

Decision No. 25599.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,)

Complainant,)

vs.)

W. F. BENNETTS, FIRST DOE, SECOND DOE,
THIRD DOE, FOURTH DOE, FIFTH DOE, FIRST
DOE CORPORATION, SECOND DOE CORPORATION,
THIRD DOE CORPORATION, FOURTH DOE COR-
PORATION, FIFTH DOE CORPORATION,)

Defendants.)

Case No. 3383.

ORIGINAL

Scott Elder, for complainant.

Edward Stern, for Railway Express Agency, Inc.

Peter J. Wilkie, for defendant.

BY THE COMMISSION:

O P I N I O N

In this proceeding Regulated Carriers, Inc., allege that defendants are operating trucks as common carriers for the transportation of freight between Sacramento on the one hand and Loomis, Penryn, Auburn, Grass Valley, Nevada City and Colfax on the other hand without having obtained a certificate of public convenience and necessity from this Commission. Defendant by his answer admits that he is operating without a certificate but alleges that the transportation he conducts is private in its nature and not subject to regulation by the Commission.

A public hearing was conducted by Commissioner Stevenot at Grass Valley on December 16, 1932, at which time the matter was submitted. The evidence presented related entirely to the operations of defendant W. F. Bennetts.

According to the testimony, including that of Bennetts, transportation has been conducted between San Francisco and Grass Valley and Nevada City for 12 shippers. Bennetts is a produce dealer, buys his stock at Sacramento and sells to merchants at various places. The record shows that these merchants requested Bennetts to transport merchandise (other than produce) from Sacramento to their stores and that he has accommodated them, making a charge therefor. His defense is that this is a service only incidental and subordinate to his main business of selling fresh produce and that in all respects the transportation was rendered as a private carrier.

While it appears from the record that defendant probably had no intention of becoming a transportation company as defined in the Truck Transportation Act, he appears to have been ready and willing at all times to perform a transportation service for compensation upon request, and that he did not refuse any one such service during a period of a year or more prior to the hearing.

The facts of record show that defendant has operated as a common carrier of freight (other than fresh produce) for compensation between Sacramento and Grass Valley and Nevada City. An order will be entered directing him to cease and desist therefrom.

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. 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. 453; Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 8 of the Auto Stage and Truck Transportation 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 Secretary of the Commission will be directed to mail certified copies of this opinion and order to shippers who appeared as witnesses in the course of the proceeding, and to other shippers who are known to be using the service and facilities of defendants, upon the said opinion and order becoming final.

O R D E R

A public hearing having been held in the above entitled proceeding, the matter having been duly submitted and being now ready for decision,

IT IS HEREBY FOUND AS A FACT that defendant W. F. Bennetts is engaged in the transportation of property by auto truck for compensation and as a common carrier between fixed termini and

over a regular route on the public highways of this State, viz.: between Sacramento and Grass Valley and Nevada City, without first having obtained a certificate of public convenience and necessity for such operations, as required by the Auto Stage and Truck Transportation Act (Chapter 213, Statutes of 1917, as amended). Therefore,

IT IS HEREBY ORDERED that defendant W. F. Bennetts shall immediately cease and desist such common carrier operations, as described in the preceding paragraph, unless and until he shall obtain a certificate of public convenience and necessity therefor,

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 W. F. Bennetts; that he cause certified copies thereof to be mailed to the District Attorneys of Sacramento, Plumas and Nevada Counties; to the Board of Public Utilities and Transportation of the City of Los Angeles; to the Department of Public Works, Division of Highways, at Sacramento; and, upon this decision becoming final, he shall cause certified copies thereof to be mailed to shippers who appeared as witnesses in the course of this proceeding and to other shippers who are known to be using the service and facilities of defendant.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaint be and it is hereby dismissed.

The effective date of this order shall be twenty (20) days after the date of service upon defendant W. F. Bennetts.

Dated at San Francisco, California, this 30th day of January, 1933.

W. F. Bennett
L. M. Whalley
W. G. Lane
W. B. Hunt
D. W. ...
Commissioners.