

Decision No. 2944

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

In the Matter of the Application
of the Highway Transport Company
for a certificate of public con-
venience and necessity to operate
an automobile freight service be-
tween the City of San Jose and the
City and County of San Francisco,
and intermediate points.

APPLICATION NO. 5628.

J. E. McCurdy, for Applicant.
M.A. Cummings and L.M. Bradshaw, for Southern Pacific Company,
Protestant.
John A. Percy and L.R. Hicks, for San Francisco & San Jose
Transportation Company, Protestant.
Walter H. Robinson, for S.B. McLenegan & Son and Gibson Express.

BY THE COMMISSION:

O P I N I O N

The Highway Transport Company, a corporation, having made application to the Railroad Commission for a certificate of public convenience and necessity to operate automotive freight service between the cities of San Francisco and San Jose and intermediate points, a public hearing was held before Examiner Geary on Friday, June 11, 1920 and the matter is now ready for a decision.

The applicant started in business on September 14, 1918, doing contract hauling and had certain verbal agreements with fifteen (15) wholesale grocers and others to handle their goods between San Francisco and San Jose and intermediate points. The business was carried on with constantly increasing magnitude and

prosperity and in its natural evolution new employees, uninstructed, had, from time to time, picked up and delivered matter to parties with whom their employer did not have contract and in that manner a demand for a common carrier service developed.

Chapter 280, Statutes 1919, effective July 22, 1919, brought the Highway Transport Company's operation as a contract carrier within the Auto Stage and Motor Truck Transportation law. This company did not, in accordance with the requirements of the Railroad Commission, file its contracts and time schedule, but on August 25, 1919, filed an application with the Railroad Commission petitioning for a certificate of public convenience and necessity to operate as a common carrier.

A hearing was held on Saturday, September 20, 1919, when the attorney for the applicant appeared, but stated that he had just returned from a vacation and was not familiar with the case, but nevertheless proceeded to present his case notwithstanding. Owing to counsel's unfamiliarity it was thought another hearing should in all fairness be granted, whereupon the hearing in this proceeding adjourned to a date to be set. Subsequently, on December 1, 1919, an adjourned hearing was held, the case was submitted and this Commission's Decision No. 6900, rendered December 5, 1919 on Application No. 4894, denied the applicant a certificate to operate as a common carrier, on the ground that no affirmative showing had been made that public convenience and necessity required additional service and the applicant was directed in that Decision in the following language:

"Applicant will be required to immediately file with this Commission its rates for transportation as a contract carrier, together with copies of contracts under which such contract carriage is being conducted."

At the hearing in the instant proceeding Mr. Burke, the Vice President of the applicant company, testified that his attorney had assured him that a tariff had been filed with the Railroad Commission in accordance with its requirements, but as a fact this was not done.

While the applicant company has apparently been operating in violation of the law, there are, perhaps, extenuating circumstances, as it was applicant's Vice President's sole belief that his attorney had filed tariffs in accordance with the requirements of the Commission and of the Statute. It was further shown by the evidence that this company is handling approximately thirty (30) tons of freight daily, and testimony also showed that no competing truck line could with its own equipment handle the business now handled by the Highway Transport Company if that company were to discontinue business.

In addition to the various representatives of the wholesale grocers, witnesses from Mountain View, Santa Clara and representatives of canneries along the route testified as to the convenience and necessity of the service given by the applicant. It is, therefore, found as a fact that public convenience and necessity is served by this applicant and that a certificate should be granted.

O R D E R

IT IS HEREBY ORDERED that public convenience and necessity require the Highway Transport Company, a corporation, to maintain a

common carrier automotive freight service between San Francisco, San Jose and intermediate points and that a certificate of public convenience and necessity should be and the same is hereby granted, subject to the following conditions:

1st- That the applicant, Highway Transport Company, a corporation, will be required to immediately file with the Railroad Commission its tariff of rates, rules, regulations and a time schedule, in accordance with General Order No. 51 and other regulations of the Railroad Commission.

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

3rd- That no vehicle may be operated by the applicant, Highway Transport Company, a corporation, unless such vehicle belongs to it or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

Dated at San Francisco, California, this 29 day of August 1920.

Edwin O. Edgerton
H. D. Leonard
Frank R. Brown
Commissioners.