

22096

ORIGINAL

Decision No. _____

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 H. M. ANDERSON for an order determining
 the establishment of a prescriptive
 right to operate a truck line service
 as a common carrier between the City
 of Coronado and the City of San Diego,
 in the County of San Diego, State of
 California.)
)
) Application
) No. 16074
)
)

E. M. Parker, for Applicant.
 H. M. Dill, for Coronado Transfer and Pacific
 Transfer Van and Transportation Co., Inc.,
 Protestants.

BY THE COMMISSION -

OPINION

H. M. Anderson has petitioned the Railroad Commission for an order determining that said applicant has established a prescriptive right for the conduct of an automobile truck service for the carriage of property between the City of Coronado and the City of San Diego, by reason of operation in good faith prior to May 1, 1917, and continuously thereafter, such operation under the provisions of Chapter 215, Statutes of 1917 and effective amendments not requiring applicant to secure a certificate of public convenience and necessity in the manner prescribed by the above mentioned statutory enactment.

A public hearing on this application was conducted by Examiner Handford at San Diego, at which time evidence was received, and the matter was duly submitted for decision.

H. M. Anderson, applicant herein, testified that he was the sole owner of the trucking business known as the Coronada Rapid Transit, establishing such business in the fall of 1912.

Local hauling of property is conducted in the City of Coronado and trips have been and are now being made between points in the City of Coronado and points in the City of San Diego. Applicant operates one truck, a Maxwell with a manufacturer's rated capacity of one ton. Applicant has never operated on any regular or fixed schedule but has operated between the City of Coronado and the City of San Diego whenever business was offered by his patrons. It is applicant's desire that he be permitted to continue operation in the same manner that has been in effect since the establishment of his business, and that his right to so continue the business be authenticated by this Commission and established as a matter of record. Applicant states that in 1918 or thereabouts he received notice from the Commission regarding the filing of tariffs and furnishing of data relative to the character of operation being conducted as of May 1, 1917, stating that the data was prepared and either sent direct to the Commission or given to a representative in San Diego to be so forwarded. Applicant was first apprised of any question as to his operative rights in September, 1929, upon receipt of a letter from the Secretary of the Commission quoting an abstract from the statutory law and requesting full data as to the character of operations being conducted. Applicant immediately referred the matter to his attorney and after informal correspondence with the Commission, the instant application was filed for an adjudication relative to applicant's claim as to the possession of a prescriptive right to operate truck service between the cities of Coronado and San Diego.

H. Bandenbrug, a resident of Coronado since 1911, testified that he had known applicant since 1907 or 1908; that applicant first began the operation of trucks between Coronado and San Diego in the fall of 1912 or in the spring of 1913, applicant being marshal of the City of Coronado at the time the operation

was commenced.

Mrs. Addie E. Rooke, a resident of Coronado for the past 24 years, testified that she knew of applicant's operations and that they were available for the public prior to 1917, witness having used his trucks for the transportation of household goods both locally in Coronado and between Coronado and San Diego.

H.A. Eaton, a resident of Coronado for 23 years, testified that he had known applicant since 1906; that he knew of applicant's operation between Coronado and San Diego for the past 16 or 17 years, as well as of his local hauling within the City of Coronado.

Henry C. Israel, a resident of Coronado for 30 years, testified that he had known applicant before 1913; and that the service of applicant between San Diego and Coronado was in operation at the time he first became acquainted with him; and that applicant at different times had transported shipments for him.

Mrs. J. Smith, a resident of Coronado for 20 years, testified that she knew of applicant having been in the business of transporting property between Coronado and San Diego prior to 1917 and that she had shipments transported for her prior to that time, and since, as occasion demands.

The affidavits of M. Herrman of San Diego; H.W.Koehler, Nellie Madden and Mrs. Harry L. Titus, residents of Coronado, were introduced as an exhibit, these affidavits reciting that affiants knew the applicant herein; that he was operating truck service between Coronado and San Diego prior to the year 1917; and that affiants had at times used said service for the transportation of property.

Protestants herein stipulated that applicant was operating truck service for the transportation of property, for compensation, prior to May 1, 1917, and continuously thereafter up to the present time.

Protestants stated they had no objection to the granting of the application, their position being that no enlargement of the character of the business now being done should be permitted, nor should applicant be authorized to sell or otherwise dispose of his operative rights. The matter of enlargement of the operative right, should such be found to exist, and of sale or transfer of said right, are not pertinent to the issue raised by this application and need not be considered at this time.

After full consideration of the evidence herein, we are of the opinion and hereby find as a fact that applicant, H.M. Anderson, was operating an automobile truck service as a common carrier of property, for compensation, between the City of Coronado and the City of San Diego, all in San Diego^{County}, in good faith prior to and on May 1, 1917, and continuously thereafter until the date of hearing hereon; that no regular schedule was observed, the operation, while over a regular route between the termini herein, being irregular and "on call" as the traffic demanded; and that no certificate of public convenience and necessity is required to be obtained by said applicant under the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto.

O R D E R

A public hearing having been held on the above entitled application, the matter having been duly submitted and the Commission being now fully advised and basing its order on the conclusion and finding of fact as appearing in the opinion which precedes this order,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that H. M. Anderson, operating auto truck service as a common carrier of property, for compensation, between the City of Coronado and the City of San Diego, in the County of San Diego, was operating such truck service prior to, and on May 1, 1917, the effective date on which operators, in good faith, were by

the Legislature in its enactment of Chapter 213, Statutes of 1917, and effective amendments thereto, exempted from the procuring of a certificate of public convenience and necessity from the Railroad Commission in the manner specifically prescribed by the terms of said statutory enactment; and that the operations of said H. M. Anderson have been continuous since May 1, 1917, to the present time,

Now, therefore, good cause appearing,

IT IS HEREBY ORDERED that applicant H.M.Anderson file with this Commission, in duplicate, and in accordance with the provisions of this Commission's General Order No.80, as effective December 1, 1927, his schedule of rates, rules and regulations, rates to be in accordance with those set forth in amended Exhibit A as attached to the application herein, and as amended at the hearing on said application; said filing of rates, rules and regulations to be made within thirty (30) days from the date of this order.

Dated at San Francisco, California, this 5th day of February, 1930.

C. Seavey
Ernest

Paul L. Lott

COMMISSIONERS.