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DEC 22 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of GREYHOUND LINES, INC.

} Application 82-04-65
(Filed April 28, 1982)

O P I N I O N,

Applicant Greyhound Lines, Inc. (Greyhound) requests that the Commission exempt Greyhound and its agents, who are nonemployees of Greyhound, from the provisions of the Public Utilities (PU) Code in the performance of intrastate local pickup and delivery (PUD) service within commercial zones established by the Interstate Commerce Commission (ICC) of bus express shipments moving in conjunction with Greyhound's intrastate line-haul passenger stage operations. In the alternative, Greyhound requests that the Commission "amend or modify General Order 102 and any additional rules and regulations so that they will be ordered inapplicable to passenger stage corporations who may or may not hold highway carrier authority for the purpose of performing a limited intrastate PUD service of bus express in conjunction with their line-haul passenger stage operations."

Bus Express Services, Inc. (BES), California Teamsters Public Affairs Council (Teamsters), California Trucking Association (CTA), and the Commission's Transportation Division staff opposed the granting of the application. CTA and Teamsters request that a hearing be held on the application.

Background

Greyhound operates principally as a passenger stage corporation transporting passengers, baggage, and express by bus via regular routes in interstate and intrastate commerce throughout a considerable portion of the United States, including California. In California, Greyhound's inter- and intrastate operating rights are generally coextensive. The purpose of this application is to achieve for Greyhound the same flexibility of operation in the PUD of California intrastate bus express shipments that federal motor carrier laws and regulations accord it in the PUD of interstate bus express shipments as interstate and intrastate traffic will be commingled in the PUD operations. In its interstate operations, Greyhound uses its agents, who are nonemployees of Greyhound, to perform local PUD service of express shipments for Greyhound. The agents use small trucks suitable for urban delivery and handle only express shipments which have a prior or subsequent movement in Greyhound's line-haul bus service. Their PUD service is confined to ICC commercial zones¹ between which Greyhound has been authorized by the ICC to conduct passenger stage service on a regular route basis. Federal motor carrier laws and regulations consider this interstate PUD service ancillary to that of the line-haul carrier and do not require either the PUD carrier or the bus company to comply with federal laws and regulations except certain safety provisions.²

On the other hand, the PU Code and Commission regulations require both Greyhound and its nonemployee agents (who are

¹ The outer limits of a commercial zone are measured from the base municipal boundary and, depending on the population of the base municipality, range from three miles to 20 miles beyond the municipal boundary (49 CFR 1048).

² Ex Parte No. MC-37 (Sub-No. 29) - Terminal Areas for Express Shipments by Bus (1977) 128 MCC 204. (49 CFR 1048.101.)

independent contractors but referred to as agents by Greyhound) to obtain truck operating authority from the Commission before intrastate traffic may be handled in the PUD operation. Each of them would be considered highway carriers with the agents classified as subhaulers for Greyhound.³ In an effort to comply with these requirements, Greyhound took the first step and filed Application (A.) 61038 which resulted in Decision (D.) 82-04-34 which granted Greyhound a certificate authorizing the following trucking operations:

"To provide pick-up and delivery service of express shipments to, from, and within the commercial zones of cities and towns, as defined by the Interstate Commerce Commission in Title 49 - Transportation, Code of Federal Regulations Section 1048.101 issued December 29, 1976, limited to shipments having a prior or subsequent movement in line-haul scheduled intercity passenger bus service."

This operating authority allows Greyhound to lawfully engage in intrastate PUD operations by truck using its own employees. However, Ordering Paragraph 2.g. of that decision admonished Greyhound to comply with the Commission's General Order Series (G.O.) 102 which relates to the use of subhaulers, in the event Greyhound elects to have its agents perform PUD for Greyhound. Under G.O. 102 a subhauler is required to have a highway carrier certificate or permit to engage in subhauling. Greyhound now seeks an exemption for itself and its agents from the provisions of the PU Code and G.O. 102.

Operations Requested to be Exempt

The operations to which the requested exemption would apply are described in detail in the application as follows:

"In providing its pick-up and delivery service, your Applicant, Greyhound appoints commission agents. These Agents, by use of their

³ Application of Morgan Drive Away, Inc., et al. (1971) 71 CPUC 709 and cited cases.

employees, provide the applicant and its customers with a wide range of services including ticketing, billing and rating, baggage and express handling, claims processing, passenger accommodation and other carrier services held out by the company under its tariffs. These commission agents also operate drug stores, filling stations, restaurants, newsstands, giftshops and other related but non-tariff businesses. The utilization of local commission agents in this fashion has been the custom in the bus business for many years. Agents customarily are compensated for their services on the basis of a percentage or an agreed share of the revenue generated through agency stations.

