lines, Inc., or customers or suppliers of said corporations or companies, J-8 Truck Lines, Inc., shall not pay such other carriers rates and charges less than rates and charges published in J-8 Truck Lines, Inc.'s, tariffs on file with this Commission.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 72039, Application No. 48197.