

ORIGINAL

Decision No. 29482

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of)  
JOSEPH C. TOPE for a License as a ) M.T.B. Application No. 20795  
Motor Transportation Broker. )

Joseph C. Tope, for applicant in pro per.

Fred N. Bigelow, for Pacific Southwest  
Railroad Association, Protestant.

L. I. McKim, for The River Lines, Protestant.

BY THE COMMISSION:

O P I N I O N

In this proceeding Joseph C. Tope has applied for a license as a Motor Transportation Broker under the provisions of the Motor Transportation Broker Act (Statutes 1935, Chapter 705). The granting of this application was protested by Pacific Southwest Railroad Association and The River Lines.

A public hearing was had before Examiner Austin at Stockton on October 16th, 1936, when evidence was offered, the matter submitted, and it is now ready for decision.

The applicant, a practicing attorney in Stockton, from time to time advanced funds to Paul W. Evans, a licensed Motor Transportation Broker, who had his headquarters in that city at 31 North Commerce Street. Following the sudden death of Mr. Evans about two weeks preceding the hearing, applicant sought this license in order to continue the business formerly conducted by Evans.

It is applicant's plan to change substantially the method under which Evans had been operating. Applicant proposes to solicit no business in his own name, confining his activities, on the contrary, merely to bringing together the shippers and the carriers, who will then make their own arrangements. He will provide no insurance, either upon the cargo or covering public liability and property damage. He will undertake no collection of the freight charges, leaving this exclusively to the carriers themselves. And he will advance no funds to the carriers to finance their operations, the carriers being required to look elsewhere for credit. The terminal formerly conducted by Evans to accommodate the carriers he represented will be discontinued, applicant proposing to retain but a small part of the premises to be used as an office. Thus he will dispense with facilities not necessary in his business as a broker and, in addition, he will avoid a heavy rental charge.

Applicant has secured letters of authority from seven carriers operating a total of eight trucks. The Commission's records, to which by stipulation reference may be made in this proceeding, indicate that all of them hold permits as Radial Highway Common Carriers, viz:

|                 |                   |
|-----------------|-------------------|
| George D. Avery | Permit No. 39-266 |
| Geo. Trowbridge | " " 51-88         |
| M. H. Bouchard  | " " 39-456        |
| C. M. Ray       | " " 39-254        |
| Fred G. Beasant | " " 39-299        |
| C. L. Brasfield | " " 39-436        |
| M. M. Brown     | " " 39-253        |

Applicant testified that whenever shippers called upon him to arrange for the transportation of freight exceeding in volume the carrying capacity of the carriers whom he represented, he would be obliged to forego handling the excess were he unable to secure in time letters of authority from other carriers. In no event will he undertake to provide such transportation through unauthorized carriers.

At the outset applicant will divide his time between his law practice and the conduct of the brokerage business, gradually devoting more attention to the latter as it develops, and ultimately retiring from the former. He expects to employ no assistant for the time being, but should this become necessary a license will be secured.

To avoid the imputation of having been unlawfully engaged in this business without a license applicant, so he testified, has refrained from soliciting any of the former patrons of Mr. Evans, nor has he made arrangements with any shippers to represent them in procuring transportation. However, he expressed some assurance of his ability immediately to secure business of this character. He has not discussed with any of the carriers the details of any arrangements to be entered into for performing transportation, applicant having confined his activities in this behalf to securing the letters of authority which have been filed. No question as to his fitness to engage in this business has been raised, and the evidence indicates his financial qualifications are adequate.

Some objection was voiced by protestants to the granting of this license because, so it was contended, the applicant would thus be enabled to engage in competition with existing carriers to the extent that he could secure for the truck operators he would represent as a broker traffic now handled by agencies already in the field. The Motor Transportation Broker Act, however, does

not authorize this Commission in a proceeding of this character to grant or refuse a license because of the effect such action may have, from a competitive standpoint, upon existing carriers.

