

Decision No. 24747

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MOTOR FREIGHT TERMINAL COMPANY,
a corporation,

Complainant,

vs.

HENRY JENSEN, FIRST DOE,
SECOND DOE, THIRD DOE, and
FOURTH DOE,

Defendants.

Case No. 3144.

ORIGINAL

John M. Atkinson and Wallace K. Downey,
by Wallace K. Downey, for Complainant.
Rex W. Boston, for Defendants.

WEITSELL, COMMISSIONER:

O P I N I O N

Motor Freight Terminal Company in this proceeding seeks an order requiring defendant Henry Jensen to cease and desist common carrier operations for the transportation of property over the public highways for compensation, particularly between Los Angeles and Calexico and intermediate points without first having obtained from this Commission a certificate of public convenience and necessity. Defendant in answer alleges that the operations he is conducting are those of a private carrier not requiring certificates of public convenience and necessity as defined in Chapter 213, Statutes of 1917 as amended.

A public hearing herein was held at El Centro February 10, 1932, at which time the matter was duly submitted and is now ready for decision. There is little dispute in the record as to the

actual facts. The only witness called by either party was defendant Henry Jensen. Although complainant had a number of other witnesses present they were dismissed when the essential facts were admitted by defendant.

Defendant acquired the trucking business of Mack Henson, deceased, in July 1931, and has continued the operations according to his own statement for the same parties and in the same manner as had Henson. At the time of his death, Henson was defendant in a similar proceeding instituted by complainant, which was submitted after hearing. This case was dismissed upon the death of Henson. Although Henson had been operating for many years in Imperial Valley and various points thereof and to and from Los Angeles his operations present no affirmative proof of ever having established a prescriptive right and the acquisition of the business by defendant includes no such representation.

At the outset complainant called Jensen as a witness in complainant's behalf and his use as a witness was objected to by defendant's counsel on the grounds, first, that under paragraph (b) of Section 7 of Chapter 213 (Auto Stage and Truck Transportation Act) defendant would under a cease and desist order be subjected to a penalty or forfeiture and therefore could not be required to testify; and further that under Section 8 of the Act that defendant would be giving testimony which might tend to incriminate him in subsequent criminal proceedings for violation of the Act. Whether this objection would be valid in either of the instances mentioned by counsel or both is a matter which is not necessary to pass on. In this proceeding a cease and desist order, if issued, would not be either a penalty or a forfeiture, being only an order to cease and desist whatever the Commission may find defendant has no legal right to do. For this reason the objection

was overruled.

Defendant also objected to the introduction of any testimony through Jensen to any operation subsequent to the filing of the complaint herein, and sought to confine the scope of proof to the period between the acquisition of the business by Jensen on July 31, 1931, and November 13, 1931, the latter being the date on which the complaint was verified, although it was not filed with the Commission until November 19, 1931. This objection is frequently made and it is my opinion that it is not good for the reason that such testimony is material as showing the continuing character of the operations complained of. Further, in view of the fact that the operations before November 13, 1931, and after that date were exactly the same in character it will make very little difference in the final disposition of the matter.

The business acquired by Jensen included four trucks, two of which are used in line haul between Imperial Valley points and Los Angeles, and two of which are used for local purposes in and about El Centro, Brawley, Calexico, Holtville and other points. The facts related by Jensen are that he transports property between Los Angeles and Imperial Valley points for Imperial Valley Hardware Company, Edgar Brothers, Sussman and Wormser, Reid and Murdock Company, Ben Herring, The Marshall Seed Company, International Harvester Company, Planters' Peanuts, Curtis Candy Company, Los Angeles Soap Company, M. R. Benson and the Los Angeles Biscuit Company. Jensen testified that service had been performed for all these interests prior to his acquisition of the business and that he continued the same without further solicitation; that he had solicited the business of no one else; that he did not advertise or have business cards; that he had no established rates and that he had rejected many offers for transportation business between Los Angeles and Imperial Valley and named a number of instances in

which such rejections had occurred. He admitted that no contracts of any kind existed. When receiving goods he usually gave shippers' receipt on his own form, subsequently billing the consignor or consignee on his own billhead. Occasionally he receives signed bills of lading with shipments out of Los Angeles. He admitted performing every service for compensation but the record is without evidence as to the amount or variation of compensation according to commodity or quantity. Witness testified that the movements between Los Angeles and Imperial Valley points were twice each week or more. Some of the shippers, particularly Imperial Valley Hardware Company and Edgar Brothers, have several places in the Valley to which deliveries have been made, particularly at Brawley and El Centro. In his own behalf, Jensen testified that he did not and would not haul for any other shippers except those named, and that he does not hold himself out as to rates or service beyond the business he acquired from Henson.

There is little proof in the record as to his operation from point to point in Imperial Valley except one movement between Brawley and Calexico.

I have given the record careful consideration and find that it establishes the operations of common carriage between Los Angeles and El Centro and other Imperial Valley points as set out in the complaint. The record shows unquestioned understanding between defendant and the customers named to transport their products from Los Angeles to Imperial Valley for compensation; also return movements (usually rejected merchandise) are made from Imperial Valley points to Los Angeles. The movement is for a substantial portion of the public and is conducted between fixed termini and according to Jensen's testimony is over the usual route via Redlands, which is the state highway between Los Angeles and Imperial Valley. The service performed by defendant is no different

than the service performed by complainant except perhaps in the matter of quantity and is a serious diversion of business from complainant and other authorized carriers between the points of Imperial Valley and Los Angeles.

After full consideration of the record consisting of evidence and exhibits herein, I conclude and hereby find as a fact that Henry Jensen has operated, and is now operating, automobile trucks as a common carrier of property between Los Angeles and Brawley, El Centro and Calexico and intermediate points over regular routes between the above mentioned fixed termini and without having secured a certificate of public convenience and necessity from the Railroad Commission as required by the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto.

I propose the following form of order:

O R D E R

Public hearings having been held on the above entitled complaint, the matter having been duly submitted, the Commission being now fully advised and basing its order on the conclusion and finding of fact as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED, that Henry Jensen immediately cease and desist from the operation of an automobile service as a common carrier of property, for compensation, over the highways of this state between Los Angeles and Brawley, El Centro and Calexico and intermediate points and not resume such operation unless and until said defendant shall have secured a certificate of public convenience and necessity from this Commission after proper application therefor in accordance with the provisions of Chapter 213, Statutes

of 1917 and effective amendments thereto, and

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be and he is hereby directed to cause personal service of a certified copy of this opinion and order to be made upon said Henry Jensen; and that a certified copy of this opinion and order be mailed to the District Attorneys of the Counties of Los Angeles, Riverside, San Bernardino and Imperial; to the Board of Public Utilities and Transportation of the City of Los Angeles; and to the Department of Public Works, Division of Motor Vehicles, Sacramento, California.

The effective date of this order is hereby fixed as twenty (20) days from the date of personal service above mentioned.

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 27th
day of May 1932.

C. L. Seavey

M. J. Cunniff

M. B. Karpis

Fred G. Stewart

Commissioners.