

Decision No. 42646

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
upon the Commission's own motion into)
the operations of all carriers of)
property for compensation subject to)
the jurisdiction of the Commission.)

Case No. 4823

(For Additional Appearances see Appendix B)

SUPPLEMENTAL OPINION

The Commission issued Decision No. 41470, April 13, 1948, in the above-entitled proceeding, after extended hearings were had at various places throughout the State. The purposes of the investigation and a summary of the evidence are set forth in Decision No. 41470. We therein made the following five findings:

I. That undesirable conditions exist in the property highway carrier industry in the State of California which have a material bearing on the future economy of the State and exert a detrimental effect upon the shipping public as well as transportation companies doing business in this State.

II. That the provisions of existing regulatory statutes governing highway carriers should be amended so as to permit the Commission to impose appropriate regulatory controls upon all types of transportation services as demanded by present day conditions.

III. That for the purpose of providing effective regulation essential to the creation and preservation of an adequate and efficient system of highway transportation for the carriage of property, legislation should be enacted at the earliest practicable date amending existing laws in the following particulars:

- (a) By extending the provisions of the Public Utilities Act now applicable only to carriers operating between fixed termini or over regular routes so as to include all radial highway common carriers at present subject to the Highway Carriers' Act and those city carriers now subject to the City Carriers' Act, operating as common carriers.
- (b) By amending the present Highway Carriers' Act and City Carriers' Act respectively, to apply only to those operating as contract carriers, and to provide further that each applicant for a permit shall hereafter be required to establish that his proposed operation will be in the public interest and to show that he possesses adequate ability, experience and financial responsibility to conduct such operation before such permit is issued.
- (c) By providing that all persons operating on April 1, 1948, and continuously thereafter under permits issued by this Commission, shall be issued a permit or certificate authorizing them to continue their operations, subject to the following conditions:
 - 1. That they make application for a permit or a certificate, whichever appropriately applies to the service to be continued, within sixty days from the date the proposed amendments become effective.
 - 2. That said application be accompanied by proof in the form of an affidavit that applicants were actually conducting the service covered by the application within a period of twelve months prior to April 1, 1948.

IV. That, in the administration of the provisions of the Highway Carriers' Act, the Commission henceforth should require those holding permits to operate to make filings with the Commission as follows:

- (a) Each contract carrier subject to the Highway Carriers' Act shall be required to file with the Commission a true copy of each contract and of any amendment thereto entered into with shippers for whom services are to be performed. Such contracts, or amendments, should mutually bind the carrier to transport and the shipper to

supply a specific category of freight and be definite as to the time involved in the performance of the contract, the route and/or terminal and/or area involved in the performance of the contract, the kind of commodity or commodities involved, the tonnage to be hauled and the actual rates and charges to be paid and received for the services to be performed thereunder. The contracts, or any terms or conditions thereof will not be made public by the Commission except as a part of the record in a formal proceeding when it considers such action consistent with the public interest.

- (b) That each radial highway common carrier as defined in the Highway Carriers' Act, shall be required to file with the Commission tariffs showing all of the rates, charges, classifications, rules, regulations, allowances and privileges it maintains for the transportation of property and for accessorial services incidental thereto.

V. That the existence of ten or more contracts by a highway contract carrier subject to the Highway Carriers' Act shall hereafter be deemed to be prima facie evidence of highway common carriage.

* * * * *

No order was issued but further hearings were had and the matter orally argued before the Commission en banc on August 23, 1946.

This proceeding is exploratory in nature. It is not an adversary case. The purpose is to find a solution to a recognized chaotic transportation condition. Ample opportunity was given to all classes of carriers and to the public to express their views. Many suggestions to remedy the situation were made. Because of sharply conflicting interests, particularly in the trucking industry, and the obvious purpose of many of the parties to subordinate the public interest to their own individual interests, few constructive remedies were proposed. Practically all of the parties of record agreed that present transportation conditions were undesirable as stated in finding I of Decision No. 43470, supra.

The following views of the Commission, therefore, are not necessarily based upon the record made in Case 4823, but reflect its conclusions as an informed regulatory body.

Since the creation of the present Commission in 1912 the transportation regulatory powers of the Commission have been inadequate, particularly with respect to truck carriers. During this 37-year period some transportation companies have been rigidly regulated; others were not regulated at all; some were partially regulated.

During the early regulatory period public transportation in California was by rail and water. About 1915 the motor carrier made its appearance. First jitneys and then buses and stages became important considerations in the transportation of passengers. These new carriers were not covered by the Public Utilities Act and the Commission did not assert jurisdiction over them. The California Supreme Court held, however, that highway carriers not operating exclusively within the limits of a municipality were "other transportation companies" within the purview of Section 22 of Article XII of the Constitution and directed the Commission to assume jurisdiction. During the next session the Legislature enacted the Auto Stage and Truck Transportation Act.² This Act provided for the certification of common carriers operating over any public highway between fixed termini or over a regular route both when engaged in the transportation of passengers and when engaged in the transportation of property.

¹ Western Association of Short Line Railroads vs. Railroad Commission, 173 Cal. 802, (1916).

² Chap. 213, Statutes 1917.

At that time the transportation of property by motor vehicle was of little consequence. World War I, however, provided a powerful impetus to the development of motor transportation. The railroads were unable to cope with the volume of war traffic in addition to ordinary domestic traffic. Service by steamer practically ceased as the government took over ships for the overseas transportation of men and supplies. Motor carriers were thus presented with unlimited opportunities to obtain traffic and were welcomed as a needed aid by shippers and the other forms of transportation. By 1919 highway transportation of property had become an important factor.

In 1923 the Legislature passed the Crittenden Amendment exempting from regulation carriers exclusively engaged in the transportation of agricultural products.³ About a year later the California Supreme Court declared this act to be discriminatory and void.⁴

Following the court action large numbers of applications were filed by carriers who had entered the field while the Crittenden Amendment was in effect. Numerous hearings on the question of certification were had. Among them was an application of one Ben Moore who sought a certificate to cover general hauling by automobile truck between any and all points within a radius of 75 miles from the town of Sanger. The majority of the Commission (two Commissioners dissenting) held that this operation was not within its certifying jurisdiction.⁵ Upon the denial of a rehearing by the Commission the matter was taken to the California Supreme Court on a petition for a

³ Chapter 310, Statutes 1923, amending Sec. 5 of the Auto Stage and Truck Transportation Act. of 1917.

⁴ Franchise Motor Freight Assn. et al v. Seavey et al, 196 Cal 77 (1925).

⁵ In re Application of Ben Moore, 27 CRC 388 (1925).

writ of certiorari. This petition was likewise denied and the Commission's decision stood as the final word in the matter.

About the same time another question of the scope of the Commission's jurisdiction was raised. M. and W. Frost, dba Frost and Frost Trucking Company were ordered to cease and desist conducting a designated operation unless and until they obtained a certificate holding that public convenience and necessity required the resumption or continuance thereof.⁶ The matter was appealed to the California Supreme Court. In the Court proceeding the facts were admitted and the question was "whether one who is engaged as a business in the transportation of property by auto truck for compensation over the public highways of the State between fixed termini or over a regular route, but operating solely under a private contract, is subject to the provisions of the Auto Truck and Stage Act, supra, as amended."⁷ The court held (one Justice dissenting) that after the amendment the Act applied to private as well as to common carriers.⁸

The matter was appealed to the United States Supreme Court. That court held that the Act under review as applied by the State court violated the rights of plaintiffs as guaranteed by the due

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25 CRC 297 (1924).

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Section I of the act defined the term "transportation company" as used therein to include every person "operating *** any automobile, jitney bus, auto truck, stage or auto stage used in the business of transportation of persons or property or as a common carrier, for compensation over any public highway in this state between fixed termini or over a regular route,***." The italicized words "business of" and "or" were added to the section by amendment of 1919, Statutes 1919, Page 458, Section 2.

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Frost v. Railroad Commission, 197 Cal 230 (1925).

process clause of the 14th Amendment (one-Justice dissenting).⁹

Following these holdings of limited jurisdiction the number of unregulated carriers operating increased rapidly. Either they claimed they were not common carriers, or, if common carriage was obvious, that their operations were radial. Both as a result of numerical increase in unregulated operators and because of drastic rate-cutting practices on the part of highway carriers the situation deteriorated rapidly. Rail lines, water carriers and truck carriers subject to the jurisdiction of this Commission¹⁰ countered by likewise resorting to rate-cutting, but to little avail.¹¹ They attempted by the filing of complaints, individually and through organizations,¹² to drive the unregulated carriers from the field. Most of the truck carriers claiming immunity from regulation by reason of the Ben Moore or Frost decisions, supra, were in fact fixed terminal or regular route operators subject to the jurisdiction of this Commission

⁹ Frost v. Railroad Commission, 271 US 583 (1926). The Federal Court accepted the construction placed upon the Act by the State Court but held it invalid. Its decision was predicated upon the premise that the statute by attempting to compel a private carrier to assume the duties and obligations of a common carrier as a condition precedent to operating was in effect attempting to compel it to surrender a constitutional right in exchange for the right to use the public highway. In effect this would do indirectly what the court in Michigan Commission v. Duke (266 US 570) held could not be done directly, namely, by legislative fiat converting a private carrier into a common carrier.

