

ORIGINAL

Decision No. 23314

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of BEKINS VAN & STORAGE COMPANY, a cor- poration, for certificate of public convenience and necessity to operate warehouses as a public utility at Oakland and Berkeley, California.)))))))	Application No. 16335
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Ervin S. Best, for Applicant.

W. F. Williamson, Wallace and Vaughan, by
 Reginald L. Vaughan, and L. A. Bailey for
 Warehousemen's Association of the Port of
 San Francisco, California Warehousemen's
 Association, Lawrence Warehouse Company,
 Merchants Express and Drayage Company,
 Parr Terminal Company, Oakland Warehouse Terminal Co.,
 Howard Terminal Company and Souther Warehouse
 Company, Protestants.

BY THE COMMISSION -

OPINION

Bekins Van & Storage Company, a corporation, by its amended application, has petitioned the Railroad Commission for an order authorizing and granting permission to applicant to file tariffs and schedules for its Oakland warehouse as a public utility, by reason of the fact that applicant was operating its said warehouse in good faith as such at the time when the amendment to the Public Utilities Act became effective on August 2, 1927.

Public hearings on this application were conducted by Examiner Handford at Oakland and San Francisco, the matter was duly submitted following the filing of briefs by counsel, and it is now ready for decision.

These proceedings originally came before the Commission in the form of an application for a certificate of public convenience and necessity to operate warehouses as public utilities at Oakland and Berkeley. By amended application filed herein

an order was requested which would grant permission to the applicant to file warehouse tariffs and schedules for the operation of applicant's Oakland warehouse as a public utility, the application alleging that applicant had been so operating its Oakland warehouse in good faith for some time prior to and as of August 2, 1927, the effective date of the amendment to the Public Utilities Act as applicable to warehouses operating as public utilities.

The sections of the Public Utilities Act which are referred to herein and which became effective on August 2, 1927, are as follows:

SECTION 2 $\frac{1}{2}$ - 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, co-operative 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.
(Added Statutes 1927, Chapter 378.)

SECTION 50 $\frac{1}{2}$ - No warehouseman shall hereafter begin to operate any business of a warehouseman, as defined by Section 2 $\frac{1}{2}$ 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, nor shall any such warehouseman hereafter add to, extend, or otherwise increase his storage or warehouse floor space by more than fifty thousand square feet in any incorporated city, or city and county, with 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 such addition or extension or increase of such storage or warehouse floor space; provided, however, that any warehouseman may without securing such certificate extend or increase his storage or warehouse floor space for the sole and exclusive purpose of storing therein the goods, wares and merchandise owned by the lessor or owner of the building or premises in which the additional or increased storage or warehouse floor space is situated.

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 effectige, under tariffs and schedules of such warehouseman lawfully on file with the railroad commission.

Any right, privilege, franchise or permit held, owned or obtained by any warehouseman may be sold, assigned, leased, transferred or inherited as other property, upon authorization by the railroad commission. The railroad commission shall have power, with or without hearing, to issue said certificate as prayed for, or to refuse to issue the same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as, in its judgment, the public convenience and necessity may require.

The railroad commission may at any time for a good cause suspend and, upon notice to the grantee of any certificate and opportunity to be heard, revoke, alter or amend any certificate issued under the provisions of this section.

When a complaint has been filed with the commission alleging that any warehouseman is operating any storage or warehouse floor space without a certificate of public convenience and necessity as required by the provisions of this section, the commission shall have the power, with or without notice, to make its order requiring said warehouseman to cease and desist from such operation until the commission makes and files its decision on said complaint, or until further order of the Commission.

The question herein to be determined is whether the applicant was operating its Oakland Warehouse in good faith as of August 2, 1927 (the effective date of the amendment of the Public Utilities Act) it being conceded by applicant that, through inadvertence, tariffs covering the storage of merchandise, other than household goods, were not filed by the applicant covering the Oakland warehouse in accordance with the regulations of this Commission.

In substantiation of applicant's contention that it was operating in good faith at its Oakland warehouse on the date above mentioned, applicant presented as witnesses E. B. Holt, Secretary; Abe Bekins, Manager of the Oakland warehouse; Reed Bekins, Vice President and Treasurer; and Milo Bekins, President.

