

Decision No. 95290.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion into the practices, operations, regulations, rates, rules, charges, and classifications, or any of them, of WILLIAM FINN, MRS. WILLIAM FINN, FIRST DOE, SECOND DOE, and THIRD DOE, operating as "passenger stage corporations" and/or as "motor carrier transportation agents".

Case No. 3400.

ORIGINAL

- T. T. Califro, for respondents.
- Orla St. Clair, for Motor Carriers Association and Pacific Greyhound Lines, Incorporated.
- E. W. Hobbs, for Southern Pacific Company as an interested party.
- L. R. Everett, for The Atchison, Topeka and Santa Fe Railway Company, interested party.

BY THE COMMISSION:

OPINION

The above entitled proceeding was instituted by the Commission on its own motion to inquire into the practices, operations, regulations, rates, rules, charges and classifications of each of the respondents, particularly as to their operations alleged to be those of "passenger stage corporations" within the meaning of Sections 2 $\frac{1}{2}$ and 50 $\frac{1}{2}$ of the Public Utilities Act (Statutes 1915, page 115, as amended) and/or as "motor carrier transportation agents" within the meaning of Chapter 638, Statutes of 1931. Respondents were cited to appear and show cause why the Commission should not order them to cease and desist operating

as passenger stage corporations or as motor carrier transportation agents, until certificates therefor or licenses should have been issued by the Commission.

A public hearing was held before Examiner Brown at San Francisco on November 25, 1932. At the hearing counsel for respondents moved to dismiss the proceeding on the ground that the Commission was without authority to issue the order to show cause, and upon the further ground that the Public Utilities Act and Chapter 638, Statutes of 1931, in so far as they relate to the operations of respondents, were unconstitutional. The motion is denied.

The record shows that respondents maintain a depot at 38 Sycamore Street, San Francisco, for the despatching of passengers from San Francisco to Los Angeles. They advertised in newspapers and otherwise held themselves out to provide transportation between these points. Transportation has been and is sold via the lines of other carriers, either directly or by various devices. The testimony of respondent William Finn also shows that passengers have been and are transported in vehicles owned and operated by said respondent. The transportation of passengers respondent characterizes as a taxicab service of a private nature, upon the theory that he operates between any and all points in the state wherever occasion demands, and has refused to transport passengers under the influence of intoxicating liquors, or colored persons.

In 1931 respondents requested from this Commission a certificate of public convenience and necessity to operate an automotive transportation service between San Francisco and Los Angeles, In Re Application of William Finn et al., 36 C.R.C.712.¹

¹ The record in this proceeding, with the exception of the testimony of Witness Croocox, was made a part of the record in the instant proceeding.

There, as here, the record showed that respondent was transporting passengers between San Francisco and Los Angeles, but it was contended that the transportation rendered was a "private service".

In Re Application of Finn, supra, Commissioner Harris, speaking for the Commission, stated:

"While it is apparent from a close study of the record in this proceeding that applicant Finn has been operating illegally for several years, it appears to me that inasmuch as he has sought authority to continue the service, submitting the matter squarely to the Commission on a claim that public convenience and necessity require it, that public good will best be served by considering the matter from that standpoint. * * * I am of the opinion, giving full consideration to every feature of the record, but particularly to the requirements of public convenience and necessity, and find as a fact, that public convenience and necessity do not require the service proposed by applicants. The application should be denied."²

Neither respondent has obtained from the Commission a motor carrier agent's license nor a certificate of public convenience to operate motor vehicles for the transportation of passengers.

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 vest 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. 1216; Motor Freight Terminal Co. vs. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth vs. Stamper, 36 C.R.C. 458; Pioneer Express Company vs. Keller, 33 C.R.C. 571.

It should also be noted that under Section 79 of the Public Utilities Act a person who violates an order of this Commission or who procures, aids or abets any utility in its viola-

² Respondent William Finn testified in the instant proceeding that his present operations had been conducted in substantially the same manner for a number of years.

tion of the Act, or in its failure to comply with any order of the Commission, is guilty of a misdemeanor and is punishable by a fine not exceeding \$1,000.00, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

Section 15 of the Motor Carrier Transportation Agent Act (Statutes 1931, Chapter 638) provides that any person, firm, or corporation acting as an agent without a license, shall, upon conviction thereof, if a person, be punished by a fine not exceeding \$1,000.00, or by imprisonment in the county jail, or state prison, for a term not to exceed one year, or by both such fine and imprisonment; or if a corporation, may be punished by a fine of not to exceed \$2,500.00.

O R D E R

Public hearing having been held and the matter having been duly submitted,

IT IS HEREBY FOUND AS A FACT that respondents, William Finn and Mrs. William Finn, have been acting as motor carrier transportation agents within the meaning of Statutes 1931, Chapter 638, Section 1, without first obtaining licenses therefor.

IT IS HEREBY ORDERED that the above named William Finn and Mrs. William Finn shall immediately cease and desist such operations as motor carrier transportation agents, unless and until proper licenses shall have been obtained, and notice is hereby given that such operation shall not be conducted by the above named respondents either directly or indirectly or by their agents, employees, representatives or assignees.

IT IS HEREBY FURTHER FOUND AS A FACT that William Finn is engaged as a passenger stage corporation, and as a common carrier of passengers, for compensation, over the public highways,

between San Francisco and Los Angeles without first having obtained a certificate of public convenience and necessity therefor as required by the Public Utilities Act.

IT IS HEREBY FURTHER ORDERED that the above named William Finn shall immediately cease and desist such operations as a passenger stage corporation, unless and until a proper certificate of public convenience and necessity therefor shall have been obtained, and notice is hereby given that such operation shall not be conducted by the above named respondent either directly or indirectly or by his agents, employees, representatives or assignees.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission cause personal service of a certified copy of this opinion and order to be made upon William Finn and Mrs. William Finn and that copies thereof be mailed to the District Attorney of the City and County of San Francisco, to the District Attorneys of the Counties of Alameda, Stanislaus, Merced, Fresno, Kern, San Mateo, Santa Clara, Santa Cruz, Monterey, Kings, Santa Barbara, Ventura and Los Angeles and to the Board of Public Utilities and Transportation of the City of Los Angeles and the Department of Public Works, Division of Highways, at Sacramento.

This order shall become effective twenty (20) days after personal service upon respondents.

Dated at San Francisco, California, this 27th day of December, 1932.

C. L. Seaver
Leon Williams
M. A. Carr
M. B. Harris
Fred C. Alvord
Commissioners.