¹⁰ Common carriers operating between fixed terminal or over regular routes.

¹¹ Illustrative of the extent to which regulated carriers deemed it necessary to go to meet unregulated competition is the following: Prior to the advent of the truck as a serious competitor for the traffic the rail rate for the transportation of gasoline from Los Angeles to El Centro was 45 cents. This rate was found not unreasonable by the Commission in C.R. Bird et al v. Southern Pacific Co., 33 CRC 259 (1929). On September 1, 1929, the railroads reduced the 45 cent rate to 32½ cents. A further reduction to 22 cents was made December 27, 1931, followed by still another reduction to 16 cents on December 16, 1933.

¹² Outstanding among these organizations was Regulated Carriers, Inc. During the period 1932 to 1935, inclusive, this organization filed 192 complaints with the Commission alleging unlawful operation.

and the Commission so found. The cease and desist orders which followed the persistent filing of complaints and the institution of investigations had a wholesome effect in so far as transportation of less than truckload and less than carload shipments was concerned. It had little effect upon carriers confining themselves to truckload shipments.¹³

By 1931 the transportation industry was in a chaotic condition. The Commission recognized this and on December 16, 1931, issued an order of investigation on its own motion for the purpose of bringing order out of chaos.

The Commission's decision in this matter was issued on October 10, 1932. It found that

"Regulation by the State is for the protection and welfare of the public and only incidentally for the protection of the regulated business. It had its inception in the need of protecting the public against the oppression and exactions of monopoly * * *. The advent of new transportation agencies, and the shifting of transportation from the rail and the water to the truck and the highway have brought about changed conditions which the law does not adequately cover. The very evils which regulation is intended to correct have returned in even more vicious form under a condition of the law where some of the transportation agencies are rigidly regulated, some are or may be partly regulated and some are not regulated at all. The public interest demands that regulation be extended alike over all or that it be withdrawn from all and the law of the jungle be given full and equal play."¹⁴

However, in the decision there was a strong inference that regulation of all carriers should be undertaken and if this course were to be followed, certain legislative recommendations were made.

During the 1933 legislative session a bill was introduced embodying some of the recommendations of the Commission. The bill failed of passage.

¹³ The complaints and investigations were mainly directed against the carriers transporting the relatively high rated small shipments.

¹⁴ In re Investigation of Transportation Systems of Calif., 38 CRC 81 (1932.)

However, it was the consensus of the Commission, all transportation agencies, shippers, farm bureaus, chambers of commerce and others, that statutes must be enacted to control and to preserve our transportation industry. In 1934, a committee was formed representing the railroads, steamship lines, certificated truck lines, contract truck lines, radial truck lines, shippers, farm bureaus and chambers of commerce. This committee met diligently throughout 1934 and during 1935 when the Legislature was in session; because of the diverse interests represented by the committee members, only compromise recommendations to the Legislature were made. The railroads and certificated carriers wanted strict and equal regulation for all carriers. The contract and radial carriers desired rate protection, but were opposed to any legislation which would limit the scope of their present or future operations. The shippers primarily wanted a system of rates established whereby their competitors could not obtain an undue rate advantage. Generally, the farm bureaus and chambers of commerce wanted regulation which would provide the lowest rates compatible with the maintenance of an adequate transportation system.

Notwithstanding these divergent views the Committee recommended to the 1935 Legislature for passage the Highway Carriers' Act, City Carriers' Act, Transportation Rate Fund Act and certain amendments to the Public Utilities Act. The measures were passed by substantial majorities.

Under the Highway Carriers' Act, the statute divides carriers into three classes, viz. highway common carriers,¹⁵ radial highway common carriers,¹⁶ and highway contract carriers. A right

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Hereafter sometimes referred to as certificated carriers.

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Hereafter sometimes collectively referred to as permitted carriers.

to operate extends to those in the two classes last mentioned almost as a matter of course, while those in the former must prove, under the provisions of the Public Utilities Act, that public convenience and necessity require their services. There are many other distinctions the more important of which is that highway common carriers (as well as rail and water carriers) must publish and file rates and charges from which they may not deviate. The permitted carriers are under no such compulsion. They may not charge less than minimum rates established by the Commission. However, they may charge more than minimum rates and are free to change their rates at will and without notice.

City carriers are not further classified. The term includes both those offering their services to the general public and those serving only a limited few under private contract. With respect to the right to operate and to the making of rates in excess of the minimum they have the freedom of the other permitted carriers.

There has been no substantive change in the acts since 1935. Thus the same general pattern of regulation has been continued. Some carriers are rigidly regulated; some are only partially regulated. The present statutes are inadequate to enable the Commission to develop a strong and stable transportation system. The ease with which totally unqualified operators can enter the transportation field is demoralizing.¹⁷

However, the 1935 statutes were beneficial in that they gave to the Commission rate-making powers. Immediately after their passage the Commission embarked upon a statewide minimum rate program. By successive steps minimum rates have been established

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Under the Highway Carriers' and City Carriers' Acts, one desiring to undertake transportation need but file a pre-forma petition showing that he has protection against liability for personal injury to one person in the sum of \$5,000 or the sum of \$10,000 if injury occurs to more than one person and protection against liability in the sum of \$5,000 for damage to property. Upon this showing a permit issues as a matter of course.

for practically all commodities. This stabilized transportation to some extent and prevented a complete breakdown of our transportation system. The Commission is now actively continuing the rate stabilization program.

After the 1935 statutes were enacted it was generally agreed that at some future date the Acts should be strengthened. In a rate proceeding decided December 27, 1938 (Case 4246, Decision 31606) the Commission said:

"Although under the Public Utilities Act certificates of public convenience and necessity are required before any common carrier services may be inaugurated, permits for radial highway common and highway contract carrier operations must, upon compliance with the insurance requirements and other provisions of the Highway Carriers' Act, issue as a matter of course. The ease with which truck equipment can be purchased and an operating permit obtained attracts unwarranted numbers of new operators into fields of transportation already adequately served, and the available traffic must be shared with these new operators. Finding insufficient tonnage in the fields in which they first intend to serve, these carriers are wont to invade other fields of transportation for which they are often not economically fitted, and thus to jeopardize the earnings and service of the carriers already in that field.

So long as the situation just described exists the public cannot be given the advantage of rates nearly as low as they could enjoy were the carriers able to obtain full use of their equipment and thus reduce their unit costs. The only satisfactory means through which this end can be obtained appears to be through the enactment of new legislation requiring persons seeking to enter the for-hire transportation field, and to use the public highways for private gain, to establish, before a permit is issued, that their entry will be in the public interest." (Emphasis supplied.) (41 C.R.C.671,674, (1938)).

Bills were introduced during the 1939 and 1941 sessions

of the Legislature to carry into effect the Commission's recommendation, but both failed of passage.

At the end of 1941 the nation was engaged in World War II. Our transportation systems were sorely taxed to carry war materials and essential civilian traffic. Because of directives of the Office of Defense Transportation and other Federal agencies, truck carriers were required to expand enormously the scope of their prewar activities. It was inevitable that during the war period most truck operations purportedly operating as contract or radial carriers were in fact common carriers requiring certificates of public convenience and necessity. This status, while forced upon them by directives of Federal agencies, was acquiesced in by this Commission. It was more important to move war materials than it was to impede the free flow of traffic by requiring carriers to operate within the circumscribed orbit of radial or contract carriers. During the postwar readjustment period the truck carriers generally, except upon order of this Commission, have not curtailed to any great extent their expanded operations.

Present Transportation Conditions

Permitted truck operators are now the dominant carriers in California. On June 30, 1948 there were 14,361 such carriers. Compared to this there were 4 trunk line railroads, a few short line rail carriers, and approximately 200 certificated truck lines. Between the metropolitan areas of San Francisco and Los Angeles approximately 14.6 per cent of the traffic is moved by the

certificated carriers, while 82.5 per cent is moved by permitted carriers. The balance of the traffic moves in shipper-owned trucks.

On a revenue basis the growth and relative importance of the transportation carriers is shown in the following table:

| Class of Carrier | Annual Gross Operating Revenues and Percents of Totals | | | |
|--------------------------------|---|-------------|--------------------|-------------|
| | 1938 | | 1948 | |
| | Revenues | % of Total | Revenues | % of Total |
| Steam Railroads | \$32,300,204 | 27.8 | \$84,915,000 | 22.0 |
| Electric Railroads | 1,915,216 | 1.6 | 3,535,000 | .9 |
| Water Carriers | 2,741,520 | 2.4 | 2,620,000 | .7 |
| Express Carriers | 2,677,814 | 2.3 | 14,675,000 | 3.8 |
| Highway Carriers ¹⁸ | <u>76,507,978</u> | <u>65.2</u> | <u>280,705,000</u> | <u>72.6</u> |
| Grand Total | \$116,142,732 | 100.0 | \$366,450,000 | 100.0 |

The phenomenal growth of the radial and contract carriers cannot be attributed wholly to indiscriminate solicitation or advertising. Primarily their growth was in response to a public demand and in most cases a public need for their services. The railroads concentrated their efforts on obtaining the long haul carload business. Certificated truck lines specialized in handling small shipments so that today their average shipment weighs less than 400 pounds.

