

Decision No. 25356

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,
Complainant,

vs.

GEORGE CAVAGNARO, JOHN DOE CAVAGNARO,
FIRST DOE, SECOND DOE, THIRD DOE,
FOURTH DOE, FIFTH DOE, FIRST DOE COR-
PORATION, SECOND DOE CORPORATION,
THIRD DOE CORPORATION, FOURTH DOE
CORPORATION, FIFTH DOE CORPORATION,

Defendants.

ORIGINAL

Case No. 3321.

Reginald L. Vaughan and Scott Elder, for
complainant.

James A. Toner and Harold C. Brown, for
defendant George Cavagnaro.

CARR, Commissioner:

O P I N I O N

Regulated Carriers, Inc. complains of George Cavagnaro, alleging unlawful common carrier operations by auto truck between Mountain View and San Francisco.

Public hearing was had at Mountain View on October 19, 1932 and the case is now ready for decision.

The record discloses fully the nature of Cavagnaro's operations. He owns a ton and a half Chevrolet truck and makes five trips a week between Mountain View and San Francisco. The business he performs is in part "shopping" in San Francisco for Mountain View merchants and business houses and in part a common carriage trucking operation. For Chas. Pearson, Jr., who operates an auto sales and repair business at Mountain View, he "shops" about in San Francisco for accessories and parts, receiving a flat monthly compensation of

\$20.00 for this service. For the Moore Furniture Company he picks up small packages, sometimes carrying the concern's orders to San Francisco and filling them and sometimes merely picking up goods otherwise ordered. About 15% of the packages carried for the Moore Company involve special or personal service. The personal service feature of his operations as to his numerous customers varies between these two extremes. With the exception of one or two concerns, as to which he collects for his service daily, he renders monthly bills. The basis of his charges as to all except Pearson is 20 cents per 100 pounds, with a minimum charge per package of not less than 25 cents. Apparently his customers have been pleased with his services and have accepted his billings as reasonable without detailed analysis of their basis.

The business conducted by Cavagnaro had its origin about 1900, when Tom Rose started making shopping trips to San Francisco for Mountain View merchants. He travelled by the railroad. Rose was succeeded by Robert O'Neal, who carried on the business until 1922, when E. E. Mylrea purchased it. O'Neal started using a truck about 1919. F. C. Tompkins took over the business in 1925 and continued it until October 1930, when Cavagnaro bought him out.

That Cavagnaro's operations are a convenience to Mountain View merchants can hardly be questioned. As to some, the shopping he does for them in San Francisco is the chief advantage. As to others an evening delivery of orders made as late as 2 p.m. is the important consideration. It can hardly be said that the main business he performs is that of shopping in San Francisco for his customers. Rather must it be concluded from the evidence that this service, together with an unusually prompt and convenient delivery, has made it possible for him to build up a nice little transportation business yielding him a fair livelihood. That he is in fact operat-

ing as a "transportation company" between Mountain View and San Francisco is clearly shown, and this being so and he having no certificate authorizing such operations it follows that under the law he must be ordered to cease and desist.

An order of this Commission finding an operation to be unlawful and directing that it be discontinued is in its effect not unlike an injunction issued by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vests the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a party is adjudged guilty of contempt, a fine may be imposed in the amount of \$500.00, or he may be imprisoned for five (5) days, or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 458; Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 8 of the Auto Truck Act (Statutes 1917, Chapter 213), a person who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding \$1000.00, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. Likewise, a shipper or other person who aids or abets in the violation of an order of the Commission is guilty of a misdemeanor and is punishable in the same manner.

The following form of findings and order is recommended:

FINDINGS AND ORDER

Public hearing having been had and the case submitted for decision, the Railroad Commission of the State of California hereby finds and concludes as follows:

The defendant George Cavagnaro is operating as a "transportation company" as defined in Sec. 1, Sub (c) of the Auto Stage & Truck Transportation Act (Chap. 213, Stats. 1917) and is engaged as a common carrier in transporting by auto truck property for hire over the public highways between Mountain View and San Francisco.

Based on the findings herein and in the opinion,

IT IS HEREBY ORDERED that George Cavagnaro cease and desist, directly or indirectly, or by any subterfuge or device, from operating as a transportation company between Mountain View and San Francisco unless and until he shall obtain a certificate of public convenience and necessity authorizing such service.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon defendant George Cavagnaro.

The effective date of this order shall be thirty (30) days after the date of service upon defendant George Cavagnaro.

The foregoing opinion, findings and order are hereby adopted as the opinion, findings and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of November, 1932.

O. C. Seamy
Leon S. Whelan
W. J. Curran
W. B. Harris
Fred G. Stetsman
Commissioners.