

Decision No. 24477

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

RICE TRANSPORTATION COMPANY, a Corporation,)
DONOVAN TRANSPORTATION COMPANY, a Corporation,)
COAST TRUCK LINE, a Corporation,)

Complainants,)

-vs-

) Case No. 3021.

E. B. McCLURE, doing business as)
INTERSTATE TRANSPORTATION COMPANY,)

) Defendant.

ORIGINAL

E. J. Bischoff for Complainant,
F. A. Jones for E. B. McClure and
F. A. Stover, Defendants,
F. M. Leake for Railway Express Agency, Inc.,
as its interests may appear.

BY THE COMMISSION:

O P I N I O N

Rice Transportation Company, a corporation, Donovan
Transportation Company, a corporation, and Coast Truck Line,
a corporation, complainants in the above entitled proceed-
ing, allege in substance and effect that E. B. McClure,
and F. A. Stover, copartners doing business under the
fictitious name of Interstate Transportation Company,
are operating auto trucks in the transportation of prop-
erty as a common carrier for compensation over the pub-
lic highways between Los Angeles and Los Angeles Harbor,
on the one hand, and the cities of San Diego, Santa Ana,
Fullerton, Anaheim and Orange, on the other hand, and
between Los Angeles and Los Angeles Harbor and between

Long Beach and San Diego without having obtained from the Railroad Commission of the State of California a certificate of public convenience and necessity authorizing such operations.

The defendants, by their written answer herein, denied all of the allegations contained in said complaint and allege that they are operating as private carriers under contract.

Public hearings on said proceeding were conducted by Examiner Satterwhite at Los Angeles, the matter was submitted and is now ready for decision.

Complainants called E. B. McClure, co-defendant, above named, and other witnesses in support of their complaint. The evidence shows that E. B. McClure and F. A. Stover, copartners under the fictitious name of Interstate Transportation Company ever since July, 1930, have been engaged in the operation of motor trucks for compensation between Los Angeles and Los Angeles Harbor, on the one hand, and San Diego on the other hand.

The undisputed record shows that defendant, E. B. McClure, by active personal solicitation of numerous shippers in the above named cities, has succeeded within a period of ten months in securing a very substantial trucking business and is now making regularly between Los Angeles and San Diego and between Los Angeles Harbor and San Diego at least four trips weekly in order to transport the volume of tonnage obtained. The following named business firms constitute the shippers for whom the defendants have hauled various commodities since they began their operations in July, 1930, viz:

Pioneer Paper Company,
Whiting & Mead,
Van Camp Sea Food Company,
K. Hovden Company,
Cohn-Hopkins
Westgate Sea Products
A. Brandenstein Company,
Asbestos Products Co.,

Ackerman Construction Company,
Zimmerman Brothers,
Western Salt Company,
California Packing Co.,
Cocoa Cola Company,
J. S. Schirn Commercial Co.,
San Diego Soda Works.

The largest tonnage transported by the defendants has been secured from four of the above named shippers who are engaged in the fish business and operate fish canneries at San Diego and Los Angeles Harbor. The commodities hauled by the defendants, both northbound and southbound between the above named points, have consisted in the main of canned goods, fish, beverages, hides, paper, machinery, building material of various kinds and plumbing materials.

The trucking operations of defendants have been carried on entirely under oral agreements by virtue of which an "on call" service was rendered at a charge or rate quoted and accepted by the shippers. No time limit as to the period of service or volume of tonnage to be hauled was ever definitely agreed upon, save and except that defendants' patrons had in several instances indicated their willingness to use the service of defendants as long as it proved satisfactory. The record also shows that the defendants have solicited from and always confined their trucking services to those patrons or shippers whose shipments are five tons or more and have refused to accept shipments under that amount. It further appears that the defendants have from time to time declined to accept offers of shipments exceeding five tons because of their limited equipment. In this connection, the codefendant E. B. McClure, who manages the business and does all soliciting, testified in part as follows:

"Q. You won't do any more soliciting until you lose some of your present business? A. Until I get some more equipment

to handle it.

Q. It depends entirely upon that-- your equipment is now limited, and for that reason you are compelled to discontinue your solicitation. You are planning, are you, to buy another new truck and transport more goods? A. Hope to.

Q. In other words, your financial resources are the only thing that is limiting you in your truck operations?

A. Yes sir. I would have more business if I had more trucks." * * * * *

Q. The charge that you make in the main is about the same for all that you carry? A. No sir.

Q. What does it range, about three to five dollars, or what?

A. Three to five.

Q. Depending upon what, within that range?

A. On the commodity.

Q. The character of the commodity? A. The character of the commodity and the handling of it at both ends.

Q. When you go to San Diego with a consignment do you generally pull your trailer along? A. As a rule, yes. If I don't have a load, pull it with the truck.

Q. But most of the time you have a trailer load for these consignments? A. Yes.

Q. The tonnage of your truck and trailer is how much each?

A. One 16 tons, and one 20.

Q. Can you load these trucks to 16 and 20 tons? A. Yes sir."

We have carefully considered all the evidence in this proceeding, and are of the opinion and hereby find as a fact that E. B. McClure and F. A. Stover, copartners operating under the

fictitious name of Interstate Transportation Company, are operating as a transportation company within the meaning of Chapter 213, Statutes of 1917, as amended, between Los Angeles and Los Angeles Harbor, on the one hand, and San Diego, on the other hand, without having obtained a certificate of public convenience and necessity therefor.

O R D E R

Public hearings having been held in the above entitled proceeding, the matter having been duly submitted and being now ready for decision,

IT IS HEREBY ORDERED that E. B. McClure and F. A. Stover, doing business under the fictitious name of Interstate Transportation Co., immediately cease and desist from common carrier operations between Los Angeles and Los Angeles Harbor, on the one hand, and San Diego, on the other hand, until they have obtained the requisite certificate of public convenience and necessity from this Commission.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission cause a certified copy of this decision to be personally served upon E. B. McClure and upon F. A. Stover and that he shall cause certified copies of this decision to be mailed to the district attorneys of Los Angeles and San Diego counties.

This decision shall become effective twenty (20) days from and after the date of service of above mentioned copies.

Dated at San Francisco, California, this 28th day of September, 1931.

O. C. Jensen
Leon O. Jensen

M. B. Lewis
Fred G. Stewart
Commissioners.