In 1941 there were approximately 8000 permitted carriers. As previously stated, on June 30, 1948, there were 14361 such carriers. Under present laws the ease with which they may obtain permits attracts untold numbers of marginal operators to enter a highly competitive field without having the necessary experience or financial resources. The following table compiled from the Commission's records is illustrative:

| | Highway and City Permits revoked in 1948 | | | | | |
|--|---|--------------|--------------|--------------|--------------|--------------|
| | Under 1 yr. | 1 to 2 years | 2 to 3 years | 3 to 4 years | 4 to 5 years | Over 5 years |
| | Number | Per Cent | Number | Per Cent | Number | Per Cent |
| | 4650 | 57 | 1394 | 23 | 658 | 8 |
| | | | 301 | 4 | 199 | 2 |
| | | | | | 445 | 6 |
| | | | | | | 8147 |
| | | | | | | 100 |

¹⁸ Of the total truck revenue approximately 16% accrues to certificated carriers operating within the scope of their certificates of public convenience and necessity.

Over a 10-year period (1939 - 1948, both inclusive) the Commission granted 60,300 permits and revoked 54,267 permits. The main causes for the revocations were the failure to carry adequate public liability and property damage insurance and to pay fees required by the Transportation Rate Fund Act. (Statutes 1935, Chapter 693.)

Considering that the permitted carriers presently are transporting the bulk of the traffic, their short lives and rapid turnover do not point to a future sound transportation system. This situation tends to dilute the traffic, weaken the financially sound carriers and lessen the load and use factors of trucks. These factors have a profound effect on the level of rates established by the Commission as well as the service rendered.

Another major reason which has contributed to an unsound transportation system, is the uncertain status of the contract and radial carriers. Both the carriers and shippers are confused as the present laws do not define with certainty what the carriers may or may not do to keep their operations within the purview of the Highway Carriers' Act. They are defined by exclusions, as any highway carrier of property, provided they are not a certificated highway common carrier as defined in Section 2-3/4 of the Public Utilities Act. But in none of the statutes is there a clear cut line of demarcation drawn between a permitted carrier and a certificated carrier. Nor is there any definite standard set forth in the decisions of this Commission or the courts which has made it possible to establish a rule of thumb to determine the status of permitted carriers. As we

construe the present laws, each case must be determined upon all the facts in the record made before the Commission. We said in Re Morris, 47 C.R.C. 267, 274:

"In determining status, consideration of legal principles distinguishing common carriage and private carriage appears to be an appropriate and relevant guide. As noted in Re Hiron (1928), 32 C.R.C. 48, carriers have always been classified in law as public and private, their duties and liabilities being distinct. And no hard and fast rule has been devised for determining whether one transporting persons or property falls within one class or the other. The Highway Carriers' Act of 1935 did not create a third general class of carrier, but recognized that the theretofore unregulated private carrier for hire should be subjected to some degree of regulation. Before 1935, numerous respondents or defendants in status proceedings urged the existence of verbal or written contracts as evidence of private carrier status, and gradually the term 'contract carrier' came into usage as a synonym for private carrier.*****"

The status of permitted carriers is indeed precarious. If we accept as a criterion past decisions of the Commission in status proceedings, it is our informed judgment that approximately 90% of such carriers may be operating in violation of Section 50-3/4 of the Public Utilities Act. They are continually in jeopardy of having their operations discontinued or materially curtailed if found by this Commission to be operating in violation of the Public Utilities Act. Moreover, they and the shippers, who knowingly aid or abet unlawful operations, are subject to severe penalties as provided for in the same Act.

Because of their forced expanded operations during the war period, and for other reasons heretofore set forth, we believe most of these carriers have been unwittingly lulled into a false sense of security. Many formal and informal complaints have been recently filed with the Commission by the competitors of the permitted carriers seeking cease and desist orders prohibiting permitted carriers from operating as certificated carriers without first having obtained a certificate of public convenience and necessity from the Commission.

Many proceedings of this nature have been heard, are now pending or have been decided by the Commission. Their disposition was and is not an easy task. Hearings usually are prolonged and costly to the Commission and the litigants. The operations of each alleged illegal operator must be carefully scrutinized and the Commission must decide, without a charted course to guide it, whether the carrier's operations have crossed the uncertain line of demarcation between a permitted and a certificated carrier. If the carrier has transgressed, it is ordered to cease and desist from violating Section 50-3/4 of the Public Utilities Act. But the Commission is unable under the present statutes to tell it exactly what it can continue to do as a permitted carrier.

The vast number of permitted carriers, whose operations are legally questionable, present a problem which must be met squarely and constructively, with the best interest of the public of paramount consideration. We cannot fail to heed the fact that the enormously expanded population of this state is now geared to truck transportation, with the permitted carriers dominant in the field. Whatever brought this about is not now of great importance. Of great importance, however, is a realistic approach to the problems which will cure an intolerable transportation condition and create a stable and enduring transportation system composed of all forms of transportation, which will adequately serve the public under just and reasonable rates.

Transportation does not flourish best as a regulated monopoly. Historically it always has been a highly competitive undertaking. It is, however, a business clothed with a great public responsibility and one so interwoven with the economic welfare of the nation it cannot be conducted in the public interest without some restraint. Without any, or partial, regulation, discriminations and other unfair practices flourish. Past experience gained by events transpiring during the past century has amply demonstrated that under such conditions the public suffers. Indeed, the vicious evils flowing from lack of regulation brought into being in 1887 the Interstate Commerce Commission, after an aroused public demanded

its creation (Act to Regulate Commerce). Likewise, an aroused
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public created the present Commission.

The regulatory purposes of neither the Federal nor State Acts were to create transportation monopolies. They were enacted to protect the public from extortionate or discriminatory rates and to prevent favored shippers from receiving rebates or obtaining preferential treatment. Transportation systems competed one with the other but originally were treated equally from a regulatory standpoint. The pattern of transportation regulation has been "regulated competition." (See In re Application of Santa Fe Transportation Co., 41 C.R.C. 239) (1938).

Regulated competition should be fair to all carriers and should be administered for the welfare of the public. For the reasons heretofore stated, carriers presently handling the bulk of the traffic now are loosely regulated. Sound public policy demands that the carriers now operating under the guise of contract or radial carriers but who are in fact operating contrary to the provisions of Section 50-3/4 of the Public Utilities Act, should be subject to substantially the same degree of regulation as the certificated carriers.

We are faced with an anomalous condition. Many of the contract and radial carriers realize their precarious position. Most of them would be willing to submit to regulation under the provisions of the Public Utilities Act. However, until recently, with few exceptions, they have been hesitant to file applications for certificates of public convenience and necessity. Probably the reason for this is twofold: First, in the early formative period of the trucking industry the Commission adopted a somewhat circumscribed concept of public convenience and necessity; (a) proof of ability and willingness of railroads, steamship lines

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Prior thereto (since 1873) some measure of transportation regulation, largely ineffective, was attempted.

and certificated carriers to perform the proposed service nearly always resulted in a denial of the application and (b) that prior operations which knowingly or unknowingly should have been conducted within the purview of the Public Utilities Act were per se reason for denial. Second, carriers are fearful lest they become embroiled in costly and prolonged litigation.

Historically, the term "public convenience and necessity" lodged a fairly broad discretion with the Commission not circumscribed by precise or artificial tests. In a broad sense, we believe that in determining public convenience and necessity we should do that which is necessary to provide the public with a stable and enduring transportation system which adequately meets the needs of commerce.

In the Commission's considered judgment, two steps should be taken to achieve this objective: (1) the present statutes should be materially strengthened, and (2) the Commission should declare its future transportation policy so that the present confused and unstable conditions will be alleviated.

LEGISLATION

Appendix A, attached hereto, reflects the considered judgment of the Commission as the optimum amendments to the present statutes which should be made at this time. They are designed so that each truck operator may be classified, within the framework of the statutes, according to his dedication of service to the public. If each carrier is fitted into a definite classification, and does not stray into foreign fields, it may attain the dignity of operating without running afoul of the statutes.

The proposals may not be the ultimate. They have been tempered with the realization that a relatively new transportation agency which has been only partially regulated will now be more completely regulated. We believe the wise course dictates a gradual rather than abrupt transition to more effective regulation.

The Commission has changed its policy in certificate proceedings to minimize time and expense by holding prehearing conferences, limiting the time for presentation of evidence by the interested parties and generally excluding evidence of alleged prior illegal operations.

