

ORIGINAL

Decision No. 77312

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of LESTER J. GORDON, an individual,  
of Paso Robles, California, for a  
permit to operate as a dump truck  
carrier, 50 mile radius from point  
of operation. (File No. T-94,392)

Application No. 51571 -  
(Filed December 16, 1969;  
Amended December 26, 1969)

In the Matter of the Application  
of GORDON H. LOYD, an individual  
dba GORDON LOYD ENTERPRISES, of  
Hanford, California, for a permit  
to operate as a dump truck carrier,  
50 mile radius from point of  
operation. (File No. T-94,422)

Application No. 51608  
(Filed December 29, 1969)

Morris Michelson, for applicants.  
Martin J. Rosen, for H.E.C. Trucking Corpo-  
ration, Universal Transport System, Inc.,  
Les Calkins Trucking, Inc., Rock Transport,  
Inc., McQuilliams Trucking, Construction  
Materials Trucking, Asbury Contractors,  
Inc., and Asbury Transportation Co.;  
G. Ralph Grago, by E. O. Blackman, for  
Associated Independent Owner Operators;  
E. O. Blackman, for California Dump Truck  
Owners Association; protestants.  
William T. Meinhold, Arlo D. Poe, and H. F.  
Kollmyer, for California Trucking Associa-  
tion, interested party.  
H. L. Farmer, for the Commission staff.

O P I N I O N

These applications were heard before Examiner Fraser on  
January 28, 1970, in Fresno, California, on a consolidated record.

The applications stem from legislation enacted by the  
California Legislature in 1969, regulating the operation of dump  
truck equipment on the public highways of this State. The pertinent  
sections of the Public Utilities Code start with Section 3610, which  
declares that dump truck hauling is "a highly specialized type of  
truck transportation". The applicants herein have no present

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authority to operate dump trucks and have therefore applied for new permits under the provisions of Section 3613 of the Public Utilities Code.

Applicant Gordon has applied to perform a statewide service, with the actual hauling to be within a 50-mile radius from the point of operation. Gordon's testimony reveals that he had a dump truck carrier permit from 1951 to 1958 and during 1960 and 1961. The permits were placed in suspension at applicant's request and later revoked. The date of revocation on the last permit was given as April 1962. Gordon drove for a construction company from 1958 to 1961 and from April 1962 to 1967. He operated a service station from 1967 through mid-1969, when he sold it. He started driving a 1955 Peterbilt tractor in August of 1969. He paid \$2,000 to his employer as an initial payment (in August) on the purchase of the truck. He classified his position as that of an employee - rather than a subhauler - although he was paid a percentage of the gross earned by the truck and trailer he drove, after fuel, insurance, Public Utilities Commission and Board of Equalization fees were deducted from his share. The trailer was provided by his employer without charge. He was registered as legal owner of the truck and filed this application in December of 1969. He believed that he could not apply for a permit unless he either leased or owned equipment. The second payment on the truck was made 45 days

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after the down payment, but title was not passed until December due to the fact that his employer had not paid enough on the original purchase price for the original purchaser to authorize a transfer of title. Gordon testified that his prior dump truck permits were abandoned due to family obligations. His children were too young at the time for him to be always away on distant jobs. He considers himself fully qualified and committed to become a dump truck operator since he has purchased a truck and recently contracted to purchase a trailer from his employer for \$7,500. The total owed on the truck and trailer combined is now about \$14,000, with monthly payments of \$442 a month.

Gordon testified that he does not know what it will cost to keep his truck in good condition, nor does he know who he will work for if he receives the permit; his experience indicates that contractors who need dump trucks do not purchase trucks and hire drivers; they prefer to hire operators who own their own trucks, which has prompted him to apply for a permit. He did not realize that his application would be protested, or that the law had been changed. He testified that he has not studied a Public Utilities Commission tariff since 1961, but he is familiar with the rates to be charged on any hauls he makes. He further testified that his truck has been on the highway already for several months and if this permit is granted the truck's operation will not change, but he will become an owner-operator rather than a hired driver.

