

Decision No. S0984 NOV 6 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations and
practices of Brink's Incorporated,
a corporation.

Case No. 9606
(Filed August 21, 1973)

Edward K. Wheeler, Attorney at Law, for Brink's
Incorporated, respondent.
R. W. Smith and A. D. Poe, Attorneys at Law,
and Gerald K. Trant, for the California
Trucking Association, interested party.
Walter H. Kessenick, Attorney at Law, for the
Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion to determine whether Brink's Incorporated (Brink's) is operating in California as an express corporation and/or freight forwarder without requisite authority from the Commission.

A duly noticed public hearing was held in this matter before Administrative Law Judge Donald B. Jarvis in Los Angeles on March 13 and 14, 1974. It was submitted subject to the filing of transcript and briefs, the last of which was received on August 14, 1974.

Brink's holds a highway contract carrier permit, which is the only operating authority granted it by the Commission. Brink's is engaged in the business of transporting cash and other valuables for banks and financial institutions. Its primary operations involve highway transportation by armored truck. In addition, Brink's provides an interstate and intrastate air courier service. In this

investigation we are solely concerned with Brink's intrastate air courier operations.^{1/}

Brink's conducts its air courier operations in the following manner. Shipments of cash and/or other valuables are picked up by armored truck, which may have more than one pickup along its route. Three or more armed men are dispatched with the armored truck. Shipments are tendered to Brink's in sealed packages. The shipper prepares a form indicating the number of pieces being shipped, the value thereof, and the consignee. An armed messenger, who is part of the armored truck crew and who has previously been identified to the shipper enters the vault or other secured area on the shipper's premises.^{2/} He receives the shipment, checks the items against the shipping form, and if everything is in order he signs a receipt for the shipment. The messenger returns to the armored truck with the shipment. When the shipment is aboard the truck, the messenger places certain information about the shipment^{3/} on a Brink's air courier pickup sheet. The armored truck generally picks up several shipments at different locations. When all the

1/ Unless otherwise stated, all subsequent references herein to air courier operations refer to California intrastate air courier operations.

2/ The messenger may be accompanied by one or more other armed Brink's personnel.

3/ The time of arrival and departure at the pickup site, number of items and the value thereof, and the number of the customer's shipping form.

shipments have been picked up, the armored truck proceeds to an airport. Brink's has made arrangements with various airport authorities and airlines which permit the armored truck and armed personnel to proceed to an area near the airplane on which the shipment will be loaded. About 15 minutes before the departure of the airplane, the shipment is placed in the baggage compartment, under the protection of the Brink's armed employees, as the last loaded item of baggage. When the cargo door is closed, the courier boards the aircraft. The armored truck crew maintains constant surveillance of the cargo door until the aircraft departs. The armored truck crew remains at the airport for 15 minutes after the plane is airborne to be available in the event it is forced to return to the airport.

Brink's is in contact with the airlines which it uses. It receives frequent information about the progress of scheduled flights, delays, cancellations, reroutings, or other contingencies. When Brink's is advised that a flight will be delayed, it determines whether the shipment should remain in the armored truck or be returned to a vault at a Brink's terminal. When Brink's is notified that a flight has been diverted to a different destination, it dispatches an armored truck and crew to the new airport to meet the incoming aircraft.

When an airplane carrying a Brink's shipment lands, it is met by an armored truck crew at the arrival gate. The courier is the first person to deplane from the aircraft and he proceeds immediately to the cargo area underneath the plane where he is joined by the armored truck crew. The shipment is the first one unloaded from the airplane. The number of items in the shipment is verified by the courier and the shipment is placed in the armored

truck. The shipment is either delivered directly by the armored truck crew or taken to a Brink's office where it is prepared for subsequent delivery.

One of the purposes of this investigation is to determine whether Brink's is operating as a freight forwarder without appropriate operating authority. The Commission staff (staff) concedes that the record is devoid of any evidence which would sustain a finding that Brink's is engaged in any activities which could be considered to be freight forwarder operations. Section 220 of the Public Utilities Code^{4/} defines a freight forwarder as

"any corporation or person who for compensation undertakes the collection and shipment of property of others, and as consignor or otherwise ships or arranges to ship the property via the line of any common carrier at the tariff rates of such carrier, or who receives such property as consignee thereof."

