EEM

Decision No. 21503

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of FRANK L. NOLAN, doing business under the firm name and style of FRANK NOLAN DRAYAGE COMPANY, for certificate to operate a warehouse.	Application No. 15212.

ORIGINAL

Sanborn & Roehl, and DeLancey C. Smith, for Applicant.

Douglas Brookman, D. W. Burbank and L. A. Bailey, for California Warehousemen's Association, and for the Warehousemen's Association of the Port of San Francisco.

BY THE COMMISSION:

O P I N I O N

Frank L. Nolan, doing business under the firm name and style of Frank Nolan Drayage Co., has petitioned the Railroad Commission, in accordance with his amended application, for an order declaring that public convenience and necessity require the transaction by him of the business of warehouseman in the City and County of San Francisco.

Public hearings on this application were conducted by Examiner Satterwhite at San Francisco, the matter was submitted and is now ready for decision.

Applicant has attached to said application as Exhibit "A" and made a part thereof Frank Nolan Drayage Company Tariff No. 1, C.R.C. No. 1, which is a schedule of charges for storage

and incidental handling of merchandise at warehouses in San Francisco, California, which said applicant is now charging and proposes to charge in event that said application is granted.

California Warehousemen's Association and Warehousemen's Association of the Port of San Francisco protested the granting of said applicant.

Frank L. Nolan testified in his own behalf and called several witnesses in support of his application.

The record shows that the warehouse business which the applicant conducted in San Francisco for many years from March, 1917, continuously down to the present time did not become subject to the jurisdiction of the Railroad Commission until August 2, 1927, when by Statutes of 1927, Chapter 878, the Legislature enlarged or broadened the scope of the definition of "Warehouseman" by adding a new section, 2-1/2, to the Public Utilities Act, which is as follows:

> "The term "Warehouseman," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any building, or structure, or warehouse, in which merchandise, other than second-hand household goods or effects, and other than merchandise sold but retained in the custody of the vendor, is regularly stored for the public generally, for compensation, within this state, excepting warehouses conducted by any nonprofit, cooperative association or corporation which is engaged in the handling or marketing of the agricultural products of its members; also excepting warehouses conducted by the agents, individual or corporate, of such associations or corporations, while acting within the limitations imposed by law on the principal of any such agent."

The operations of the applicant as a warehouseman prior to August 2, 1927, did not fall within the definition of Section 2-aa of the Public Utilities Act for the reason that applicant never at any time conducted his warehouse business in connection with or to facilitate the transportation of property by common carrier or vessel, or the loading or unloading of the same, which section is

as follows:

(2-aa) "The term "warehouseman," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any building or structure in which property is regularly stored for compensation within this state, in connection with or to facilitate the transportation of property by a common carrier or vessel, or the loading or unloading of the same, other than a dock, wharf or structure, owned, operated, controlled or managed by a wharfinger."

The evidence clearly shows that applicant has regularly and continuously since March, 1917, engaged in operating a drayage and warehouse business in San Francisco and has stored for compensation continuously since that time goods, wares and merchandise of various kinds in warehouses controlled and operated by him in various locations in San Francisco.

The contention of protestants that the applicant from time to time engaged only in a private storage business as an incident to his drayage business, has little or no support from any evidence offered during these proceedings.

The applicant's testimony shows that his storage warehouse business began simultaneously with his drayage operations in 1917 and that, by personal solicitation, as well as sign advertising upon his warehouses and trucks in connection with his drayage business, he secured warehouse patronage from various business firms and merchants in San Francisco. Since 1924 he has regularly operated two warehouses on Townsend Street, one being a restricted and the other an unrestricted warehouse, a practice common to warehouse operations. Applicant's business has enjoyed for many years a slow, but steady growth resulting in his taking over about a year ago a larger warehouse at 180 Townsend Street in the place and stead of his smaller warehouse at 130 Townsend Street. It appears that for many years applicant has stored in substantial and varying

volume such commodities or merchandise as steel, grain, cement, tile, nuts, copra, kopak, linters, electric fixtures, tin plates, fire brick, magnesite and compounds of different kinds and recently has stored coffee in large quantities.

Protestants further contend that applicant was not actually operating as a public warehouseman in good faith at the time when Section 50-1/2 of the Public Utilities Act was added in 1927 by the Legislature for the reason that applicant had never lawfully or otherwise filed tariffs and schedules of rates with the Railroad Commission.