These witnesses testified regarding the general operations of the Bekins Van & Storage Company at the various warehouses operated in particular locations in this state, and specifically as to operations at the Oakland warehouse. The business of the applicant is primarily in the storage of household goods and personal effects, neither of which is subject to the jurisdiction of this Commission under the statutory law. The storage of general commodities, as covered by the Public Utilities Act, is incidental to the general business of the applicant, said general business consisting of the storage of household goods and effects, as described above. It is the evidence of these witnesses that the applicant has always performed general storage of commodities as a warehouse in its Oakland warehouse and that it still continues and offers such storage facilities to the public, the storage of general merchandise and commodities having been continuously available at the Oakland warehouse by the applicant and its predecessors since 1905, and at the present location since about the year 1916, the date of the completion of the present warehouse. The record does not show definitely the volume of storage of general merchandise and commodities, other than household goods and personal effects for the years prior to 1927, although it is of record that automobiles were stored prior to that time and that some storage of merchandise and commodities was made at the Oakland warehouse by the General Electric Co. and one other concern.

An exhibit (Exhibit No.1), was received in evidence covering all merchandise, other than household goods or personal effects, that was stored in the Oakland warehouse during the calendar year 1927. From this exhibit it appears that during such year eleven lots were stored for nine concerns, two of such lots being stored in private rooms rented by those storing material. Three of the lots are still in storage, one being in

a private room rented by the party owning the goods. The commodities stored in the year 1927 consist of veneer parcels, sacks of rubber, automobiles, tables, paper, counter, lot of maps and adding machines, the last two being stored in private rooms rented by the owners.

It is of record that a tariff covering the storage of automobiles at the Oakland warehouse was duly filed with the Commission, but such tariff was canceled by request of the applicant and by permission of the Commission in the year 1923, the reason for the application requesting cancellation of the tariff being stated by the applicant as follows:

"For the past years we have required practically all of the space in storage for household goods and personal effects and it is a very rare occasion when we can find room for automobiles."

It appears from the record that the reason advanced in the application for cancellation of the tariff on file covering the storage of automobiles at the Oakland warehouse was because other competitors had entered the Oakland territory and secured the majority of the automobile storage business. Following the cancellation of this tariff, covering the storage of automobiles at the Oakland warehouse, there were no tariffs on file with the Railroad Commission covering the storage of automobiles or any other commodity, nor have any tariffs been filed since such time although from the exhibit filed showing commodities, other than household goods and personal effects, in storage during the year 1927, appears the item of automobiles stored for the Howard Automobile Co., Lot 18381, received January 15, 1927, and delivered August 15, 1927.

As further evidence of the alleged good faith of applicant to receive storage from the public of merchandise and commodities, other than household goods or personal effects, the record shows the correspondence accompanying and referring to

annual reports of the applicant for the years noted in the following recital:

Report for year ending December 31, 1925.
Report filed in blank with the following letter of explanation under date of March 30, 1926:

"State Railroad Commission of California,
Civic Center Bldg.,
San Francisco, Calif.

Gentlemen:

With reference to the 1925 statement of storage business transacted under the Railroad Commission jurisdiction covering automobiles, please be advised that during the year 1925 we handled no new automobiles storage whatsoever. Therefore, there is no report to be filed.

Yours very truly,
Bekins Van & Storage Co.,
(Signed) Milo W. Bekins,
President and General Manager."

MWB/E

Report for year ending December 31, 1926.
No report filed. In answer to correspondence

regarding report not being filed, the following letter under date March 15, 1927, was received:

"Railroad Commission,
of the
State of California,
5th Floor, California State Building,
San Francisco, Calif.

Gentlemen:

In reply to yours of the 10th inst., reference to filing an annual report in warehouse service, kindly be advised that we have not handled any new automobile storage or new merchandise for storage at our Alameda Street warehouse. We therefore returned the two annual reports to you in blank.

Yours very truly,
Bekins Van & Storage Co.,
(Signed) Milo W. Bekins,
Pres. & Gen'l Mgr."

MWB/E

Report for year ending December 31, 1927 -

Report filed in blank with following letter under date
March 7, 1928:

"Railroad Commission of the State of California,
Civic Center Bldg.,
San Francisco, Calif.

