

Decision No. 26309

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Investigation on)
the Commission's own motion into the)
practices, operations, regulations,)
rates, rules, charges, and classifi-)
cations, or any of them, of WILLIAM)
FINN, MRS. WILLIAM FINN, W. J. VICTOR,)
JAMES MOORE, FIRST DOE, SECOND DOE,) Case No. 3368
THIRD DOE, JANE DOE, JOHN DOE AND)
RICHARD ROE, a copartnership, and)
JOHN DOE COMPANY, operating as "pas-)
senger stage corporations" and/or as)
"motor carrier transportation agents.")

ORIGINAL

Orla St. Clair, for F. A. Savage, for
Motor Carriers' Association, and for Pacific
Greyhound Lines, interested parties.

Robert Brennan and William F. Brooks, for
The Atchison, Topeka and Santa Fe Railway Co.,
interested party.

I. M. Gilbert, for W. J. Victor, respondent.

BY THE COMMISSION:

OPINION, FINDINGS, AND JUDGMENT

Decision 25434 (December 10, 1932) found as a fact that
W. J. Victor was acting as a motor carrier transportation agent
within the meaning of Statutes 1931, chapter 638, without having
a license. He was ordered to cease and desist until a license
should have been obtained. (1)

The application for order to show cause and affidavit
of service of F. A. Savage was filed on April 17, 1933. It
alleges the institution of the prior investigation, hearings
thereon, issuance of the desist order, service thereof, and
ability to comply therewith. It alleges further that notwith-

(1) Decision 25434 (Exhibit 1) was personally served upon
W. J. Victor on December 20, 1932 (Exhibit 2) and by its terms
became effective twenty days thereafter. (January 9, 1933.)

standing the desist order, with full knowledge thereof and subsequent to its effective date, W. J. Victor has continued to act as a motor carrier transportation agent, holding himself out to the public and acting as such agent. Said affidavit alleges four specific violations in four separate counts.

On May 1, 1933 the Commission issued its order directing W. J. Victor to appear before Commissioner Harris on June 13, 1933 and show cause why he should not be punished for contempt. (2) No answer was filed on behalf of respondent. The matter was heard and submitted on briefs to be filed. (3)

F. A. Savage testified that he is a special officer of the Motor Carriers' Association; that he knows respondent; and that J. M. Thomas, O. J. Burns, and O. M. Moore were employed by him and were directed to book transportation through respondent.

Witness J. M. Thomas, on the morning of March 19, 1933, saw respondent Victor in the latter's office on the mezzanine floor of the King Edward Hotel in Los Angeles and "told him I would like to arrange transportation to San Francisco, and he made out a membership certificate which I signed." (Tr., p. 7.) This "membership certificate" reads as follows: (Exhibit 4.)

(2) The order to show cause, together with the affidavit, was personally served upon W. J. Victor on May 2, 1933 (Exhibit 3.)

(3) July 18, 1933 was fixed as the day for the filing of the closing brief. No brief has been filed by any of the parties to this proceeding.

"Signature of Contributing Subscribing Member J. M. Thomas

- GOOD FOR ONE MONTH FROM DATE PUNCHED -
Cash Receipt for Monthly Contribution - Associate Members

ASSOCIATE MEMBER'S RECEIPT

UNITED STATES TOURING ASSOCIATION

Travelling Member

A Benevolent Trust Estate - Organized under the Constitution of the United States
Liability Limited to Estate.

NOT TRANSFERABLE NOT GOOD FOR TRANSPORTATION

This receipt when punched on the day and date issued, one date only to be punched out, is a receipt that your contribution is made for one month from date punched. Members must present this receipt to offices and drivers of automobiles for the purpose of identification as a member. THIS RECEIPT VOID IF MORE THAN ONE DATE PUNCHED

1933	1934	JAN.	FEB.	(MAR.)	APR.	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.	1935	1936	UNITED STATES TOURING ASSOCIATION															
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	(19)	20	21	22	23	24	25	26	27	28	29	30	31	Phone Trinity-5454 Ma - 1860

NOTICE - THIS RECEIPT TO BE USED FOR TRAVEL MEMBERS

MAIN OFFICE: 826 WEST 8th STREET,
LOS ANGELES

Form B-1

The "stub" attached to the above "membership certificate" reads as follows:

"NOTICE - All Members Must Sign This Coupon

UNITED STATES TOURING ASS'N.

The undersigned member agrees to terms of this receipt.

J. M. Thomas
Signature of ASSOCIATE MEMBER

Street and No. 936 Mission

City S.F. State Cal

Amt. Collected \$5.00

Issued by W. J. Victor
Signature of Office Manager

Street and No. King Edward

City L. A. State Calif

Date Mch 19 1933

Office Manager must detach this coupon and send to
General Office. Form B-1"

(4)

Thomas paid Victor \$5.00, and at the latter's request signed both the "stub" and the "certificate". The "stub" was filled in by respondent. Shortly afterwards Victor informed Thomas that the car was ready and the driver picked up Thomas' suitcase and carried it to an automobile in which Thomas was

(4) "Q. You paid this \$5.00 directly to Mr. Victor? A. To Mr. Victor.