"The agents to be appointed in conjunction with the pick-up and delivery service will function under the direction of and control of Greyhound just as the Commission Agents who represent Greyhound and sell its passenger transportation services through on-line agencies in the state of California. If a shipper or consignee has a complaint, it will be directed to the Applicant, Greyhound. The pick-up and delivery agents will operate under a Pick-Up and Delivery Service Agreement with Greyhound, a copy of which is attached hereto and marked Exhibit A. In addition an appropriate vehicle equipment lease will be executed, a copy of which Agreement is also attached marked Exhibit B. As further evidence of the control over the agents and responsibility for the service, the vehicle in which the pick-up and delivery service will be conducted will be identified with the Greyhound logo and registered trademarks. In conjunction therewith, a Licensing Agreement, a copy of which is likewise attached marked Exhibit C will be executed by the parties. Also attached marked Exhibit D is a sample advertising piece used in the promotion of Greyhound's pick-up and delivery service. It will be immediately evident that the responsibility, control and direction of the pick-up and delivery service will be Greyhound's. If the service is deficient in any way or not conducted in accordance with Greyhound's required high level of performance and Greyhound receives

complaints from the public, the Agreement, as provided therein will be promptly terminated. This will thereby assure that the shipping public will be satisfactorily served by Greyhound in conjunction with their pick-up and delivery requirements.

"From the foregoing, the Commission will readily appreciate that one of the major attributes of the entire pick-up and delivery program of Greyhound is the method by which its pick-up and delivery service operations, nationwide, are conducted, i.e. by the use of agents rather than employees. Applicant's mode of operation as provided in the authority granted by the commission as highway common carrier will be restricted to those shipments having a prior or subsequent movement in the line-haul intercity scheduled service of Greyhound. Shipments will not be both picked up and delivered in the same city nor will they be transported in a door-to-door service from one city to another in continuous movement. Applicant's program is designed to involve the pickup of shipments within an authorized city zone, carriage to the applicable terminal or agency in a van or similar vehicle, transferred to and transported in a passenger-carrying vehicle (bus) between named cities in its passenger stage operations and either picked up at the Greyhound Terminal in the destination city or delivered at that end by the Greyhound local pick-up and delivery agent. Agent's pick-up and delivery service may be utilized at the origin or destination point or both."

Motions to Dismiss the Application

BES, Teamsters, and the Commission staff each filed a motion to dismiss the application based on the contention that the relief sought by Greyhound is beyond the power and authority of the Commission to grant because the PU Code requires Greyhound's agents to have highway carrier authority⁴ to engage in the described service for Greyhound, otherwise known as subhauling. Hence, relief from this statutory requirement can come only from the Legislature.

⁴ PU Code §§ 1063, 3511, 3513, 3515, 3541, 3571, 3582, 3591.5, 3592, 3596.5, 3611, and 3620.

In its response to the motions, Greyhound contends that by virtue of Article XII, § 4 of the State Constitution the Commission is vested with broad rulemaking authority under which it can give the requested relief. Furthermore, Greyhound contends the Commission can also give the requested relief under PU Code § 701 which gives the Commission broad supervisory powers to do all things when it concludes that such action is necessary and convenient in the exercise of the Commission's power and jurisdiction.

New Federal Bus Regulation

On September 20, 1982, a date subsequent to the filing of this application and all pleadings in respect to the application, the Federal Bus Regulatory Reform Act of 1982 (the Act) was signed into law by President Reagan. The Act became effective November 19, 1982 and added, among other things, subsection (c)(1)(C) (the federal preemption) to (10922 of Title 49, United States Code, which reads as follows:

"No State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law relating to the provision of pickup and delivery of express packages, newspapers, or mail in a commercial zone if the shipment has had or will have a prior or subsequent movement by bus in intrastate commerce and if a city within the commercial zone, as defined in section 10526(b)(1) of this title, is served by a motor common carrier of passengers providing regular route transportation of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title."

The Congressional Findings in Section 3 of the Conference Report (ER Report No. 97-780, 97th Congress, 2d Session) on the Act state that "State regulation of the motor bus industry has, in certain circumstances, unreasonably burdened interstate commerce." We take official notice of the federal preemption and the Conference Report, as their consideration, in our opinion, is of paramount importance in determining the outcome of the case.

