

Decision No. 27086

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

REGULATED CARRIERS, INC.,
a corporation,

Complainant,

vs.

Case No. 3523.

ARTHUR S. LYON, FIRST DOE, SECOND
DOE, THIRD DOE, FOURTH DOE, FIFTH
DOE, FIRST DOE CORPORATION, SECOND
DOE CORPORATION, THIRD DOE CORPORA-
TION, FOURTH DOE CORPORATION, FIFTH
DOE CORPORATION,

Defendants.

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

Thomas Maul for Arthur S. Lyon, defendant.

BY THE COMMISSION:

O P I N I O N

Regulated Carriers, Inc., a corporation, herein complains of Arthur S. Lyon and other defendants and alleges that said defendants are operating as a transportation company as such term is defined by Chapter 213, Statutes of 1917, and without any certificate of public convenience or necessity so to do or other prior operating right to transport property between Sacramento and Placerville.

Arthur S. Lyon duly filed his answer herein, said answer being a general denial of the material allegations of the complaint.

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

The record herein shows that Arthur S. Lyon is operating

a star route in the carriage of U. S. Mail between Sacramento and Placerville, daily trips being made. Lyon uses a converted Chevrolet automobile and for some time has transported groceries, meats and other articles between Sacramento and Placerville, the carriage being all in one direction to Placerville only. Lyon charges for his services not alone for transportation but for the trouble and expense he incurs in filling orders for merchandise for his Placerville patrons. No regular charge or rate is assessed to patrons for this service and in some instances when packages are small no charge has been made.

Ten witnesses testified regarding the service received from defendant Lyon. These witnesses were grocers, restaurant keepers, proprietors of meat markets, cigar and candy stores, all in Placerville. These witnesses use Lyon for transporting property from Sacramento to Placerville paying Lyon on receipt of the shipments for their value and for his services. Some use the services of Lyon practically daily, others one to three times per week. None of the witnesses has ever entered into any written contract with Lyon for his service and none had ever found the service not available when requested. Shipments have varied in weight from a small package to a maximum of about 200 pounds. No regular schedule of rates has ever been charged. Practically all of the persons for whom the service is rendered originally requested that Lyon perform such service.

Arthur S. Lyon, defendant herein, described his operations between Sacramento and Placerville. It is defendant's contention that the carriage of property is incidental to his carriage of U. S. Mail over the star route which he holds from the United States Postal Department. No regular rates are assessed for the transportation of merchandise for Placerville and in some instances charges have not been made. Defendant claims to have refused to haul certain shipments and to have refused service to prospective patrons and that the amounts assessed for transportation

include also the payment for trouble and expense in picking up merchandise for which he has orders from his Placerville customers. The record shows a holding out to a portion of the public for the business of a common carrier by purchasing goods in Sacramento and delivering such purchases at Placerville, making a charge for the service, and said charge includes the cost of transportation.

The record is clear that Arthur S. Lyon is and has been engaged in the business of a transportation company as such term is defined by Chapter 213, Statutes of 1917, and an order to cease and desist such unlawful operation should issue.

An order of this Commission finding an operation to be illegal 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. vs. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wermuth vs. Stamper, 36 C.R.C. 458; Pioneer Express Company vs. 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 \$1,000.00, 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.

ORDER

A public hearing having been had in the above entitled matter,

IT IS HEREBY FOUND THAT Arthur S. Lyon is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act (Chapter 213, Statutes 1917, as amended), with common carrier status between Sacramento, Sacramento County, and Placerville, El Dorado County, 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 Arthur S. Lyon 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 Arthur S. Lyon, that he cause certified copies thereof to be mailed to the District Attorneys of Sacramento and El Dorado Counties and to the Department of Public Works, Division of Motor Vehicles at Sacramento.

The effective date of this order shall be twenty (20) days after the date of service upon defendant Arthur S. Lyon.

Dated at San Francisco, California, this 21st day of May, 1934.

C. Deaver
Leon A. White
M. A. Lee
W. B. Harris
W. H. [unclear]
Commissioners.