

Decision No. 27407

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

REGULATED CARRIERS, INC., a corporation,

Complainant,

vs.

ORIN THORKILDSEN, C. McWILLIAMS, ORIN
THORKILDSEN and C. McWILLIAMS doing
business under the fictitious name and
style of Sterling Transit Company,
FIRST DOE, SECOND DOE, THIRD DOE,
FOURTH DOE, FIFTH DOE, FIRST DOE CORPORA-
TION, SECOND DOE CORPORATION, THIRD DOE
CORPORATION, FOURTH DOE CORPORATION,
FIFTH DOE CORPORATION,

Defendants.

Case No. 3805.

Reginald L. Vaughan and Scott Elder, for
Complainant.

L. M. Phillips, for Defendant Orin Thorkildsen.

Edward Stern, for Railway Express Agency,
intervener.

CARR, Commissioner.

O P I N I O N

By complaint filed on March 19, 1934 the complainant charges Orin Thorkildsen and C. McWilliams, together with Thorkildsen and McWilliams, doing business under the fictitious name of Sterling Transit Company, with unlawful common carrier operations by auto truck between Los Angeles, Vernon, Huntington Park and contiguous territory on the one hand and San Francisco Bay points on the other, and between Sacramento and San Francisco Bay points and also between Sacramento and Los Angeles and contiguous territory, and points intermediate between the respective termini.

A public hearing was had on September 18th, briefs have been filed and the matter is now ready for decision.

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

In December 1933 the defendant Orin Thorkildsen and V. W. Runyon, under the name of Sterling Transit Company, commenced the business here under attack as unlawful. The nature of this business is not disputed. Indeed, the defendant Thorkildsen, with perfect frankness, made a full disclosure of just what was being done.

Thorkildsen, it seems, had been employed by the Terminal Distributing Company or Agency, the operations of which are described and were declared to be unlawful in Regulated Carriers, Inc. vs. O. P. Moya, Decision 26533, of date November 13, 1933. When the business of this concern broke up he had nothing to do so he and Runyon decided to establish a business of their own under the name of Sterling Transit Company. They secured a dock at 509 Molino Street, Los Angeles, had a telephone installed and either by phone or through personal solicitation contacted various shippers, most of whom had been customers of the Terminal Distributing Agency. The business they secured was north bound business to San Francisco Bay points and points intermediate, and also to Sacramento and points intermediate. They had no trucks of their own for making the line haul and they farmed the business out to various truck owners. The service assumed a high degree of regularity. Almost daily a truck left Los Angeles for the north. About half the time they were able to secure enough freight to make a full truck load. When unable to secure a full load the truck owner was free to complete his load in any way he saw fit. As the Sterling Transit Company generally represented to shippers that deliveries would be made on the morning following the receipt of freight, the privilege to the truckers of

filling out their load was subject to this limitation.

The Sterling Transit Company assumed full responsibility for the safe transportation and delivery of the freight, appropriate insurance being carried. Uniform bills of lading were used. Charges for carriage were assessed and billed and collections made by the Sterling Transit Company.

Thorkildsen knew about what various truck owners would charge for transportation. The amount paid them for the line hauls represented about 75% of the amount collected from the shippers, so that the Sterling Transit Company retained the remaining 25% for getting the business, gathering the freight to the dock, providing insurance and collecting the charges.

Of the trucks customarily employed in this service about half were from San Francisco Bay points and were available at Los Angeles and made themselves evident at Los Angeles in search of a back-haul load. The other half were from Los Angeles and after they had made the haul north were free to hunt up a back-haul load.

The operations here described are of the character held to be unlawful in M.F.T. Co. v. Move Forwarding Company, 37 C.R.C. 857, as to which a petition for certiorari was denied on November 10, 1932, S.F. No. 14801; Regulated Carriers v. Universal Forwarders, Ltd., Decision 26236, Case 3544, as to which a petition for certiorari was denied on October 23, 1933, L.A. No. 14467; and Regulated Carriers, Inc. v. O. P. Move, et al., supra, and other cases.

No good reason is presented why a different rule should be applied here. Sub-section (ka) of Section 1 of the Public Utilities Act, added by the Legislature in 1933, and to which reference is made in the defendant's brief, does not break the force of these decisions. 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 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 \$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.

I recommend the following form of order:

O R D E R

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

IT IS HEREBY FOUND that Orin Thorkildsen and V. W. Runyon are and the former is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act, (Chapter 213, Statutes of 1917, as amended) with common carrier status between Los Angeles, Vernon and Huntington Park on the one hand and San Francisco and San Francisco Bay points on the other, and

points intermediate, and also between Los Angeles, Vernon and Huntington Park on the one hand and Sacramento on the other, and points intermediate, 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 Orin Thorkildsen cease and desist, directly or indirectly, or by any subterfuge or device, under his own name or under the name of Sterling Transit Company or otherwise, from continuing such operations.

IT IS FURTHER ORDERED, that the complaint as against the named defendant, C. McWilliams, be dismissed.

The effective date of this order shall be twenty (20) days from the date hereof.

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 29th day of October, 1934.

Leon C. Whittell
M. A. Cunn
M. B. Harris
A. J. [illegible]
E. J. [illegible]
Commissioners.