

Decision No. 21887

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 CHAS. F. KANE, doing business under  
 the name of Chas F. Kane & Co., for  
 a certificate authorizing the trans-  
 portation of freight by motor vehicle  
 between San Francisco and Oakland,  
 Berkeley, Alameda, Piedmont, Emeryville  
 and Melrose.

ORIGINAL

) Application  
 ) No. 15609  
 )

Douglas Brookman, for Applicant.

Gwyn H. Baker, for Merchants' Express & Draying  
 Company, Interurban Express, Kellogg Express,  
 East Bay Drayage & Warehouse Company, Protestants.

R. L. Vaughan, for Bay Cities Transportation  
 Company, Protestant.

BY THE COMMISSION -

O P I N I O N

Chas. F. Kane, doing business under the fictitious name  
 of Chas. F. Kane & Co., has petitioned the Railroad Commission  
 for an order declaring that public convenience and necessity  
 require applicant to engage in the business of transporting  
 freight, for compensation, by motor truck between San Francisco  
 and points within the cities of Oakland, Berkeley, Alameda,  
 Piedmont, Emeryville and Melrose.

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

Applicant proposes rates in accordance with a schedule  
 marked "Exhibit A" as filed with and forming a part of the  
 application; to operate at least once daily, except Sunday,  
 between San Francisco and the east-bay cities; using as equipment  
 such portion of the fleet of 42 trucks, owned by applicant, as  
 may be necessary to care for the demands of traffic.

Applicant alleges that he has continuously since the year 1906, made at least one trip daily between San Francisco and the east bay cities, transporting freight in both directions; and that he has never filed tariffs of rates and charges with this Commission for the reason that he has heretofore understood that the transportation service heretofore conducted by him between San Francisco and the east bay cities was not of a kind or character requiring the filing of tariffs and rates with this Commission.

Applicant relies as justification for the granting of the desired certificate upon the following alleged facts:

- 1- That public convenience and necessity require that applicant continue in the business of transporting freight by motor truck, for compensation, between San Francisco and points in the east bay territory within the cities of Oakland, Berkeley, Alameda, Piedmont, Emeryville and Melrose.
- 2- That other individuals and corporations are engaged in similar transportation service between the points for which authorization is herein sought, and that such persons and corporations have been cognizant of the operations of applicant and that applicant has been regularly engaged in rendering transportation service between San Francisco and the above mentioned east bay points continuously since 1906.
- 3- That the rates herein proposed are the same rates which are now charged by persons and corporations engaged in similar transportation between San Francisco and east bay cities, except that applicant proposes a special commodity rate of twenty-five (25) cents per hundred pounds, on bicycles and automobile parts, accessories and supplies.

Chas. F. Kane, applicant herein, testified that he had been for many years engaged in the drayage business in San Francisco commencing with the operation of horse drawn trucks; that he had for many years operated to east bay cities at least one round trip, daily except Sunday, transporting freight and merchandise in both directions, transporting all commodities. Witness was operating both horse drawn and automobile trucks on May 1, 1917, which was the date recognized by the legislature in its enactment

of Chapter 213, Statutes of 1917, as that upon which operators in good faith were not required to secure a certificate of public convenience and necessity from the Railroad Commission before commencing operation. Witness now operates motor trucks exclusively, the use of horse drawn vehicles having been discontinued some four years ago.

C. A. Wesker, employed as manager for applicant, testified that he had been connected with applicant's business since 1924; and that he was first informed in February, 1929, that the filing of tariffs with this Commission was necessary in connection with the transbay operations of his employer. Trucks have been operated every day, except Sunday and holidays, daily trips being made to Oakland, Berkeley, Alameda and Emeryville, and to Piedmont as often as traffic offered, or approximately twice weekly. The schedule of rates heretofore assessed is the same as that in effect with other transbay carriers performing the same character of service as the applicant.

About 30 shippers in San Francisco regularly use the facilities of applicant and about 15 shippers in the eastbay territory.

The granting of the application is protested by Bay Cities Transportation Company, Merchants Express & Draying Company, Interurban Express, Kelloggs Express and East Bay Drayage & Warehouse Company.

Arthur B. Wellington, general manager of Bay Cities Transportation Company, protestant herein, testified that his company operated boat service between San Francisco and Oakland-Alameda, making regularly scheduled round trips, at least twice daily. Connecting service is performed with the Merchants Express & Draying Company and the Lawrence Warehouse Company and all other drayage companies serving the eastbay territory

use this service. Merchandise shipments are transported from Pier 5, San Francisco, to the Clay Street Wharf in Oakland and to the Encinal Terminal in Alameda. No pick-up or delivery service is performed by this carrier in San Francisco or the eastbay section, the business being confined to the water haul across San Francisco Bay. The equipment of this protestant is now operating and utilizing but twenty five percent of its capacity.

Emmett H. Hart, Secretary-Manager of the Draymen's Association of Alameda County, called as a witness for protestants, testified that the members of his association owning in excess of 150 trucks were engaged in transbay operation under the jurisdiction of this Commission; that trucks operating in transbay service were usually lightly loaded and seldom were operated with capacity loads; that more service was available than demanded by the public; and that any increased demand by shippers could be immediately cared for by the use of reserve equipment now available. This witness, familiar with the east bay requirements, is of the opinion that no additional service is necessary.

We have carefully considered the evidence herein. It appears that applicant, engaged principally in the drayage business locally in the City of San Francisco, has for some years been engaged in operations between San Francisco and the east bay cities of Oakland, Berkeley, Alameda, Piedmont and Emeryville, and now desires a certificate of public convenience and necessity to enable such operation to be continued, or an order of this Commission directing the filing of tariffs and rate schedules. As to the former, there is no evidence herein, other than that presented by the applicant and his Manager, indicating that additional service between San Francisco and the east bay cities is needed by shippers or receivers of freight. No public witnesses were called to testify as to their needs or requirements.

Evidence is of record, by witnesses for protestants, that the needs of the public are fully met by existing authorized carriers, and that any increased need can be promptly met by the reserve equipment of authorized carriers, who are now operating with ample space to care for increased tonnage. There is no evidence indicating inadequacy or inability of the authorized carriers to fully perform all the service necessary over the routes herein proposed by applicants.

#### ORDER

Public hearings having been held on the above entitled application, the matter having been duly submitted and the Commission being now fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity do not require the operation by Chas. F. Kane, doing business under the fictitious name of Chas. F. Kane & Co., of an automobile truck line as a common carrier of freight, for compensation, between San Francisco and points within the cities of Oakland, Berkeley, Alameda, Piedmont, and Emeryville, and that the record herein does not

justify a finding that an order should issue authorizing applicant to file tariffs and rate schedules based on alleged operation in good faith as of May 1, 1917, and continuously thereafter.

IT IS HEREBY ORDERED that this application be and the same hereby is denied.

Dated at San Francisco, California, this 9th day of December, 1929.

Thos B. Laid

C. L. Seavey

Wm. J. McKeon

Leon Whittell

W. A. Linn

COMMISSIONERS.