We are strongly in favor of the legislation set forth in Appendix A and it will be our purpose to have introduced in the Legislature a Bill embodying such proposals. Wholly aside from any legislation which might be enacted we consider it may be helpful to the public and the transportation industry to make a declaration of policy which should be applicable now.

DECLARATION OF POLICY

1. The Commission should be liberal in granting certificates of public convenience and necessity.

2. Contract and radial permittees are placed on notice that if they have reason to believe their operations come within the provisions of the Public Utilities Act, they should file applications for certificates.

3. The Commission in granting certificates of public convenience and necessity will follow a policy of strictly limiting such certificates to the scope of operation justified by the showing made, giving consideration to such matters as types and quantities of commodities, and the areas to be served.

4. Permitted carriers who operate in violation of Section 50-3/4 of the Public Utilities Act are placed on notice that they may be ordered to cease and desist therefrom or that their permits may be suspended or revoked.

5. The rate stabilization program of the Commission will be continued vigorously. Carriers who willfully violate the Commission's rate orders will be prosecuted by the Commission by suing for penalties provided for by the statutes or by suspension or revocation of certificates or permits or both. Shippers who knowingly aid or abet carriers

in rate violations will be prosecuted under the penalty provisions of the Acts.

* * *

This opinion supersedes Decision No. 41470, supra, in so far as it conflicts with the findings contained therein.

No order is necessary, and none will be issued.

Dated at San Francisco, California, this 22nd day of March, 1949.

R. Z. Anderson
Justus Z. Craemer
Ernest L. Howell
Harold H. Huls
Samuel W. Potter
Commissioners

APPENDIX A

SUGGESTED REVISIONS OF PUBLIC UTILITIES ACT

Amend Section 2-3/4(c) to read:

The term "common carrier" when used in this act, in addition to the definition herein otherwise given, shall include every highway common carrier, their lessees, trustees, receivers or trustees appointed by any court whatsoever, operating within this State; and every irregular route highway common carrier, their lessees, trustees, receivers or trustees appointed by any court whatsoever, operating within this State.

Add Section 2-3/4(d):

The term "irregular route highway common carrier" when used in this Act means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any auto truck, or other self-propelled vehicle, used in the business of transportation of property as a common carrier for compensation over any public highway in this State and not usually or ordinarily between fixed termini or over regular routes, and not operating exclusively within the limits of an incorporated city or town, or city and county.

Add Section 2-3/4(e):

Nothing in this section shall be construed to include transportation of unprocessed agricultural commodities from point of production to processing or storage plant.

Amend Section 50-3/4(a) to read:

No highway common carrier, or irregular route highway common carrier, shall hereafter operate or cause to be operated

any auto truck, or other self-propelled vehicle not operated on rails, for the transportation of property as a common carrier for compensation on any public highway in this State except in accordance with the provisions of this act.

Amend Section 50-3/4(b) to read:

The Railroad Commission of the State of California is hereby vested with power and authority to supervise and regulate every highway common carrier and irregular route highway common carrier in this State; to fix the rates, fares, charges, classifications, rules and regulations of each such highway common carrier and irregular route highway common carrier; to regulate the accounts, service and safety of operations of each such highway common carrier and irregular route highway common carrier, to require the filing of annual and other reports and of other data by such highway common carriers and irregular route highway common carriers; and to supervise and regulate highway common carriers and irregular route highway common carriers in all other matters affecting the relationship between such carriers and the shipping public. The Railroad Commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations applicable to any and all highway common carriers and irregular route highway common carriers. The Railroad Commission, in the exercise of the jurisdiction conferred upon it by the Constitution of this State and by this act, shall have power and authority to make orders and to prescribe rules and regulations affecting highway common carriers and irregular route highway common carriers, notwithstanding the provisions of any ordinance or permit of any incorporated city or town, city and county, or county, and in case of conflict between any such order, rule or regulations and any such ordinance or permit, the order, rule or regulation of the Railroad Commission shall in each instance prevail.

Amend Section 50-3/4(c) to read:

No highway common carrier or irregular route highway common carrier shall hereafter begin to operate any auto truck, or other self-propelled vehicle, for the transportation of property for compensation on any public highway in this State without first having obtained from the Railroad Commission a certificate declaring that public convenience and necessity require such operation, but no such certificate shall be required of any highway common carrier as to the fixed termini between which, or the route over which it was actually operating as a highway common carrier on July 26, 1917, and in good faith continuously thereafter, or for operations exclusively within the limits of an incorporated city, town or city and county, conducted by either a highway common carrier or an irregular route highway common carrier, or for the performance of pickup, delivery, or transfer services by such a highway common carrier within such carrier's lawfully published pickup and delivery zones insofar as such pickup and delivery limits do not include territory in excess of three miles from the corporate limits of any incorporated city or town or three miles from the post office of any unincorporated point. Any right, privilege, franchise, or permit held, owned or obtained by any highway common carrier or irregular route highway common carrier may be sold, assigned, leased, transferred or inherited as other property, only upon authorization by the Railroad Commission. The Railroad Commission shall have power, with or without hearing, to issue said certificate as prayed for, or to refuse to issue the same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the right granted by said certificate such terms and conditions as, in its judgment, the public convenience and necessity require. Without the express approval of the commission, no certificate of public convenience and necessity issued to one highway common carrier or

irregular route highway common carrier under the provisions of this section, or heretofore issued by the commission to one highway common carrier for the transportation of property by auto truck or self-propelled vehicle, nor any operative right of one highway common carrier founded upon operations actually conducted in good faith on July 26, 1917, shall be combined, united or consolidated with any such certificate or operative right issued to or possessed by another highway common carrier or irregular route highway common carrier so as to permit through service between any point or points served, by one highway common carrier or irregular route highway common carrier, on the one hand, and any point or points served, by another highway common carrier or irregular route highway common carrier, on the other hand; nor, without the express approval of the commission, shall any through route or joint, through, combination, or proportional rate be established by one highway common carrier or irregular route highway common carrier between any point or points which it serves, on the one hand, and any point or points served by another highway common carrier or irregular route highway common carrier, on the other hand. Any one highway common carrier may establish through routes and joint rates, charges, and classifications between any and all points served by such highway common carrier under any and all certificates or operative rights issued to or possessed by such highway common carrier.

Any person or corporation possessing a radial highway common carrier permit on March 1, 1949, and continuously thereafter to the date of filing an application as herein provided may, on or before December 31, 1949, file an application for an irregular route highway common carrier certificate, setting forth the territories in which, and the points between which, operations have been conducted, the commodities which have been transported, and other pertinent data describing the operations which have been

conducted. The commission shall upon satisfactory showing, with or without hearing, and without further showing of public convenience and necessity, issue to such applicant a certificate of public convenience and necessity authorizing operation as an irregular route highway common carrier. Pending action by the commission upon such application, operations as described therein may be continued after December 31, 1949, subject to the provisions of the Highway Carriers' Act, as amended.

Any person or corporation not included within the provisions of the foregoing paragraph who, or which, when this section takes effect, possesses a radial highway common carrier permit, may continue operations pursuant to such permit until December 31, 1949; and if application for a certificate to operate as an irregular route highway common carrier is made to the commission on or prior to such date, said carrier may continue operations as described therein, subsequent to December 31, 1949, subject to the provisions of the Highway Carriers' Act, as amended, unless and until otherwise ordered by the commission.

The Railroad Commission may at any time for a good cause suspend, and upon notice to the holder of an operating right acquired by virtue of operations conducted on July 26, 1917, as aforesaid, or to the grantee of any certificate, and opportunity to be heard, revoke, alter or amend any such operative right or certificate.

Amend Section 57-1/2 to read:

In addition to the fees specified in section 57 of this act, the commission shall charge and collect the following fees:

For filing each application for a certificate of public convenience and necessity, or for the mortgage, lease, transfer or assignment thereof, \$50.00;

All fees charged and collected under this section shall be

paid, except as provided in the Transportation Rate Fund Act,
as amended, at least once each month into the State treasury to
the credit of the general fund.

APPENDIX ASUGGESTED REVISIONS OF THE HIGHWAY CARRIERS' ACT

Amend Section 1(g) to read:

The terms "highway common carrier" and "irregular route highway common carrier" when used in this act means every refer to those highway carriers operating as a common carriers subject to regulation as such by the Railroad Commission under the Public Utilities Act of the State of California, as amended.

Amend Section 1(h) to read:

The term "radial highway common carrier" when used in this act means every highway carrier operating as a common carrier not heretofore subject to regulation as such by the Railroad Commission under the Public Utilities Act of the State of California, as amended.

The term "initial agricultural carrier" when used in this act means every highway carrier engaged in the transportation of unprocessed agricultural commodities from a point of production to a processing or storage plant.

Amend Section 1(i) to read:

The term "highway contract carrier" when used in this act means every highway carrier other than a highway common carrier as defined in subsection (g) and every radial highway common carrier as defined in subsection (h) which does not hold itself out to serve the public or any portion thereof generally and does not include a highway common carrier, an irregular route highway common carrier, or an initial agricultural carrier.

