

APR 11 1997

Decision 97-04-039 April 9, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Western Motor
Tariff Bureau, Inc., for authority under General Order
154, to amend and restate its bylaws and waiver from
Rules 8.3, 9.2, and 9.5, General Order 80-C.

Application 96-04-026
(Filed April 12, 1996)

ORIGINAL

OPINION

Summary

Application of Western Motor Tariff Bureau, Inc. (WMTB) for approval of new bylaws dismissed for lack of jurisdiction since Assembly Bill (AB) 1683.

Background

In April 1996 WMTB filed for authority to amend and restate its bylaws. Since the filing of this application the Legislature enacted AB 1683 (Stats. 1996, ch. 1042), which had the general effect of removing most statutory jurisdiction of this Commission over the transportation of property over the public highways in California. The exception to this generality is our retained jurisdiction over household goods movers. Most of this legislation carried an immediate effective date.

On November 20, 1996, the Administrative Law Judge issued a ruling requiring applicant to file points and authorities showing what, if any, jurisdiction the Commission retained to grant any of the requests in the application. WMTB made a timely filing in response to this ruling, and it is the question of jurisdiction that we now address.

Discussion

Prior to the enactment of AB 1683 this Commission ruled on issues raised in the present application under the authority of Public Utilities (PU) Code § 496. The applicability of that section to motor carriers of property was revoked upon enactment

of AB 1683, which had an immediate effective date. Thus, the statutory basis for any further action by us in this area was terminated.

In its points and authorities WMTB asserts that the Commission retains power over transportation companies under the provisions of Article XII, Section 4 of the California Constitution. This provides:

"The commission may fix rates and establish rules for the transportation of passengers and property by transportation companies,..."

We call attention to the word "may." This is permissive authority (see PU Code § 14.) The Commission is not obligated to exercise permissive jurisdiction. Given the revocation of the express authority to regulate agreements between motor carriers of property formerly provided by § 496, we interpret the Legislature's intent to be that we no longer play any part in this area of law with regard to these carriers.

Further support for this interpretation can be found within AB 1683. Not only is the applicability of § 496 to motor carriers of property revoked immediately, but the permission of these carriers to engage in uniform rules such as requested in the present application is reenacted in Business and Professions (B&P) Code § 16728, a new section in that portion of the B&P Code relating to restraint of trade.

WMTB acknowledges the enactment of B&P Code § 16728, but asserts that the mere existence of the section is not sufficient to grant it the immunity from antitrust actions that it requires. According to WMTB, to obtain antitrust immunity there must be two actions by the state government:

"1) the conduct must be clearly articulated and affirmatively expressed as state policy, and 2) the policy must be actively supervised by the state government." (Emphasis in original.)

WMTB agrees that newly enacted B&P Code § 16728 satisfies the first point. However, it correctly asserts there is no statement in § 16728 or anywhere else in AB 1683 indicating who will "actively supervise" the conduct. WMTB argues that we must step forward to fill this void.

While we have sympathy for the position in which WMTB and its members find themselves, we will decline their invitation. We believe the Legislature was clear in

expressing its desire to remove this Commission from the regulation of motor carriers of property other than household goods movers. The Legislature having spoken, we will implement their direction. We will not "actively supervise" that which the Legislature has told us is no longer a part of our concern. Nor will we divert our employees to perform this mission. The solution lies with the Legislature which created what WMTB now finds to be a problem.

Finally, WMTB makes a "fairness" argument, stating that if the Commission had acted on its application before the passage of AB 1683 the rules which it wished changed would now be in effect. While there is an initial appeal to this argument, it is refuted by WMTB's own pleading. Assuming that the application had been granted before the passage of AB 1683 and the new uniform carrier rules gone into effect, they would no longer meet the two-pronged test enunciated by WMTB. After passage of AB 1683, which was effective on September 29, 1996, there would not have been any active supervision by this Commission. Therefore, the prerequisites for antitrust immunity which WMTB seeks would not be present. Thus, WMTB has not been disadvantaged by our failure to consider their application at an earlier date.

Findings of Fact

1. WMTB is an organization of motor carriers of property.
2. WMTB seeks Commission approval of an amendment to its bylaws pertaining to common actions of its members.
3. WMTB seeks this approval in order to obtain protection from otherwise applicable antitrust laws.
4. This Commission has regularly considered applications of this type by WMTB pursuant to PU Code § 496, and actively supervised conduct under this authority.
5. The applicability of PU Code § 496 to motor carriers of property was repealed pursuant to AB 1683, effective September 29, 1996.
6. AB 1683 revoked all of this Commission's jurisdiction over highway carriers of property, other than household goods movers.

7. AB 1683 stated the Legislature's policy in favor of providing antitrust immunity to motor carriers of property in new B&P Code § 16728.

8. AB 1683 does not indicate which agency of state government will actively supervise these carriers' conduct.

9. WMTB asserts that this Commission has authority to actively supervise the activity of its members pursuant to Article XII, Section 4 of the California Constitution, despite revocation of the applicability of PU Code § 496 and our other authority over motor carriers of property.

Conclusions of Law

1. By passage of AB 1683, the Legislature intended this Commission to abandon the field of trucking regulation, other than household goods movers.

2. Article XII, Section 4, of the California Constitution gives us permissive authority to regulate carriers of property, but does not require that we exercise this authority.

3. Were we to grant the application of WMTB under the permissive authority of the California Constitution we would be ignoring the legislative intent as indicated by AB 1683.

4. Even if we were to grant the application of WMTB we would provide no active supervision of the conduct of applicant's members, and thus would not provide the necessary requisite for antitrust immunity.

5. This application should be dismissed for lack of jurisdiction.

O R D E R

IT IS ORDERED that the application herein is dismissed.

This order is effective today.

Dated April 9, 1997, at San Francisco, California.

P. GREGORY CONLON
President

JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners