

Decision No. 27105

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,
Complainant,

v.

A. W. HENNINGER, FIRST DOE, SECOND DOE,
THIRD DOE, FOURTH DOE, FIFTH DOE,
FIRST DOE CORPORATION, SECOND DOE CORPORATION,
THIRD DOE CORPORATION, FOURTH DOE CORPORATION,
FIFTH DOE CORPORATION.

ORIGINAL

Case No. 3403

Reginald L. Vaughan and Scott Elder, for Complainant.
Horace M. Street, for Defendants.

WEITSELL, Commissioner -

O P I N I O N

By complaint filed on November 1, 1932, complainant charges A. W. Henninger et al., with unlawful common carrier operations by auto truck between Los Angeles and San Francisco and Modesto, Hughson, Salinas, Santa Cruz, Watsonville and other points.

Public hearings were had at Watsonville and San Francisco and the case was duly submitted.

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

The testimony presented by complainant fully established the transportation of various commodities, principally between the Watsonville-Santa Cruz area to Los Angeles and to San Francisco and also between Modesto and Hughson and intermediate points to San Francisco. Shipper witnesses produced scores of bills showing regular and constant service between all the points in the year previous to the hearings. Except for cross

examination of complainant's witnesses, little in defense was offered as to defendant Henninger. At the conclusion of the hearings defendant's counsel submitted the case with this statement:

"There is abundant evidence for the Commission to issue a cease and desist order against the defendant A. W. Henninger; and as far as the defendant Marc Worst is concerned, I will submit the case on the evidence, claiming that there is insufficient evidence to issue a cease and desist order against him."

I agree with the statement of counsel as an inescapable conclusion based on the record. The evidence as to Worst, who worked for Henninger, is mostly that, when Henninger discontinued service during the pendency of the hearings, Worst represented to shippers that he would succeed to Henninger's business.

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 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.

ORDER

IT IS HEREBY FOUND THAT A. W. Henninger is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Act (Chapter 213, Statutes 1917, as amended), with common carrier status between Los Angeles and San Francisco, Santa Cruz, Monterey, Salinas, Modesto and Hughson, Oakland and San Jose and intermediate points without a certificate of public convenience and necessity or prior right authorizing such operation.

Based upon the finding herein and the opinion,

IT IS HEREBY ORDERED that A. W. Henninger 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 A. W. Henninger; that he cause certified copies thereof to be mailed to the District Attorneys of San Francisco, Alameda, Santa Clara, Santa Cruz, Salinas, Monterey, Los Angeles, Madera, Stanislaus and Merced 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.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of May, 1934.

C. J. Kealey

W. A. Linn

W. B. Lewis

D. H. [unclear]
COMMISSIONERS.