

ORIGINALDecision No. 55086

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of FRANK D. DAVI for renewal of)
license as a motor transportation)
broker.)

Application No. 38701

Marvin J. Coangelo, on behalf of the applicant.
Sefton and Gartland by Lee Sefton, on behalf of
Keith Peck; Russell Bevans, on behalf of
Draymen's Association of San Francisco, Inc.;
and Armand Karp, on behalf of Callison Truck
Lines, Inc.; protestants.
A. J. Lyon, on behalf of the Commission staff.

O P I N I O N

Frank D. Davi in the above-entitled application is requesting a renewal of his motor transportation broker's license. Public hearings were held on March 1, 1957 and on March 8, 1957 before Examiner William L. Cole at San Francisco. The matter was submitted on March 8, 1957.

Applicant was originally licensed by this Commission to act as a motor transportation broker in 1954. Applicant's license was renewed for the year 1955 and for the year 1956. Section 4842 of the Public Utilities Code provides that broker's licenses shall expire on December 31 of each year. At the time of the hearing, in the present matter, applicant had on file with the Commission the required surety bond and letters of authority from the carriers designating him as their duly authorized transportation representative.

The evidence introduced at the hearing showed that during the year 1956, applicant obtained a permit from the Commission to operate as a radial highway common carrier. The record also shows that he has operated during 1956 as a carrier and broker with respect to the transportation, interstate, of commodities exempt from the certificating and licensing provisions of Part II of the Interstate Commerce Act.

The question that must be decided is whether or not the fact that applicant has a radial highway common carrier permit and is operating as a carrier at the same time that he is acting as a motor transportation broker warrants denying applicant's request for renewal of his 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, the Commission has a certain amount of discretion as to whether or not a license is to be issued.

In a recent decision, the Commission has stated 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.¹ It was pointed out in that decision that 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 a motor transportation 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. In view of the fact, however, that the radial highway common carrier, through the use of subhaulers, can perform substantially the same operation as the motor transportation broker, confusion will result in the case of an individual authorized to operate in either capacity, on the question of whether he is operating as a carrier or as a broker as to any given shipment of property. The evidence in the present case substantiates this conclusion. Applicant's testimony, with regard to his method of operation as a broker of interstate shipments, indicates that the bills of lading are issued to him; that he collects the freight charges; that he carries cargo insurance on the shipments; that he accepts full responsibility for the property transported; that he requires the carrier physically transporting the property to report to him every 48 hours while the transportation is in progress; and that he advances such carriers' sums against their expected

¹ Application of Kohrt, Decision No. 54902, dated April 22, 1957, Application No. 38255.

compensation for the shipment, which compensation comes from applicant. Applicant stated that there was no difference in his method of operation as a broker of interstate shipments and as a carrier of interstate shipments using subhaulers.²

Applicant testified, however, that his method of operation as a broker of intrastate shipments was different and distinct from his method of operation as a carrier. Applicant testified that as a broker of intrastate shipments he charges the carrier a flat fee for obtaining each shipment and that the carrier has

2

With respect to the Commission's jurisdiction as to brokers hauling interstate shipments of commodities exempt from the jurisdiction of the Interstate Commerce Commission, Section 4801 of the Public Utilities Code 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."

Section 4805 of the same code provides:

"4805. This chapter 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."

the responsibility of delivering the load and the billing and collecting of the freight charges. Applicant testified, however, that he maintains cargo insurance for such shipments and passes the insurance expense on to the carriers. That confusion will result as to whether an individual is acting as a broker or a carrier, even though the methods of operation for each appear to be different, is illustrated by the evidence in this matter. A representative of the field section of the Commission's staff testified that in making an investigation of applicant's brokerage operations, he was shown by applicant's wife, who is also applicant's bookkeeper, certain documents concerning an intrastate shipment of property which she represented to the witness to have been handled by applicant as a broker. Applicant on the other hand testified at the time of the hearing that the shipment was in fact handled by him as a radial highway common carrier. He testified that it was a shipment on which he used a subhauler. The evidence further showed, however, that applicant, on his quarterly reports to the Commission, did not list any subhaulers as having been used by him during the period of time that this shipment took place. Thus the confusion remains as to whether applicant handled this particular shipment as a broker or as a carrier. Enforcement of the rules and regulations for both carriers and brokers, while already difficult, would become increasingly more so if such a situation were allowed to continue.

Therefore, the Commission finds and concludes that in view of the fact that applicant has a permit to operate as a

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radial highway common carrier, it is contrary to the public interest to renew his license as a motor transportation broker.

ORDER

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 4th day of June, 1957.

[Signature]
President

[Signature]

[Signature]

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Commissioners