

Decision No. 27243

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

BENJAMIN S. GOLDBERG and J. H. GOLDBERG,)
doing business under the firm name and)
style of GOLDBERG FILM DELIVERY,)

Complainants,

vs.

Case No. 3798

HARRY SHONTZ, doing business under the)
firm name and style of SHONTZ FILM)
SERVICE, and MARY L. SPANN, doing)
business under the name and style of)
MARY L. SPANN FILM DELIVERY,)

Defendants.)

ORIGINAL

Phil Jacobson, for Complainant,

Harold R. Smith and Orfa Jean Shontz,
for Evelyn Shontz, Defendants.

Mary L. Spann, in propria persona.

A. S. Groocox, for Board of Public Utilities
and Transportation of the City of Los Angeles.

BY THE COMMISSION -

O P I N I O N

Benjamin S. Goldberg and J. H. Goldberg, doing business under the firm name of Goldberg Film Delivery, herein complain that Harry Shontz (Shontz Film Service), and Mary L. Spann (Mary L. Spann Film Delivery), are operating as transportation companies over the highways of this state and that said defendants have no certificates of public convenience and necessity so to do, nor any prescriptive or other rights for such operations, which are being conducted in violation of Chapter 213, Statutes of 1917.

Subsequent to the filing of said complaint and prior to the hearing in this matter, defendant, Harry Shontz, died. On May 30, 1934, an amended complaint was filed, naming Evelyn Shontz

as defendant in lieu of Harry Shontz, deceased. On the same date a stipulation, entered into by the attorney for complainant and the attorney for defendant, Evelyn Shontz, was filed, wherein it was stipulated that Evelyn Shontz, wife of Harry Shontz, had taken over and continued to operate the Shontz Film Delivery Service in the same manner as heretofore operated by Harry Shontz and that the answer heretofore filed by Harry A. Shontz may be deemed the full and complete answer to said amended complaint for and on behalf of Evelyn Shontz.

A public hearing on this complaint was held before Examiner Gorman at Los Angeles on May 31, 1934, at which time the matter was duly submitted.

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

EVELYN SHONTZ - SHONTZ FILM SERVICE

Evelyn Shontz, wife of Harry Shontz, since the death of her husband, on or about May 2, 1934, has operated and is continuing to operate the so-called Shontz Film Service in the same manner as heretofore operated by Harry A. Shontz. Motion picture films and accessories are being delivered regularly by defendant to eight theaters, three¹ of which are located outside of the City of Los Angeles. In addition, defendant makes an occasional delivery to Fox Wilshire Theater, located near Wilshire Boulevard and Hamilton Drive, in the City of Beverly Hills.

The record shows that the film delivery service to the theaters outside of the City of Los Angeles is conducted over a regular route and on a regular schedule and in approximately the same manner as other film delivery services being conducted under regulation of this Commission as a result of the issuance of certificates of public convenience and necessity.

¹ ~~including~~ Golden Gate Theater, at Atlantic and Whittier Boulevards, Belvedere Gardens, Bonita Theater, at Ford Boulevard and Brooklyn Avenue, and Garden Theater, at Telegraph Road, west of Ford Boulevard.

Defendant, Evelyn Shontz, testified that the film delivery business to theaters located outside the City of Los Angeles was not secured from solicitation by her or her deceased husband but was obtained as a result of requests from the managers or owners of the respective theaters for said service; that no written contracts have been entered into for said service; that no solicitation or advertising is or has been carried on by her or her deceased husband and that the film exhibitors pay the transportation charges.

MARY L. SPANN - MARY L. SPANN FILM DELIVERY.

Mary L. Spann, operating the Mary L. Spann Film Delivery, is conducting a film delivery service transporting motion picture films and accessories between various theaters and film exchanges in Los Angeles. Only one of the theaters² served by Mary L. Spann is located outside of the City of Los Angeles. Defendant testified that the United Artists Theater at Belvedere Gardens was formerly served by plaintiff and while so served she called upon the management of said theater for the purpose of attempting to secure the film delivery business to said theater but, however, was unsuccessful; that subsequent to this solicitation, the manager of said theater, by telephone, gave her the business; that no written contract had been entered into with said theater; that no advertising is resorted to for securing business, as such would be useless; that she contemplates soliciting various theaters for their film delivery business; and that the film exhibitors pay the transportation charges.

The record shows that the business of transporting motion picture films and accessories by defendants is conducted in the same manner as the business of plaintiff, Goldberg Film Delivery.

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United Artists Theater at Belvedere Gardens.

The Commission, by its Decision No.25493, dated December 27, 1932, on Application No.18271, determined that it had jurisdiction over such operations.

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 Company 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 Co. 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 this 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 Evelyn Shontz and Evelyn Shontz, doing business under the fictitious name and style of Shontz Film Service, and Mary L. Spann and Mary L. Spann, doing business under the fictitious name and style of Mary L. Spann Film Service, are operating transportation companies as defined in Section 1,

Subdivision (c) of the Auto Truck Transportation Act (Chapter 213, Statutes 1917, as amended), with common carrier status, between the City of Los Angeles and points outside thereof, as set forth in the foregoing opinion, and without having a certificate of public convenience and necessity or prior right authorizing such operations.

Based upon the finding herein and the foregoing opinion,
IT IS HEREBY ORDERED that Evelyn Shontz and Evelyn Shontz, doing business under the fictitious name and style of Shontz Film Service, and Mary L. Spann and Mary L. Spann, doing business under the fictitious name and style of Mary L. Spann Film Delivery, shall cease and desist, directly or indirectly or by any subterfuge or device, from continuing such operation.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be personally served upon Evelyn Shontz and Mary L. Spann; that he cause certified copies thereof to be mailed to the District Attorney's office of Los Angeles county, 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 the defendants.

Dated at San Francisco, California, this 30th day of July, 1934.

C. J. Lewis
Leon A. ...
W. B. ...

COMMISSIONERS.