The evidence clearly indicates that Brink's acts as a carrier and does not act as consignor or consignee with respect to the transportation here under consideration. An appropriate finding will be made on this point and the question of alleged freight forwarder operations will not be further considered.

It is undisputed that Brink's operates its air courier service on a regular basis in both directions between Los Angeles-San Francisco, Los Angeles-Sacramento, Los Angeles-Oakland, and Los Angeles-San Jose. Brink's conducts its air courier operations utilizing aircraft operated by regularly scheduled airlines. The material issue presented herein is whether Brink's is an express corporation as defined in Section 219.

It is necessary to consider a preliminary matter before addressing the merits of the material issue here involved. Brink's contends that the matters raised herein were adjudicated in Investigation of Brink's (1971), unreported, Decision No. 79027 in Case No. 9229. It argues that Decision No. 79027 held that there was insufficient evidence to find that Brink's was an express corporation, that the facts herein are substantially similar to those in Case No. 9229, that Decision No. 79027 is controlling and that this proceeding should be discontinued. Brink's position is not correct.

^{4/} All references are to the Public Utilities Code unless otherwise stated.

Case No. 9229 was an investigation on the Commission's own motion to determine whether Brink's was operating as an express corporation without appropriate authority. No hearings were held in that matter. A staff study of Brink's operations was made but the specifics of the study were never formally presented to the Commission. The Commission takes official notice that the study is not included, anywhere, in the file on Case No. 9229. It appears that the staff indicated to the Commission that, in its opinion, the study did not contain sufficient evidence to warrant a finding that Brink's was operating as an express corporation. Acting upon the staff's recommendation, the Commission entered Decision No. 79027, which contained no findings of fact. The decision stated that: "On the basis of the facts disclosed by our staff we find that there is insufficient evidence on which to make a finding of public utility status and thus no reason to continue the course of this proceeding." The investigation was discontinued.

Subsequently, two of the respondents in the Loomis case^{5/} sought to rely on Decision No. 79027 to support their contention that they should not be held to be express corporations. (75 CPUC at p. 449.) The Commission held that the Loomis respondents could not rely on Decision No. 79027, without establishing substantial similarity. Since Decision No. 79027 was entered without a hearing or findings, substantial similarity could not be established. (75 CPUC at p. 449.) Because of the allegations made by parties in Loomis and in view of the disposition of Case No. 9229 without a hearing or findings, the present investigation was instituted.

^{5/} (Loomis Courier Service, Inc., et al. (1973) 75 CPUC 440, review denied July 10, 1974, SF No. 23068.)

Decision No. 79027 is not controlling because: (1) No findings of fact were entered in that decision and the holding that "there is insufficient evidence on which to make a finding of public utility status" is not the equivalent of finding that Brink's was not an express corporation. 2. Even if it be assumed that at the time Decision No. 79027 was entered (August 10, 1971) Brink's was not acting as an express corporation, this would not foreclose a determination of Brink's current operations.

The staff contends that Brink's operations are within the purview of the definition of an express corporation in Section 219; that Brink's is a common carrier as defined in Section 211; and that Brink's has dedicated and offered its services to a portion of the public, thereby subjecting it to regulation as a public utility under Section 216(a). Brink's argues that it is not an express corporation; that it is a contract carrier, and because of the specialized protective nature of its air courier service it has never been willing to serve all members of the public; that it has never dedicated its service to the public; and that forcing it to become a common carrier would be a violation of due process of law.

Sections 219 and 211 provide as follows:

"219. 'Express corporation' includes every corporation or person engaged in or transacting the business of transporting any freight, merchandise, or other property for compensation on the line of any common carrier or stage or auto stage line within this State."

"211. 'Common carrier' includes:

(a) Every railroad corporation; street railroad corporation; express corporation; freight forwarder; dispatch, sleeping car, dining car, drawing-room car, freight, freight-line, refrigerator, oil, stock, fruit, car loading, car renting, car loading, and every other car corporation or person operating for compensation within this State. . . ."

