

Decision No. 23842.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,  
Complainant,

vs.

J.D. MAYNARD, J.W. MAYNARD, J.D. MAYNARD  
and J.W. MAYNARD, doing business under the  
name and style of J.D. Maynard Company,  
FIRST DOE, SECOND DOE, THIRD DOE, FOURTH  
DOE, FIFTE DOE, FIRST DOE CORPORATION,  
SECOND DOE CORPORATION, THIRD DOE CORPORATION,  
FOURTH DOE CORPORATION, FIFTH DOE CORPORATION,

Defendants.

Case No. 3385.

ORIGINAL

R.L. Vaughan and Scott Elder for Complainant.

J.E. Mc Curdy for Defendants J.D. and J.W. Maynard.

WHITSELL, Commissioner:

O P I N I O N

By complaint filed on October 18, 1932, complainant charges J.D. Maynard and J.W. Maynard with unlawful common carrier operations by auto truck between San Jose and San Francisco.

Public hearing was had on March 9, 1933, on which date the case was submitted.

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

Defendants have been engaged in the transportation of orchard and field produce between points in the Santa Clara Valley, and also between such points and San Francisco for many years. By stipulation previous records (in Application No. 6700, Decision No. 10289 and Application No. 11183, Decision No. 17217) were admitted in the record. Under the first application defendants acquired a certificate, limited to "contract" operations between Betabel, Gilroy and Oakland and San Francisco. In 1923 the

Crittenden Act exempted movements of the products of husbandry, etc., from the Auto Truck Transportation Act and defendants ceased observation of the limitations of the certificate and, according to the record in Application No. 11183, greatly enlarged the area served and the commodities transported. After the Crittenden Act was declared unconstitutional (Franchise Motor Freight Assn. v. Seavey, 196 Cal. 77), defendants filed Application No. 11183 to cover such enlarged operations. After submission of this application (27 C.R.C. 388) applicants were asked to indicate whether they proposed to operate as a common carrier or as a private carrier. Their reply was that they proposed to operate as a private carrier and upon this statement the application was dismissed without prejudice. On May 24, 1927, the original rights granted by Decision No. 10289 on Application No. 6700, at request of applicants, were revoked.

Since then defendants have operated from the area long served and for which they sought a certificate, and San Francisco. The testimony of seven witnesses at the hearing of the instant application discloses regular service to shippers from San Martin and Santa Clara and intermediate points and San Francisco, for berries and produce and at rates fixed by verbal or written agreement. The services were performed with practical continuity over regular routes between May and November of each year, and possess all the characteristics of regularity between fixed termini and over regular routes. Defendants' headquarters are at Santa Clara and all movements are from this point though pickup is made in adjacent territory.

There are, however, other aspects of the matter, an important one being that there is no imputation of bad faith on defendants' part. For many years they have attempted to comply

with their legal duty, under advice. Their patrons are satisfied with the service performed as the result of more than a decade of fair dealing. While I must and do find that their present operations are not legally maintained, equity justifies my recommendation that the order to cease and desist afford defendants an opportunity to request a reopening of Application No. 11183 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 this 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 <sup>of an order</sup> of the Commission is guilty of a misdemeanor and is punishable in the same manner.

The following form of order is recommended:

O R D E R

IT IS HEREBY FOUND AS A FACT THAT J.D. and J.W. Maynard 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 Santa Clara and San Martin and intermediate points including San Jose, and San Francisco and 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 J.D. and J.W. Maynard shall cease and desist, directly or indirectly, or by any subterfuge or device, from continuing such common carrier operations within sixty (60) days from date hereof unless within thirty (30) days from date hereof said defendants file a petition to reopen Application No. 11183 or a new application for a certificate of public convenience and necessity covering the operations 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 J.D. and upon J.W. Maynard, and that he cause certified copies thereof to be mailed to the District Attorneys of San Francisco and Santa Clara Counties and to the Department of Public Works, Division of Highways, at Sacramento.

The effective date of this decision shall be twenty (20) days after personal service.

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 17th day of

April 1933.

C. J. Sawyer  
Leon A. Whisely  
W. J. Lee  
W. B. Vandy  
W. H. ...  
Commissioners.