Discussion

The federal preemption is explicit and absolute. It leaves no room for state involvement or participation in the regulation of intrastate PUD operations in ICC commercial zones under the conditions set forth in the preemption. If the federal preemption is applicable to this case, it would provide Greyhound and its agents with the relief Greyhound seeks. Greyhound would be relieved from obtaining our authority to conduct the proposed intrastate PUD operations in commercial zones where it has interstate and intrastate regular route operating authority. Hence, a dismissal of the application would be in order respecting such intrastate PUD operations.

In this case we consider the federal preemption, not the PU Code, to be the prevailing law and hold that we must apply the prevailing law. A similar issue arose when the Federal Aviation Act was amended in 1978 to include 49 USCA 1305(a)(1) which provided in part as follows:

"...no state or political subdivision thereof and no interstate agency or other political agency of two or more states shall enact or enforce any law, rule, regulation or standard, or other provision having the force and effect of law relating to rates, routes, or service of any air carrier having authority under subchapter VI of this chapter to provide interstate air transportation."

The Ninth Circuit Court of Appeals in Hughes Air Corp. et al v California Public Utilities Commission. et al. (1981) 644 F 2d 1334, held that this provision preempted our jurisdiction to regulate intrastate air transportation (PU Code § 2739-2769.5) on the ground that it was within the power of Congress to do so under the commerce clause of the U.S. Constitution. The court held that the regulation of air carriers is not such an integral and important aspect of state life that the federal government's preemption of this state regulation interferes with the state's sovereignty guaranteed by the Tenth Amendment.

That case cited with approval U.S. v California (1936) 297 US 175, 1984 which held that "the power of a state to fix intrastate railroad rates must yield to the power of the national government when the regulation is appropriate to the regulation of interstate commerce." Thus, our regulatory power over intrastate transportation by air is preemptible by federal law. We conclude that the federal preemption is equally effective to oust us of jurisdiction over the subject PUD trucking operations. Hence, we will dismiss the application for lack of jurisdiction insofar as it pertains to intrastate PUD under conditions described in the federal preemption.

Such dismissal may appear to run counter to Article 3, § 3.5 (the constitutional provision) of the State Constitution which reads in part as follows:

"Sec. 3.5. An administrative agency, including an administrative agency created by the Constitution...has no power:

* * *

"(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations."

As of the date of this order, we are not aware that any appellate court has determined that the federal preemption under the Act is controlling, nor are we aware that any case is pending in a court which may lead to such determination. However, the constitutional provision does not require Greyhound or its agents to wait for an appellate court order before they may lawfully engage in intrastate PUD operations without having to abide by PU Code provisions or Commission regulations. Hence, it would be meaningless for the Commission to decry those operations or to fail to recognize their lawfulness pending a future appellate court determination. The law does not require the performance of idle acts.

While waiting for an appellate court decision we would be required by the constitutional provision to waste taxpayers' money in needlessly compelling, handling, and processing the filing of tariffs, reports, and applications. We would be required to demand that bus companies and their agents unnecessarily pay an application fee of \$500 to secure from us a highway carrier certificate or permit⁵ to conduct operations over which we now have no jurisdiction. We would be required to extract from them taxes which they lawfully do not owe⁶ for use by us in compelling them⁷ to comply with PU Code provisions and Commission regulations which the federal preemption has relieved them from complying with. More importantly, parties such as applicant would be deterred from doing what under the prevailing law they are clearly entitled to do.

In proceedings before us involving the issue of federal preemption, the constitutional provision would require us to arbitrarily and unfairly deprive one or more of the parties of their right to effectively assert the legal right to rely on the federal preemption, of the right to have cases decided under prevailing law, and of the right to obtain a Commission decision that is not arbitrary. For these reasons, we believe that the constitutional provision runs counter to due process of law and to the supremacy clause of the U.S. Constitution.⁸ We cannot at the same time have jurisdiction

⁵ PU Code § 1010(b) and § 5004.

⁶ PU Code §5003.1.

⁷ PU Code § 5001.