Brink's contends that its operations do not fall within the statutory definition of express corporation in Section 219. It argues that it is not in the business of transporting any freight, merchandise, or property for compensation since it will only provide secure transportation for valuables. This position is devoid of merit. Brink's would have us read the word "any" in the first portion of Section 219 as meaning "all".^{6/} Such interpretation is contrary to the plain meaning of the statute and well-settled rules of statutory construction. "Any" is defined as "1: one indifferently out of more than two: one or some indiscriminately of whatever kind.... 2: one, some or all indiscriminately of whatever quantity...." (Webster's Third New International Dictionary, p. 97.) Brink's contention about the meaning of the word "any" in the first portion of Section 219 is not in accord with the ordinary meaning and usage of the word. Furthermore, the cardinal rule of statutory construction is to give effect to the intent of the Legislature. (Scala v Jerry Wett & Sons, Inc. (1970) 3 C 3d 359, 366.) Section 219 is part of the Public Utilities Act, which establishes a comprehensive plan for the regulation of utilities in California. (Waters v Pacific Telephone & Telegraph Co. (1974) 12 C 3d 1; Pacific Telephone & Telegraph Co. v Eshelman (1913) 166 Cal 640, 653.) Acceptance of Brink's contention would negate the obvious legislative intent of Section 219. Under Brink's construction, regulation could be avoided by a carrier's refusal to transport one type of freight or even one article.^{7/} Such a construction of Section 219 would lead to an absurd result.

^{6/} Significantly, Brink's does not attempt to give the same construction to the word "any" where it appears later in the statute.

^{7/} The question of scope of carriage is hereinafter considered in the discussion about dedication and requirements of service.

It is undisputed that Brink's operates its air courier service between Los Angeles and San Francisco over the lines of air common carriers five days a week on a continuing basis. It clearly falls within the definition of an express corporation set forth in Section 219. The primary point to be decided is whether Brink's is subject to regulation under the provisions of Section 216(a) which provides that:

"'Public utility' includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, wharfinger, warehouseman, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof."

Brink's argues that its courier service does not serve the public and that it has not dedicated the service to the public.

Certain of Brink's positions are based upon misconceptions of California law. Brink's contends that it only serves financial institutions for the insured transportation of commodities of high value and that a finding that it is an express corporation would compel it to serve the general public, thereby denying it due process of law. Brink's cites Frost v Railroad Commission (1926) 271 US 583, and other cases in support of its position. "In the intervening years since 1926, Frost has lost much of its vitality and, except for general statements of law contained therein, is no longer controlling. (See discussion and cases collected by Frank, J., in Fordham Bus Corporation v United States (1941) 41 F Supp 712, 715; California State Auto. etc. Bureau v Downey (1950) 96 CA 2d 876, 891, affd, 341 US 105.)" (Anglo California Services, Inc. (1973) 75 CPUC 354, 357.) We need not, however, dwell upon Frost and related cases because we are not here presented with a Frost type of situation.

The staff does not contend that if Brink's is found to be a public utility it must serve all of the public and transport all commodities. It is well settled that some activities or facilities of a respondent may be subject to public utility regulation while others may not. (Mound W. Co. v Southern Calif. Edison Co. (1921) 184 Cal 587, 596; Lamb v California Water & Tel. Co. (1942) 21 C 2d 33, 40-41; Delaware & A. Telegraph & Telep. Co. v State of Delaware 3d Cir. (1892) 50 Fed 677, 678.) The points to be determined are: 1. Do the financial institutions for which Brink's provides air courier service constitute a portion of the public within the contemplation of Sections 207 and 216(a)? 2. Has Brink's dedicated its air courier service to use by a portion of the public?

As indicated, Section 216(a) provides that a public utility is one of the defined entities which serves "the public or any portion thereof." Section 207 provides that "'Public or any portion thereof' means the public generally, or any limited portion of the public, including a person, private corporation, municipality, or other political subdivision of the State, for which the service is performed or to which the commodity is delivered." It has been held that Sections 207 and 216 "make clear that a utility that has dedicated its property to public use is a public utility even though it may serve only one or a few customers...." (Richfield Oil Corp. v Public Util. Com. (1960) 54 C 2d 419, 431.) "The fact that only a restricted portion thereof is eligible to apply for it is not determinative." (Commercial Communications v Public Util. Com. (1958) 50 C 2d 512, 523.) We consider Brink's contentions in the light of these authorities.

