

**ORIGINAL**Decision No. 46571

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation to consider questions of )  
 construction, application, and procedure )  
 pertinent to the administration of the ) Case No. 5331  
 Household Goods Carriers Act. (Public )  
 Utilities Code, Sections 5101-5319.) )

(For Appearances see Appendix)

O P I N I O N

This proceeding was instituted on our own motion to consider questions of construction, application and procedure pertinent to the administration of the Household Goods Carriers Act (Statutes 1951, Chapter 974, as amended by Chapter 1726; Public Utilities Code, Sections 5101-5319) which became effective on September 22, 1951.

Public hearings were held on October 24 and 25, 1951, in San Francisco before Examiner Howard at which time oral and documentary evidence was received and the matter was submitted.

During the course of the hearing, questions relating to the act were raised and discussed by carriers or their representatives. The hope was expressed that the Commission would consider the problems broached and issue an advisory opinion for the guidance of those affected by the new act. This is not an adversary proceeding and no relief is being sought. With the object of aiding in the administration of this statute the Commission will express an opinion upon the questions raised. These fall generally into three groups which relate to:

1. The definition of a Household Goods Carrier.
2. The applicability of the Household Goods Carriers Act.
3. Grandfather rights as Household Goods Carriers.

The definition of a Household Goods Carrier.

A household goods carrier is defined in the Public Utilities Code in the following language:

"5109. 'Household goods carrier' includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in the transportation for compensation or hire as a business by means of a motor vehicle or motor vehicles being used exclusively in the transportation of used household goods and personal effects, office, store, and institution furniture and fixtures over any public highway in this State."

After reviewing the evolution of this section of the act from its form as originally introduced in the legislature to its final language as enacted, the meaning seems clear. We are of the opinion that every intrastate ~~for hire~~ <sup>or hire</sup> truck carrier who transports for compensation by means of a motor vehicle or motor vehicles any of the articles specified in such section and carries no other commodities in such vehicle or vehicles at the same time, is a household goods carrier when so operating and is subject to the Household Goods Carriers Act while performing such movement, except when such movement is entirely within a single city or city and county.

The applicability of the Household Goods Carriers Act.

The scope and embraciveness of the act is indicated by the following language of the Public Utilities Code:

"5112. The regulation of the transportation of used household goods and personal effects, office, store, and institution furniture and fixtures in a motor vehicle or motor vehicles being so used exclusively, over any public highway in this State shall be exclusively as provided in this chapter. Any provision of the Public Utilities Act or the Highway Carriers Act in conflict with the provisions of this chapter is superseded and repealed."

It seems clear from the first sentence above quoted that the Household Goods Carriers Act is designed to regulate all transportation of used household goods and personal effects, office, store, and institution furniture and fixtures in a motor vehicle or motor vehicles being so used exclusively, over any public highway

in California. The legal effect of the second sentence quoted above in conjunction with the section as a whole caused much comment and is of particular concern to existing certificated household goods carriers.

A query was voiced as to whether a radial or contract dry freight truck carrier who also at times transports used household goods, personal effects, office, store and institution furniture or fixtures is included within the above definition and would need a permit under the act involved. It is our conclusion that if such carrier employs a truck or trucks to transport used household goods exclusively at any time in an operation not intracity, he is subject to the Household Goods Carriers Act while so operating and must obtain a permit thereunder. If such trucker transports a mixed shipment consisting of general freight and used household goods, it is our opinion that said act does not apply to such movement.

A similar question was asked as to whether draymen who have been transporting office, store and institution furniture and fixtures to points outside a city must obtain permits to operate as household goods carriers or may continue to transport such articles by virtue of their radial highway common carrier or highway contract carrier permits. We are of the opinion that the answer given to the first question above applies here as well. If nothing but commodities specified in the Household Goods Carriers Act are hauled in the truck or trucks, the movement is subject to such act and a household goods permit must be obtained; however, if the shipment contains used household goods and other commodities not specified in the act, no such permit is necessary as the definition in the act does not include such transportation.

The question was raised whether the language of the section under consideration, purporting to repeal any provision of the Public Utilities Act in conflict with the Household Goods Carriers Act, has the effect of invalidating all certificates of public convenience and necessity or parts of such certificates which authorize transportation of used household goods and related articles as a highway common carrier.

The author of the assembly bill upon which the act was based introduced in evidence an opinion of the California Legislative Counsel. Such opinion expressed the view that enactment of the Household Goods Carriers Act would invalidate certificates of public convenience and necessity authorizing highway common carrier operations solely for the transportation of used household goods and related items. Others at the hearing were of the same opinion. A contrary belief was voiced by counsel for some of the existing certificated household goods carriers. The latter apparently believed the legislature could have nullified such certificates had it undertaken to do so, but argued that the legislature had not expressly so done. It is elementary that the repeal of statutes by implication is not favored. It will be presumed that the legislature did not intend by a later act to repeal a former one, if by a fair and reasonable construction effect can be given to both.

