

Decision No. 25851

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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THE RIVER LINES (The California
Transportation Company, Sacramento
Navigation Company, and Fay Trans-
portation Company), and REGULATED
CARRIERS, INC., a corporation,

Complainants,

vs.

FRANCIS GEHRING, JOHN GEHRING,
FRANCIS GEHRING, doing business under
the firm name and style of Gehring
Truck Company, JOHN GEHRING doing
business under the firm name and
style of Gehring Truck Company,
FRANCIS GEHRING and JOHN GEHRING,
doing business under the partnership
name and style of Gehring Truck Com-
pany, JOHN DOE, RICHARD ROE and
JOHN DOE CORPORATION,

Defendants.

ORIGINAL

) Case No. 3405

BY THE COMMISSION:

OPINION ON PETITION FOR REHEARING

Decision 25747, issued on March 20, 1933, found as a fact that Francis Gehring and John Gehring were each operating a common carrier trucking service between certain points without certificates of public convenience and necessity. It was ordered that they cease and desist such common carrier operations.

On April 8, 1933, defendants filed a Petition for Re-hearing, a Motion to Modify Cease and Desist Order, an affidavit

in support of the motion to modify, a brief in support of such motion, and a petition to extend effective date. (1)

Rehearing is sought on the ground that defendants are private carriers. The motion to modify asks that there be added to the desist order a provision to the effect that nothing in the order shall be construed as forbidding the defendants, as co-partners, from operating as private carriers, nor as forbidding them from complying with the terms of four certain contracts with W. H. Macy & Co., Rumiano Bros., Orland Cheese & Butter Co., and Baker, Hamilton and Pacific Company. The motion is made upon the ground that defendants have ceased to dedicate their trucks to a public use and to operate as common carriers, and that the Commission is without jurisdiction to prevent them from operating as private carriers.

The affidavit of counsel in support of the above motion alleges that the transcript of testimony was received by him on February 27, 1933, (2) and that while preparing the brief counsel arrived at the conclusion that the Commission would hold that by reason of the conduct of defendants in transporting property over the highways, and particularly on account of the large number of shippers served, defendants were operating with common carrier status, and so advised them on March 6, 1933. It is alleged that on March 8, 1933, defendants entered

(1) On April 11, 1933 the effective date of the desist order was extended from April 13, 1933 to April 25, 1933.

(2) Public hearing was had on February 16, 1933 and the matter submitted upon briefs to be filed. Decision 25747 was issued on March 20, 1933.

into a co-partnership by an agreement in writing, and that it is their desire to operate as private carriers and to enter into special agreements with a limited number of persons, firms and corporations selected by them and only pursuant to agreements entered into in each instance prior to performing such transportation service. It is alleged that on March 8, 1933, defendants, in good faith and not for the purpose of masquerading as private carriers, entered into written agreements with the four firms mentioned above. Affiant, on behalf of defendants, offers to cease and desist from transporting property as a common carrier for hire, and alleges that since March 8, 1933 defendants have not rendered any transportation service between the points in question save and except for the four concerns with whom they have entered into agreements, and that they will no longer serve the other shippers named in the desist decision.

The finding of common carrier status and the desist order necessarily were based upon the facts of record in this proceeding on February 16, 1933, on which date the case was submitted. The order made directs only the cessation of common carrier operation between certain points, and it is assumed that defendants will comply. It does not purport to deny to defendants their unquestioned right to conduct a bona fide private carrier service. It finds only that the operations as of the date of the submission of the above complaint were common carrier in nature and should be discontinued in the absence of a certificate. The Commission did not pass upon and is not here determining the status of possible future truck-

ing operations on the part of these defendants. That is a matter to be determined if and when such status is questioned in a future proceeding, and upon the facts of record in such proceeding.

ORDER DENYING REHEARING

Good cause appearing. IT IS HEREBY ORDERED that the petition for rehearing filed herein on April 8, 1933 is hereby denied, and IT IS HEREBY FURTHER ORDERED that the effective date of Decision 25747 is hereby extended from April 25, 1933 to June 25, 1933.

Dated at San Francisco, California, this 17th day of April 1933.

C. L. Jeany
Leon O'Connell
W. A. Cunn
M. B. Harris
W. H. ...
Commissioners