

ORIGINAL

Decision No. 79296

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:)
ARMORED TRANSPORT, INC., a corporation,)
and VALLEY ARMORED TRANSPORT, INC., a)
corporation, for relief from rate fund)
fee assessment. }

Application No. 52571
(Filed April 21, 1971)

Robert G. Irwin, Attorney at Law, for applicants.
G. R. Dougherty, Attorney at Law, and T. H. Peceimer,
for the Commission staff.

O P I N I O N

Armored Transport, Inc. (Armored) and Valley Armored Transport, Inc. (Valley) are highway contract carriers in the armored car business. Armored has been billed \$767.89 and Valley has been billed \$22.16 by the Commission in Transportation Rate Fund Fees which each has refused to pay. Applicants contend that said fee assessments relate to coin wrapping, a function of their business which is totally unrelated to transportation and outside the scope of the Commission's taxing authority. By the application herein, applicants request that an order be issued declaring that said assessments were improper and should be vacated.

Public hearing was held before Examiner Mooney in Los Angeles on June 16, 1971. The matter was submitted upon the receipt of reply briefs which have been filed, and the matter is ready for decision.

Testimony and exhibits were presented on behalf of Armored by its Sales Representative and on behalf of Valley by its District Manager. Both applicants have the same president and secretary who also testified. The Commission staff participated in

the development of the record by cross-examining the witnesses. Concurrent opening and reply briefs were filed by applicants and the staff.

Facts

The following undisputed facts are established by the record, and we find them to be such:

1. Both applicants are affiliated and are engaged in the armored car business. They operate pursuant to highway contract carrier permits.
2. Armored transports money and valuables in armored cars under armed guard in Southern California between banks and commercial customers, between member banks and the Los Angeles Branch of the Federal Reserve Bank, between bank main offices and their branches and between a bank and a corresponding bank. It also transports said items from said branch of the Federal Reserve Bank to Valley in Fresno which performs similar functions in the Fresno area.
3. In addition to the foregoing services, applicant perform a coin wrapping service for some of their customers. However, most of the customers do their own coin wrapping.
4. Coins to be wrapped are brought from the Los Angeles Branch of the Federal Reserve Bank or from a customer to Armored's office in Los Angeles or to Valley's office in Fresno. At both locations, personnel in the wrapping room are specialists concerned only with wrapping and accounting for coins wrapped and bagged. They are not engaged in loading or unloading or transporting the coin in any way. Each applicant considers the coin wrapping to be a separate operation from transportation, and charges therefor are separately stated in contracts with customers and billing. The customer is billed a charge for transporting loose coin to the office, an additional charge for delivery of the wrapped coin plus a separate charge for wrapping.

5. Wrapped coin will be stored in the vault of either applicant from one day to several weeks before its customer requests delivery.

6. Wrapping of the coin is not necessary to facilitate its transportation. It can be transported in bags just as easily loose or wrapped.

7. Applicants have not paid Transportation Rate Fund Fees on gross operating revenue they attribute to coin wrapping.

Arguments and Discussion

It is applicants' position that the gross operating revenue it receives from coin wrapping is not subject to the applicable Transportation Rate Fund and Fees provisions of Chapter 6 of Division 2 of the Public Utilities Code (Sec. 5001 to 5011). The staff is of the opinion that it is. We agree with the staff.

Section 5001 of said Chapter 6 provides in part for the creation of a fund to administer and enforce the duties conferred on the Commission to regulate the rates of the transportation agencies carrying property for compensation and to enforce the Highway Carriers' Act. The sources of the fund are varied and include the gross operating revenue fee provided for in Section 5003.1, which states in part that every person or corporation transporting property for hire on the public highways under the jurisdiction of the Commission shall pay to the Commission a fee equal to one-third of one percent of the gross operating revenue derived from such transportation. Said section also provides that the Commission may set the fee at a lower rate. Section 5002 defines the term "gross operating revenue" as used in Chapter 6 as including all revenue derived from the transportation of property having origin and destination within the state and excepts therefrom revenue derived from the transportation of such property in interstate or foreign commerce or from the transportation of vehicles by ferries. Section 5007 provides penalties for default in payment.

