



BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of)
 TARANTINO PRODUCE COMPANY for cer-)
 tificate of public convenience and :
 necessity to operate motor truck : Application No. 6826
 service between points in San Mateo)
 County, Santa Clara County, and San)
 Francisco. :
)

- R. W. Gillogley for the Applicant
- B. F. McKibben and G. R. Anderson for San Francisco and San Jose Produce Transfer Company and Bay City Hauling Company and Highway Transport Company.
- L. N. Bradshaw for Southern Pacific Company and American Railway Express.

BRUNDIGE, Commissioner.

O P I N I O N

In this petition A. P. Tarantino, Salvatore Tarantino and Frank Tarantino, doing business under the fictitious name of Tarantino Produce Company, have made application to the Railroad Commission petitioning for an order declaring that public convenience and necessity require the operation of an automobile truck line by them as a contract carrier between San Francisco and points in San Mateo and Santa Clara Counties north of the City of San Jose.

A public hearing was held on June 23, 1921, at San Francisco, at which time the matter was submitted and is now ready for decision.

Applicants are at present engaged in the transportation of fruit, berries and vegetables from truck gardens located in San Mateo County adjacent to Menlo Park and Portola to San Francisco. Approximately 90 to 95 per cent of the commodities handled are purchased by applicants at their point of origin for

transportation to applicants' commission house in the City of San Francisco.

No certificate of public convenience and necessity is required for the transportation by a commission house of its own commodities, as such commodities are not transported for compensation. Applicants have, however, contracted with some five farmers in the Menlo Park and Woodside territory, under which contracts they have been since the spring of 1919 and are at the present time transporting their produce from their respective farms to their own and other commission houses in the City of San Francisco.

A. P. Tarantino, a witness for applicants, testified that it was their desire to extend this service as far south as San Jose and to enter into contracts with various farmers in the territory, San Jose north, to transport produce under contract from truck gardens to San Francisco commission houses. Applicants, however, produced no testimony whatsoever as to the public necessity for the service which they propose to render, but did in fact testify that existing authorized carriers between San Jose and San Francisco had heretofore and were at the present time handling, without cause for complaint, such traffic as applicants had themselves been unable to handle with their own trucks.

Chapter 213, Statutes of 1917, included as subject to the provisions of such Act, automobile transportation companies operating over a regular route between fixed termini as common carriers. Such Act did not include those operators serving only as contract carriers. Chapter 213, Statutes of 1917, as amended by Chapter 280, Statutes of 1919, included not only common carriers but any person, firm, or corporation engaged in the business of transportation by automobile over a regular route between fixed termini for compensation. This amendment included contract carriers as subject to the provisions of such Act. The amended Act also pro-

vides that carriers subject to the provisions thereof operating in good faith prior to the effective date of such Act, could by filing copies of their tariffs, contracts and time schedules thereby establish an operative right over the route which they were serving in good faith prior to such effective date.

It would appear therefrom that insofar as applicants were operating in good faith prior to July 22nd, 1919, under contract, from San Francisco to points in Menlo Park and Woodside, that by filing copies of their rates, contracts, and time schedules between such points, they could thereby establish an operative right covering the continuance of such service provided that such right would be confined solely to those parties served prior to July 22nd, 1919 and continuously thereafter. This right, while not precluding the renewal of the contracts with existing parties heretofore served, would preclude the execution of additional contracts with other parties.

As stated in a number of decisions heretofore issued by this Commission upon applications for certificates of public convenience and necessity, the desire of an applicant to operate for compensation is not in itself sufficient to warrant the granting of a certificate. It is incumbent upon all applicants for certificates of public convenience and necessity to make an affirmative showing that a public necessity exists for the service which they propose to render. Such a showing has not been made by the applicants herein. In addition thereto a witness for applicant testified that from 90 to 95 percent of the commodities which were moved by applicants trucks were owned by them and it would, accordingly, appear that there is no public necessity for the service which applicants propose to render.

I submit the following form of order.

O R D E R

A. P. Tarantino, Salvatore Tarantino and Frank Tarantino, doing business under the fictitious name of Tarantino Produce Company, having made application to the Railroad Commission for a certificate of public convenience and necessity authorizing the operation of an automobile truck line as a contract carrier between San Francisco and points in San Mateo and Santa Clara Counties north of the City of San Jose, a public hearing having been held, evidence submitted and the Commission being fully informed,

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

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission.

Dated at San Francisco, California, this 20th day of June, 1921.

H. P. Anderson
H. J. Lovelace

J. A. London
Commissioners