This question is important to some of the present certificated household goods carriers because of a collateral issue involved. A carrier possessing an intrastate certificate based on a showing of public convenience and necessity may register such certificate with the Interstate Commerce Commission and thus acquire authority to conduct commensurate interstate operations. If, however, the intrastate operative right is revoked, the interstate

authority will be terminated also. It was argued at the hearing, by those who contend that certificates of public convenience and necessity issued under the Public Utilities Act to carriers of household goods are invalidated, that interstate rights derived from registration of such certificates are invalid also.

The effect of the purported repealing section of the Household Goods Carriers Act upon existing certificated rights is a question to be finally determined by the Supreme Court of this State in a proper case. We will not attempt to prophesy what determination may be reached. It does seem inequitable, however, to require substitution of permitted authority for certificated rights when to do so would deprive carriers of interstate operative authority. It is understood that household goods carrier permits cannot be registered with the Interstate Commerce Commission because they are not predicated upon public convenience and necessity. A construction would be preferable, in our opinion, which would leave existing household goods certificates in effect to be supplemented or augmented by permits under the Household Goods Carriers Act to points they are not certificated to serve. Obviously, with such a result the present interstate rights would not be jeopardized and at the same time existing certificated carriers of household goods would be able to acquire intrastate rights to transport used household goods as extensive as those which may be obtained by for-hire carriers previously operating under radial highway common carrier or highway contract carrier permits.

Another problem discussed at the hearing should be mentioned at this juncture. It has to do with the transfer of permits obtained under the Household Goods Carriers Act. The pertinent language of the act as it appears in the Public Utilities Code reads as follows:

"5284. \*\*\*\*. No permit shall be sold, leased, assigned or otherwise transferred or encumbered by the holder thereof without first having secured from the commission an order authorizing the same. \*\*\*\*."

Attention was directed to the fact that no criteria for deciding applications for authority to transfer household goods carrier permits are prescribed by the Act. The Commission was urged to indicate what criteria will govern such proceedings. We are of the opinion that, in the absence of any standards in the new statute, the same tests applied in cases of transfers of certificates of public convenience and necessity should be followed. Authority to transfer, then, would be made to depend upon a finding of whether or not the proposed transfer will be adverse to the public interest.

Grandfather Right as Household Goods Carrier.

Establishment of the so-called grandfather right based on prior operation is provided for in the Household Goods Carriers Act in the following language as it appears in the Public Utilities Code:

"5133.5. Any person or corporation who was engaged in the business of transporting used household goods and personal effects, office, store, and institution furniture and fixtures over any public highway in this State for compensation on the effective date of this section and thereafter may file with the commission prior to January 1, 1952, an application for a permit as provided in Section 5134. The commission shall upon satisfactory proof of such operation issue such permit authorizing operation within the area requested in the application without further proceedings. Between the effective date hereof and the final determination of any such application the continuance of such operations shall be lawful."

Several matters relating to the application and interpretation of this section were discussed at the hearing. ✓

The most important of these interrogatories was whether an applicant under such section is limited to operations within the territory in which he is serving on the effective date of the Act and thereafter up to January 1, 1952.

Whether applicant is so limited depends upon the construction of the phrase "satisfactory proof of such operations." If such phrase refers to the nature of the operation as described in the first sentence, applicant is not so limited. If, however, "such operation" relates "to operations within the area requested," applicant is so restricted.

The evidence shows it is the opinion of the Legislative Counsel the sounder construction is that such phrase refers to the nature of the operations described by the first sentence of the above section. This view is supported by the legislative history of Assembly Bill 2923 which enacted this section. This bill as amended in the assembly, April 25, 1951, contained the following provision:

"Any person or corporation who is operating as a household goods carrier on the effective date of this section and continuously thereafter may file with the commission prior to January 1, 1952, an application for a permit as provided in Section 9 and the commission shall upon satisfactory proof of such operation issue such permit without further proceedings."

"Satisfactory proof of such operation" in the earlier form of the bill could have had reference only to the nature of the operations conducted by the applicant. The Legislative Counsel argues, therefore, it is reasonable to assume the legislature intended no change when it used substantially the same language in the later form of the bill and that the added language, "authorizing operation within the area requested in the application," had reference only to the permit and not to the scope of operation prior to January 1, 1952.

It is our opinion that the section under consideration should be so interpreted. Any carrier engaged in the business of transporting used household goods and related articles on the effective date of such section (September 22, 1951) and thereafter,

who establishes such operation by satisfactory proof, should be able to apply for and receive a permit authorizing operations as a household goods carrier within the area requested whether this be less or more than or the same as the territory served on September 22, 1951, and thereafter.