Amend Section 2 to read:

No highway carrier other than a highway common carrier or irregular route highway common carrier shall engage in the business of the transportation of property for compensation by motor vehicle over any public highway in this State, except in accordance with the provisions of this act, which the Legislature hereby declares to be enacted under the power of the State to regulate the use of public highways.

Amend Section 3 to read:

Except as herein provided, no highway carrier, other than a highway common carrier or irregular route highway common carrier, shall engage in the business of transportation of property for compensation by motor vehicle on any public highway in this State without first having obtained from the Railroad Commission a permit authorizing such operation. Any highway carrier desiring a permit to operate hereunder as a highway carrier other than a highway common carrier or irregular route highway common carrier shall file a petition therefor with the Railroad Commission. Such petition shall set forth the name and address of the applicant, the names and addresses of its officers, if any, full information concerning the financial condition and physical properties of applicant, and such other information necessary to the enforcement of this act, as the Railroad Commission may require. Except as otherwise provided in this act, a permit must be issued by the commission upon compliance with this act. Any operating permit not exercised for a period of one year shall lapse and terminate. be in such form and contain such information as may be prescribed by the commission.

Before a permit is issued hereafter the commission shall require that applicant establish ability, experience, and financial responsibility, and also establish that the proposed operation will

be in the public interest; provided, however, that an applicant for an initial agricultural permit need establish only ability, experience, and financial responsibility. The commission shall have power, with or without hearing, to issue said permit as prayed for, or to refuse to issue the same, or to issue it for a partial exercise only of said privilege sought, and may attach thereto such terms and conditions as, in its judgment, the public interest requires. Highway contract carrier permits issued on and after the effective date of this act shall remain in effect unless or until otherwise ordered by the commission; provided, however, that such permit shall lapse and terminate if not exercised for a period of six months. Any highway contract carrier permit may be sold, assigned, leased, transferred or inherited only upon authorization by the Railroad Commission. Initial agricultural carrier permits except as otherwise provided by the commission under Section 3-3/4 of this act, shall expire on December thirty-first of the year in which issued unless sooner terminated or revoked by order of the commission.

Any person or corporation possessing a highway contract carrier permit on March 1, 1949, and continuously thereafter to the date of filing a petition as herein provided may, on or before December 31, 1949, file a petition for a highway contract carrier permit, setting forth the parties for whom, the territories in which, and the points between which, operations have been conducted, commodities which have been transported, and other pertinent data describing the operations which have been conducted. The commission shall, upon satisfactory showing, with or without hearing, and without further showing of public interest, issue to such applicant a highway contract carrier permit, as provided for in the preceding paragraph hereof, attaching to such permit such terms and conditions as, in its judgment, the public interest requires. Pending action by the commission upon such petition operations as

described therein may be continued after December 31, 1949 subject to the provisions of this act.

Any person or corporation not included within the provisions of the foregoing paragraph who, or which, when this section takes effect, possesses a highway contract carrier permit, may continue operations pursuant to such permit until December 31, 1949; and if petition for a permit to operate as a highway contract carrier is made to the commission on or prior to such date, said carrier may continue operations as described in said petition subsequent to December 31, 1949, subject to the provisions of this act, unless and until otherwise ordered by the commission.

Except where petition has been filed for a permit as provided for in the two preceding paragraphs hereof, or application has been filed for a certificate to operate as an irregular route highway common carrier as provided for in the corresponding paragraphs of Section 50-3/4 (c) of the Public Utilities Act, as amended, no operations may be conducted subsequent to December 31, 1949, founded upon highway contract or radial highway common carrier permits issued prior to the effective date of this act.

Add a new Section 3-1/2 to read:

Subsequent to December 31, 1949, no highway contract carrier shall conduct operations under the provisions of this act unless and until said carrier shall file with the commission evidence in such form as the commission may prescribe that there is in existence, as to each shipper for whom such carrier transports or proposes to transport property, a valid and effective written bilateral contract imposing specific obligations upon both carrier and shipper or shippers, setting forth the points or areas served, the nature and amount of commodities to be transported,

the effective period of the contract, charges made thereunder, and the special, unique, or peculiar circumstances incident to the transportation involved. Should it appear that a contract on file as herein provided does not comply with the conditions set forth in this section, the commission may, in its discretion, with or without hearing, order said carrier to cease and desist from conducting operations pursuant to said contract.

Add Section 3-3/4 to read:

To provide for service for which there is an immediate and urgent need, the Railroad Commission may, in its discretion and without hearing or other proceeding, grant temporary authority for such service to an initial agricultural carrier. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the commission shall specify but for not more than an aggregate of 180 days, and shall create no presumption that a corresponding permit will be granted thereafter under the provisions of Section 3 hereof.

Amend Section 5 to read:

The Railroad Commission shall, in granting permits under the provisions of this act, and in issuing certificates under the Public Utilities Act, as amended, require the highway carrier to procure, and continue in effect during the life of the permit or certificate, adequate protection, as required in section 6 hereof, against liability imposed by law upon such highway carrier for the payment of damages for personal bodily injuries (including death resulting therefrom) in the amount of not less than five thousand dollars on account of bodily injuries to, or death of, one person; and protection against a total liability of such highway carrier on account of bodily injuries to, or death of, more than one person, as a result of any one accident, in the amount of not less than ten thousand dollars; and protection in an amount of not less than five thousand dollars for one accident resulting in damage or destruction of property whether the property of one, or more than one claimant.

Amend Section 7 to read:

The protection against liability as outlined in section 5 hereof must be continued in effect during the active life of the permit or certificate. and the The commission shall have power, with or without hearing, to suspend or revoke any permit issued under this act or any certificate issued under the Public Utilities Act, as amended, for failure to comply with the requirements of sections 5 and 6 hereof. The policy of insurance, surety bond or personal bond shall not be cancellable on less than ten (10) days written notice to the Railroad Commission. The Railroad Commission shall have power to establish such rules and regulations as may be necessary to carry out the provisions of sections 5 to 7, inclusive.

Amend Section 8 to read:

No highway carrier shall operate any motor vehicle over any public highway unless there shall be displayed on such vehicle a distinctive license plate in the form to be prescribed by the Railroad Commission, showing the classification, as herein provided, to which such carrier belongs, but no such license plate shall be issued by the said commission until a permit under this act, or a certificate of public convenience and necessity as provided for under the provisions of the Public Utilities Act of the State of California has been issued to such carrier. No such plate shall be transferred from any vehicle to which it may have been assigned by the commission to any other vehicle to which it has not been so assigned. Upon the cancellation, revocation or other termination of any certificate or permit, the highway carrier to whom such permit or certificate may have been issued shall thereupon surrender and deliver to the commission any and all plates which may have been issued to such carrier hereunder. Upon the sale or other disposal of any vehicle to which such plates may have been assigned, the license plates assigned to such vehicle shall be returned to the commission, unless reassigned by the commission, an identification symbol in such form and in accordance with such rules and regulations as the commission may prescribe.

Add Section 8-1/4 to read:

The commission is vested with power and authority to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of its power and jurisdiction, to accomplish the purposes of this act.

Amend Section 10 to read:

The Railroad Commission shall, upon complaint or upon its own initiative without complaint, establish or approve just, reasonable,

and nondiscriminatory maximum or minimum or maximum and minimum rates to be charged by any highway carrier other than a highway common carrier or irregular route highway common carrier, now subject to the jurisdiction of said commission under the Public Utilities Act, as amended, for the transportation of property and for accessorial service performed by said highway carrier.

In establishing or approving such rates the commission shall take into account and give due and reasonable consideration to the cost of all of the transportation services performed, including length of haul, any additional transportation service performed, or to be performed, to, from, or beyond the regularly established termini of common carriers or of any accessorial service and the value of the commodity transported and the value of the facility reasonably necessary to perform such transportation service.

In the event the commission establishes minimum rates for transportation services by such highway carriers, such rates shall not exceed the current rates of common carriers by land subject to the provisions of the Public Utilities Act for the transportation of the same kind of property between the same points.

It shall be unlawful for any such highway carrier to charge or collect any lesser rate than the minimum rate or greater rate than the maximum rate established by the commission under this section.

The commission shall make such rules and regulations as may be necessary to the application and enforcement of the rates established or approved under the provisions of this act.

Amend Section 12(a) to read:

No highway carrier, other than a highway common carrier or irregular route 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.

Amend Section 12(b) to read:

No highway carrier, other than a highway common carrier or irregular route highway common carrier, or any officer, or agent thereof, or any person acting or employed by it, shall, by means of known false billing, classification, weight, weighing or report of weight, or by any other device, assist, suffer or permit any corporation or person to obtain transportation for any property between points within this State at rates less than the minimum rates or more than the maximum rates then established or approved by the Railroad Commission. No person, corporation or any officer, agent or employee of a corporation shall, by means of false billing, false, or incorrect classification, false weight or weighing, false representation as to the content or substance of a package, or false report or statement of weight, or by any other device or means, whether with or without the consent or connivance of a highway carrier other than a highway common carrier or irregular route highway common carrier, or any of its officers, agents or employees, seek to obtain or obtain such transportation for such property at less than the minimum rates or charges nor more than the maximum rates or charges established or approved by the commission and in force thereafter.

