

ORIGINAL

Decision No. 54902

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
R. W. KOERT, DBA P & B MOTOR TRANS-)
PORTATION, for a License as a Motor)
Transportation Broker.)

Application No. 38255

E. Clinton Murphy, for the applicant.

O P I N I O N

In the above-entitled application, R. W. Kohrt, doing business as P & B Motor Transportation, requests a license authorizing him to engage in the business of a motor transportation broker pursuant to Chapter 5, Division 2 of the Public Utilities Code.

A public hearing was held before Examiner William L. Cole at Sacramento on January 29, 1957, at which time the matter was submitted. No one appeared in protest to the granting of the application.

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

Applicant testified as to the procedure he intends to follow with respect to his proposed broker operations. He testified that when a shipper contacts him, he will ascertain the type of cargo the shipper desires to ship, its approximate weight and where it is to be shipped. Applicant will then prepare a bill of lading. At this point, applicant will contact one of the carriers for whom

he is authorized to sell transportation and inform him as to the nature of the load and where it is to go. The carrier is then to obtain the prepared bill of lading from the applicant. The carrier, himself, signs the bill of lading when it is given to the shipper. It will not be signed by the applicant. The carrier will be charged with the responsibility of billing the shipper directly. Applicant proposes to charge a commission of 6 per cent of the total transportation charges for his services. Applicant intends to receive this compensation directly from the carriers. Applicant testified he will not carry any insurance in his operation as a broker; however, before he refers a carrier to a shipper, the carrier will have to show that he has sufficient cargo insurance to cover that particular operation.

Applicant also testified that he has had a radial highway common carrier's permit issued by this Commission, but that he requested the permit to be temporarily suspended. He further testified that it was his intention to have this permit reinstated some time in April or May of 1957, and that during the period that the permit is in effect, he will operate both as a carrier and a broker. Applicant testified that he owns one truck which is used for hauling grain, tomatoes and similar commodities and that the only time he operates as a radial highway common carrier is when these commodities are in season. He testified that he will keep his permit in force only during the periods that these commodities are in season. Applicant also testified that only two companies use his services as a radial highway common carrier and that he has never used subhaulers in connection with his carrier operations. Applicant's testimony indicates that if his application is granted he will keep his carrier and broker operations separate and distinct. It should be pointed out here, however, that notwithstanding that primarily only two shippers use his services as a radial highway common carrier,

his services as such a carrier are available to the entire shipping public so long as he is not requested to operate between fixed termini or over a regular route. The record indicates that applicant will operate both as a carrier and as a broker under the name P & B Motor Transportation.

Applicant appears to have all of the requirements necessary for the granting of a motor transportation broker's license. From his testimony as to his proposed method of operation, it appears that he understands the proper functions and position of a motor transportation broker.

The only question that must be decided is whether or not the fact that applicant intends to operate as a radial highway common carrier at the same time that he is acting as a motor transportation broker warrants denying applicant's request for a broker's license.

The Public Utilities Code does not specifically prohibit the issuing of a broker's license to a person holding a permit as a radial highway common carrier. Section 4835 of that Code provides:

"4835. The Commission, with or without hearing, may issue the license as prayed for, or may refuse to issue it, or may issue it for the partial exercise of the privilege sought. The Commission shall not issue a license when, with or without hearing, it determines that (a) the applicant is not a fit and proper person to receive the license, or (b) the motor carriers for whom the applicant proposes to sell transportation have not complied, and are not complying and do not propose to comply, with state or federal laws, or all general orders of the Commission applicable to the operations of the motor carrier."

It can be seen from this section that, with two exceptions that are not applicable here, it is within the Commission's complete discretion as to whether or not a license is to be issued. The section does not require the Commission to grant a license. The only guidepost set up in the section is the negative requirement that the Commission cannot issue a license to an applicant who is

not a fit and proper person or to an applicant the motor carriers for whom, have not, are not and do not propose to comply with the applicable state or federal laws or general orders of the Commission.

We have been unable to find any previous decision of this Commission which holds that a motor transportation broker's license will be denied for the sole reason that the applicant possesses at the same time a radial highway common carrier permit. Various decisions have been issued by this Commission, however, which have a bearing on the question raised by the present application.¹ These decisions denied brokers' licenses to various individuals on the ground that the applicant's proposed operations were in fact carrier operations. These cases have established that one who is himself a carrier cannot act as a broker in respect to the sale of or negotiation for transportation over his own lines, rather the broker must be an intermediary between the public and the motor carriers.

