

Decision No. 28579

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

REGULATED CARRIERS, INC.,
a corporation,

Complainant,

vs.

Case No. 3582.

IMPERIAL MERCHANTS ASSOCIATION, LTD.,
FRIEDA BERTSCHINGER, CHARLES E. COLMAN,
ARTHUR EDGAR, NEAL E. CAVIN, W. J. TEBO,
E. B. INGLE, FIRST DOE, SECOND DOE,
THIRD DOE, FOURTE DOE, FIFTE DOE, FIRST
DOE CORPORATION, SECOND DOE CORPORATION,
THIRD DOE CORPORATION, FOURTE DOE COR-
PORATION, FIFTE DOE CORPORATION,

Defendants.

ORIGINAL

Reginald L. Vaughan and Scott Elder, by Willard
S. Johnson, for complainant.

Irene Brooks, for defendants.

BY THE COMMISSION:

O P I N I O N

By complaint filed May 13, 1933, complainant alleges that the Imperial Merchants Association, Ltd., a California corporation, and the other individual parties specified as defendants, hereinafter referred to as defendant, are engaged in the transportation of property by auto trucks as common carriers for compensation between Los Angeles and destinations located in the Imperial Valley, the important communities being Calipatria, Westmorland, Brawley, Imperial, Holtville, El Centro, Calexico and intermediate points.

A public hearing was held at El Centro October 20, 1933, before Examiner Geary and the proceeding having been duly

submitted, it is now ready for our Opinion and Order.

The facts as developed at the hearing may be briefly summarized as follows: Complainant introduced the testimony of 10 witnesses and by stipulation/^{it was}agreed that the testimony of their additional witnesses, some 11 in number, would be approximately the same as those who had actually given testimony, under oath, while on the witness stand. The testimony of the witnesses taking the stand on behalf of complainant, ~~most~~ most of them appearing under subpoenas, was directed to proving that the merchants and others located within the Imperial Valley Basin were regularly securing the transportation of property originating in Los Angeles by the use of defendant's facilities. In some cases the charges were prepaid at Los Angeles by the consignor; in others they were collected at the point of destination by an employee of defendant at a rate of approximately 65 cents per 100 pounds. Defendant introduced but little direct testimony and confined its efforts to the cross-examination of complainant's witnesses principally for the purpose of showing that all for whom tonnage was transported were members of the Imperial Merchants Association, Ltd.. It was not denied by defendant that it had a paid agent in Los Angeles whose duties were to accept shipments and arrange for their movement to the consignees in the Imperial Valley.

Exhibits showed that the defendant association was created under date of April 28, 1932, and that a resolution to establish the service was signed by some 125 merchants and shippers, located in the Imperial Valley. The Articles of Incorporation, carrying the signatures of 5 of the original directors, was signed May 14, 1932, and by its terms provided that the purposes for which the corporation was organized was to engage generally in the business of hiring, renting or leasing motor trucks, to engage

in the operations of a trucking transportation business for the convenience and necessity of its members, and confining the operations to the carriage of goods for its members only. It further provided that goods might be stored in warehouses maintained and operated for the benefit and convenience of its members and that the association is not formed with a view to pecuniary gain or profit. The association appears to have but two paid employees; one the Manager at Los Angeles, and the other a collector of the freight charges at the principal destination points in the Imperial Valley. The activities of defendant are confined to the receiving of the merchandise at its Los Angeles warehouse and then after a sufficient quantity has been assembled, to hire a truck or trucks, usually three or four times a week, to haul the tonnage to the Valley points. The defendant owns no trucks or other vehicles and depends entirely upon the arrangements made by its Los Angeles Manager for the character and capacity of the trucks used in the haulage services. No regular trucker is employed and the services are secured as needed from any responsible truck renter who may quote a charge including the truck driver, satisfactory to the Los Angeles Manager. The defendant has positive control or jurisdiction over the hired trucks and while, as a general rule, only defendant's tonnage is transported southbound, it may occasionally happen that freight accepted by the trucker independent of the association will travel on the same vehicle with the association tonnage. After the truck has reached the Imperial Valley and has completed the deliveries, it is released entirely by the defendant association who is not interested in any northbound tonnage moving from the Imperial Valley to Los Angeles. The truck must secure its own return shipment or travel empty on the homebound movement.