Gentlemen:

We are returning herewith your annual report
sent to Bekins Van & Storage Co., Los Angeles.

You will note that we have not filled out this
report, the reason being that we are in the household
goods storage business, which does not require a report.

We specialize in household goods and the only
reason we filed our rates on commercial goods was due
to the fact that we may sometime in the future wish to
handle commercial accounts in some of our buildings.

Cordially yours,
Bekins Van & Storage Co.,
(Signed) Milo W. Bekins,
Pres. & Gen'l Mgr. "

MWB/E
Enc.

Report for year ending December 31, 1928 -

Filed showing estimated revenue of \$338.26 on commercial
storage and estimated expense of \$338.26 accruing on
commercial storage.

Report contains following notation:

"The business of this company is mainly devoted to the
moving, shipping and storage of household goods in
Los Angeles, San Francisco, Oakland and other places,
which is not subject to report -- a very small amount
of other storage was handled during the year of 1928."

Report for year ending December 31, 1929 -

Filed showing estimated revenue of \$5461.07 as being
accrued from storage, handling in and out, and unloading
of cars or vehicles of merchandise storage, with estimated
expense of \$4650.00 chargeable to such items. Report
contains a notation as follows:

"More than 95% of our business is storage of household
goods. This report covers only miscellaneous merchandise
accounts stored."

As evidence that the applicant herein had refused items of merchandise for storage, protestants filed exhibits (Exhibits Nos. 2 and 4), showing inquiries from eastern manufacturers requesting rates and inquiring regarding storage at Oakland and San Francisco, said inquiries being made during the months of June and July, 1925. The applicant company replied to these inquiries stating that they were not in a position to handle the kind of goods regarding which inquiry was made and referred the inquiries to another local warehouse. The refusal to handle these items was explained by witnesses for the company who considered that they were not able to handle consignments requiring storage for subsequent local distribution.

The record also shows that a verbal arrangement existed between applicant and the Lawrence Warehouse Co. of Oakland and San Francisco whereby inquiries for storage of household goods or personal effects were to be referred to the applicant, and inquiries for storage of general commodities were to be referred by the applicant to the Lawrence Warehouse Co.

After a full consideration of all the evidence, exhibits and briefs in this proceeding, we are of the opinion and hereby find as a fact that applicant was not holding itself out to the general public as of August 2, 1927, as a warehouseman for the storage of general merchandise or commodities. The record shows that there was not, and had not been since the cancellation of the tariff on automobiles for storage in the Oakland warehouse in 1924, any tariff lawfully filed with this Commission covering any merchandise or commodities. The evidence that the President of applicant company was empowered by action at a meeting of the board of directors of his company in 1927 to file tariffs for his Oakland, San Francisco and Los Angeles warehouses, and that filing was thereafter made for the Los Angeles and San Francisco warehouses, does not excuse the applicant for its lack of compliance with the statutory law as regards its Oakland warehouse.

The further fact that there was merchandise and commodities, other than household goods or personal effects, stored in the Oakland warehouse before, as of, and continually since August 2, 1927, and without a tariff covering same having been filed with the Railroad Commission does not indicate the good faith alleged by the applicant. It appears from the record herein that the storage of merchandise and commodities, other than household goods and personal effects, was considered at all times by the applicant to be a very minor and unimportant part of its general business of storing, packing and shipping household goods and personal effects. It further appears from the records and the files of the Commission that no tariffs are on file covering the storage of merchandise or commodities, other than household goods or personal effects at the warehouses of the applicant located in Berkeley, Fresno, Santa Barbara, Beverly Hills and Pasadena, although it appears from the testimony of the President of the applicant that commercial storage is conducted at some, if not all, of the locations mentioned.

ORDER

Public hearings having been held on the above entitled application, the matter having been duly submitted upon the filing of briefs, the Commission being now fully advised and basing its order on the conclusions and finding of fact as appearing in the opinion which precedes this order,

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

Dated at San Francisco, California, this 26th day of

January, 1931.

C. S. Murray
Leon Whiteall
W. B. Harris
Fred G. Stewart
COMMISSIONERS.