

Decision No. 27249.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of)
THE BAY SHORE FREIGHT LINES, INC.,)
for a permit to operate for-hire) (Application No. 19216.
vessels for the transportation of)
property for compensation, between)
points upon the inland waters of the)
State of California. (

ORIGINAL

R.L. Vaughan and Scott Elder, for applicant.
Gwynn E. Baker, for California Inland Water
Carriers' Conference.
A.L. Whittle for the Southern Pacific Company.
N.E. Keller for Pacific Portland Cement Company.

HARRIS, Commissioner:

O P I N I O N

Applicant asks for a permit under the "For-Hire Vessel Act" Chapter 223 California Statutes 1933 to operate for-hire vessels for the transportation of certain specified commodities for compensation between Portland Cement Company, Redwood Harbor and San Francisco, Oakland and Alameda via water from wharf in Redwood Harbor.

The application was protested by the Southern Pacific Company and by California Inland Water Carriers' Conference.

Protestants' main contentions are that the proposed service is common carrier in nature and that the commission under the For-Hire Vessel Act has discretionary power to grant or deny applications for permits and that in this case its discretion should be used against the application.

To decide these issues it is necessary to consider all provisions of the act that have any bearing on them.

The "For-Hire Vessel Act" provides for the supervision and regulation by the Railroad Commission of for-hire vessels other than common carrier vessels operating between points exclusively on

the inland waters of the State of California. (See title of act).

Section 1, Subdivision (e) defines the term "For-Hire Vessels" as including "the same species of water craft" as are included in the Public Utilities Act, but not including a vessel or vessels as defined in Sections 2(1) and 2(y) of that act. This definition, therefore, limits, as does the title, for-hire vessels to those not for public use.

No one shall operate a for-hire vessel between points exclusively on the inland waters of the state except in accordance with the provisions of the act.(Section2).

A permit to operate such vessels must be secured from this Commission.(Sec.3).

Applications for permits must be in writing, shall specify the points between which applicant proposes to operate, shall show the rates, fares, tolls, rentals and charges applicable, shall show the commodities to be transported, shall set forth the rules and regulations governing the proposed service and shall conform to the rules and regulations adopted by the Commission. (Section 4).

Permits may be granted either with or without a public hearing. (Section 5).

Every permit shall specify the points and routes to which it shall apply, the articles which may be transported and a description of the vessels covered thereby and such other conditions as the Commission may impose. (Section 9).

No permit shall be issued for an operation over the whole or any part of any route operated by applicant as a common carrier. (Section.13).

The Commission shall have authority to promulgate rules and regulations respecting the issue of permits and for the conduct of investigations and hearing. (Section 6)

It shall prescribe rules and regulations covering the operations of such vessels. (Section 10).

It may amend or revoke any permit for violation of any of its terms or conditions or because of unlawful operation thereunder. (Section 11).

It will be noted that the title of the act limits the scope of the Commission's powers and duties to "the supervision and regulation of For-Hire Vessels", etc. The terms of the act are entirely consistent with the title. No discretion is reposed in the Commission in the issuance of permits other than to determine the matters mentioned in the succeeding paragraph. A controversy or doubt as to the existence of any of these facts would justify a hearing.

It is clear that permits can be issued only to private carriers as distinguished from common carriers and that a permit must be issued to (1) any private carrier whose application (2) complies with the requirements of the act, (3) who proposes to operate on the inland waters vessels of the type provided by the Act and (4) whose proposed operation shall not be over the whole or any part of a route operated by it as a common carrier.

Is the proposed service private in nature?

Applicant is conducting a common carrier service under certificates of public convenience and necessity for the transportation of freight by vessel between Port South Shore and San Francisco, Oakland and Alameda in conjunction with truck service between Port South Shore and Santa Clara Valley points. For this service it uses two vessels, "South Shore No.2" and the "South Shore", the latter being used only in emergencies when the "South Shore No.2" is on the ways which occurs about twice a year.

For about three years applicant has performed for Portland Cement Company the service for which, because of the enactment of the "For-Hire Vessel Act", it now asks a permit. There is

no evidence that applicant ever held itself out to the public to haul between Redwood City and the other points named. On the contrary it hauled only for the Cement Company refusing a number of requests of others to haul for them between said points.

The use of the "South Shore" for emergencies in applicant's common carrier service does not preclude its use under this application. In fact, the record shows that this boat was used for the Cement Company only when not needed in common carrier service and not between the points covered by that service, and that the same use will be made of it in the future. The proposed service is private in nature.

The application complies with the requirements of the Act and sets forth all the matters named in Section 4.

The vessel to be operated by applicant is of the type prescribed by the Act. The operation is to be on the inland waters of California.

The proposed operation is not over the whole or any part of any route operated by applicant as a common carrier. Redwood City is not on the route followed by it between Port South Shore and San Francisco, Oakland and Alameda.

Apparently the Commission has the power upon granting a permit to change the rates, fares, etc., filed with the application. (Section 7). The rates named in the proposed tariff have been in effect for the past three years and no sufficient reason has been advanced for a change in them at this time.

O R D E R

The Commission adopts as its findings the statement and findings of fact in the preceding opinion.

Pursuant to said findings, it is ordered:

That a Permit issue to applicant The Bay Shore Freight Lines, Inc., to operate that certain vessel the "South Shore",

between Port South Shore from wharf in Redwood Harbor and San Francisco, Oakland and Alameda, such service to be limited to the transportation of such cement, shells and mineral mixtures and composts consisting of fifty to eighty per cent of ground shells in sacks as may be delivered to it at said wharf by Portland Cement Company; such vessel to be used for such service only when not needed by applicant in its common carrier service.

It is ordered that such Permit shall issue subject to the following conditions:

1. Applicant shall file its written acceptance of the Permit herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant shall file in triplicate with its acceptance of the Permit a tariff containing rates and rules which in volume and effect shall be identical with the rates and rules shown in amended Exhibit (b) as modified by Exhibit 1.
3. It shall also file with the above a description of the vessel "South Shore."
4. This Permit and the rights and privileges exercisable thereunder may not be sold, leased, transferred or assigned unless the consent of this Commission thereto has first been secured.

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

Dated at San Francisco, California, this 6th day of August, 1934.

C. L. Seavey
Leon A. Whidbey
W. H. J. C.
M. B. Harris
W. H. J. C.
Commissioners.