Sections 5008 and 5009 relate to collection of delinquent fees and inspection of a carrier's records. Section 5011 authorizes the Commission to establish such rules as it deems necessary to carry out the provisions of said chapter.

The argument by the applicants is as follows: The applicable Code provisions in Chapter 6 of Division 2 limit the taxing power of the Commission in assessing the Transportation Rate Fund Fees to revenue derived from transporting property only; while Section 3662 of the Code gives the Commission the power to set rates for accessorial services, it does not give the Commission the power to tax; the coin wrapping in issue is clearly not a transportation function nor accessorial service; it is performed separately from the transportation and is not necessary to the protection or movement of the coin; to hold that the coin wrapping is subject to the Rate Fund assessment, as contended by the staff, would be the same as concluding that all manufacturing functions are subject to a transportation tax, which is obviously erroneous.

The staff argument is as follows: Section 209 of the Public Utilities Code defines "transportation of property" as including "every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and handling, and the transmission of credit by express corporations"; said definition indicates a broad functional meaning of the term "transportation of property"; the coin wrapping clearly comes within this definition and is an accessorial service subject to the Transportation Rate Fund Fee provisions; both Loomis Armored Car Service, Inc., and Brinks Incorporated, two of the largest armored car services in the state, recognize coin wrapping as a transportation function or an accessorial service and include revenue from it in their "gross operating revenue" report on which they pay the Transportation Rate

Fund Fee; examples of other accessorial services which are subject to said fees are stringing pipe, the disassembling and reassembling of oil well derricks that are moved and the raising and construction of new foundations for houses that are moved.

From a review of the applicable sections of the Public Utilities Code, it is apparent that the Legislature did not intend the term "transportation of property" in Section 5002 to be given a restricted construction limited to the picking up, transportation and setting down of property. This is evidenced by the definition of said term in Section 209 which specifically states that it "includes every service in connection with or incidental to the transportation of property". It is obvious, therefore, that said term includes accessorial services. Had the Legislature intended otherwise, it would have so specified in Section 5002.

We are of the opinion, based on the record herein, that the coin wrapping is an accessorial service, and the revenue therefrom is subject to the applicable Transportation Rate Fund Fee provisions of the Code. This is a service that is offered to those for whom coin transportation is performed. It is offered to no one else. The fact that the employees of applicant who perform the coin wrapping are assigned exclusively to this duty, that the charges therefor are separately stated and that coin can be transported loose does not make this a separate and distinct service entirely unrelated to transportation. It is the type of service that is traditionally offered in connection with the transportation of coin, and one that would logically be expected by those customers who desire it.

Findings

In addition to the above seven findings of fact, the Commission further finds as follows:

8. Applicants are subject to the Transportation Rate Fund Fee provisions of Chapter 6 of Division 2 of the Public Utilities Code.

9. The term "transportation of property" as used in the definition of "gross operating revenue" in Section 5002 of said Chapter 6 includes accessorial services in connection therewith.

10. The coin wrapping performed by applicants is an accessorial service to the transportation they perform, and, as such, the gross operating revenue therefrom is subject to the gross operating revenue fee provisions of Section 5003.1 of said Chapter 6.

11. The \$767.89 and \$22.16 heretofore billed to Armored and Valley, respectively, in Transportation Rate Fund Fees in connection with the coin wrapping are due and payable and should be paid by said applicants together with any such additional fees as may have become due and owing subsequent thereto.

Conclusion

The Commission concludes that Application No. 52571 should be denied.

O R D E R

IT IS ORDERED that Application No. 52571 is denied.

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

Dated at San Francisco, California, this 9th day of NOVEMBER, 1971.

[Signature]
 Chairman

William L. Lyons Jr.
[Signature]
Vernon L. Sturgeon
[Signature]
 Commissioners

[Signature]
[Signature]
[Signature]