

DECISIONS OF

The Public Service Commission

OF THE

COMMONWEALTH OF PENNSYLVANIA

May 11, 1931, to February 28, 1933

VOLUME 11



HARRISBURG, PENNSYLVANIA

1933

APPLICATION OF FOWLER t/a FOWLER AND WILLIAMS
 DELAWARE, LACKAWANNA AND WESTERN RAILROAD
 COMPANY et al.

v.

FOWLER t/a FOWLER AND WILLIAMS

APPLICATION DOCKET NOS. 23972, FOLDER NOS. 2 AND 3
 COMPLAINT DOCKET No. 9304

Motor vehicles — Common carriers — Certificates of public convenience — Conditions, limitations and restrictions — Violations — Penalty — Call and demand service — Transportation for rail carrier.

It is for the Commission, not the certificate holder, to determine what service is necessary in a given territory, and the certificate holder has no right to render the service until the Commission has made the necessary determination.

Where it appeared in a complaint proceeding that an applicant for removal of a certificate restriction had rendered a necessary service in violation of the restriction the Commission found that the public interest would be better served by imposition of a fine than by revocation of the certificate.

An application for the right to perform call and demand service in and from a city was approved with territorial and other restrictions.

An application for the right to transport freight by motor vehicle for a railroad company between points on the company's rail line was approved.

Gilbert Nurick and Sterling G. McNees for Fowler & Williams.

Kelly, Balentine, Fitzgerald & Kelly for Blue Line Quick Delivery Express.

Paul Bedford for The Delaware & Hudson Railroad Corporation.

James K. Peck and Walter W Kohler for Arrow Carrier Corporation.

James P. Harris for The Central Railroad Company of New Jersey, Reading Company and Reading Transportation Company.

Thomas Byron Miller for The Pennsylvania Railroad Company and Railway Express Agency.

G. W. Morgan for Chester T. Davies, Inc., and Delaware, Lackawanna & Western Railroad Company.

W. J. Wilcox for Lehigh Valley Transit Company.

Harold S. Shertz for Tri-State Motor Freight Company, Modern

Transfer Company, Fred Erb and Philadelphia Drayage & Express Corporation.

REPORT BY THE COMMISSION, *December 13, 1932:*

On March 15, 1932, Hilton G. Fowler was granted a certificate of public convenience authorizing him to transport property by truck as a common carrier between the Borough of Forest City, Susquehanna County and the City of Philadelphia. The certificate contains certain limitations upon the rights granted to him, one of which prohibits transportation from Philadelphia of any merchandise excepting sugar. A petition for reconsideration in order that this limitation be removed was refused. He later filed an application (A. 23972 Folder 2) for the right to operate over the same route, dividing it into four zones. The zones were (a) Forest City to Scranton, (b) Scranton to Stroudsburg, (c) Stroudsburg to Easton, (d) Easton to Philadelphia. He asked for the right to transport property from any zone to any other zone, with no right to transport between points in the same zone. The approval of this application would grant the right to transport other merchandise than sugar from Philadelphia to points north of Easton.

A complaint was filed alleging that he was transporting merchandise other than sugar from Philadelphia after the certificate containing that limitation was issued to him. In his answer to the complaint he admitted such transportation, claiming that the situation had changed since the certificate was granted; that there was no demand for his service in the transportation of sugar, and that operation without a return load from Philadelphia was unprofitable. As the Commission had found that there was a necessity for service from Forest City and vicinity to Philadelphia, he assumed the right to transport upon return in order that the necessary service might be continued.

The Public Service Commission is the body established by law to decide questions of this kind. The individual holder of a certificate has no right to assume those functions and determine questions of public necessity for himself. It may be, as in this case, that there is a need for the service which the carrier desires to perform, but he has no right to perform the service until the Commission has made the necessary finding. Because of the circumstances, the Commission will not revoke the certificate already granted in this case. We find that the public interest will be better served by the imposition of a monetary penalty upon the respondent. We find further that respondent has violated the restriction placed in the order of the Commission on at least six (6) separate days, by which actions he has

forfeited and must pay to the Commonwealth the sum of Three hundred dollars (\$300).

The witnesses produced by him as applicant, testified that there is a need for truck service of the character which he has been rendering. He made certain agreements concerning conditions upon the desired rights which satisfied the protests of various truckers. From the evidence the Commission finds that there is a need for the service requested in the application, subject to the stipulations, and a certificate of public convenience in evidence thereof will be granted.

Mr. Fowler has also applied for the right to transport freight upon call or demand from the City of Carbondale and also to transport property for the Ontario and Western Railroad Company at points on its line between Carbondale and Scranton. That railroad company has found it advisable to transport less than carload lots along its line by trucks instead of rail. It desires to employ the applicant to perform this service. The service will be similar to that formerly rendered by the railroad and the Commission finds that applicant's service will be necessary or proper for the public accommodation and convenience. A certificate will be granted to the applicant authorizing him to perform it.

There was not much question of the need for call and demand service from the City of Carbondale. The protests were based chiefly upon the unlimited radius of the territory within which the applicant desired to render service. The Commission finds that there is need for service of the class designated as (b) and (c) in General Order No. 29. The applicant will be permitted to render service within the City of Carbondale and contiguous municipalities and from Carbondale to points within a radius of twenty-five (25) miles, subject to the restrictions applied to class (c) truckers of General Order No. 29, and subject to the additional condition that no goods be transported on the route between Carbondale and Scranton.

Orders will issue in accordance with the findings in this report.