⁸ Article VI of the United States Constitution provides, in pertinent part: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof... shall be the supreme Law of the Land: and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."

and not have jurisdiction over a particular trucking operation. We cannot blink our eyes and pretend that the federal constitution and federal laws do not exist. To disregard or ignore federal law in the exercise of our quasi-judicial powers and responsibilities in ruling on applications such as the one before us would imply that, regardless of the clarity and purpose with which Congress has acted, we may pretend there is a gap in the reach of federal statutes. This is a conclusion which we cannot uphold. Article III, Section 3.5, subdivision (c), requires us to act in a manner fundamentally at odds with our oath of office.⁹ In this case we find that we do not have jurisdiction over intrastate trucking operations performed under conditions described in the federal preemption, and we will dismiss that part of the application on those grounds. ✓

There is also another reason to find that the constitutional provision is inoperative to require us to wait for an appellate court decision to tell us, before we decide that we have no jurisdiction over the intrastate PUD operations conducted under

⁹ As Commissioners we are required under PU Code Section 302 to swear to the following oath upon assuming office: "I (name) do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter." We find it highly significant, though not surprising, that the oath twice refers to the Constitution of the United States ahead of the Constitution of California. We also note that we do not reach today the question whether subsections (a) and (b) of Article III, Section 3.5, assuming they are severable from subsection (c), also are invalid under the Supremacy Clause.

conditions described in the federal preemption. PU Code § 202, which governs the regulation of highway common carriers, states, in part, as follows:

"202. Neither this part nor any provision thereof, except when specifically so stated, shall apply to...interstate commerce, except insofar as such application is permitted under the Constitution and laws of the United States..."

And PU Code § 3506, which governs the regulation of highway permit carriers, reads in part, as follows:

"3506. This chapter shall not be construed as a regulation of commerce...among the several states, except insofar as such regulation is permitted under the provisions of the Constitution and the acts of Congress of the United States."

As stated before, the Conference Report found that "State regulation of the motor bus industry has, in certain circumstances, unreasonably burdened interstate commerce". This finding indicates that there is such an appropriate relationship between state regulation of the PUD of intrastate bus express shipments and the PUD of interstate bus express shipments that the state regulation of the former PUD operations would indeed "apply to...interstate commerce" in the sense that those words are used in PU Code § 202. Such application is indirect, of course, but PU Code § 202 does not require that state regulations be directly applicable to interstate commerce before that regulation becomes inoperative. It requires only that the regulations "apply" to interstate commerce in some manner. PU Code § 3506 prohibits us, in effect, from regulating commerce among the several states. Where interstate commerce has become unreasonably burdened by intrastate regulation as found by the Conference Report, intrastate regulation has the effect of regulating interstate commerce. Hence, by operation of PU Code §§ 202 and 3506 we lack jurisdiction over intrastate PUD operations conducted under the conditions described in the federal preemption.

As to the motions of BES, Teamsters, and the staff to dismiss the application, we will grant the motions but only insofar as they apply to PUD operations conducted by or for a bus company at points which are not served on a regular route basis by an ICC certificated bus company. We believe the Morgan Drive Away case and the cited cases contain ample explanation and discussion why we cannot grant the exemption for those intrastate operations. Otherwise, the motions will be denied for reasons stated in our discussion involving the federal preemption.

The underlying facts set out in the application, on which the application is based, are not in dispute. Only the conclusions to be derived from the facts are in dispute. Therefore, we see no necessity for presenting these facts at a hearing.

Findings of Fact

1. Greyhound is a passenger stage corporation whose extensive certificated regular bus route operations in intrastate and interstate commerce within the state are generally coextensive.

2. Greyhound requests that the Commission exempt Greyhound and its agents, who are nonemployees of Greyhound, from provisions of the PU Code and G.O. 102 in the performance of local intrastate PUD service within commercial zones established by the ICC or bus express shipments moving in conjunction with Greyhound's intrastate line-haul passenger stage operations.

3. Greyhound has a highway common carrier certificate issued by the Commission authorizing it to perform intrastate PUD service of bus express shipments within ICC commercial zones of traffic having a prior or subsequent movement in line-haul scheduled intercity passenger bus service.

4. Greyhound proposes to use its agents primarily to perform the PUD of both interstate and intrastate shipments where its interstate and intrastate authority is coextensive.

5. The agents will lease vehicles to Greyhound which will be driven by agents or employees of the agents.

6. The vehicles will be painted with the Greyhound name and logo.

7. The agents will be operating under PUD contracts with Greyhound.

8. Greyhound will compensate its agents as set out in the PUD contract for providing PUD service.

9. The agents will not be employees of Greyhound in performing the PUD service.

10. The agents will be operating as subhaulers for Greyhound where the conduct of those operations are under Commission jurisdiction.

