

Decision No. 52954**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)

JAMES C. ELLIOTT)

For a License as a Motor Trans-)
portation Broker.)

Application No. 37044

James C. Elliott in propria persona.
Luther N. Gulick, Senior Counsel for the
Commission staff.

O P I N I O N

In this proceeding, James C. Elliott requests a license to engage in business as a motor transportation broker at Los Angeles. A public hearing was held before Examiner Leo. C. Paul at Los Angeles on October 5, 1955.

The only oral evidence adduced herein was through the testimony of applicant and the president of F. P. Baugh, Inc. Applicant testified that he is and plans to continue as a full time paid employee of the corporation, F. P. Baugh, Inc. (hereinafter sometimes referred to as the corporation). He is its office manager and secretary-treasurer. He also owns a small number of shares of its capital stock.

Applicant stated the corporation, as a wholesaler, is engaged exclusively in the purchase and sale of lumber. The lumber is purchased by the corporation at the producing mills in northern California and transported via truck or rail to and sold at Los Angeles and the general surrounding area. The corporation neither owns nor maintains a lumber yard or other facilities for storage purposes. It maintains an office only. In the words of the witness "it never sees the lumber," which it acquires at the mills and sells

directly to various retailers or ultimate consumers without intermediate storage. The corporation maintains no stock whatsoever.

One of the functions of the witness, so he said, is arrangement of transportation of the lumber from the mills to the corporation's various customers. Motor carriers using truck-trailer combinations are used principally. According to the witness the corporation in many instances has had difficulty in having its lumber delivered at specified times. Deliveries frequently are delayed two or three days especially when using what he referred to as "outside trucking firms." The witness and his company concluded that a better and more reliable transportation service for the corporation could be established if a motor transportation broker license were secured as that would enable them to obtain "better control over the trucks." The witness also said "we have some very good independent truckers working with us now" and "better working conditions for them" would result if a license were obtained. The witness stated that if licensed he would be able to establish better scheduling and more regular operation of the motor carriers. This would be accomplished by obtaining some loads from other shippers for the motor carriers in order to keep them busy when not needed by his company. Under such an arrangement the motor carriers would be available for hauling shipments for applicant's firm when needed. The present method of arranging the corporation's transportation was described in detail. The use of part of applicant's time, telephone calls and other items constitute some expense for the corporation. If licensed, applicant would keep certain records, prepare various reports, pay taxes and fees and perform other functions for the motor carriers for which an undetermined charge would be made. Applicant stated his charge as a broker would be very small - less than five per cent and totalling between \$1,000 and \$2,000 annually. The record is not clear as to the recipients of the various charges.

The corporation, F. P. Baugh, Inc., applicant's employer, pays the freight charges from which applicant would make deductions of any advances to or charges incurred by the motor carriers. Applicant stated in substance that it is imperative that control of the carriers be had in order to assure prompt deliveries of the corporation's lumber.

A motor transportation broker is defined by the statute as follows:

"4801. The Legislature declares that the public welfare requires the regulation and control of those persons, whether acting individually or as officers, commission agents, or employees of any person, firm, or corporation, who hold themselves out to act as intermediaries between the public and those motor carriers of property operating over the public highways of the State, for compensation.

"4803. "Motor transportation broker" means any person who, acting either individually or as an officer, commission agent, or employee of a corporation, or as a member of a copartnership, or as a commission agent or employee of another person, sells or offers for sale, or negotiates for or holds himself out as one who sells, furnishes, or provides transportation over the public highways of this State, when such transportation is furnished or offered or proposed to be furnished, by a motor carrier."

The statute does not specifically exclude from the definition of a broker those who are employees or agents of shippers. However, in our opinion it is clear that one who is definitely identified with and shown to be a part of a shipper's organization, either as an employee, officer, representative or agent must be so excluded as he stands in the position of the shipper and not that of a broker. Here the evidence clearly shows, as frankly admitted by applicant, that the primary purpose of his plan is the development of a reliable group of motor carriers to transport shipments of his employer. He will not solicit traffic on behalf of the carriers except incidentally and only to the extent necessary to keep them sufficiently employed to be always available to meet the transportation needs of his employer.

In our opinion applicant has failed to establish that the service he is rendering is that of a motor transportation broker. Therefore, the application must be denied.

O R D E R

An application therefor having been filed, a public hearing having been held thereon and based upon the conclusion herein above expressed,

IT IS ORDERED that the above-entitled application is hereby denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 24th day of April, 1956.

[Signature]
President

[Signature]

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Commissioners