Brink's argues that since it will only provide courier service for financial institutions, in specified locations for the transportation of high value shipments, it is not serving a portion of the public within the meaning of Sections 207 and 216(a).^{8/} The record indicates that Brink's will only provide air courier service for financial institutions. Even as to these institutions it will not handle a shipment if the value exceeds Brink's insurance coverage. Also, Brink's will not handle dangerous commodities or shipments into high risk areas.

In considering Brink's arguments, we note that express corporations have a separate genesis as common carriers and are separately defined in terms of law. (Public Util. Code §§ 211, 219, 1010; Civil Code § 2081; Code of Civil Procedure § 200(10); Penal Code § 577; 18 USC 1991.) "The express business, as understood and carried on in the United States, is said to have been inaugurated by Alvin Adams in the year 1839. It at first involved the carriage of small packages of value between important cities, and proving convenient to the public and remunerative to those engaged in the business, it gradually expanded in volume and importance, until upon all the great thoroughfares of the country, whether by land or water, one or more companies was to be found engaged in the receipt, carriage, and delivery of property varied in character, and including that of great value in small compass, articles requiring special care to protect them from injury or theft, perishable goods requiring speedy transit and immediate delivery, and a variety of others, all known as 'express matter.'" (Pfister v Central Pacific R.R. Co. (1886) 70 Cal 169, 179.) It has been held that: "A parcel-delivery express company need not receive and deliver hay, lumber or other articles

^{8/} Brink's makes essentially the same argument on the question of dedication, hereinafter considered.

too bulky or heavy, or otherwise inconvenient to handle and transfer by its usual facilities." (Pfister v Central Pacific R.R. Co., supra, at p. 178.) Furthermore, the transportation of shipments of high value has been an incident of the express business since its inception. (Hooper v Wells Fargo & Co. (1864) 27 Cal 11; Pfister v Central Pacific R.R. Co., supra.) The air courier service operations of Brink's are consistent with services historically rendered by express corporations.

Brink's has contracts with 75 financial institutions which encompass the providing of air courier service. At the time of the hearing, Brink's furnished air courier service to 13 banks and 32 stockbroker firms on a regular basis. Many of these financial institutions are multi-branch organizations. Some of the material transported in the sealed packages involves transactions for customers of these institutions. The Commission finds that these financial institutions constitute a portion of the public within the purview of Sections 207 and 216(a).

The remaining point to be considered is whether Brink's has dedicated its air courier service to the portion of the public here involved. It has been held "the statutory definitions of public utilities as applying only to utilities that have dedicated their property to public use." (Richfield Oil Corp. v Public Util. Com. (1960) 54 C 2d 419, 429.) "The test to determine whether facilities or service have been dedicated to public utility use is whether there has been a holding out of the facility or service to the public or portion thereof. (Yucaipa Water Co. No. 1 v. Public Util. Comm., 54 Cal. 2d 823, 827; Coml. Communications v. Public Util. Comm., 50 Cal. 2d 512, 523; California Water & Telephone Co. v. Public Util. Comm., 51 Cal. 2d 478, 494; S. Edwards Associates v. Railroad Comm. 196 Cal. 62, 70; Camp Rincon Resort Co. v. Eshleman,

172 Cal. 561, 563.) Dedication may be found to exist by implication. (Yucaipa Water Co. No. 1 v. Public Util. Comm., supra; S. Edwards Associates v. Railroad Comm., supra.)" (City of Mountain View et al. v Southern Pacific Co. (1967) 67 CPUC 291, 310.) We also note that in this day of extensive regulation of the transportation industry one may not become an express corporation or other type of common carrier by dedication of facilities alone. It is necessary to secure from this Commission a certificate declaring that public convenience and necessity require the proposed service. In addition, operating as an express corporation or other type of common carrier without first securing a certificate of public convenience and necessity is a misdemeanor. (Public Util. Code §§ 2110, 2112.) It would be a most foolhardy person indeed who, without having obtained a certificate of public convenience and necessity, would publicly declare that he was operating as an express corporation or other type of common carrier. As a practical matter, where it is alleged that someone has been illegally operating as a common carrier, the usual way in which this ultimate fact is established is to examine the conduct of the alleged violator and from this conduct determine whether or not there has been a "dedication" or a "holding out." Thus in determining whether respondent has been operating as an express corporation we must look to its conduct and from this we determine "intent," "dedication", or "holding out."