Amend Section 12(c) to read:

No person or corporation, or any officer, agent or employee of a corporation, shall knowingly, directly or indirectly by any false statement or representation as to cost or value or the nature

or extent of damage, or by the use of any false billing, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit or deposition, or upon any false, fictitious or fraudulent statement or entry obtain or attempt to obtain any allowance, rebate or payment for damage in connection with or growing out of the transportation of property, or an agreement to transport such property, whether with or without the consent or connivance of a highway carrier other than a highway common carrier or irregular route highway common carrier or any of its officers, agents, or employees; nor shall any highway carrier other than a highway common carrier or irregular route highway common carrier or any officer, agent or employee thereof, knowingly pay, or offer to pay any such allowance, rebate or claim for damage.

Amend Section 14(a) to read:

Every highway carrier other than a highway common carrier or irregular route highway common carrier and every officer, director, agent or employee of any such highway carrier who violates or who fails to comply with, or who procures, aids, or abets any violation by any such highway carrier of any provisions of this act, or who fails to obey, observe or comply with any order, decision, rule, regulation, direction, demand or requirement, or any part or provision thereof, of the commission, or of any operating permit issued hereunder to any such highway carrier, or who procures, aids or abets any highway carrier in his or its failure to obey, observe or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit, or any part or provision thereof, shall be guilty of a misdemeanor, and upon conviction thereof, be fined not more than five hundred dollars or imprisoned in the county jail for not more than three months, or both.

Amend Section 14-3/4 to read:

The commission may, in its discretion, at the instance or request of any highway carrier other than a highway common carrier or irregular route highway common carrier, suspend the operating permit of such carrier for a definite time during which it shall be unlawful for such carrier to conduct any operations as such carrier. Upon such suspension of said permit the commission shall thereupon require the removal from any vehicle or vehicles operated thereunder and the surrender to the commission of any distinctive symbol or license plates which may have been issued therefor. Upon the termination of such period of suspension the commission shall restore said permit and return to said carrier the distinctive symbols or license plates surrendered or such other and additional symbols or license plates as may be necessary.

Amend Section 15(a) to read:

Every highway carrier other than a highway common carrier or irregular route highway common carrier and every officer, director, agent or employee of any such highway carrier who violates or who fails to comply with, or who procures, aids or abets, any violation by any such highway carrier of any provision of this act, or who fails to obey, observe or comply with any order, decision, rule, regulation, direction, demand or requirement, or any part or provision thereof, of the commission, or of any operating permit issued hereunder to any such highway carrier, or who procures, aids or abets any such highway carrier in his or its failure to obey, observe or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit, or any part or provision thereof, is subject to a penalty of not more than five hundred dollars (\$500) for each offense.

Amend Section 20-1/4(a) to read:

The commission may require annual, periodical or special reports to be filed by all highway carriers other than highway common carriers or irregular route highway common carriers, prescribe the manner and form in which said reports shall be made and require from such carriers specific answers to all questions upon which the commission may deem information to be necessary. Such reports shall be under oath whenever the commission so requires. The commission may also require any such highway carrier to file with it a true copy of each or any contract, agreement or arrangement between such carrier and any other carrier or person in relation to any traffic affected by the provisions of this act, to which such carrier may be a party.

Amend Section 20-1/4(b) to read:

The commission may, in its discretion, prescribe the forms of any and all accounts, records and memoranda to be kept by highway carriers other than highway common carriers or irregular route highway common carriers and the length of time such accounts, records and memoranda shall be preserved, including the accounts, records and memoranda of the movement of traffic as well as of the receipt or expenditure of money. Where the commission has prescribed the forms of accounts, records and memoranda to be kept by such carriers for any of its business, it shall thereafter be unlawful for any such carrier to keep any accounts, records or memoranda for such business other than those so prescribed, or those prescribed by or under the authority of any other State or of the United States, excepting such accounts, records or memoranda as shall be explanatory of and supplemental to the accounts, records or memoranda prescribed by the commission. The commission or its duly authorized employees, representatives or inspectors shall at all times have access to all lands, buildings or

equipment of such carriers used in connection with the operation of their business as such carriers in this State, and also all accounts, records and memoranda, including all documents, books, papers and correspondence, now or hereafter existing, and kept or required to be kept by such carriers. The employees, representatives and inspectors of the commission shall have authority under its order or direction to inspect and examine any and all such lands, buildings, equipment, accounts, books, records and memoranda, including all documents, papers and correspondence, now or hereafter existing and kept or required to be kept by such carriers. The provisions of this section shall, to the extent deemed necessary by the commission, apply to persons having control, direct or indirect, over or affiliated with any such carrier.

SUGGESTED REVISIONS OF THE
CITY CARRIERS' ACT

Amend Section 1(f) to read:

The term "carrier" when used in this act means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever engaged in the transportation of property for compensation or hire as a business over any public highway in any city or city and county in this State by means of a motor vehicle or vehicles. However, it does not include the following:

(1) Any farmer resident of this State who occasionally transports from the place of production to a warehouse, regular market, place of storage, or place of shipment the farm products of neighboring farmers in exchange for like services or for a cash consideration or farm products for compensation. "Occasionally" as used in this section shall be construed to mean occasionally or for a total annual compensation from all sources for providing such transportation for hire of not more than six hundred dollars (\$600), and provided that such transportation shall constitute the sole transportation of persons or property for hire or compensation. Any such farmer shall keep available an account of each time he has transported such farm products and the compensation received therefor. The account of transportation performed and compensation received therefor, as herein provided, may be any simple method of record keeping and in cases where record keeping practices are such that reports upon truck operations are reported at the end of the operating season, such end-of-the-season reports shall be deemed adequate for the purposes of this section.

(2) Persons or corporations hauling their own property;

(3) Any farmer operating a motor vehicle or vehicles used

exclusively in the transportation of his live stock and agricultural commodities or in the transportation of supplies to his farm;

(4) Any nonprofit agricultural cooperative association organized and acting within the scope of its powers under Chapter 4, Division VI of the Agricultural Code to the extent only that it may be engaged in transporting its own property or the property of its members.

Amend Section 3 to read:

Except as hereinafter provided, no carrier shall engage in the business of transportation of property for compensation by motor vehicle over any public highway in any city in this State without having first obtained from the Railroad Commission a permit authorizing such operation. Any carrier desiring a permit to operate hereunder shall file a petition therefor with the Railroad Commission. Such petition shall set forth the name and address of the applicant, the names and addresses of its officers, if any, full information concerning the financial condition and physical properties of the applicant, and such other information necessary to the enforcement of this act, as the Railroad Commission may, by order require. Upon compliance with this act a permit shall be issued by the commission, but no such permit shall be granted to a foreign corporation unless such corporation is engaged in interstate commerce of like character within this State. Any operating permit not exercised for a period of one year shall lapse and terminate. be in such form and contain such information as may be prescribed by the commission.

Before a permit is issued hereafter, the commission shall require that applicant establish ability, experience, and financial responsibility, and also establish that the proposed operation will be in the public interest; provided, however, that an applicant for a city carrier permit to engage in the transportation of unprocessed agricultural commodities from a point of production to a processing or

storage plant or an applicant for a city carrier permit to operate within a city whose population is less than 150,000 need establish only ability, experience, and financial responsibility. The commission shall have power, with or without hearing, to issue said permit as prayed for, or to refuse to issue the same, or to issue it for a partial exercise only of said privilege sought, and may attach thereto such terms and conditions as, in its judgment, the public interest requires. Any city carrier permit may be sold, assigned, leased, transferred or inherited only upon authorization by the Railroad Commission. Permits issued on and after the effective date of this act shall remain in effect unless or until otherwise ordered by the commission; provided, however, that such permit shall lapse and terminate if not exercised for a period of six months; and provided, further, however, that permits issued to engage in the transportation of unprocessed agricultural commodities from a point of production to a processing or storage plant shall expire on December thirty-first of the year in which issued unless sooner terminated or revoked by order of the commission.

Any person or corporation possessing a city carrier permit on March 1, 1949, and continuously thereafter to the date of filing a petition as herein provided, may, on or before December 31, 1949, file a petition for a city carrier permit, setting forth the city or cities in which operations have been conducted, commodities which have been transported, and other pertinent data describing the operations which have been conducted. The commission shall, upon satisfactory showing, with or without hearing, and without further showing of public interest, issue to such applicant a city carrier permit, as provided for in the preceding paragraph hereof, attaching to such permit such terms and conditions as, in its judgment, the public interest requires. Pending action by the commission upon such petition, operations as described therein may be continued after December 31, 1949 subject to the provisions of this act.

