

Decision No. 27728

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC.,  
a corporation,  
Complainant,

vs.

H. K. FULTON, JANE DOE FULTON and H. K.  
FULTON and JANE DOE FULTON doing busi-  
ness under the fictitious name and style  
of California Truck Lines, First Doe,  
Second Doe, Third Doe, Fourth Doe, Fifth  
Doe, First Doe Corporation, Second Doe  
Corporation, Third Doe Corporation,  
Fourth Doe Corporation, Fifth Doe Cor-  
poration,  
Defendants.

Case No. 3896.

ORIGINAL

Reginald L. Vaughan and Scott Elder, by  
Scott Elder, for complainant.

H. K. Fulton in propria persona.

BY THE COMMISSION:

O P I N I O N

By this petition filed August 29, 1934, complainant charges H. K. Fulton, Jane Doe Fulton and H. K. Fulton and Jane Doe Fulton doing business under the fictitious name and style of California Truck Lines, with unlawful common carrier operations by auto truck between San Francisco, Oakland, Alameda, Berkeley, Richmond, Emeryville, San Leandro, on the one hand, and Los Angeles, Huntington Park, Vernon, Long Beach, South Gate and intermediate points on the other.

Defendant made no formal answer to the complaint.

A public hearing was held before Examiner Geary on December 21, 1934, and the proceeding having been duly submitted is now ready for our opinion and order.

This record shows that the California Truck Lines is a fictitious name for an organized business owned and conducted by H. K. Fulton. The auto truck services were first furnished to the public early in 1934, shortly after defendant left the employ of the Motor Freight Agencies.

The testimony of shipper witnesses having their places of business in San Francisco was to the effect that defendant responded to all calls, usually made by telephone, furnished trucks promptly and gave a quick and reliable daily service. Truck drivers sign bills of lading or receipts on behalf of the California Truck Lines, and the rates charged are on a scheduled basis and are the same between like points. Defendant collects the hauling charges about once a month and loss and damage claims are paid promptly. No written contracts have been executed by any of these witnesses. The tonnage offered by the San Francisco territory, which embraces many common items, is mostly in truck load lots, although small shipments will be accepted. Shippers have no dealings or contact with the truck owners and drivers, they transacting all their business with the California Truck Lines. The traffic is practically all southbound from San Francisco to Los Angeles.

Defendant's testimony showed that there was no ownership of trucks and no warehousing facilities in San Francisco. No regular employees are used except members of defendant's family, but a solicitor is occasionally employed on a commission basis. Defendant claims to be acting only as the agent for truck owners who come to San Francisco with tonnage assembled in Southern California, with which he has no interest. His activities are devoted entirely to the securing of lading for the southbound movement. The trucker as compensation receives from 35 to 90 per cent of the revenue collected. There is practically no movement to points other than Los Angeles.

Exhibits were introduced showing that California Truck

Lines have printed accounting forms and uses standard bills of lading receipted for by this defendant, per the truck operator. They also use a business card in soliciting traffic.

We have carefully considered all the evidence and from this record conclude and find as a fact that E. K. Fulton, doing business under the fictitious name and style of California Truck Lines, is operating as a common carrier within the meaning of Chapter 213, Statutes 1917, between San Francisco and points adjacent thereto on the one hand, and Los Angeles and points adjacent thereto on the other, and certain intermediate points, and that defendant does not possess a certificate of public convenience and necessity. It therefore follows that 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.

O R D E R

A public hearing having been had in the above entitled case, IT IS HEREBY FOUND AS A FACT that H. K. Fulton, doing business under the fictitious name and style of California Truck Lines, 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 San Francisco and points adjacent thereto on the one hand, and Los Angeles and points adjacent thereto on the other, and certain intermediate points, 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 H. K. Fulton, doing business under the fictitious name and style of California Truck Lines, 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 H. K. Fulton, that he cause certified copies thereof to be mailed to the District Attorneys of San Francisco, Alameda, San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kern and Los Angeles 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.

Dated at San Francisco, California, this 4<sup>th</sup> day of

February, 1935.

Leon Whittell  
H. K. Fulton  
M. B. ...  
...  
...  
Commissioners.