The remaining questions pertaining to this section are closely related and may be considered together. The first query refers directly to the section. It is whether applicants will be required to furnish documentary evidence to prove such operations. The next two questions relate to the form of application for a Household Goods Permit ("Grandfather") prepared by the Commission and designated as P & F 577. Specific reference is to item 7 of such form pertaining to proof of operations which reads: "Applicant should attach hereto copies of shipping documents relating to shipments (excluding intra-city shipments) conducted on and after September 22, 1951. Ordinarily, not more than five such documents need be so attached." The first question is what prompted the Commission to decide upon five documents rather than some other number. The next and last inquiry is whether applicant to make satisfactory proof of operations must submit five documents showing shipments made between September 22, 1951, and January 1, 1952.

While it seems clear that we are required under the provisions of said Section 5133.5 to issue a household goods carrier permit to an applicant "upon satisfactory proof of such operation," we are of the opinion that the nature and extent of such proof is to be determined by the Commission in its discretion. ✓  
Therefore, we can require that documentary evidence be submitted for such purpose. However, while we may require documentary proof, we have not made this mandatory. The language used in the form P & F 577 is "applicant should attach \*\*\* shipping documents." The burden of



supplying "satisfactory proof of such operation" is upon applicant and any reasonable means which accomplishes such objective would probably be acceptable.

The number five has no especial significance in the statement in such form that "ordinarily not more than five such documents need be so attached." This is an arbitrary figure and proof of operations may be satisfactorily established with less or may require more. It is intended merely as a guide or suggestion to those applying under the act in question. The proof submitted must show that applicant was engaged in the business of transporting household goods for-hire on September 22, 1951, and thereafter, to qualify him to file an application for a "grandfather" permit before January 1, 1952. Therefore, it is our opinion that enough of the shipping documents produced must relate to the period between September 22, 1951, and January 1, 1952, to establish that applicant was engaged in such business on the effective date of the Household Goods Carriers Act and thereafter.

In conclusion, it should be noted that this proceeding does not determine rights between litigants nor does it grant or deny requested relief. The sole purpose is to inquire and assist those concerned by rendering an advisory opinion upon questions raised respecting the Household Goods Carriers Act. It is hoped that the opinions and conclusions expressed herein will simplify administration of such act and secure uniformity of approach to the various problems involved. It is not our intention to preclude or prevent anyone from raising hereafter questions concerning the

construction or application of the Household Goods Carriers Act in appropriate proceedings.

Dated at San Francisco, California, this 18<sup>th</sup> day of December, 1951.

A. J. [Signature]  
President

James J. [Signature]

Harold A. [Signature]

[Signature]

[Signature]  
Commissioners

APPENDIX

Boris H. Lakusta, for Public Utilities Commission of the State of California.  
William Meinhold, for Southern Pacific Company and Pacific Motor Trucking Company.  
V. A. Carroll, for San Francisco Movers, Inc.  
Glen M. Lee, for Lee's Transportation & Storage.  
J. W. Barker, for Bigge Drayage Company.  
Harold J. Blaine, for Lyon Van and Storage Company.  
E. W. Kerttu, for California Moving and Storage Association.  
W. Ray James, for James Van Lines, James Transfer and Storage Company.  
John Dominguez, for Callison Bros. Transfer Company.  
H. L. Mathewson, for Pacific States Motor Tariff Bureau.  
G. Delbert Morris, Member of State Legislature, Assemblyman, 63rd District.  
Daniel W. Baker, for Alameda County Draymen's Association.  
R. W. Adams, for Nation Van Lines, Inc.  
Guy R. Hacker, for Red Bluff Transfer.  
Jim Cummins, for Market Street Van and Storage.  
Fred V. Murphy, for Laguna Beach Transfer and Storage Co.  
E. Paul, for Paul's Moving and Storage Company.  
Wesley O. Sweeney, for Anderson's Moving Company.  
Robert Peeters, for Peeters and Sons Van and Storage Co.  
C. A. Millen, for Valley Express Company and Valley Motor Lines, Inc.  
Jackson W. Kendall, for Bekins Van and Storage Company, Inc.  
Gordon, Knapp and Gill, by Wyman C. Knapp, for Bekins Van Lines, Inc., Lyon Van Lines, Inc., W. Ray James, Calmay Van Lines, Pacific Freight Lines, Pacific Freight Lines Express and Bigge Drayage Company.  
Russell Bevans, for Draymen's Association of San Francisco and San Francisco Movers, Inc.  
Frank Loughran, for Radial Carrier Conference, and California Moving and Storage Association.  
Margaret J. Fisher, for Arrow Express Company.  
Relford Spikes, for Relford Spikes Express.  
Otis M. Fisk, for Fisk Moving.  
W. Wade Jones, for Wade's Transfer and Storage.  
Don W. Williams, for Ball Transfer Company.  
V. I. Mayfield, for Mayfield Furniture Company.  
Robert S. Reis, for City Transfer and Storage Company.  
A. D. Carleton, H. L. Gunnison and McI A. Neuberger, for Standard Oil Company of California.