Any person or corporation not included within the provisions of the foregoing paragraph who, or which, when this section takes effect, possesses a city carrier permit may continue operations pursuant to such permit until December 31, 1949; and if petition for a permit to operate as a city carrier is made to the commission on or prior to such date, said carrier may continue operations as described in said petition subsequent to December 31, 1949, subject to the provisions of this act, unless and until otherwise ordered by the commission.

Except where petition has been filed for a permit as provided for in the two preceding paragraphs hereof, no operations may be conducted subsequent to December 31, 1949 founded upon city carrier permits issued prior to the effective date of this paragraph.

Add Section 3-3/4 to read:

To provide for service for which there is an immediate and urgent need, the Railroad Commission may, in its discretion and without hearing or other proceedings, grant temporary authority for such service to a city carrier to engage in the transportation of unprocessed agricultural commodities from a point of production to a processing or storage plant. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the commission shall specify but for not more than an aggregate of 180 days, and shall create no presumption that a corresponding permit will be granted thereafter under the provisions of section 3 hereof.

Amend Section 6 to read:

The protection against liability as outlined in section 4 hereof must be continued in effect during the life of the permit, and the The commission shall have power, with or without hearing, to suspend or revoke any permit issued under this act for failure to comply with the requirements of sections 4 and 5 hereof. The

policy of insurance, surety bond or personal bond shall not be cancellable on less than ten (10) days written notice to the Railroad Commission. The Railroad Commission shall have the power to establish such rules and regulations as may be necessary to carry out the provisions of sections 4 to 5, inclusive.

Amend Section 7 to read:

Each carrier shall display on each vehicle operated by it a distinctive license plate in the form to be prescribed by the Railroad Commission, an identification symbol in such form and in accordance with such rules and regulations as the commission may prescribe.

Add Section 7-1/4 to read:

The commission is vested with power and authority to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of its power and jurisdiction to accomplish the purposes of this act.

Repeal Section 8:

A fee of three dollars (\$3.00) shall be paid to the Railroad Commission for filing each application for an operating permit. Each permittee shall also pay to the Railroad Commission on or before the first day of January of each year, a fee of one dollar (\$1.00) for the registration of his permit. All moneys collected by the Railroad Commission under this act shall be deposited at least once each month into the State treasury, to the credit of the general fund, and a detailed statement thereof shall be transmitted to the State Controller.

Add Section 12-7/8 to read:

In all proceedings instituted by or pending before the commission under this act the commission may from time to time make such interim, interlocutory or other orders as it may deem advisable.

No such order shall operate as a final determination of the proceeding, and the commission shall have power at any time thereafter to make such further orders as it may deem advisable with respect to the matters considered and determined in such order or to other matters involved in said proceeding. A petition for rehearing with respect to any such order may be filed by any party to such proceeding or any stockholder or bondholder or other party pecuniarily interested in the carrier affected, within the time after the making of such interim, interlocutory or other order and for the reasons provided in section 66, Public Utilities Act, and may be acted upon by the commission within the time and in the manner therein provided. Any such order may be reviewed as provided in section 67, Public Utilities Act, and the provisions of said section are hereby made applicable to any such proceeding. Upon such review, only that portion of the record in such proceeding considered by the commission and upon which it acted in making the order sought to be reviewed, need be certified to and considered by the Supreme Court of the State of California.

Amend Section 13 to read:

Any person or any director, officer, agent or employee of a corporation who shall violate any of the provisions of this act or of any operating permit issued hereunder to any carrier, or any order, rule or regulation of said commission, shall be guilty of a misdemeanor and, upon conviction thereof, be fined not more than five hundred dollars or imprisoned in the county jail for not more than three months, or both. The operating permit, if any, shall, at the discretion of said commission, be subject to cancellation for such violation, and said commission shall thereupon require the removal from such vehicle operated thereunder of any distinctive symbols or

license plates herein provided for, which may have been issued therefor.

(a) Every carrier and every officer, director, agent or employee of any such carrier who violates or who fails to comply with, or who procures, aids, or abets any violation by any such carrier of any provisions of this act, or who fails to obey, observe or comply with any order, decision, rule, regulation, direction, demand or requirement, or any part or provision thereof, of the commission, or of any operating permit issued hereunder to any such carrier, or who procures, aids or abets any carrier in his or its failure to obey, observe or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit, or any part or provision thereof, shall be guilty of a misdemeanor, and upon conviction thereof, be fined not more than five hundred dollars or imprisoned in the county jail for not more than three months, or both.

(b) Every corporation or person other than a carrier, who knowingly and wilfully, either individually, or acting as an officer, agent, or employee of a corporation, copartnership or any other person other than a carrier, violates any provision of this act or fails to observe, obey or comply with any order, decision, rule, regulation, direction, demand or requirement, or any part or provision thereof, of the commission, or who procures, aids or abets any such carrier in his or its violation of this act, or in his or its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand or requirement, or any part or provision thereof, shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not more than five hundred dollars or imprisoned in the county jail for not more than three months, or both.

Add Section 13-1/2 to read:

(a) The commission may in its discretion cancel, revoke, or

suspend the operating permit or permits of any carrier whenever it shall appear that said carrier has conducted any carrier operations illegally, or has violated any of the provisions of this act, or of any operating permit issued thereunder, or of any order, decision, rule, regulation, direction, demand, or requirement, or any part or portion thereof, established by the commission pursuant to the provisions of this act; or has been convicted of any misdemeanor under this act; or has suffered a judgment for any penalty imposed under this act; or has failed to pay within the time required by law any fee imposed upon such carrier.

(b) After the cancellation or revocation of said permit, or during the period of its suspension, it shall be unlawful for such carrier to conduct any operations as said carrier. The commission may, in its discretion, either grant or deny an application for a new permit or permits whenever it appears that a prior permit of the applicant has been canceled or revoked pursuant to paragraph (a) hereof, or whenever it appears, after hearing, that as a prior permit holder, the applicant engaged in any of the unlawful activities set forth in paragraph (a) hereof for which his permit might have been canceled or revoked.

Add Section 13-3/4 to read:

The commission may, in its discretion, at the instance or request of any carrier, suspend the operating permit of such carrier for a definite time during which it shall be unlawful for such carrier to conduct any operations as said carrier.

Amend Section 14 to read:

Any person or corporation who violates or fails to comply with any provision of this act, or who fails, omits or neglects to obey,

observe or comply with any order, decision, rule, direction or requirement or any part or provision thereof, of the commission, is subject to a penalty of not more than five hundred dollars for each offense.

(a) Every carrier and every officer, director, agent or employee of any such carrier who violates or who fails to comply with, or who procures, aids or abets, any violation by any such carrier of any provision of this act, or who fails to obey, observe or comply with any order, decision, rule, regulation, direction, demand or requirement, or any part or provision thereof, of the commission, or of any operating permit issued hereunder to any such carrier, or who procures, aids or abets any such carrier in his or its failure to obey, observe or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit, or any part or provision thereof, is subject to a penalty of not more than five hundred dollars (\$500) for each offense.

(b) Every corporation or person other than a carrier who knowingly and wilfully, either individually, or acting as an officer, agent or employee of a corporation, copartnership or any other person other than a carrier, violates any provision of this act or fails to observe, obey or comply with any order, decision, rule, regulation, direction, demand or requirement, or any part or provision thereof, of the commission, or who procures, aids, or abets any such carrier in his or its violation of this act, or in his or its failure to obey, observe or comply with any such order, decision, rule, regulation, direction, demand or requirement, or any part or provision thereof, is subject to a penalty of not more than five hundred dollars (\$500) for each offense.

Add Section 19-1/4 to read:

(a) The commission may require annual, periodical or special reports to be filed by all carriers, prescribe the manner and form in which said reports shall be made and require from such carriers specific answers to all questions upon which the commission may deem information to be necessary. Such reports shall be under oath whenever the commission so requires. The commission may also require any such carrier to file with it a true copy of each or any contract, agreement or arrangement between such carrier and any other carrier or person in relation to any traffic affected by the provisions of this act, to which such carrier may be a party.

(b) The commission may, in its discretion, prescribe the forms of any and all accounts, records and memoranda to be kept by carriers and the length of time such accounts, records and memoranda shall be preserved, including the accounts, records and memoranda of the movement of traffic as well as of the receipt or expenditure of money. Where the commission has prescribed the forms of accounts, records and memoranda to be kept by such carriers for any of its business, it shall thereafter be unlawful for any such carrier to keep any accounts, records or memoranda for such business other than those so prescribed, or those prescribed by or under the authority of any other State or of the United States, excepting such accounts, records or memoranda as shall be explanatory of and supplemental to the accounts, records or memoranda prescribed by the commission. The commission or its duly authorized employees, representatives or inspectors shall at all times have access to all lands, buildings or equipment of such carriers used in connection with the operation of their business as such carriers in this State, and also all accounts, records and memoranda, including all documents, books, papers and correspondence, now or hereafter existing, and kept or required to be

kept by such carriers. The employees, representatives and inspectors of the commission shall have authority under its order or direction to inspect and examine any and all such lands, buildings, equipment, accounts, books, records and memoranda, including all documents, papers and correspondence, now or hereafter existing and kept or required to be kept by such carriers. The provisions of this section shall, to the extent deemed necessary by the commission, apply to persons having control, direct or indirect, over or affiliated with any such carrier.

