

Decision No. 27232.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

BETTER BUSINESS BUREAU OF SAN
FRANCISCO, LTD. (a corporation),

Complainant,

vs.

HARRY LOUIS STELLING,

Defendant.

Case No. 3818.

Gerald O'Gara and Howard Day, for complainant.
Orla St. Clair for Motor Carriers Association,
interveners on behalf of complainant.
Robert Brennan and Wm. F. Brooks, for The
Atchison, Topeka and Santa Fe Railway Com-
pany, intervener on behalf of complainant.
H. C. Lucas and John Maatta, by John Maatta,
for Pacific Greyhound Lines, Inc., inter-
veners on behalf of complainant.
Raine Kwell, for defendant.

BY THE COMMISSION:

O P I N I O N

The issue placed before the Commission in this complaint is that the defendant Harry Louis Stelling has advertised, negotiated for, and offered for sale transportation over the public highways of this state by motor carrier or motor carriers as defined in Chapter 390, Statutes of 1933, and has engaged in the business of a motor carrier transportation agent without having a license therefor, all of which it is alleged are in violation of Chapter 390, Statutes of 1933.

The complaint was filed on April 13, 1934, and hearings

were held in San Francisco before Examiner Albert L. Johnson on May 28 and 29, 1934, the case being submitted on the latter date. The record shows that due and proper service was made upon the defendant, and that Raine Ewell appeared on behalf of the defendant specifically to object to the jurisdiction of the Railroad Commission.

The testimony produced shows that the defendant has for some years past been engaged in business at 768 Howard Street, San Francisco, and that at that address had been engaged as a licensed Motor Carrier Transportation Agent until December 31, 1933. The records of the Commission disclose that the defendant, Harry Louis Stelling, has not been a licensed Motor Carrier Transportation Agent in the year 1934, but a witness produced by the complainant testified that he had regularly advertised transportation service from the address 768 Howard Street, San Francisco. Most of the advertisements stated that the fare was \$4.50 from San Francisco to Los Angeles and concluded with the address, and the number of the telephone at 768 Howard St., San Francisco. From January 1 until April 13, 1934, the date of the filing of the complaint, there was no Motor Carrier Transportation Agent authorized to do business at 768 Howard St., San Francisco, and the evidence shows conclusively that while the \$4.50 rate advertised was a steamer rate, restricted to men only, it attracted a large number of prospects to defendant's place of business who were subsequently transported by automobiles operated without having a certificate of public convenience and necessity from this Commission.

Exhibit No. 1, introduced through Frank Coreia, shows that the classified advertisement order was placed with the Examiner on November 17, 1933, by the defendant, and that on April 10, 1934, the defendant, Harry Louis Stelling, requested the same advertisement order stopped and gave his explanation of the reason for its discontinuance, "no license".

Witness C. M. Daniels testified that on January 8, 1934, he negotiated for transportation with the defendant, Harry Louis Stelling, at 768 Howard St., San Francisco, and that the defendant at that time stated:

"I should go in one of his cars, and that cars left approximately 10 or 10:30 in the morning, 4:30 in the afternoon, and the fare would be \$5.00; that his cars were licensed by the state to carry passengers, and that his drivers were bonded and insured."
(Tr., page 27)

Mr. J. H. Noonan testified that on May 13, 1934, he had negotiations with the defendant, Harry Louis Stelling, and was subsequently conveyed by automobile to Los Angeles as a result.

Witness Edward A. Nickel testified that on March 14, 1934, he made arrangements with the defendant, Harry Louis Stelling, to go to Los Angeles by automobile as a result thereof.

Albert Vuconovich testified that on May 10, 1934, he negotiated with the defendant, Harry Louis Stelling, for transportation by automobile to Los Angeles for \$5.00, and subsequently made the trip as a result of said negotiations.

Witness Van Zywarden testified that on April 19, 1934, he paid the defendant, Harry Louis Stelling, \$8.50 for transportation to Portland, Oregon, and was issued a receipt (Exhibit 12) signed by the defendant, Harry Louis Stelling; that in accordance with instructions received from said Stelling this witness pre-

presented the receipt to the Gray Line ticket office on Market Street and was handed a ticket reading from San Francisco to Portland over the Independent Stages. This ticket is in evidence as Exhibit No. 13.

Witness Alexis Smyrno procured transportation from 768 Howard St., San Francisco, to Los Angeles on February 20, 1934, in response to an advertisement in the Examiner.

Joseph J. Roesch testified that on or about February 21, 1934, he telephoned to 768 Howard St., San Francisco, in response to an advertisement in a newspaper, to secure transportation to Los Angeles and as a result thereof was picked up at No. 5 South Van Ness Avenue and made the trip to Los Angeles.