Section 50-1/2 provides in part as follows:

> "No warehouseman shall hereafter begin to operate any business of a warehouseman, as defined in section 2-1/2 of this act, in any incorporated city, or city and county of this state having a population of one hundred fifty thousand or more, without first having obtained from the railroad commission a certificate declaring that public convenience and necessity require or will require the transaction of business by such warehouseman * * * * * No such certificate shall be required by any warehouseman as to storage or warehouse space actually operated in good faith at the time this act becomes effective, under tariffs and schedules of such warehouseman lawfully on file with the railroad commission."

It is true that applicant had never filed any tariffs or schedules with the Commission up to the time Section 2-1/2 and Section 50-1/2 were added to the Public Utilities Act in 1927, for the reason that he had been informed and always believed in good faith that as his storage business had always been confined to goods and merchandise on which he had performed only a local drayage service that he was not under the jurisdiction or and did not have to file tariffs with this Commission. There is nothing in the record in these proceedings, nor is this Commission aware of any provision of law in force prior to August 2, 1927, or any order or direction of its own which required applicant to file tariffs subsequent to August 2, 1927, when the warehouse operations of

applicant for the first time came under its regulation and jurisdiction.

It appears that applicant learned for the first time in October, 1928, after seeking legal advice, that his failure to file tariffs was a violation of the Public Utilities Act and he immediately thereafter tendered to the Commission for filing his tariffs known as Frank Nolan Warehouse Tariff No. 1, C.R.C. No. 1, which was returned to him with the advice that said tariff could not be accepted for filing and that it would be necessary for him to secure a certificate of public convenience and necessity from the Commission to operate a warehouse in accordance with the provisions of Section 50-1/2 of the Public Utilities Act.

The evidence in this proceeding shows that applicant has never knowingly or intentionally violated any provision of the Public Utilities Act or any order or regulation of this Commission and that it would work great hardship and injury to him if denied the right to continue the operation of his public warehouse business which he has continuously operated for ten years prior to the enactment of Section 50-1/2 of the Public Utilities Act.

It is quite obvious that before this Commission acquired jurisdiction on August 2, 1927, over the class of warehouses operated by applicant, it would have been an idle and useless act for applicant to have filed any tariffs covering his warehouse operations. It is also clear from the evidence that the failure of applicant to file or offer to file his tariffs and schedules immediately after August 2, 1927, was the result of misunderstanding, ignorance or inadvertence on his part and not from any intention to violate any provision of the Public Utilities Act. A careful examination of the provisions of Section 2-1/2 and Section 50-1/2 herein referred to convinces us that any interpretation or construction placed upon these sections that the

mere failure of applicant to file tariffs and schedules would result in denying to him the right to continue to conduct his established public warehouse business, would be erroneous. We are satisfied that these new sections were added to the Public Utilities Act in 1927, in order that new comers in the field of public warehouse operations should not begin to operate the business of public warehouseman without first securing from this Commission a certificate of public convenience and necessity to transact such business.

The protestants offered during the course of these proceedings considerable oral and documentary evidence to the effect that the various authorized public utility warehouses in San Francisco, consisting of about 12 in number, had always rendered an adequate and satisfactory service and that there was no public need for any new and additional warehouse service as proposed by applicant.

We are of the opinion under all the facts and circumstances, as shown by the record, that the service of applicant does not constitute a new and additional public warehouse service in San Francisco and that the certificate sought by applicant should be issued. The application, therefore, will be granted.

O R D E R

Public hearings having been held in the above entitled proceeding, the matter having been submitted and being now ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby declares that public convenience and necessity require that Frank L.Nolan,

doing business under the firm name and style of Frank Nolan Drayage Company, transact the business of a warehouseman in the City and County of San Francisco; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such business be and the same is hereby granted to Frank L. Nolan, subject to the following conditions:

1. Applicant shall file in duplicate within a period not to exceed twenty (20) days from the date hereof, tariff of rates, such tariff of rates to be those submitted with the application herein, or other rates satisfactory to the Railroad Commission and shall commence operation of said service within a period not to exceed thirty (30) days from the date hereof.

2. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

Dated at San Francisco, California, this 30th day of August, 1929.

Thos. S. Lovett

P. E. Leavey

Edwin Kolb

Leon O. Whitsell

W. J. Carr

Commissioners.