Add Section 19-1/2 to read:

No person shall be excused from attending and testifying or from producing any book, document, paper or account in any investigation or inquiry by or hearing before the commission or any commissioner or examiner, or in obedience to the subpoena of the commission, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of any of the provisions of this act, when ordered to do so, upon the ground that the testimony or evidence, book, document, paper or account required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall, under oath, have testified or produced documentary evidence before said commission, or in obedience to its subpoena, or in any such cause or proceeding; provided, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony.

Add Section 20-1/2 to read:

Any employee of the commission who divulges any fact or information which may come to his knowledge during the course of the examina-

tion of the accounts, records, and memoranda of carriers, as pro-
vided in section 19-1/4, except as he may be authorized or directed
by the commission or by a court of competent jurisdiction or judge
thereof, shall be guilty of a misdemeanor and, upon conviction there-
of, be fined not more than five hundred dollars or imprisoned in the
county jail for not more than three (3) months, or both.

SUGGESTED REVISIONS OF
TRANSPORTATION RATE FUND ACT

Amend Section 1 to read:

For the purpose of correlating and regulating the rates charged for the transportation of property by the various transportation agencies in the State subject to the jurisdiction of the Railroad Commission of the State of California and for the purpose of creating a special fund to administer and enforce the acts conferring upon the Railroad Commission of the State of California jurisdiction to regulate the rates of transportation agencies carrying property for compensation and to administer and enforce the "Highway Carriers' Act" and the "City Carriers' Act," every railroad corporation, express corporation, freight forwarder, and every person or corporation operating vessels, as these terms are defined in the Public Utilities Act of the State of California, and every motor transportation broker, as the term is defined in the Motor Transportation Brokers' Act, and every person or corporation owning or operating motor vehicles in the transportation of property for hire upon the public highways under the jurisdiction of the Railroad Commission of the State of California, shall, between the first and fifteenth days of October 1935, and thereafter between the first and fifteenth days of January, April, July, and October of each year, file with the Railroad Commission a statement showing the gross operating revenue derived by such person or corporation from the transportation of property for the preceding three calendar months, and shall at the time of filing such report pay to the said Railroad Commission of the State of California a fee of one dollar for each quarter, together with one-fourth of one per cent of the amount of such gross operating revenue.

A fee of three dollars shall be paid to the Railroad Commission for filing each application for an operating permit under the Highway Carriers' Act or City Carriers' Act. Each permittee shall also pay to the Railroad Commission, on or before the first day of January of each year, a fee of one dollar for the re-registration of his permit.

There shall be paid to the Railroad Commission a fee of five dollars for each application for a permit to operate as an initial agricultural carrier, a fee of twenty-five dollars for each application for a permit to operate as a highway contract carrier or for authority to transfer such permit, and a fee of twenty-five dollars for each application for a permit to operate as a city carrier or for authority to transfer such permit.

Amend Section 3 to read:

All fees charged and collected under this act and under the Public Utilities Act for the filing of applications for certificates of public convenience and necessity pursuant to Section 50-3/4 thereof shall be deposited at least once a month in the State treasury to the credit of the Railroad Commission transportation rate fund, which special fund is hereby created, and shall be in augmentation of the current appropriation by the Legislature for the support of the Railroad Commission of the State of California, and shall be expended by the Railroad Commission for the purpose of administering and enforcing the "Highway Carriers' Act," and the "City Carriers' Act," and the "Motor Transportation Brokers' Act," and also for the purpose of administering and enforcing those provisions of the Public Utilities Act and other acts of the State of California conferring upon the Railroad Commission jurisdiction over the rates, charges, and classifications, and the rules, regulations, and practices relating thereto, of carriers of property for compensation.

Appendix "B"

The list of appearances is as shown in Appendix "B" to Decision No. 41470 of April 13, 1948 and the following

ADDITIONAL APPEARANCES:

F. G. Ackerman, for Garden City Transfer Co.
Joe Arazia, for Santa Fe Transportation Co.
W. F. Bagline, for Richmond Transfer & Storage
L. A. Bailey & Jack L. Dawson, for California Warehouse Tariff Bureau
Rufus Bailey, for Motor Truck Assn. of Southern California
Charles S. Baxter, for Lockheed Aircraft Corporation and Los Angeles Traffic Managers Conference
H. J. Bischoff, for Southern California Freight Lines and Southern California Freight Forwarders
Calvin L. Blaine, for California Cattlemen's Association, California Wool Growers Association and Western States Meat Packers Association
C. R. Boyer, for Southwestern Portland Cement
Herbert Cameron, for California Dump Truck Owners Assn. and Moser Frozen Food Lines
Tom Clark, for Inland Transportation Corp.
Martin C. Colvin, for Belyea Truck Co.
Ralph Crandall, for Los Angeles Traffic Management Council
Frank O. Culy, for Culy Transportation Co.
Marjorie Deane, for Deane's Trucking Service
D. P. Dunn, for G. I. Trucking Co.
E. J. Dunne and W. H. Adams, for Shell Oil Co., Inc.
L. O. Eckstein, for Los Angeles Warehouse Co.
McIntyre Faries, for California Delivery Service
Larry Fites, for Truck Owners Assn.
J. G. Fitzhenry, for Sacramento Freight Lines
Edgar Flanders, for Hunt Transportation Co.
Marquam C. George, for Dump Truck Operators Assn.
Waldo A. Gillette and Joseph T. Enright, for Monolith Portland Cement Co.
Glanz & Russell by Theodore W. Russell, for Desert Express, Constructors Transport Co., and Boyle & Son

Appendix "B"

ADDITIONAL APPEARANCES:

E. M. Gordon, for Express Freight Lines
Hugh W. Hendrick, for Elmer Ahl
B. J. Hicks, for Santa Cruz Portland Cement
J. W. Huff and R. F. Walker, for Spreckels Sugar Co., and
Western Sugar Refinery
E. J. Hunter, for Crow Transportation Co.
C. S. Hutchins, for G. I. Trucking Co.
Rudolf Illing, for Columbia Steel Co.
W. S. Johnson, in propria persona
N. E. Keller, for Pacific Portland Cement
Jackson W. Kendall, for Bekins Van & Storage Co., Bekins Van
& Storage, Inc., and Bekins Van Lines
E. W. Kerttu, for California Moving & Storage Assn.
Frank A. Krauft and L. E. Osborne, for California Manufacturers
Assn.
P. S. Labaugh and Sylvia Kempton, for Cannery League of
California
William M. Larimore, for Wigle and Larimore
Peter M. Lazzari, for Machado Truck Lines
Fred T. Leonard, in propria persona
T. A. L. Loretz, in propria persona
Frank Loughran, for San Francisco Movers Inc.
Leon Love, for C. K. Randal Trucking Co. and Schober
Trucking Co.
David McCaulley, for McCaulley Moving & Storage Co.
V. E. McFarland and B. J. Feigenbaum, for Owens Illinois
Glass Co.
L. B. McLauren, for Bridge Service Corp.
Clair W. McLeod, for California Western Railroad
A. W. Merrifield, for Merrifield Trucking Co.
E. J. Moore, for Imperial Truck Lines
H. G. Moore, for Moore's Draying Co.
S. A. Moore, for Permanente Cement Co.
E. J. Murzio, for Motor Transport Division of Miles & Sons

Appendix "B"

ADDITIONAL APPEARANCES:

A. D. Paxton, for Paxton Trucking Co. and DeLair Trucking Co.
Pillsbury, Madison and Sutro by T. H. McBaine, for Western
Union Telegraph Co.
Paul Porton, for Libby, McNeil & Libby
James L. Roney, for Cannery League of California and S. & W.
Fine Foods
A. L. Russell, for Sears Roebuck & Co.
Jack P. Saunders, for Gerber Trucking Co.
A. F. Shumacher, for Owens-Illinois Glass Co., Pacific Coast
Division, 320 California St., San Francisco
C. D. Stephenson, for Union Oil Co.
Frank M. Taylor, for Butane Transport Co., Petrolane, Ltd.
Frank F. Terramorse, for Kentner Truck Line
Orin Thorkildsen, for Sterling Transit Co., Inc.
K. P. Thorpe, for Rexall Drug Assn. & Drug Shippers Assn.
J. Richard Townsend, for Pacific Portland Cement
Raymond Tremaine, for Charles S. McGregor
F. M. Turcotte, for Higgins Trucks Inc., and Charles C. Wilson
dba Fred C. Wilson & Sons
Marvin Vanderboort, for Palo Alto Storage Co.
Ross M. Van Gundy, for James Truck Lines
P. C. Weeks, for Paul C. Weeks Co.
Elmer B. White, for California Freight Service, Inc.
R. L. Whitehead, for Kraft Foods Co.
L. M. Wright, for Riverside Cement Co.

End of Appendix "B"