Keeping in mind the foregoing principles, we examine the facts of this case.

Brink's relies on the following arguments in support of its contention that its air courier service has not been dedicated to the public or portion thereof. 1. The specialized nature of the service is such that dedication cannot be inferred from it. 2. Brink's will only provide the service for those with whom it will enter into contracts. 3. It does not advertise the service.

We have heretofore discussed the question of the specialized nature of the air courier in considering other points raised by Brink's. We found that the insured transportation of high value shipments was consonant with express service from its inception. The fact that Brink's will only serve financial institutions, and then only in certain areas is not determinative. This may show limitation of dedication but does not mandate a finding of its absence.

Brink's contends that one indication that it has not dedicated its air courier service to any portion of the public is that it does not advertise this service. This contention is neither persuasive nor determinative on the issue of dedication. The record indicates that Brink's does not advertise its air courier service in newspapers, etc. Its telephone directory yellow page listing is under the heading of Armored Car Service and does not specifically refer to the air courier service.^{9/} However, there is abundant testimony in the record that most financial institutions are aware of Brink's service. Brink's has marketing representatives who call on newly established financial institutions to acquaint them with Brink's services. The marketing representatives also call on existing customers. They furnish customers a brochure detailing all the services offered by Brink's.^{10/} Customers are also furnished an Air Courier Service Schedule. Where members of the public or portion thereof are normally aware of the service provided by an alleged public utility, lack of advertising does not negate public utility status. (B.S. and W.E. Goldberg (1952) 51 CPUC 512, 519.)

^{9/} The ad indicates, among other things, "Complete Bank Service." (Exh. 18)

^{10/} There is much ado in the record as to whether a customer must first ask for the brochure before it is furnished. It is not necessary to resolve this point since the answer would be of no consequence. Since most financial institutions are aware of Brink's services, and new ones are contacted about them, the function of the brochure is to put in written form information which is already known by the customers.

The record indicates that Brink's will only provide air courier service for customers with whom it will enter into contracts. Brink's contracts are for a period of thirty days. They are automatically renewable for a like period and subject to cancellation on thirty days' notice by either party. No minimum tender is provided for therein. In Loomis we noted that: "In courier operations, applicants generally contract with a customer to provide pickup and delivery at specified times." (75 CPUC at p. 442.) The Commission previously held that where a common carrier was willing to enter into contracts with all those within the class of persons it was willing to serve this was indicative of an intent to serve that portion of the public. (United Clearings, Inc. (1971) 72 CPUC 118, 121; see also Wayne F. Maloney (1939) 42 CRC 69; Camp Rincon Resort Co. v Eshelman (1916) 172 Cal 561.)

The Brink's brochure states in part:

"Just as the dray of yesteryear evolved into the armored car, so our latest armored car has developed wings. Each business night Brink's couriers board jet aircraft operated by scheduled commercial airlines. Their mission - to provide a swift vault to vault service link for large banks and financial institutions in a growing number of cities in the United States and Canada." (Exhibit 6.)

The Air Courier Service Schedule indicates service among three California points. The import of the schedule is that a financial institution contracting with Brink's for air courier service can expect transportation in accordance therewith. John W. Jones, Brink's executive vice-president testified as follows:

"Q Mr. Jones, I will ask you a hypothetical question and phrase it as carefully as I can.

"If I, representing a reputable stock brokerage house in the financial district of Los Angeles with offices in the financial district of San Francisco, indicate to you that I wish to enter into a contract with Brink's for air courier service to ship securities, negotiable and nonnegotiable, at a high value, in some instances, and agree to enter in a contract with you for such service on the basis of an agreed upon limit of high liability and insurance coverage, would you agree, would you enter into such a contract with me?

"A If you called us, Mr. Kessenick, and you were a reputable dealer and we came down and after an interview, were satisfied that the service you were requesting could be rendered and put in the air courier network, we would certainly enter in an agreement with you.

"Q From the facts I have given you, do you see any reason why you could not fit this in your network?