The instant proceeding is actually a continuation of

Case No. 3070, Coast Truck Line vs. California Merchants Association and Imperial Valley Merchants Warehouse Association, Ltd. (37 C.R.C. 434) wherein we held that the Imperial Valley Warehouse Association, Ltd. was a common carrier for compensation over the highways of this state between Los Angeles and the Imperial Valley points, that it had no certificate and that the operations were unlawful. A Cease and Desist Order (Decision No. 24701) dated April 18, 1932, was issued. Immediately thereafter on April 28, 1932, as heretofore stated, the same individuals organized this defendant, the Imperial Merchants Association, Ltd. The original organization, Imperial Valley Merchants Warehouse Association, Ltd., required that every user of its facilities must be a member and own at least one share of stock having a value of \$5. This defendant, Imperial Merchants Association, Ltd., has no stockholders, neither does it require its signatory members to pay an entrance fee or assume any liability in connection with the operations of the association.

Defendant in the instant proceeding, for all practical purposes, is exactly the same organization ordered to cease and desist by our Decision No. 24701, supra.

Defendant by its participation at the hearing and by its brief does not deny that it conducts a regular and satisfactory transportation service by trucks over the public highway, for compensation, between Los Angeles and the Imperial Valley points for those individuals or firms who signed the original membership roll on April 28, 1932, or may have signed it subsequent to that date. There are at this time some 125 such members and apparently all that is necessary on the part of an intending shipper to secure this transportation service is to sign defendant's membership roll. It is defendant's main contention that because the association is a non-profit organization and undertakes to serve only its known membership, that it is not under the control of the Auto Truck Transportation Act, a conclusion not justified by the language of

the statute.

This record clearly shows that there is here an attempted evasion of Sec. 1 (c) and Sec. 5 of the Auto Truck Transportation Act by this defendant.

We have repeatedly held that the organization of associations with memberships consisting of chosen people brought together for the sole purpose of conducting a transportation business for compensation on any public highway between fixed termini over a regular route in this state, without a certificate of public convenience and necessity, is in violation of the Auto Truck Transportation Act.

So far as the present record is concerned, we adhere to the views expressed and the conclusions reached in the following cases:

31 C.R.C. 158	<u>Cal. Transit vs. Auto Tours.</u>
31 C.R.C. 843	<u>Monroeville vs. Gregory.</u>
32 C.R.C. 48	<u>Hirons (United Grocers, Inc.)</u>
33 C.R.C. 508	<u>Sierra Ry. vs Berg.</u>
37 C.R.C. 59	<u>Motor Frt. Term. Co. vs Burke.</u>
37 C.R.C. 434	<u>Coast Truck Line vs. Imp. Valley Merchants Warehouse Assn., Ltd.</u>
165 Cal. 255	<u>Valley Ferry Co. vs. Solano Aquatic Club.</u>

The facts of record show that defendant has operated as a common carrier of freight for compensation between Los Angeles and the Imperial Valley points. An order will be entered directing it to cease and desist therefrom.

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 2 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

A public hearing having been held in the above entitled proceeding, the matter having been duly submitted and being now ready for decision,

IT IS HEREBY FOUND AS A FACT that defendant Imperial Merchants Association, Ltd., is engaged in the transportation of property by auto truck for compensation and as a common carrier between fixed termini and over a regular route on the public highways of this State, viz: between Los Angeles and Imperial Valley points, without first having obtained a certificate of public convenience and necessity for such operations, as required by the Auto Stage and Truck Transportation Act (Chapter 213, Statutes of 1917, as amended). Therefore,

IT IS HEREBY ORDERED that defendant Imperial Merchants Association, Ltd., shall immediately cease and desist such common carrier operations, as described in the preceding paragraph, unless and until he shall obtain a certificate of public convenience and necessity therefor.

IT IS HEREBY FURTHER ORDERED that the secretary of this

Commission shall cause a certified copy of this decision to be personally served upon defendant Imperial Merchants Association, Ltd.; that he cause certified copies thereof to be mailed to the District Attorneys of Los Angeles, San Bernardino, Riverside and Imperial Counties; to the Board of Public Utilities and Transportation of the City of Los Angeles; to the Department of Public Works, Division of Highways, at Sacramento; and, upon this decision becoming final, he shall cause certified copies thereof to be mailed to shippers who appeared as witnesses in the course of this proceeding and to other shippers who are known to be using the service and facilities of defendant.

The effective date of this order shall be twenty days after the date of service upon defendant Imperial Merchants Association, Ltd.

Dated at San Francisco, California, this 25th day of November, 1933.

D. C. Seaver
Leon Caldwell
W. J. Cunn
Robert M. ...