

McS

Decision No. 14294

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

-000-

FRANCHISE MOTOR FREIGHT ASSOCIATION

Complainant

ORIGINAL

-vs-

CASE NO. 2020

CALIFORNIA SHIPPERS, a corporation,
Harry Y. Stebbins, Edwin S. Roberts,
William Magee.

Defendants.

Harry N. Blair, Phil Jacobson for
Complainant

Frank M. Smith for Defendants.

WHITTLESEY, Commissioner:

O P I N I O N

The above entitled proceeding is a complaint brought by the Franchise Motor Freight Association, a voluntary association organized under the laws of the State of California for the promotion and protection of a number of automotive truck carriers operating under the jurisdiction of the Railroad Commission against California Shippers, a corporation, and Harry Y. Stebbins, Edwin S. Roberts, William Magee alleging in effect that said corporation was operating automotive truck service for the transportation of property for compensation between the fixed termini and over a regular route not exclusively within the limits of a

single incorporated city or town or city and county; that such operation is conducted in violation of the provisions of Chapter 213, Statutes of 1917, and amendments thereto in that said corporation was not operating in good faith prior to May 1st, 1917, and continuously since nor has it secured a certificate of public convenience and necessity from the Railroad Commission as required under the provisions of the above numbered statutory enactments.

The Answer of defendants was filed on August 21, 1924, denying allegations as set forth in the complaint. A public hearing was held at Los Angeles on October 14, 1924, at which time the matter was submitted and it is now ready for decision.

A number of witnesses were produced by complainant, many of them being shippers located at Oxnard, Ventura, Santa Paula and Santa Barbara, being points upon the regular route alleged to be served by defendants herein. These witnesses testified in effect that they had received shipments of merchandise from Los Angeles upon which shipments they had paid rates assessed under the tariff of defendants; that they had not at any time signed any agreement or become associate or active members of defendant corporation. Several other witnesses also testified to having received shipments moved by defendants' trucks upon which they had paid the assessed rates. Further that they had signed applications for associate membership in the California Shippers, Inc., a corporation. Copies of the forms used for application for associate membership were submitted in evidence as Complainant's Exhibits Nos. 5 and 7. Exhibit No. 7 shows that a charge of \$10.00 was paid for an associate membership, the application being No. 1882 B having marked on its face "paid HJA". This witness, however, testified that the solicitor who had asked

him to sign said application had marked the same paid but had informed him that no payments were necessary nor had any ever been made. Same applies to other witnesses who had signed a membership application.

No testimony was submitted on behalf of defendants other than their claimed statement that they were operating insofar as possible strictly in accordance with their articles of incorporation and by laws, a copy of which was submitted in evidence. The articles of incorporation of defendant California Shippers Inc., a corporation, provide in part for the purchase, acquisition, etc., of terminals, depots, warehouses and yards in the State of California and for the collection, pick-up, delivery and transportation of all kinds of personal property for its membership, the membership to be composed of two classes, namely, active and associate members. The active members to have all voting powers, the associate members to have no vote in the affairs of the corporation. Further, that the associate members shall have no right, title and interest in any of the property or assets of the corporation, but all of such property rights are to be vested in the active members who shall be the proprietary members thereof and upon dissolution or liquidation of the corporation all the property and assets shall vest and be distributed to and divided among active members only.

Section 7 of Article 11 of the By-laws provides that any person, firm, partnership or corporation may become an associate member by the payment of the sum of \$10.00 as an initiation fee and by the recommendation of the Board of Directors.

The Secretary-Treasurer of the corporation testifying as a witness for complainant stated that he knew nothing of the amounts collected or the distribution thereof and could not state what was done with amounts collected, if any, of \$10.00

for associate membership or the amounts collected covering rates.

In view of the evidence submitted in this proceeding, we are of the opinion and hereby find as a fact that defendants are operating automotive trucks for the transportation of property for compensation over regular route or between fixed termini as that term is defined in Chapter 213, Statutes of 1917, and amendments thereto; that they have obtained no certificate from this Commission nor were they operating in good faith prior to May 1st, 1917 and continuously since as provided for in Section 5 of the above numbered statutory enactment.

O R D E R

Public hearing having been held in the above entitled proceeding, evidence submitted and the Commission being fully advised and basing its order upon the statement and finding of fact as set forth in the Opinion preceding this order,

IT IS HEREBY ORDERED that the California Shippers, a corporation, Harry V. Stebbins, Edwin S. Roberts and William Magee be and they hereby are directed to immediately cease operation of automotive trucks for the transportation of property for compensation over regular routes or between fixed termini within the State of California.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission be and he hereby is directed to serve a certified copy of the within Opinion and Order on the District Attorneys of Los Angeles County, Ventura County and Santa Barbara County.

The effective date of this decision for all other

purposes be and the same hereby is fixed as twenty days from date hereof.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of November, 1924.

Clarence
H. H. Anderson
Erving Martin
Ernest Shore
J. F. Whitte
Commissioners