"A Not unless you asked for something unusual during the course of our interview, but if it was just the normal air courier service that fit in our schedule and was within our limitation of liability and you agreed to hand us a properly sealed package with all the necessary information on that package so that we would be able to have continuity of control of that shipment from the time we received it to the time we delivered it, I would see no reason to deny you that contract.

"Q Would the same thing hold true if I were a commercial bank, the only difference being a commercial bank rather than a stockbroker?

"A That's correct." (R.T. 163-64.)

In the light of the foregoing evidence, the Commission finds that Brink's has dedicated its air courier service as an express corporation for financial institutions for the transportation of insured shipments of high value among specified points in California. We are mindful that Brink's position has been based on a good faith, but erroneous, interpretation of California law. The Commission is also aware of the testimony in the record that Brink's is the only carrier presently furnishing this service to California financial institutions. The Commission must enforce the California Constitution and statutes. (Western Assn. etc. R.R. v Railroad Commission (1916) 173 Cal 802.) A cease and desist order will be issued herein. However, we will provide a reasonable time for Brink's to apply for appropriate operating authority. (See, Loomis Courier Service, Inc., supra (express authority); Emery Air Freight Corp. (1952), unreported, Decision No. 46829 in Application No. 32454 (limited highway common carrier authority).)

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. Brink's holds a highway contract carrier permit which was issued on May 14, 1962 and is in File No. T-72807. This is the only operating authority granted Brink's by the Commission.
2. Brink's conducts its air courier operations in the following manner. Shipments of cash and/or other valuables are picked up by armored trucks, which may have more than one pickup along its route. Three or more armed men are dispatched with the armored truck. Shipments are tendered to Brink's in sealed packages. The shipper prepares a form indicating the number of pieces being shipped, the value thereof and the consignee. An armed messenger, who is part of the armored truck crew and who has previously been identified

to the shipper enters the vault or other secured area on the shipper's premises. He receives the shipment, checks the items against the shipping form, and if everything is in order he signs a receipt for the shipment. The messenger returns to the armored truck with the shipment. When the shipment is aboard the truck, the messenger places certain information about the shipment on a Brink's air courier pickup sheet. The armored truck generally picks up several shipments at different locations. When all the shipments have been picked up, the armored truck proceeds to an airport. Brink's has made arrangements with various airport authorities and airlines which permit the armored truck and armed personnel to proceed to an area near the airplane on which the shipment will be loaded. About 15 minutes before the departure of the airplane, the shipment is placed in the baggage compartment, under the protection of the Brink's armed employees, as the last loaded item of baggage. When the cargo door is closed, the courier boards the aircraft. The armored truck crew maintains constant surveillance of the cargo door until the aircraft departs. The armored truck crew remains at the airport for 15 minutes after the plane is airborne to be available in the event it is forced to return to the airport.

Brink's is in contact with the airlines which it uses. It receives frequent information about the progress of scheduled flights, delays, cancellations, rerouting, or other contingencies. When Brink's is advised that a flight will be delayed, it determines whether the shipment should remain in the armored truck or be returned to a vault at a Brink's terminal. When Brink's is notified that a flight has been diverted to a different destination, it dispatches an armored truck and crew to the new airport to meet the incoming aircraft.

When an airplane carrying a Brink's shipment lands, it is met by an armored truck crew at the arrival gate. The courier is the first person to deplane from the aircraft and he proceeds immediately to the cargo area underneath the plane where he is joined by the armored truck crew. The shipment is the first one unloaded from the airplane. The number of items in the shipment is verified by the courier and the shipment is placed in the armored truck. The shipment is either delivered directly by the armored truck crew or taken to a Brink's office where it is prepared for subsequent delivery.

3. Brink's operates its air courier service on a regular basis, Monday through Friday, in both directions between the following points: Los Angeles-San Francisco, Los Angeles-Sacramento, Los Angeles-Oakland, and Los Angeles-San Jose.

4. Brink's conducts its air courier operations utilizing aircraft operated by regularly scheduled airlines, which are common carriers.

5. On August 10, 1971, the Commission entered Decision No. 79027 in Case No. 9229. No findings of fact or conclusions of law were made in that decision. The decision stated that "On the basis of the facts disclosed by our staff we find that there is insufficient evidence on which to make a finding of public utility status and thus no reason to continue the course of this proceeding." Decision No. 79027 is not determinative of the issues raised herein.

