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**ORIGINAL**

Decision No. 76038

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Applications  
of AMERICAN TRANSFER CO. for the  
issuance and acquisition of  
certificates of public convenience  
and necessity to operate as a  
highway common carrier.

Application No. 50584  
(Filed October 1, 1968)

Marvin Handler, for petitioner.  
Frank Loughran, for W. G. Hatch Co., and A. W. Hayes;  
R. Y. Schureman, for Applegate Drayage Co., Max  
Binswanger Trucking, L. R. Denny, Inc., Daniel  
Lohnes Trucking Co., Lang Transportation Corporation,  
More Truck Lines, Universal Transport System, Inc.,  
William H. Shatto, Inc., protestants.  
S. A. Moore and K. M. Robinson, for Kaiser Cement and  
Gypsum Corp.; Marty Rosen, for Gransotto Trucking  
Co., Inc., interested parties.  
William McNertney, Leonard L. Snaider, Counsel, and  
Don Harvey, for the Commission staff.

O P I N I O N

American Transfer Co., presently providing service as a highway common carrier between various points within the State for the transportation of shipments moving in intrastate and interstate commerce, requests an order of the Commission clarifying its intrastate authority.

On June 26, 1969, staff counsel filed a motion to dismiss the petition. Oral argument was heard before Examiner Daly on July 16, 1969 at San Francisco.

Petitioner's interstate operations are performed pursuant to a certificate of registration. Recently the Interstate Commerce Commission requested petitioner to provide evidence of its authority to transport dry commodities in bulk in trailers and semitrailers.

Petitioner's intrastate authority, which was originally issued by Decision No. 60572, dated August 16, 1960, in Application No. 41511, as amended by Decision No. 60876, dated October 11, 1960, restricts, among other things, its transportation of the following commodities:

1. Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
2. Commodities when transported in bulk in dump trucks or in hopper-type trucks.

Petitioner assertedly has invested approximately \$60,000 for five sets of hopper-type semitrailers and full trailers to transport dry commodities in both intrastate and interstate commerce. It alleges that it does not utilize nor does it propose to utilize dump trucks or hopper-type trucks; that the restriction on the use of dump trucks or hopper-type trucks does not apply to semitrailers and trailers because they are clearly distinguishable as determined by Sections 410 and 415 of the California Vehicle Code, which defines a truck as a self-propelled vehicle and a trailer as a vehicle which is drawn by a motor vehicle; and the distinction was clearly made by this Commission when it specifically broadened the restriction with respect to the transportation of liquids and gases so as to include tank trailers and semitrailers and limited the restriction on dry commodities to trucks only.

Staff counsel requests dismissal of the petition on the ground that this Commission has no authority to grant declaratory relief. Moore Truck Lines, Decision No. 75413, dated March 11, 1969, in Application No. 50536; Holabird v. Railroad Commission, 171 Cal. 691, 696; Borden v. The California Company, 21 CRC 23, 25; Peckham, 30 CRC 851; concurring opinion in Arizona Edison v. So. Sierras, 31 CRC 609, 613; Pickwick Stages, 34 CRC 61; Re Loomis 34 CRC 137, 138; LA & S.L.R. Co., 46 CRC 790, 793. ✓ ✓

The staff suggested that absent any provision conferring jurisdiction on the Commission to issue a declaratory order in the matter, petitioner continue its operations and place the burden of instituting a formal action upon a complainant or upon the Commission in an Order Instituting Investigation.

Petitioner admits the holding of the cases cited, but believes that the Commission should reconsider its position because the time may come when the Commission may wish to grant such relief. Petitioner believes that the provisions of Section 701 of the Public Utilities Code are broad enough to confer jurisdiction upon the Commission to grant the relief requested.<sup>1/</sup>

After consideration the Commission finds that in the absence of specific authority to grant declaratory relief the motion to dismiss should be granted and the petition for clarification should be dismissed.

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<sup>1/</sup> "701. The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

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O R D E R

IT IS ORDERED that the motion to dismiss is hereby granted and Application No. 50584 is hereby dismissed.

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

Dated at San Francisco, California, this 19th day of AUGUST, 1969.

William Symons Jr.  
President

August  
James B. Mossessey  
William L.  
James B.  
Committees