Section 4801 of the Public Utilities Code sets forth the legislative declaration as to the reasons for the legislation regulating the brokers in question. This section provides:

"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. Until the Congress of the United States acts, the public welfare requires the regulation and control of such intermediaries between the public and interstate motor carriers as well as between the public and intrastate carriers."

¹ Application of Schempp, Dec. No. 40843, Appl. No. 28710, 47 CRC 510.
Application of Peterson, Dec. No. 29084, Appl. No. 20465, 40 CRC 71.
Application of Williams, Dec. No. 28958, Appl. No. 20555, 40 CRC 47.
Application of Newell, Dec. No. 29174, Appl. No. 20456, 40 CRC 169.
Application of Millspaugh, Dec. No. 29083, Appl. No. 20464.

Section 4805 of the same Code provides:

"4805. This Chapter (Chapter 5. Motor Transportation Brokers) shall not apply to the officers, agents, or employees of any carrier operating for compensation over the public highways of this State who is under the jurisdiction of the Commission, or to a passenger stage corporation as defined in Section 226 engaged in transporting express when such transportation is incidental to the transportation of passengers.

"The provisions of this Chapter shall apply whether the transportation sold, or offered to be sold, is interstate or intrastate."

It would appear from these sections that the Legislature did not contemplate that an individual who was already licensed as a carrier would also be licensed as a broker. There appear to be sound reasons for this. An individual who has a permit as a radial highway common carrier can through the use of subhaulers perform substantially the same operation as does the motor transportation broker. In view of this it appears inevitable that where an individual has both a permit to operate as a radial highway common carrier and a license to operate as a motor transportation broker, confusion will result on the question of whether he is operating as a carrier or as a broker as to any given shipment of property. Under such a situation such factors as who billed the shipper and who issued the bill of lading would be determinative of whether the individual was acting as a carrier or as a broker. Enforcement of the rules and regulations for both carriers and brokers, while already difficult, would become increasingly more difficult under such a situation. It would be possible for a shipper not to know whether he was dealing with an individual as a carrier or as a broker until he received a bill of lading and he might not know even then.

As was previously pointed out, a radial highway common carrier can through the use of subhaulers perform substantially the same operation as does a broker. The one exception to this would appear to be that the radial highway common carrier is prohibited

from accepting business which would result in his operating between fixed termini or over a regular route, whereas a broker is not encumbered by any such prohibition. Notwithstanding this fact, however, and for the reasons set forth above, it is the Commission's conclusion, and it so finds, that it is contrary to the public interest to grant a motor transportation broker's license in a situation where the individual will then have a permit to operate as a radial highway common carrier and also a license as a motor transportation broker. Inasmuch as the applicant in the present matter testified that if granted a broker's license he intends to operate both as a broker and as a radial highway common carrier, his application will be denied. However, if the applicant decides that he will no longer operate as a radial highway common carrier, either at the present time or in the future, then the Commission will give consideration to any future application for a motor transportation broker's license filed by him.

The Commission's conclusions set forth above are not inconsistent with the language contained in its prior decision, Application of Tope, Decision No. 29482, Application No. 20795. In that decision, the Commission granted an application for a motor transportation broker's license. Various protests were entered to the granting of that application on the grounds that the applicant would thus be enabled to engage in competition with existing carriers to the extent that he could secure for the truck operators, that applicant would represent as a broker, traffic now handled by agencies already in the field. The decision stated that the Motor Transportation Broker Act does not authorize the Commission to grant or refuse a license because of the effect such action may have, from a competitive standpoint, upon existing carriers. The decision went on to state:

"From these provisions it is clear that our inquiry must be directed solely to the questions (1) whether the applicant is a fit and proper person to be licensed, and (2) whether the plan under which he proposes to operate is lawful."

The Commission finds that this latter provision is sufficiently broad to authorize inquiry into all of the circumstances surrounding applicant's proposed method of operation, including the fact that the applicant intends to operate as a radial highway common carrier, for the purpose of determining whether such a proposed operation is contrary to the public interest.

O R D E R

A public hearing having been held in the above-entitled matter and the Commission being fully informed therein, now therefore IT IS ORDERED that the application be and it hereby is denied.

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

Dated at San Francisco, California, this 22nd day of April, 1957.

[Signature]
President
[Signature]
[Signature]

Commissioners

Commissioner Rox Hardy & C. Lyn Fox being necessarily absent, did not participate in the disposition of this proceeding.