

Decision No. 25582

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,)
Complainant,)

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VINCENT KEYES, ANDRUS HURLBERT, E. O.)
HURLBERT, GENERAL TRANSFER COMPANY,)
FOURTH DOE, FIFTH DOE, FIRST DOE COR-)
PORATION, SECOND DOE CORPORATION,)
THIRD DOE CORPORATION, FOURTH DOE)
CORPORATION, FIFTH DOE CORPORATION,)
Defendants.)

Case No. 3444.

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

Theodore M. Stuart for Defendants.

BY THE COMMISSION:

O P I N I O N

By its amended complaint, Regulated Carriers, Inc. a corporation, complains of Vincent Keyes, Andrus Hurlbert, E.O. Hurlbert, General Transfer Company, Fourth Doe, Fifth Doe, First Doe Corporation, Second Doe Corporation, Third Doe Corporation, Fourth Doe Corporation and Fifth Doe Corporation, and allege that said defendants, and each of them, are now operating as common carriers in the transportation of property over the public highways of this state, particularly between Fresno and Bakersfield and intermediate points, on the one hand, and San Francisco and east

bay points, on the other hand, serving also intermediate points on the route and also between Fresno and Bakersfield on the one hand and between Los Angeles and adjacent territory on the other hand, serving also intermediate points on such route; and that none of defendants possess a certificate of public convenience and necessity or are the possessors of prescriptive rights which permit such operation.

Defendants duly filed their answer herein same being a general denial of the allegations of the complaint and alleging that the operation of defendants was not that of a common carrier and not that of a transportation company as such company is defined in Chapter 213, Statutes of 1917.

A public hearing on this complaint was conducted by Examiner Handford at Fresno, the matter was duly submitted and it is now ready for decision.

J. C. Saunders, Fresno office manager for W. P. Fuller & Company, paint dealers; E. Elkus, Fresno manager for Zellerbach Paper Company, Lynn E. Baker, manager, and C. M. Kootz, department manager of Black's Package Store, Fresno; H. A. Rotheram, office manager of San Joaquin Material Company, Fresno, J. R. Murphy, manager of Danish Creamery Company, A. Maisler of Maisler Bros. Lumber Company, Fresno, A. H. McAllister of Pacific Coast Paper Co., Fresno, J. S. Canham, manager of Canham-Davis, Fresno; H. E. Cram, Fresno, manager of Walworth Company of California, George G. Goodwin, with Kearny, Gordon & Pendleton Co.; Mr. Jones, manager of Carco Supply Company and L. K. Burnham of J. B. Inderidan Company of Fresno all testified that they had done business with the General Transfer Company and had make and received shipments between the San Francisco, Bay District, and Fresno and vicinity, the hauling all having been done in accordance with hauling contracts.

Shipments from Fresno are principally those destined to steamship docks in San Francisco for eastern and foreign points as ultimate destinations.

Vincent Keyes, one of the defendants, testified that the General Transfer Company was a partnership consisting of himself, Andrus Hurlbert and E. O. Hurlbert and that it had been in business since 1912. Hauling is done from the City of Fresno to or from any point in California, to or from San Francisco Bay points and to Los Angeles or Southern California points, all such hauling being done pursuant to written contracts which are always executed prior to the performance of the work. No active solicitation of this hauling is made by this defendant or by the General Transfer Company and prospective business has often been refused especially if the conditions required by the General Transfer Company are not agreeable to shipper or the receivers of the goods.

On August 21, 1925, A. Hurlbert, E. O. Hurlbert and V. G. Keyes, doing business under the fictitious name and style of General Transfer Company, filed their application (No. 11614) for a certificate of public convenience and necessity to operate freight truck service between all points in the San Joaquin Valley and the San Francisco Bay District and Los Angeles. This application was dismissed without prejudice by Decision No. 16854 dated June 5, 1926, for the reason that applicants failed to specify fixed points and regular routes on which service was proposed. The defendants, General Transfer Company, V. G. Keyes, E. O. Hurlbert and Andrus Hurlbert, were defendants in two actions brought by the People of the State of California before the Superior Court in and for the County of Fresno for taxes alleged to be due from said defendants from revenue received from operation as common

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carriers during the years 1927 and 1928 (Cases Nos. 45252, Dept. 4,
Superior Court, County of Fresno). In both these cases defendants
were found not to be common carriers and although the matters were
appealed by complainant the appeal was later dismissed by applicant.

We have carefully considered the evidence in this proceeding, and do not find therein any justification for the conclusion that the defendants have acted as a transportation company as such transportation company is defined in Chapter 213, Statutes of 1917, or as a common carrier for compensation over the highways of this state. All operation has been conducted in accordance with written contracts and such written contracts were executed prior to the undertaking of any hauling and there is no evidence in this proceeding which indicates that defendants have conducted any operations in violation of the statutory law or in violation of the obligations of a private carrier or as set forth in the complaint. No advertising of the service is given. After a full review of the evidence in this proceeding it is our opinion that the complaint herein should be dismissed.

C O R D E R

Public hearings having been held upon the above entitled complaint, the matter having been duly submitted, and the Commission being now fully advised, and basing its order on the facts as shown in the preceding opinion,

IT IS HEREBY ORDERED that this complaint be and the same is hereby dismissed.

Dated at San Francisco, California, this 25th day of November, 1935.

W. J. Sewey
Leon C. Whisler
W. H. Van
W. H. Van
COMMISSIONERS.