11. CTA, BES, Teamsters, and the staff object to the granting of the application and each moved to dismiss the application on the grounds that Greyhound's request is beyond the power and authority of the Commission to grant.

12. After the application and all pleadings with respect to the application were filed, the Act was enacted into law and became effective November 19, 1982. The Act preempts state regulation of pickup and delivery service related to express packages, newspapers or mail in a commercial zone if the shipment has had or will have a prior or subsequent movement in intrastate commerce and a city within the commercial zone is served by a motor common carrier regulated by the ICC.

13. The United States Congress has found that state regulation of the motor bus industry with respect to intrastate commerce has, in certain circumstances, unreasonably burdened interstate commerce.

14. To alleviate burdens on both interstate and intrastate commerce, and to give proper recognition to the federal supremacy clause, it is necessary that the ordering paragraphs of this decision be effective the date of signature.

Conclusions of Law

1. The provisions of Part 1 of Division 1 of the PU Code do not apply to interstate commerce.

2. State regulation of intrastate PUD operations conducted under conditions described in the federal preemption has an adverse effect upon interstate commerce.

3. The provisions of Chapter 1 of Division 2 of the PU Code do not apply to regulation of interstate commerce.

4. State regulation of intrastate PUD operations conducted under conditions described in the federal preemption is an unreasonable burden upon interstate commerce.

5. The PU Code does not give the Commission jurisdiction to enforce the provisions of the PU Code respecting intrastate PUD operations performed under conditions described in the federal preemption, unless permitted by the laws of the United States.

6. The federal preemption denies states, including California, the authority to regulate intrastate PUD operations when performed under conditions described in the federal preemption.

7. In the face of conflicting and directly contradictory mandates in the federal statute (The Federal Bus Regulatory Reform Act of 1982) and in the California statutes and Constitution (The Public Utilities Act and Article 3, § 3.5, Subparagraph (c)) we must, under the Supremacy Clause (Article VI, Paragraph II) of the Constitution of the United States, defer to the supreme law of the land. Insofar as Article III, Section 3.5 requires this Commission to ignore or disregard applicable federal law, it also violates the Due Process Clause of the Fifth Amendment to the United States Constitution made applicable to the states through the Fourteenth Amendment.

8. The state constitutional provision, Article III, Section 3.5, subdivision (c), does not give the Commission effective power to deny due process of law to parties coming before it.

9. The federal preemption acts through the commerce and supremacy clauses of the United States Constitution to effectively relieve the Commission from jurisdiction over the intrastate PUD operations conducted under conditions described in the federal preemption described in Finding of Fact 12.

10. The state constitutional provision, Article III, Section 3.5, subdivision (c), does not act to give the Commission jurisdiction to regulate the intrastate PUD operations conducted under conditions described in the federal preemption.

11. In conducting the proposed intrastate PUD operations under conditions other than those described in the federal preemption Greyhound and its agents will be highway carriers as defined in PU Code § 3511.

12. As highway carriers, Greyhound and its agents are required by the PU Code and Commission regulations to have either a certificate or permit from the Commission before they may commence intrastate PUD operations under conditions other than those described in the federal preemption.

13. The Commission has no authority or power to exempt Greyhound or its agents from abiding by the provisions of the PU Code in the conduct of intrastate PUD operations conducted under conditions other than those described in the federal preemption.

14. The motions to dismiss made by BES, Teamsters, and Commission staff should be granted to the extent that the motions apply to Greyhound's requests that it be exempted from the provisions of the PU Code and Commission regulations in conducting PUD operations under conditions other than described in the federal preemption.

15. The motions to dismiss made by BES, Teamsters, and Commission staff should be denied insofar as those motions apply to intrastate PUD operations performed under conditions described in the federal preemption.

O R D E R

IT IS ORDERED that:

1. The motions of BES, Teamsters, and Commission staff are granted insofar as those motions apply to intrastate PUD operations conducted under conditions other than those described in the federal preemption.

2. The motions of BES, Teamsters, and Commission staff are denied insofar as those motions apply to intrastate PUD operations conducted under conditions described in the federal preemption.

3. Those parts of the application (a) requesting exemption from the provisions of the PU Code and Commission regulations respecting intrastate PUD operations performed under conditions other than those described in the federal preemptions and (b) requesting exemption from the provisions of the PU Code and Commission regulations in the conduct of intrastate PUD operations under conditions described in the federal preemption are dismissed for lack of jurisdiction.