By the terms of Section 6 of this Act an applicant for a license must file with the Commission a duly verified application in such form as may be prescribed, and the Commission is thereupon authorized, with or without hearing, to issue or refuse to issue the license or to issue it for the partial exercise of the privilege sought. This section further provides:

"No license shall be issued to an applicant when, with or without hearing, the Railroad Commission shall determine that (1) the applicant is not a fit and proper person to receive the same, or (2) the motor carriers for whom applicant proposed to sell transportation have not complied, and are not then and there complying and do not propose to comply with State and/or Federal laws, and/or all general orders of the Railroad Commission of the State of California, applicable to the operations of said motor carrier."

Pursuant to Section 10 of the Act, a license may be suspended or revoked by the Commission whenever it "shall determine that the licensee is not a fit and proper person to hold the same", or whenever it shall determine that the licensee, in acting as such motor transportation broker,

"\* \* \* has sold, offered for sale, or negotiated for sale, transportation by any carrier that under the laws of this State is conducted in a manner contrary to the public interest, or without proper authority, or in violation of the provisions of this act or the general orders, rules and regulations of the Railroad Commission pertaining thereto."

From these provisions it is clear that our inquiry must be directed solely to the questions (1) whether the applicant is a fit and proper person to be licensed, and (2) whether the plan under which he proposes to operate is lawful.

The facts developed in the instant proceeding disclose nothing unlawful about applicant's plan of operations and he appears to be a proper person to hold a license. The application therefore will be granted.

### O R D E R

A public hearing having been had in the above entitled matter, evidence having been offered, the matter having been duly submitted, and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that the application of Joseph C. Tope for a license as a Motor Transportation Broker, as defined in Chapter 705, Statutes of 1935, be and the same is hereby granted, and that such a license be issued to him, subject to the following conditions:

(1) That said licensee shall keep the license certificate as Motor Transportation Broker open at all times to public inspection.

(2) That said licensee shall do business as a Motor Transportation Broker only at the location set forth in his application for a license, and only for the motor carriers hereinafter named, or for whom said licensee may hereafter from time to time be permitted to do business by any subsequent order or orders of the Commission.

IT IS HEREBY FURTHER ORDERED that the said license shall authorize said Joseph C. Tope to sell, offer for sale, negotiate for, furnish or provide, and hold himself out to sell, furnish or provide transportation of such property over the public

highways of this State to be furnished only by the carriers whose names, addresses and permit numbers follow, to-wit:

| <u>Name</u>     | <u>Address</u>                                    | <u>Permit No.</u> |
|-----------------|---|-------------------|
| George D. Avery | Route 2, Box 40-H,<br>Stockton, California.       | 39-266            |
| Geo. Trowbridge | Route 3, Yuba City,<br>California.                | 51-88             |
| M. H. Bouchard  | 2515 Beverly Pl.,<br>Stockton, California         | 39-456            |
| C. M. Ray       | 429 S. Sierra Nevada St.,<br>Stockton, California | 39-254            |
| Fred G. Beasant | 5 West Willow St.,<br>Stockton, California        | 39-299            |
| C. L. Brasfield | 31 N. Commerce St.,<br>Stockton, California       | 39-436            |
| M. M. Brown     | 409 E. Hazelton,<br>Stockton, California.         | 39-253            |

IT IS HEREBY FURTHER ORDERED that the surety bond heretofore filed with the Commission in this application, executed by said applicant Joseph C. Tope, as principal, and by Glens Falls Indemnity Company, a corporation, as surety, in the sum of One Thousand Dollars (\$1,000.00), payable to the State of California, and/or any person (including any firm or corporation), or persons, for, or to whom the principal may or shall furnish or provide transportation as a licensed Motor Transportation Broker under the provisions of Chapter 705, Statutes of 1935, and conditioned as provided in Section 8 of said Chapter 705, Statutes of 1935, be and it is hereby approved, as and for the bond required to be provided by or on behalf of said licensee, Joseph C. Tope.

IT IS HEREBY FURTHER ORDERED that the Secretary be and he is hereby authorized and directed to issue and deliver to said Joseph C. Tope a license certificate as such Motor Transportation

Broker, in the form heretofore adopted by the Commission for such license certificate, and subject to the conditions hereinabove specified.

For all other purposes the effective date of this order shall be twenty (20) days from date hereof.

Dated at San Francisco, California, this 25<sup>th</sup> day of January, 1937.

Malcolm Mac  
Leon Asher  
Frank R. M.  
Ray W. W.  
Ray K. Rice  
Commissioners.