



BY THE COMMISSION -

O P I N I O N

The primary issue in the above entitled proceedings is to determine if the Commission has jurisdiction to establish uniform rates, rules and regulations for the transportation of property by common carrier truck lines between Los Angeles on the one hand and Los Angeles and Long Beach harbors on the other hand.

Public hearings were had before Examiners Brown and Kennedy at Los Angeles.

There are in excess of one hundred individual carriers transporting property between Los Angeles and the harbors. Approximately twenty three of them are engaged in intrastate traffic operating under certificates of public convenience and necessity issued by this Commission. The remainder are engaged exclusively in interstate or foreign commerce, hereafter collectively referred to as interstate commerce.

There is no dispute as to the Commission's jurisdiction to regulate those carriers engaged in intrastate traffic. The sole question here for determination is whether or not the Commission has the power to regulate and establish the rates, rules and regulations of carriers engaged exclusively in interstate commerce. It was held by the California Supreme court in Meyers v. Railroad Commission, 218 Cal. 316, that this Commission has no authority to deny the right to such carriers to operate over the highways.

So far as this record is concerned, it must be conceded that the traffic which the carriers not possessing certificates of public convenience and necessity from this Commission transport is interstate commerce. In excess of 75% of the traffic handled over the wharves and docks at Los Angeles harbor and Long Beach is traffic of this nature. The balance is handled by the regulated carriers and is commingled with the interstate shipments which all of them transport. The interstate shipments do not

move under through bills of lading nor under through rates in connection with the steamer lines reaching the ports. The intrastate shipments in many cases do. The truck transportation is wholly between two points within the State of California over highways built and maintained by the people of the state. The nature of the service rendered by the truck lines unmistakably stamps them as common carriers both as to intrastate and interstate commerce.

The conclusion is inescapable from the evidence and testimony here presented that the public interest, not only from the standpoint of the shippers and receivers of freight but from the carriers as well, requires that some form of regulation be imposed upon these carriers to prevent a complete breakdown of the transportation system. What then is the power and duty of this Commission to impose such reasonable regulations that will not burden interstate commerce and will not be in violation of Article I, Section 8 of the commerce clause of the Constitution of the United States?

Article XII, Section 22 of the Constitution of California, gives the Railroad Commission the power

"\* \* \* to establish rates of charges for the transportation of passengers and freight by railroads and other transportation companies and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation for passengers or freight, or for any service in connection therewith between the points named in any tariff of rates established by said Commission than the rates, fares and charges which are specified in such tariff."

The California Supreme court in construing this constitutional provision in Western Association of Short Line Railroads v. Railroad Commission, 173 Cal. 902, held that it was the duty of the Railroad Commission to assume jurisdiction over common carriers using the highways of the state. (See also Franchise Motor Freight Association v. Seavey, 196 Cal. 77). From these decisions it is apparent that the Commission has jurisdiction

under the constitutional provisions over transportation companies operating as common carriers on the highways. There is no express constitutional prohibition against the Commission assuming jurisdiction over the rates of carriers transporting interstate or foreign commerce.

But would reasonable regulation of the rates of common carriers transporting shipments originating at or destined to interstate or foreign points, which do not move under through billing or through rates, impose an undue burden on, or be an interference with, interstate commerce? We believe not. Congress has not acted to assume jurisdiction over the rates of these carriers. While they handle interstate or foreign shipments the physical transportation of the property is between points within the state and is over state owned highways. In many cases the interstate shipments are commingled with intrastate shipments. The very nature of the service performed makes the operation of the trucks substantially a matter of local concern. In the absence of federal regulation and where a utility is performing a service which is clothed with local interest, it has been held that primarily jurisdiction rested with the state, even though such regulation affected interstate commerce. Thus it was said by the United States Supreme court in Munn v. Illinois, 94 U.S. 113, March 1, 1877, involving the question of whether or not the Legislature of Illinois could establish the maximum rate of charge for the storage of grain in warehouses at Chicago and other places in the state:

"We come now to consider the effect upon this statute of the power of Congress to regulate commerce. It was very properly said in the case of the State Tax on R. Cross Receipts, 15 Wall 293, 21 L. ed. 167, that 'It is not everything that affects commerce that amounts to a regulation of it, within the meaning of the Constitution.' The warehouses of these plaintiffs in error are situated and their business carried on exclusively within the limits of the State of Illinois. They are used as instruments by those engaged in state as well as those engaged in interstate commerce, but they are no more necessarily a part of commerce itself than the dray or the cart by which, but for them, grain would be transferred from one railroad station to another. Incidentally they may become connected with interstate commerce, but not necessarily so. Their regulation is a thing of domestic concern and, certainly until Congress acts in reference to their interstate relations, the state may exercise all the powers of government over them, even in so doing it may indirectly operate upon commerce outside its immediate jurisdiction." (Emphasis supplied).

(See also C. B. & Q. R.R. v. Cutts, 94 U.S. 155; Peik v. The Chicago and Northwestern Ry. Co., 94 U. S. 164; Chicago, Milwaukee & St. Paul R.R. Co. v. Achley, 94 U.S. 179; Winona & St. Peter R.R. Co. v. Blake, 94 U.S. 180, and Stone v. Wisconsin, 94 U.S. 102).

The issue here presented is somewhat analogous to that before the United State Supreme court in Wilmington Transportation Co. v. Railroad Commission, 236 U.S. 151. This proceeding involved the authority of the Railroad Commission to prescribe reasonable rates for transportation by water between San Pedro on the mainland and Avalon on Santa Catalina island. Vessels plying between these two points traverse the high seas and are thus engaged in commerce with foreign nations, within the meaning of the commerce clause of the federal constitution.

The order of the Railroad Commission prescribing the rates to be charged by the Wilmington Transportation Company was sustained by the California Supreme court, Wilmington Transportation Company v. Railroad Commission, 166 Cal. 741. On appeal to the United States Supreme court the decision of the California Supreme court was upheld. In the opinion written by Justice Hughes

it was stated:

"The rule which the plaintiff in error invokes is not an arbitrary rule, with arbitrary exceptions, but is one that has its basis in a rational construction of the commerce clause. As repeatedly stated, it denies authority to the state in all cases where the subject is of such a nature as to demand that, if regulated at all, its regulation should be through a general or national system, and that it should be free from restraint or direct burdens save as it is constitutionally governed by Congress; and on the other hand, as to those matters which are distinctively local in character, although embraced within the federal authority, the rule recognizes the propriety of the reasonable exercise of the power of the states, in order to meet the needs of suitable local protection, until Congress intervenes." (Emphasis supplied)

Upon consideration of all the facts of record we are of the opinion and so find that this Commission has jurisdiction to regulate the rates, rules and regulations of transportation companies operating as common carriers in the transportation of intrastate, interstate and foreign commerce between Los Angeles on the one hand and Los Angeles harbor and Long Beach on the other hand.

During the course of these proceedings tariffs were submitted to the Commission for its approval. These tariffs are not in all instances satisfactory. The carriers will be ordered to submit on or before sixty days from the effective date of this order, for the approval of the Commission, new schedules containing the rates, rules and regulations for the transportation of property between Los Angeles and Los Angeles and Long Beach harbors.

#### ORDER

This proceeding having been duly heard and submitted, full investigation of the matters having been had,

IT IS HEREBY ORDERED THAT all transportation companies operating as common carriers in the transportation of intrastate, interstate and foreign commerce by auto truck between Los Angeles

on the one hand and Long Beach and Los Angeles harbors on the other hand, shall on or before sixty (60) days from the effective date of this order, submit schedules for the approval of the Commission containing the rates, rules and regulations to be charged for the transportation of such commerce.

Dated at San Francisco, California, this 17<sup>th</sup> day of September, 1934.

Leon A. White

M. J. Carr

M. B. Harris

\_\_\_\_\_  
COMMISSIONERS.