

Decision No. 41141

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
JOHN WILLIAM RIZZARI for a license as a
Motor Transportation Broker.

) Application No. 28477
)
) Second Supplemental

SECOND SUPPLEMENTAL OPINION AND ORDER

By Decision No. 40821, issued October 21, 1947, in this proceeding, the Commission granted applicant a license to engage in business as a motor transportation broker.

The opinion therein referred to applicant's intention to obtain compensation on the basis of a flat monthly charge, or a percentage of the hauling charge, and disapproved of the latter method on the ground that it would involve a violation of certain provisions of the City Carriers' Act and the Highway Carriers' Act.

The applicant now petitions for "rehearing or modification" of Decision No. 40821, and requests a reconsideration of that portion of the opinion disapproving of the applicant's proposal to obtain compensation on the basis of a percentage of the hauling charge.

Section 11 of the City Carriers' Act is as follows:

"It shall be unlawful for any carrier or his agent, servant or employee, directly or indirectly, to offer, remit or give to any person, directly or indirectly, any such commission or consideration as an inducement to secure the transportation of any such property."

Section 12(a) of the Highway Carriers' Act is as follows:

"No highway carrier, other than a highway common carrier, shall charge, demand, collect or receive for the transportation of property, or for any service in connection therewith, rates or charges less than the minimum rates and charges or greater than the maximum rates and charges applicable to such transportation established or approved by the Railroad Commission;

nor shall any such carrier directly or indirectly pay any commission or refund or remit in any manner or by any device any portion of the rates, or charges so specified, except upon authority of the commission."

The Motor Transportation Broker Act recognizes the status of motor transportation brokers and contains various provisions regulating their activities. It expressly recognizes the fact that such persons are engaged in business for compensation.

A literal interpretation of the quoted provisions of the City Carriers' Act and the Highway Carriers' Act would have the effect of nullifying the Motor Transportation Broker Act by making it illegal for brokers to receive any compensation for their services.

We do not believe that this was the legislature's intention. It is our opinion that the evil aimed at by the quoted sections of the City Carriers' Act and the Highway Carriers' Act was the giving of secret rebates to shippers with the resulting evasion of rates prescribed by this Commission.

No reason appears for differentiating between compensation to motor transportation brokers in the form of a percentage of the hauling charge and compensation in any other form.

Upon careful consideration of the matters contained in the petition, the Commission is of the opinion that Decision No. 40821 should be amended by deleting therefrom that portion which disapproves of the applicant's proposal to obtain compensation on the basis of a percentage of the hauling charge.

O R D E R

IT IS HEREBY ORDERED that Decision No. 40821 be amended by deleting therefrom the following paragraph:

"Applicant's proposal to charge for his brokerage services on the alternative basis of a percentage of the hauling charge, however, is not acceptable. Such a proposal would appear to entail the payment of commissions by the carriers involved, a device prohibited to city carriers (City Carriers' Act, Sec. 11) and, unless authorized by the Commission, likewise forbidden to carriers subject to regulation under the Highway Carriers' Act (Highway Carriers' Act, Sec. 12(a))."

As thus amended, Decision No. 40821 shall remain in full force and effect.

The foregoing order shall become effective on the date hereof.

Dated at San Francisco, California, this 19th day of January, 1948.

R. I. [Signature]
Justus F. [Signature]
Grant [Signature]
Harold [Signature]
Wm. [Signature]
 Commissioners