Applicant Loyd owns a dental laboratory. He purchased two trucks as an investment to rent or lease to a truck broker or contractor. He planned to hire someone to manage and drive the trucks and would not be personally involved in the operation. His

original plan was to use the trucks only on private property to avoid various fees but this theory had to be modified. He then decided in November 1969 that the trucks should be operated under the authority of a dump truck carrier permit. His application requests authority to operate statewide, with the hauling to be performed within a fifty-mile radius of the point of operation. He has never been in the dump truck business, but has two relatives in the business who can assist him or manage his dump trucks, if necessary. Loyd testified there seemed to be a need for dump trucks so he purchased two used 3-axle, 10-wheel trucks from the manufacturer after they had been turned in by Kings County. The trucks were fitted with dump truck bodies to operate as single units. They were rented to a truck company for about a month prior to the hearing date, but the agreement was canceled when it became known that the trucks were occasionally used on the public highways rather than exclusively on private property. Loyd testified he would start operating in the Fresno area if a permit is granted. He requested a fifty-mile coverage from point of operation on the advice of his insurance agent. Loyd testified his position is that of an investor. He is not familiar with dump truck tariffs or rates.

Seven protestants testified and three also placed documents in evidence. They described the variety of dump truck equipment they have available at all times, insurance coverage, safety programs, their experience, and the fact they considered California saturated with dump truck owners, operators and drivers. The protestants classified dump truck operation as a highly specialized form of transportation due to job conditions, pickup sites, off-highway hauling and necessary safety precautions. They emphasized that all operators should be familiar with dump truck tariffs, rates and safety requirements.

Applicants' representative argued that a refusal to grant a permit for lack of qualification under Section 3613 would be discriminatory since under Section 3614 one who seeks a permit can purchase one without qualifications, providing the holder of the permit applies to the Commission for authority to transfer the permit. If the Commission refuses to grant any more new permits the prospective operator is arbitrarily required to purchase an issued permit - if one is available - at a greatly inflated price. He further argued that if permits are easy to purchase, there is no guarantee that refusing to grant new permits will result in fewer dump trucks on the public highways, or that those who purchase issued permits will be more cognizant of public safety than those who seek new permits.

Applicants' argument contrasting those who apply for new permits with those who purchase existing permits is not persuasive. Applications for new permits are governed by Section 3613; Applications to transfer permits are governed by Section 3614.

It is evident from Gordon's testimony concerning his truck purchase that his financial position is not sound. His evidence concerning his recent driving experience is sketchy, although it can be inferred that he drove as an employee. He is not familiar with dump truck rates or tariffs and has little familiarity with safety procedures due to a lack of experience. Gordon testified he does not know who he will work for if his permit is granted, although he has requested authority to operate statewide. Gordon does not qualify for a permit under the provisions of Section 3613 of the Public Utilities Code. A contrary holding would nullify and disregard the provisions of the statute.

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Applicant Loyd has financial stability but no experience. Applicant Loyd also does not qualify for a permit under other provisions of Section 3613 of the Public Utilities Code.

Findings and Conclusion

Applicant Gordon has failed to prove by a preponderance of evidence:

1. That he has sufficient operating knowledge and financial ability to initiate and continue a dump truck operation.

2. That the privilege sought:

- (a) Will not endanger the safety of the public; or
- (b) Interfere with public use of the highways or impair the condition or maintenance of them, directly or indirectly; or
- (c) Will not unnecessarily burden the public highways; and
- (d) Is necessary to serve the public and will not impair the ability of presently permitted dump truck carriers to provide adequate service at the lowest possible reasonable rates.

Applicant Loyd has failed to prove by a preponderance of evidence:

1. That he has sufficient operating knowledge and financial ability to initiate and continue a dump truck operation.

2. That the privilege sought:

- (a) Will not endanger the safety of the public; or
- (b) Interfere with public use of the highways or impair the condition or maintenance of them, directly or indirectly; or
- (c) Will not unnecessarily burden the public highways; and
- (d) Is necessary to serve the public and will not impair the ability of presently permitted dump truck carriers to provide adequate service at the lowest possible reasonable rates.

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Based on the foregoing findings of fact the Commission concludes that the applications should be denied.

O R D E R

IT IS ORDERED that the applications for dump truck carrier permits filed by Lester J. Gordon and Gordon H. Loyd are hereby denied.

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

Dated at San Francisco, California, this  
3rd day of JUNE, 1970.

William J. Lyons  
President

Verne L. Sturgeon  
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.