

Decision No. 25794

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SAN DIEGO FORWARDING COMPANY,)

Complainant,)

-vs-

Case No. 3353

KENT CONSOLIDATOR'S, INC.,)

Defendant.)

REGULATED CARRIERS, INC.,)
a corporation,)

Complainant,)

-vs-

KENT CONSOLIDATIONS, INC., a)
corporation, DAVE KENT, FRANK KENT,)
JOHN KENT, MARY KENT, MATT HOUP,)
FIRST DOE, SECOND DOE, THIRD DOE,)
FOURTH DOE, FIFTH DOE, FIRST DOE)
CORPORATION, SECOND DOE CORPORA-)
TION, THIRD DOE CORPORATION, FOURTH)
DOE CORPORATION, FIFTH DOE CORPOR-)
ATION,)

Defendants.)

Case No. 3364

R. L. Vaughan and Scott Elder, by Scott Elder,
for Complainant in Case No. 3364.
C. J. Gamble for Complainant in Case 3363.
Robert Brennan and Wm. F. Brooks, by Wm. F. Brooks
for The Atchison, Topeka & Santa Fe Ry Co.
Interested Party.
Hogan & Thompson, by Romaine Hogan,
for Defendants, in Cases 3353 and 3364.

BY THE COMMISSION:

O P I N I O N

In Case No. 3353 San Diego Forwarding Company, a

corporation, complains of Kent Consolidator's, Inc. and alleges that such company is operating trucks between Los Angeles and San Diego without having first secured a certificate of public convenience and necessity, in accordance with the requirements of Chapter 213, Laws of 1917. Defendant Kent Consolidator's duly filed its answer herein denying the material allegations of the complaint.

Regulated Carrier's, Inc., a corporation, has filed a complaint against Kent Consolidations, Inc., a corporation, Dave Kent, Frank Kent, John Kent, Mary Kent, Matt Houpt, First Doe, Second Doe, Third Doe, Fourth Doe, Fifth Doe, First Doe Corporation, Second Doe Corporation, Third Doe Corporation, Fourth Doe Corporation, and Fifth Doe Corporation, alleging that said defendants, and each of them, were operating truck service over the highways of this state, particularly between Los Angeles and San Diego and without having secured a certificate of public convenience and necessity in accordance with the requirements of Chapter 213, Statutes of 1917.

An answer was duly filed by defendants, said answer denying the material allegations of the complaint.

Public hearings on these cases were conducted by Examiner Handford at San Diego and Los Angeles, the matters were duly consolidated for the receipt of evidence and for decision and after the filing of briefs were duly submitted and are now ready for decision.

Kent Consolidations, Inc. is a company incorporated on September 8, 1932, and Matt Houpt, Frank Kent and Virginia Guidera appear as the incorporators, shareholders and directors. It appears that this incorporation was originally

initiated as the scheme of Matt Houpt who had indebtedness due him from the Paul Kent Truck Company and from the husband of Virginia Guidera. The Paul Kent Truck Company picked up shipments in Los Angeles and delivered them to the Los Angeles terminal, they were then transported to San Diego by trucks employed for such carriage and distributed in San Diego by the trucks of the Paul Kent Truck Company.

Most of the shipments were made by the trucks of Henry Guidera as regarding the line haul from Los Angeles to San Diego.

Fifteen witnesses testified that they had received goods by truck at San Diego that had been shipped from Los Angeles and five witnesses at Los Angeles testified that they had made shipments at Los Angeles for delivery to consignees at San Diego.

It appears that the trucking operations of Kent Consolidations, Inc., were directed by Frank A. Kent who voluntarily assumed the position of manager, and that Mr. Kent made all arrangements for the line haul between Los Angeles and San Diego and also arranged for the necessary bill-heads and other stationery required in the operations. It is claimed that he had no authorization so to do as the company had never held a stockholders meeting or appointed any officials. The service was advertised by post card addressed to shippers at Los Angeles and by the distribution of stickers to shipping clerks and merchants in Los Angeles and San Diego. Frank Kent made his Los Angeles headquarters with the Paul Kent Trucking Co. and at such point the loads were assembled for the line haul to San Diego. Frank Kent also was at one time working for the

Paul Kent Truck Company, although the record does not show that he was a salaried employee during such time. Matt Houpe is claimed to have no knowledge of the alleged practices of the Kent Consolidations, Inc., or of the actions of Frank Kent as the self-appointed manager of the company. The record shows, however, contracts between Kent Consolidations, Inc., and the Paul Kent Truck Company for pick-up service in Los Angeles and for delivery service in San Diego (Exhibit 7), signed on behalf of Kent Consolidations, Inc., by Matt Houpt as President. An agreement for the line haul from Los Angeles to San Diego with Henry Guidera was also signed by Matt Houpt as President of Kent Consolidations, Inc. (Exhibit 8). It appears that defendant Matt Houpe was acting as President of Kent Consolidations, Inc., and should have had full knowledge of the operations of such company.

All shipments were transported from Los Angeles to San Diego, there being no record of any moving from San Diego to Los Angeles. According to the record, some 37 trips had been made from the beginning of the operation until the date of hearing, the majority of the shipments moving by the trucks operated by Henry Guidera and the others being transported by other unauthorized truck owners, the business being usually furnished to the lowest bidder for the line haul between Los Angeles and San Diego.

It appears clearly from the record that Kent Consolidations, Inc., have since the commencement of its operations been engaged in the operations of a transportation company as such company is defined in Chapter 213, Statutes of 1917 and effective amendments, and that such company and its officers should cease and desist any operation or control of operation of auto trucks between Los Angeles and San Diego.

An order of this Commission finding an operation unlawful and directing that it be discontinued is in its effect not unlike

an injunction issued by a court. 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 that 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 & 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 Transportation Act (Statutes of 1917, Chapter 213, as amended), 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.

O R D E R

Public hearings having been held in the above entitled complaint, the matters having been duly consolidated and submitted after the filing of briefs,

IT IS HEREBY FOUND that Kent Consolidation³, Inc., a corporation, Frank Kent and Matt Houpt are operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act (Chapter 213, Statutes 1917, as amended) with common carrier status between Los Angeles and San Diego and without a certificate of public convenience and necessity or prior right authorizing such operations.

Based upon the finding herein and the preceding opinion,
IT IS HEREBY ORDERED that Kent Consolidations, Inc., a
corporation, Frank Kent and Matt Houpt shall cease and desist
directly or indirectly or by any subterfuge or device from con-
tinuing such operations,

IT IS HEREBY FURTHER ORDERED that the Secretary of this
Commission shall cause a certified copy of this decision to be
personally served upon Kent Consolidations, Inc. a corporation,
Frank Kent and Matt Houpt, that he cause certified copies thereof
to be mailed to the District Attorneys of Los Angeles, Orange and
San Diego counties, to the Board of Public Utilities and Trans-
portation of the City of Los Angeles and to the Department of Pub-
lic Works, Division of Highways at Sacramento,

IT IS HEREBY FURTHER ORDERED that these matters, in so far
as they refer to defendants, John Kent, Mary Kent, First Doe, Sec-
ond Doe, Third Doe, Fourth Doe, Fifth Doe, First Doe Corporation,
Second Doe Corporation, Third Doe Corporation, Fourth Doe Corpora-
tion and Fifth Doe Corporation be and the same hereby are dismissed.

The effective date of this order shall be twenty (20) days
from and after the date of service upon above defendants.

Dated at San Francisco, California, this 3rd day of
April, 1933.

6.

O. L. Sawyer
Leon O'Connell
M. A. C.
H. B. Harner
Walter B. ...
Commissioners.