

Decision No. 28429

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of
FRANK ESTALLE, doing business under
the fictitious name of SAN JOAQUIN
FRUIT EXPRESS, for a certificate of
public convenience and necessity to
operate a motor truck service as a
common carrier, between Stockton and
Oakland and Stockton and San Francisco,
for the transportation of fruits and
vegetables.

Application No. 18995.

ORIGINAL

J. LeRoy Johnson for applicant.
Louttit, Marceau & Louttit, by Edwin B. Marceau,
for V. Antonini, protestant.
Robt. Brennan, Wm. F. Brooks, and H. P. Lockwood,
by H. P. Lockwood, for The Atchison, Topeka &
Santa Fe Railway Co., protestant.
Roy G. Hillebrand for Southern Pacific Company,
protestant.

WARE, Commissioner:

OPINION

Applicant seeks from this Commission a certificate of public convenience and necessity to operate a motor truck service as a common carrier between Stockton and Oakland and Stockton and San Francisco, for the transportation of fruits and vegetables. Public hearing thereon was held at Stockton, the matter was duly submitted and now is ready for decision.

The testimony of eleven witnesses was offered in support of this application and each in turn established, corroborated and strengthened two controlling reasons for the denial of the certificate sought. First, the applicant has been and is disqualified from having such certificate conferred by reason of having established himself since June of 1928 as a common carrier operating for hire between fixed termini and over a regular route upon the highways

of California without any authorization or certificate permitting him so to do. In short, for years he has been doing unlawfully the very thing for which he seeks herein a certificate. Secondly, the existing common carrier service of the protestant V. Antonini was uniformly acclaimed as entirely satisfactory and adequate.

On May 15, 1935, by Decision No. 25944 (Application No. 18720) V. Antonini was granted a certificate substantially identical to the one herein sought by the applicant Estalle. Every witness called by the applicant testified that the Antonini service is entirely adequate and satisfactory. In the same decision this Commission denied the application of John P. French and Fred R. Pearson (Application No. 18751) for a similar certificate, holding that they lacked sufficient experience in "the trucking business" and other "necessary qualifications." The testimony herein disclosed that the applicant Estalle had arranged with the said French and Pearson to "manage" and "actively conduct" their common carrier business in the event of favorable action by this Commission. Disappointed in this, he seeks herein to be certificated directly. A frank inspection of the applicant's past activities disqualifies him from being certificated as herein prayed for. In June of 1928 Estalle boldly entered the field of freight transportation. His first haul was for hire at the hands of a Spanish grower near Stockton. In short Estalle's enterprise was conceived, and during long intervals operated through the intervening years as an unlawful common carrier.

Public necessity cannot be established by proving the unlawful operation of the service sought to be certificated. This Commission has repeatedly denied certificates in the case of applicants whose past performances display an open and continuous course of lawless and unauthorized operation. To do otherwise would confer approval and reward upon the wrongdoer.

An exception to this rule occurs in cases illustrated in the application of Antonini where the conduct of the applicant was conceived in innocence and lawful enterprise, and developed by natural and inevitable stages into activities that became technical rather than willful violations of the law.

Therefore, the applicant Estalle cannot successfully argue that Antonini fared more favorably at the hands of this Commission.

The granting of the Antonini certificate was predicated upon a very different basis of facts, history and public necessity. C.R.C. Decision No. 25944 provides in part:

"Prior to 1926 Antonini had established himself as an experienced truck operator in the matter of shipping perishable fruits and vegetables grown or purchased by himself in the Stockton region and thence hauled to the Bay markets."

"It appears that this enterprise was innocently conceived and by natural processes was gradually and constantly expanded. First, a few of his neighboring producers enlisted his trucking and marketing services in the movement of their crops to the Bay wholesalers. Commencing with 1926 and continuously thereafter, this variety of patronage increased whilst his purchases diminished."

***** it may be contended plausibly that the carrier believed his service was that of buyer for the purchasing San Francisco brokers on the one hand, or agent for the Stockton growers upon the other. It is doubtful that he pursued these activities with unlawful intent."

Recurring to the second reason for the denial of this

certificate, the Commission has repeatedly denied the granting of any certificate where the existing utility is rendering a satisfactory and adequate service. Invoking this wholesome rule leaves applicant without any good reason to justify granting him a certificate. The application should be denied and I recommend the following form of order:

O R D E R

Frank Estalle having made application to establish and operate automotive transportation service for the transportation of fruits and vegetables between Stockton and San Francisco and/or Oakland, a public hearing having been held and the matter having been duly submitted for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity do not require the establishment of service as proposed, and

IT IS HEREBY ORDERED that the application be and the same hereby is denied.

The above opinion and order are hereby approved and adopted as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of October, 1933.

C. C. Seavey
Leon C. Seavey
W. H. C. C.
M. B. Harris
Walter Harris
Commissioners.