

Decision No. 3401

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA  
REGULATED CARRIERS, INC., a corporation,  
Complainant,

vs.

FRANK DE MARCO, FIRST DOE, SECOND DOE,  
THIRD DOE, FOURTH DOE, FIFTH DOE, FIRST  
DOE CORPORATION, SECOND DOE CORPORATION,  
THIRD DOE CORPORATION, FOURTH DOE CORPOR-  
ATION, FIFTH DOE CORPORATION.

Defendants.

Case No. 3401

**ORIGINAL**

Reginald L. Vaughan and Scott Elder, for Complainant.

H. A. Encell and R. V. Bressani, for Defendant.

WHITSELL, Commissioner -

O P I N I O N

By complaint filed on November 1, 1932, complainant charges Frank De Marco with unlawful common carrier operations by auto truck between San Jose and other points and San Francisco.

Public hearing was had at San Jose on March 9, 1933.

The facts as developed at the hearing may be summarized briefly as follows:

Eleven witnesses produced by complainant, all growers of field or orchard produce, testified to present and past shipments by defendant between San Jose and other points within 25 miles, and San Francisco. The service is regular, in season, though not on schedule. A very large volume of tonnage is transported. While the shipments may be picked up at various ranches the service of defendant, whose headquarters are at San Jose, really is from the San Jose terminal. Defendant testified that his operations are generally the same now as in 1923, when he began business, over the same territory and that during a season (May to November)

he transports produce for 250 to 300 individuals -Exhibit No. 3 lists 217. A considerable portion of the tonnage is from ranch to packing house or is moved exclusively in the City of San Jose. He uses six trucks, performs service every shipping day in season (Saturday excluded) and some of his cargo is destined to Oakland. He uses highway No. 101 and Bayshore Highway. In all this business he has transported for all upon request, though he did produce F.E. Weaver who testified defendant had refused to furnish him transportation but who admitted the refusal was because the witness wanted a reduced rate.

The record is conclusive that defendant is conducting a common carrier service for the transportation of property between fixed termini and over a regular route and I so find as a fact.

I am impressed, however, with the fact that twice since 1923 (Application No. 8952 in 1923 and Application No. 11587 in 1927) defendant has sought to bring his operations under regulation. Each time he has presented about the same state of facts as found above. In the instant proceeding his counsel alluded to defendant's previous efforts at certification, and gave assurance that he would take every step to obtain a certificate, if one is found to be necessary by the Commission. In the absence of any intimation of bad faith on the part of defendant, I must recommend that the usual order to cease and desist be modified by giving defendant a reasonable period within which to request a reopening of the prior applications or to file a new application for a certificate.

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. 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 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.

I propose the following form of order:

C R D E R

IT IS HEREBY FOUND AS A FACT THAT Frank De Marco is 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 San Jose and adjacent points and San Francisco without a certificate of public convenience and necessity or prior right authorizing such operations.

Based upon the finding herein and the opinion, IT IS HEREBY ORDERED that Frank De Marco cease and desist, directly or indirectly, or by any subterfuge or device, from continuing such operations within sixty (60) days from date hereof unless within thirty (30) days from date hereof defendant shall file a petition to reopen Applications Nos. 8952 and 11587 or shall file an application for a certificate of public convenience and necessity covering operation herein found to be unauthorized.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission cause a certified copy of this decision to be personally served upon Frank De Marco, and that he cause certified copies thereof to be mailed to the District Attorneys of Santa Clara and San Francisco Counties and to the Department of Public Works, Division of Highways, at Sacramento.

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

The foregoing opinion and order is 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 17<sup>th</sup> day of April 1933.

C. S. Henry  
Leon Whelan  
W. J. Cox  
M. B. Harris  
Walter Moore  
Commissioners.