Witness Anthony J. Weber testified that on or around March 23, 1934, in response to an advertisement he had read in the Examiner, he telephoned to defendant's office to arrange for transportation to Los Angeles, and that as a result of the telephone conversation he was picked up at his home, 1521 Sutter St., and made the trip to Los Angeles.

Witness Edward J. Varni testified that on April 16, 1934, he called at 768 Howard St., San Francisco, and asked for transportation to Los Angeles; that a man standing behind the counter told him he wanted \$8.00 for transportation on the stage, and that about this part of the conversation the defendant, Harry Louis Stelling, commenced talking:

"He became very indignant, quite angry, because the man behind the counter told him the fare was \$8.00. He cursed the man and told him to put me on the list, and the man behind the counter was - - he was very hesitant. He did not want to do it at all when the fellow, this old gentleman who was standing outside" (defendant Stelling) "rushed in and swore and shoved him back and took the list down from the top of, I think it was a safe, and he asked me to sign it. He says, 'We will take you for \$5.00. We have private sedans for \$5.00.' "

(Tr., page 44)

Other witnesses testified that they sought to negotiate with the defendant, Harry Louis Stelling, and were referred by the said defendant to other parties in defendant's office.

Witness Adolph Damazonio testified that on May 12, 1934, he visited defendant's office and asked defendant what time the next bus left for Los Angeles. Defendant replied "around five o'clock." When the witness advised the defendant he would like to make the trip defendant Harry Louis Stelling replied: "All right, this fellow here will fix you up." (Tr., page 158)

Witness Fred A. Hornblower, investigator for the State Board of Equalization, testified that since January 1, 1934, he has in the course of his business been at 768 Howard St., San Francisco, at least once a day and that there are about 25 cars operating with State Board of Equalization licenses from 768 Howard St. Mr. Hornblower further stated that the people he had observed visiting 768 Howard St. usually came individually and not in groups.

Section 14 of Chapter 390, Statutes 1933, the Motor Carrier Transportation Agent's Act, provides:

"Any person, firm or corporation, shall be understood to be acting as a motor carrier transportation agent within the meaning of this act who shall (1) orally or by card, circular, pamphlet, newspaper, radio, sign, billboard, or any other way, advertise himself, or itself, as one who sells, furnishes, negotiates for, or provides transportation over the public highways of this State when such transportation is furnished or offered, or proposed to be furnished, by motor carriers as defined in this act; (2) manage or conduct as manager, conductor, agent, proprietor, lessor, lessee, ticket collector, or otherwise, a place where transportation is, or is offered, or proposed to be, sold, furnished, negotiated for, or provided by a motor carrier as defined in this act."

The record shows that none of the operators of the cars that transported the witnesses, held certificates of public convenience and necessity.

No denial was made or evidence introduced by the defendant.

Under the effective statutes of this state and the regulations of this Commission the sale of motor carrier transportation

or any arrangement for passenger transportation is not governed by the license plates issued to car owners by the State Board of Equalization but by other existing laws, and the regulations of this Commission arising from such laws must be complied with.

We have carefully considered the record in this proceeding. It appears that the defendant has discussed the matter of transportation by sedan automobile with the public and has advertised and negotiated for automobile services operated by persons licensed by the Board of Equalization under Chapter 390, Statutes of 1933. By the sale to Portland and these negotiations to Los Angeles the defendant violated Chapter 390, Statutes of 1933. An order to cease and desist should herein issue.

An order of this Commission finding an operation to be illegal and directing that it be discontinued is in 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 or he may be imprisoned for five (5) days, or both. C.C.P. Section 1218; Motor Freight Terminal Co. vs. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Wernuth vs. Stemper, 38 C.R.C. 458; Pioneer Express Company vs. Keller, 33 C.R.C. 571.

It should also be noted that a person who violates an order of the Commission is guilty of a misdemeanor and is punishable by a fine not exceeding One Thousand (\$1000) dollars or by imprisonment in the county jail not exceeding one year or by both such fine and imprisonment. Likewise a patron or other person

who aids and 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

The Railroad Commission being fully advised in the premises,

IT IS HEREBY FOUND AS A FACT that Harry Louis Stelling has acted as a Motor Carrier Transportation Agent and without a license so to do as is required by the provisions of Chapter 390, Statutes of 1933. Based upon the findings herein and the opinion,

IT IS HEREBY ORDERED that Harry Louis Stelling shall cease and desist directly or indirectly, or by any subterfuge or device, from continuing to act as a Motor Carrier Transportation Agent as such is defined by Chapter 390, Statutes of 1933.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon Harry Louis Stelling and cause a certified copy to be mailed to the District Attorney of the City and County of San Francisco.

The effective date of this order shall be twenty (20) days after date of service upon defendant, Harry Louis Stelling.

Dated at San Francisco, California, this 20th day of July, 1934.

C. C. Leamy
Leon C. Williams
W. A. Lee
W. B. Harris
Commissioners.