6. Brink's has contracts with 75 financial institutions which encompass the providing of air courier service. At the time of hearing, Brink's furnished air courier service to 13 banks and 32 stockbroker firms on a regular basis. Many of these financial institutions are multi-branch organizations. Some of the material transported in the sealed packages involves transactions for customers of these institutions.

7. The financial institutions for which Brink's provides air courier service constitute a portion of the public as defined in Sections 207 and 216(a).

8. The insured transportation of high value shipments is consonant with express operations from their beginnings in the United States.

9. Portions of the express industry will provide service only under written contracts. Brink's will only provide air courier service for customers with whom it will enter into contracts. Brink's contracts are for a period of thirty days. They are automatically renewable for a like period and subject to cancellation by either party on thirty days' notice. No minimum tender is provided for therein.

10. Brink's does not advertise its air courier service in newspapers, etc. Its telephone directory yellow page listing is under the heading of Armored Car Service. The yellow page listing does not specifically refer to the air courier service. It indicates that Brink's furnishes a complete bank service.

11. Brink's employs marketing representatives who call on existing accounts and newly established financial institutions to acquaint them with the services offered by Brink's.

12. Financial institutions in California are generally aware of the services offered by Brink's, including its air courier service.

13. Brink's, on occasion, provides its customers and potential customers with a brochure detailing its services and an Air Courier Service Schedule. The schedule indicates service among specified points in California.

14. Brink's has held out and dedicated its air courier service to recognized financial institutions for the transportation of insured shipments of high value, from areas that are without high risk, among the following points: Los Angeles-San Francisco, Los Angeles-Sacramento, Los Angeles-Oakland, and Los Angeles-San Jose.

15. Brink's is a common carrier and has held out and dedicated its service to a portion of the public, thereby subjecting it to regulation as a public utility under Section 216(a). ✓

16. Brink's is operating as an express corporation as defined in Section 219 without having secured a certificate of public convenience and necessity as required by Section 1010.

17. Brink's should be ordered to cease and desist from operating as an express corporation without having secured appropriate operating authority from the Commission.

18. Brink's is the only carrier presently providing air courier service to California financial institutions for the insured transportation of shipments having high value. Brink's has provided this service under a bona fide, but erroneous, belief that it could do so without appropriate authority from this Commission. Brink's cooperated with the staff during the course of this investigation.

19. It would be in the public interest to allow Brink's a reasonable period of time in which to apply for appropriate operating authority before the cease and desist order becomes effective.

20. Brink's is not operating as a freight forwarder as defined in Section 220.

Conclusions of Law

1. Decision No. 79027 in Case No. 9229 is not determinative of the issues raised herein.
2. The financial institutions for which Brink's provides air courier service constitute a portion of the public as defined in Sections 207 and 216(a).
3. Brink's is an express corporation as defined in Section 219.
4. Brink's is a common carrier as defined in Section 211.
5. Brink's is a public utility as defined in Section 216(a).
6. Brink's is operating as an express corporation without having secured a certificate of public convenience and necessity as required by Section 1010.
7. Brink's is not operating as a freight forwarder as defined in Section 220.
8. Brink's should be ordered to cease and desist from operating as an express corporation unless it secures appropriate operating authority from this Commission.
9. The public interest requires that Brink's be afforded a reasonable time in which to apply for appropriate operating authority before the cease and desist order becomes effective.

O R D E R

IT IS ORDERED that within one hundred and eighty days after the effective date of this order Brink's Incorporated shall cease and desist from operating as an express corporation for the insured transportation for recognized financial institutions of high value shipments from areas that are without high risk, among the following points: Los Angeles-San Francisco, Los Angeles-Sacramento, Los Angeles-Oakland, and Los Angeles-San Jose unless it has first obtained

a certificate of public convenience and necessity from this Commission authorizing it to conduct such operations.

The Executive Director of this Commission is directed to cause personal service of this order to be made on Brink's Incorporated.

The effective date of this order shall be thirty days after the date upon which such service is made.

Dated NOV 6 1979 at San Francisco, California.

John E. Byron
President
Richard D. Hinkle
James M. ...
Commissioners