This order is effective today.

Dated DEC 22 1982, at San Francisco, California.

RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
Commissioners

Commissioner John E. Bryson
Present but not participating

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

Joseph E. Bodovien
Joseph E. Bodovien, Secretary

While waiting for an appellate court decision we would be required by the constitutional provision to waste taxpayers' money in needlessly compelling, handling, and processing the filing of tariffs, reports, and applications. We would be required to demand that bus companies and their agents unnecessarily pay an application fee of \$500 to secure from us a highway carrier certificate or permit⁵ to conduct operations over which we now have no jurisdiction. We would be required to extract from them taxes which they lawfully do not owe⁶ for use by us in compelling them⁷ to comply with PU Code provisions and Commission regulations which the federal preemption has relieved them from complying with. More importantly, parties such as applicant would be deterred from doing what under the prevailing law they are clearly entitled to do.

In proceedings before us involving the issue of federal preemption, the constitutional provision would require us to arbitrarily and unfairly deprive one or more of the parties of their right to effectively assert the legal right to rely on the federal preemption, of the right to have cases decided under prevailing law, and of the right to obtain a Commission decision that is not arbitrary. For these reasons, we believe that the constitutional provision runs counter to due process of law and to the supremacy clause of the U.S. Constitution.⁸ We can not at the same time have jurisdiction

⁵ PU Code § 1010(b) and § 5004.

⁶ PU Code §5003.1.

⁷ PU Code § 5001.

⁸ Article VI of the United States Constitution provides, in pertinent part: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."

and not have jurisdiction over a particular trucking operation. We cannot blink our eyes and pretend that the federal constitution and federal laws do not exist. To disregard or ignore federal law in the exercise of our quasi-judicial powers and responsibilities in ruling on applications such as the one before us would imply that, regardless of the clarity and purpose with which Congress has acted, we may pretend there is a gap in the reach of federal statutes. This is a conclusion which we cannot uphold. Article III, Section 3.5, subdivision (c), requires us to act in a manner fundamentally at odds with our oath of office.⁹ ~~We therefore hold it is unconstitutional and will not refrain from reaching the determination required by federal law.~~ In this case we find that we do not have jurisdiction over intrastate trucking operations performed under conditions described in the federal preemption, and we will dismiss that part of the application on those grounds. CR

There is also another reason to find that the constitutional provision is inoperative to require us to wait for an appellate court decision to tell us, before we decide that we have no jurisdiction over the intrastate PUD operations conducted under

⁹ As Commissioners we are required under PU Code Section 302 to swear to the following oath upon assuming office: "I (name) do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter." We find it highly significant, though not surprising, that the oath twice refers to the Constitution of the United States ahead of the Constitution of California. We also note that we do not reach today the question whether subsections (a) and (b) of Article III, Section 3.5, assuming they are severable from subsection (c), also are invalid under the Supremacy Clause.

Conclusions of Law

1. The provisions of Part 1 of Division 1 of the PU Code do not apply to interstate commerce.

2. State regulation of intrastate PUD operations conducted under conditions described in the federal preemption has an adverse effect upon interstate commerce.

3. The provisions of Chapter 1 of Division 2 of the PU Code do not apply to regulation of interstate commerce.

4. State regulation of intrastate PUD operations conducted under conditions described in the federal preemption is an unreasonable burden upon interstate commerce.

5. The PU Code does not give the Commission jurisdiction to enforce the provisions of the PU Code respecting intrastate PUD operations performed under conditions described in the federal preemption, unless permitted by the laws of the United States.

6. The federal preemption denies states, including California, the authority to regulate intrastate PUD operations when performed under conditions described in the federal preemption.

7. ~~Subdivision (c) of Article III, Section 3.5 of the California Constitution violates the supremacy clause (Article VI, Paragraph II) of the United States Constitution and is unconstitutional because it bars this Commission, a state administrative agency entrusted with quasi-judicial powers and responsibilities, from observing, adhering to and enforcing federal law, such as the federal preemption of state regulation of pickup and delivery service described in Finding of Fact 12. Insofar as Article III, Section 3.5 requires this Commission to ignore or disregard applicable federal law, it also violates the Due Process Clause of the Fifth Amendment to the United States Constitution made applicable to the states through the Fourteenth Amendment.~~

*Insert
you + A
memo.*

8. The state constitutional provision, Article III, Section 3.5, subdivision (c), does not give the Commission effective power to deny due process of law to parties coming before it.