

Decision No. 40843

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of LEONARD F. SCHEMPF for a)
license as a motor transportation) Application No. 28710
broker.)

LEONARD F. SCHEMPF, in propria persona

O P I N I O N

In the above-entitled application Leonard F. Schempp requests a license authorizing him to engage in the business of a motor transportation broker pursuant to Act No. 6393E, Chap. 705, p. 1906, Statutes of 1935.

A public hearing was held by Examiner Syphers at Los Angeles on October 1, 1947, and the matter was submitted. No one appeared in protest to the granting of the application.

The applicant has, according to the record, complied with the essential routine statutory requirements in connection with motor transportation broker proceedings, in that he has prepared and filed an application, surety bond, and letters of authority from the carriers designating him as their duly authorized transportation representative.

Applicant testified that he now is, and for some years past has been, performing dump-truck hauling services for building and construction contractors and other shippers. In the performance of these services he owns and operates one dump truck.

In addition, he uses the services of various subhaulers who, in most cases, are owner-drivers of dump trucks. If the owner of any truck should hire a driver other than himself, that driver, according to applicant's testimony, would be an employee under the control of the truck owner and not of applicant. The subhaulers obtain insurance and licenses for their own equipment and also the necessary permits from the Public Utilities Commission and the Board of Equalization.

The billing for all this hauling, both on applicant's own truck and on the trucks of the subhaulers, is performed by applicant. The bills show applicant's name and he collects the charges directly from the shipper. These bills are rendered to the shippers monthly on the fifth or sixth of the following month, and collections are usually completed by the 20th of that month, on which date applicant pays the subhaulers. Of the amounts received from the shippers for hauling performed by subhaulers, applicant retains 5% as his charge. From the remaining 95% applicant deducts any advances he has made to the subhaulers during the previous month and remits the balance to them. The subhaulers are authorized to purchase gasoline and oil from various service stations and to have repairs to their equipment made at various garages and charge these items to applicant's account. Applicant then deducts these charges from the amounts due the subhaulers and pays them the balance.

In addition to the aforementioned deductions, applicant also pays the various taxes required on the hauling operations, including the taxes paid to the Board of Equalization and the

Public Utilities Commission. These taxes are likewise deducted from the subhaulers' share of the moneys received.

Applicant testified that he is the holder of permits under the Highway Carriers' Act for operation as a radial highway common carrier, and a highway contract carrier. He also holds a city carriers' permit under the City Carriers' Act. The hauling performed in his own truck is conducted under these permits.

In the solicitation of business applicant uses various types of advertising literature, including letters and folders, as well as conducting solicitations by telephone. In some of the literature the subhaulers are mentioned and in some cases applicant represents himself to be a broker. He contended that the use of the word "broker" was, in the general sense, as it is understood in the industry, rather than having any specific reference to a broker as defined in the Motor Transportation Broker Act.

In short, the operations applicant is now conducting, and those he proposes to conduct in the future, are under an arrangement whereby he performs some hauling with his own equipment, but for the bulk of the hauling uses subhaulers. He has no control over the employees of these subhaulers, nor does he have anything to do with the licensing and insurance of their trucks. However, in effect he does advance to the subhaulers the cost of gasoline, oil, and repairs. The billing for all of the hauling is performed on applicant's bills, and the taxes due thereon are paid by applicant and deducted from the subhaulers' share of the proceeds in the same manner as the deductions are made for operating expenses. Both applicant and the subhaulers have permits from

the Public Utilities Commission. In most cases the permits which the subhaulers have are radial highway common carrier and city carrier permits. Applicant testified that he advised all of the subhaulers to obtain these two permits.

Testimony of applicant shows that he is 46 years of age, and has been engaged in the trucking business in Los Angeles for more than twenty years. He proposes to conduct the business for which he is seeking a license in his own name and as an individual. He further proposes to limit this business to dump-truck hauling and services exclusively.

With the application there were filed letters of authority from 78 carriers, all of whom hold either radial highway common carrier or city carrier permits, or both. At the hearing applicant testified that he had received additional letters of authority from approximately 75 more carriers.

The Secretary-Manager of the California Dump Truck Owners' Association testified that 90% of the dump-truck operators in Southern California are individual owner-drivers, and further, that the individual owner-driver is the most efficient type of operator in that business. He also testified that there were advantages to the shippers in group billing and group solicitation, inasmuch as it was more convenient for them to deal with one individual. Therefore, since most dump-truck hauling business requires a large number of trucks, it has been the common practice for a number of years for the shippers to deal with representatives of groups of dump-truck owners. He testified that, in his opinion, it would be desirable to have such representatives operate as brokers and file the necessary bond, thereby increasing their responsibility.

From the foregoing facts, which show a holding out by applicant to serve the public, actual ownership and operation of one truck and some control over the operation of other trucks, hauling over the public highways for compensation, solicitation by applicant, use of applicant's bills, and hauling arrangements directly between applicant and the shippers, we conclude that applicant's operations are those of a carrier.

It is well established that one who is himself a carrier cannot act as a broker in respect to the sale of, or negotiation for, transportation over his own lines (Re Peterson, 1938, Decision No. 29084, 40 CRC 71, 76). We hold to the view that a broker is an intermediary between the shipper and the carrier. His status is that of an agent with its resulting fiduciary obligations to the party he represents, whether that party be shipper or carrier. Such a status is clearly distinguishable from a straight shipper-carrier relationship.

It is not a broker's proper function to issue bills of lading, either as a shipper or as a carrier, nor to issue, in his own name, freight bills to cover transportation charges, nor to hold himself out as a carrier. A contract of carriage is properly one between a shipper and a carrier; a broker should not be a party thereto.

Thus we find from the evidence that applicant's present and proposed operations do not fall within the definition of a broker as set out in Section 2 of the Motor Transportation Broker Act (Statute 1935, Chapter 705). The application will, therefore, be denied.

O R D E R

Application as above entitled having been filed, public hearing having been held thereon, the matter having been submitted, and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED that the application of Leonard F. Schempp, an individual, for a license as a motor transportation broker, be, and the same hereby is, denied.

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

Dated at Los Angeles, California, this 28th day of October, 1947.

Harold P. Kula

Justus F. Cravens

A. J. Dwyer

Samuel F. Fitts
COMMISSIONERS