Q. It was by arrangement with Mr. Victor? A. Yes.

Q. What was the reason you paid him \$5.00? A. My understanding was for transportation back to San Francisco." (Tr., p. 9.)

(5) "Q. . . . you had a conversation with Mr. Victor, is that correct, about transportation? A. About transportation.

Q. What was that conversation? A. I told him I would like to arrange for transportation to San Francisco.

Q. What did Mr. Victor say? A. He proceeded to make out a receipt, and asked me my name, or asked me first to sign a receipt, and then asked me my address, and at the same time explaining to me, in case of accident, they liked to have the address of the parties enroute." (Tr., pp. 13-14.)

taken to the Cordova Hotel, West 8th and Figueroa Streets, Los Angeles. Thomas was transferred into a Cadillac sedan (California 1933 license P C H8064) in a parking lot in the rear of the Cordova Hotel. This automobile, driven by one Denning, contained six passengers in addition to Thomas, and proceeded through Santa Barbara, San Luis Obispo, San Jose and along the Bay Shore highway to the St. Marleau Hotel, 190 O'Farrel Street, San Francisco.

Witness Thomas testified further that he saw respondent on April 2, 1933, on the mezzanine floor of the King Edward Hotel, Los Angeles, and, in the presence of O. J. Burns and Miss Ola Mae Moore, told respondent that he would like to arrange for transportation to San Francisco, gave respondent \$5.00, and received a receipt (Exhibit 5), which is in the same form as Exhibit 4. Later on the same day witness Thomas, Burns, Miss Moore and another lady were taken by automobile from the King Edward Hotel to the Cordova Hotel, and at the latter place transferred into a Chrysler sedan (California 1933 license P C J5268), in which were three other passengers and which was driven by one Edgar Smith, and thence taken to San Francisco, going through Santa Barbara, Atascadero, King City, and San Jose.

Witness O. J. Burns confirmed the testimony of Thomas and "I paid for Miss Moore and myself, I paid two five dollar bills, and he issued a receipt for her and also myself." (Tr.,
(6)
p. 21.

"Q. Did you have a conversation there with Mr. Victor? A. Regarding transportation.

Q. Who was present? A. Mr. Thomas and Miss Moore.

Q. What was that conversation you had? A. Transportation to San Francisco and what the charge was.

(6) These receipts, Exhibits 6 and 7, are in the same form as Exhibit 4.

Q. What did Mr. Victor reply? A. \$5.00

Q. What else was said? A. Not very much else was said, only he issued the ticket, the signed receipt, and he took my address and took the money." (Tr., p. 23.)

Miss Ola Mae Moore also confirmed the testimony of witnesses Burns and Thomas.

"Q. You accompanied Mr. Burns? A. Mr. Burns, yes.

Q. Mr. Burns did all the talking for you? A. Yes, he did.

Q. Did you see Mr. Burns pay Mr. Victor \$10.00?
A. Yes, sir.

Q. Were you issued a receipt at that time? A. Yes."
(Tr., p. 25.)

"Q. Miss Moore, did you have any conversation with Mr. Victor himself? A. No, sir.

Q. Did you pay any money yourself, did you? A. No, sir.

Q. Did you hear what Mr. Victor said when the money was paid? A. He just gave us those receipts there to sign and asked us to sign our names." (Tr., p. 26.)

Respondent Victor, testifying in his own behalf, stated that originally his office was at the Chapman Hotel, Los Angeles, at which time he was associated with Mr. Finn.⁽⁷⁾ He ceased to do business with Mr. Finn in December of 1932. On September 1, 1932 respondent moved his office to the King Edward Hotel. He was served with the desist order on December 20, 1932 and ceased operating his travel office on January 9, 1933.

"A. I had an office there from the 1st of September to January 9, 1933. I was out of there for some time, and another man operated the place as the United States Touring Association, a branch office, until the 10th of March, when I went back as a member of the association myself and operated the office." (Tr., p. 32.)

(7) In Finn et al v. Railroad Commission, 2 Fed. Supp. 891 (decided March 7, 1933), plaintiffs sought to enjoin certain orders of the Commission directing them to desist activities as motor carrier transportation agents and also to desist passenger stage operation between San Francisco and Los Angeles. In reviewing the facts the court stated - "At Los Angeles plaintiffs had several booking agents who arranged for passengers for the return trip to San Francisco." The orders of the Commission were upheld and the constitutionality of the Agent Act (Statutes 1931, chapter 638) sustained. Restraining order was dissolved and a decree entered for defendants.

As to the constitutionality of the Agent Act, see also Marriott on Habeas Corpus, 85 Cal. Decs. 598; People v. Henry, 73 Cal. App. Decs. 228.

The main office of the "United States Touring Association" is at the Cordova Hotel, Los Angeles. (8)

Q Now, referring to the testimony of Mr. Thomas, did you transport Mr. Thomas yourself? A No, sir.

Q What did you have to do with his transportation, Mr. Victor? A May I answer that in my own way?

