

Decision No. 26479

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

REGULATED CARRIERS, INC., a corporation,
Complainant,

vs.

Case No. 3422.

ELMER E. NOERDEN, ELMER E. NOERDEN, doing
business under the fictitious name and
style of Pajaro Valley Motor Express,
FIRST DOE, SECOND DOE, THIRD DOE, FOURTH
DOE, FIFTH DOE, FIRST DOE CORPORATION,
SECOND DOE CORPORATION, THIRD DOE COR-
PORATION, FOURTH DOE CORPORATION, FIFTH
DOE CORPORATION,

Defendants.

ORIGINAL

Reginald L. Vaughan and Scott Elder, by Scott Elder,
for complainant.

Horace M. Street, for defendant.

BY THE COMMISSION:

O P I N I O N

By complaint filed on November 21, 1932, complainant charges Elmer E. Noerden with unlawful common carrier operations by auto truck between Watsonville and San Francisco and intermediate points.

Public hearing was had before Examiner Johnson on March 2, 1933, after which the case was submitted upon briefs.

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

Defendant is at present hauling for only three shippers. These shippers and all others with whom defendant formerly did business had been under written contract with the defendant and

the defendant refused to haul except under written contract. The defendant ceased hauling for numerous shippers in May, 1932, because he was unable to obtain from them a satisfactory rate. The defendant is not interested in the hauling of small shipments but refused many such; however, defendant is regularly hauling for three shippers on a common carrier basis and is willing to haul for any others with whom he can negotiate a satisfactory price, and if he does not exceed the total capacity of his equipment.

Testimony showed that defendant would accept any hauling which he considered profitable business. The defendant was known to haul as much freight as his equipment could accommodate between Watsonville and San Francisco and intermediate points. It is true that he has but one small truck at the present time but we cannot judge the common carrier operations from the smallness of his operations.

A cease and desist order should issue.

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.

O R D E R

IT IS HEREBY FOUND THAT Elmer E. Nohrden is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Taxicab Transportation Act (Chapter 213, Statutes 1917, as amended), with common carrier status between the vicinity of Watsonville and San Francisco and intermediate points 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 Elmer E. Nohrden shall cease and desist directly or indirectly or by any subterfuge or device from continuing such operations.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon Elmer E. Nohrden, that he cause certified copies thereof to be mailed to the District Attorneys of Monterey, Santa Cruz, Santa Clara, San Mateo and San Francisco Counties, to the Board of Public Utilities and Transportation of the City of Los Angeles 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.

Dated at San Francisco, California, this 30th day of
October, 1933.

O'Brien

Leon White

W.A. Lee

M.B. Lewis

M. MacDermott

Commissioners.