

ORIGINAL

Decision No. 73179

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ERLE L. RAINVILLE, dba
MORTUARY SPECIAL SERVICE,

Complainant,

vs.

JAMES O. MURPHY, dba
MORTUARY TRANSPORTATION
& SERVICES,

Defendant.

Case No. 8638
(Filed May 24, 1967)

Erle L. Rainville, in propria persona.
David Dooley, for defendant.

O P I N I O N

By his complaint filed May 24, 1967, Erle L. Rainville, doing business as Mortuary Special Service, alleged that James O. Murphy, doing business as Mortuary Transportation & Service, was operating beyond the scope of his permitted authority. On June 7, 1967, defendant Murphy filed a motion to dismiss the complaint for failure to state a cause of action.

A public hearing was held before Examiner Daly, on September 11, 1967, at San Francisco and the matter was submitted.

The record indicates that complainant is authorized to transport human remains, caskets, casket boxes, flowers and clothing as a highway common carrier between all points within the state. Defendant Murphy is presently authorized to transport human remains, caskets, casket boxes, flowers and clothing, as a radial highway common carrier between all points within the state. At the time the

complaint was filed, however, defendant's radial permit was limited to all points within a radius of 150 miles of San Jose.

Attached to the complaint is a folder, which purports to be an advertisement by which defendant Murphy offered service to "Any Place--Any Time." Complainant alleges that this constituted an implied offer of service to points beyond the scope of the 150-mile restriction then imposed upon defendant's permit and also constituted an implied offer to provide service between fixed points. Complainant also alleges that defendant was quoting and providing rates in violation of Sections Nos. 3663 and 3667 of the Public Utilities Code in that said rates were not in the "unit of measure" as provided by Minimum Rate Tariff No. 2.

Defendant's motion to dismiss is predicated upon the following grounds:

1. The complaint fails to allege when or where defendant Murphy conducted a highway common carrier service.
2. The complaint fails to allege when or where defendant Murphy engaged in transportation beyond the scope of his permitted authority.
3. The complaint fails to specify the provisions of the Commission's Minimum Rate Tariff No. 2, which complainant alleges have been violated.
4. The complaint fails to allege what "unit of measure" is provided for under the Commission's Minimum Rate Tariff No. 2.

During the course of hearing complainant admitted that he had no affirmative evidence to present in support of any specific violations, but testified that he was of the opinion that the

Commission's staff, after the filing of the complaint, would have conducted an independent investigation of defendant's operations and introduce the results thereof at the hearing. The record is, therefore, without any evidence in support of the allegations set forth in the complaint.

The motion to dismiss will be granted.

ORDER

IT IS ORDERED that the complaint in Case No. 8638 is hereby dismissed.

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

Dated at San Francisco, California, this 17th day of OCTOBER, 1967.

R. E. Mitchell President
William G. Bennett
Augustin
William Lyndon Jr
Paul P. Morrison Commissioners