Q Yes. A The members of the United States Touring Association, with an office at the Cordova, have an office manager, such as myself, and they appoint us and we pay dues. We must be a member, and the drivers of the automobiles are also members. The people wishing that sort of transportation become members when they contribute and sign this receipt, and are members for thirty days." (Tr., pp. 31-32.)

Q Out of the \$5.00 paid by a respective member, how much do you retain; paid you by Mr. Thomas, for instance, how much did you retain? A One dollar.

Q What did you do with the other four dollars? A I turned it over and obtained a receipt from the driver and the passenger." (Tr., p. 43.)

During the hearing reference was made to a proceeding before the District Court of the United States, Southern District of California, Central Division. (Rice v. Seavey, No. Y-34-J.) (9)

Upon a careful review of the record in this proceeding the Commission makes the following findings of fact:

(8) Q Who owns that association, do you know? A The trustee at the time was J. J. Kreutz." (Tr., p. 30.)

Q Did you pay Mr. Kreutz any money? A I did.

Q How much? A I paid him \$5.00 .

Q For what period? A Thirty days.

Q Were any certificates or papers or charter issued to you? A There was a contract issued, which was notarized.

Q What else, Mr. Victor? A I have a contract or charter right on my desk.

Q Are you required to pay a membership every month? A I am." (Tr., p. 31.)

(9) On August 1, 1933 order to show cause why a temporary restraining order should not issue was discharged and interlocutory injunction denied.

FINDINGS

1. On December 10, 1932 the Railroad Commission, in its Decision 25434, found as a fact that W. J. Victor was acting as a motor carrier transportation agent within the meaning of Statutes 1931, chapter 638, without first obtaining a license therefor and ordered said respondent to cease and desist from so acting. Said order has never been revoked, annulled, or stayed, and is now in full force and effect.

2. A certified copy of said Decision 25434 was personally served upon W. J. Victor on December 20, 1932; said respondent had personal knowledge and notice of said decision and its contents on and prior to January 9, 1933, the effective date thereof, and was able at all times thereafter to comply with said order.

3. On April 17, 1933 there was filed with the Railroad Commission the affidavit of F. A. Savage, in which it was alleged in substance that W. J. Victor, notwithstanding the order contained in Decision 25434, with full knowledge of its contents, and subsequent to its effective date, had failed and refused to comply with said order in that he was continuing to act as a motor carrier transportation agent.

4. Upon said affidavit being filed the Railroad Commission, on May 1, 1933, issued its order directing W. J. Victor to appear on June 13, 1933, and show cause why he should not be punished for contempt for his failure and refusal to comply with the order of the Railroad Commission. Said order to show cause, together with the affidavit upon which based, was personally served upon W. J. Victor on May 2, 1933. Hearing was had on June 13, 1933 and the matter submitted.

5. Notwithstanding the order of the Railroad Commission contained in its Decision 25434 and subsequent to the effective date thereof, the said W. J. Victor failed and refused to comply therewith, and continued to act as a motor carrier transportation agent, without first obtaining a license, by furnishing, negotiating for, and providing transportation for persons, for compensation, over the public highways in this state between Los Angeles and San Francisco.

6. The said failure of W. J. Victor to comply with said order of the Railroad Commission and his continuance to act as a motor carrier transportation agent was and is in contempt of the Railroad Commission of the State of California and its order and in violation of Statutes 1931, chapter 638.

J U D G M E N T

IT IS HEREBY ORDERED AND ADJUDGED that W. J. Victor has been and is guilty of contempt of the Railroad Commission in disobeying its order made on December 10, 1932, in its Decision 25434, by having failed and refused to desist from acting as a motor carrier transportation agent without first obtaining a license; and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that for his said contempt of the Railroad Commission and its order, said W. J. Victor be punished by a fine of five hundred dollars (\$500.00) and by five (5) days' imprisonment in the county jail of the County of Los Angeles; said fine to be paid to the secretary of the Railroad Commission within five (5) days after the effective date of this opinion, findings, and judgment; and that in default of payment of the aforesaid fine, said W. J. Victor be committed to the county jail of the County of Los Angeles until such fine be paid or satisfied in the proportion of one day's imprisonment for each five dollars thereof that shall so remain unpaid.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission, upon this order becoming effective, prepare and issue in the name of the Railroad Commission of the State of California appropriate order or orders of arrest and commitment to which shall be attached and made a part thereof a certified copy of this opinion, findings, and judgment, and providing for the incarceration of said W. J. Victor for a period of five days.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission, if said fine is not paid within the time specified above, prepare and issue in the name of the Railroad Commission of the State of California, an additional appropriate order, or orders, of arrest and commitment, to which shall be attached and made a part thereof a certified copy of this opinion, findings, and judgment.

IT IS FURTHER ORDERED that this opinion, findings, and judgment shall become effective twenty (20) days after personal service of a certified copy thereof upon W. J. Victor.

Dated at San Francisco, California, this 22 day of

September 1933.

C. S. Sauer

M. H. C.

M. B. Harris

Commissioners