

Decision No. 27940

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CERTIFICATED HIGHWAY CARRIERS, INC.,

Complainant,

vs.

SHERMAN LOCKE and SHERMAN LOCKE, Jr.

ORIGINAL

Case No. 3967

Owen C. Emery, for Complainant.

R. L. Vaughan and Scott Elder, for Regulated Carriers, Inc,  
intervenor in behalf of Complainant.

Sherman Locke, Sr., defendant, in propria persona.

BY THE COMMISSION -

O P I N I O N

Complainant alleges that defendants Sherman Locke, Sr. and Sherman Locke, Jr. are conducting a trucking service for the transportation of property as a common carrier between Los Angeles and Lone Pine, Big Pine, Independence and Bishop without having first procured a certificate of public convenience and necessity from this Commission. An order requiring them to cease and desist is sought.

A public hearing was conducted at Los Angeles by Examiner Williams. The record shows that about October 11, 1934, Sherman Locke and his son formed a truck operating partnership under the name "Mt. Whitney Transport" and began operations at Lone Pine. An office was established in Lone Pine and another, for terminal purposes, at the Ellis Motor Parts Co., 4100 Avalon Boulevard, Los Angeles. Notice of the formation of the partnership and the operation under the fictitious name by the co-partners was published in Inyo county papers together with advertisements announcing the business of "trucking contractors,

local and long distance." Thereafter, the Lockes made trips to and from Los Angeles at least once a week and, at times, twice or more a week, transporting property for merchants in and about Lone Pine. The record discloses shipments from sixteen consignors in Los Angeles, mostly large wholesale houses and consignees in Lone Pine, Big Pine and Independence, numbering about fifty or more. Only one shipment was shown to have moved to Bishop.

Sherman Locke, Sr., under examination by complainant, admitted that the service had been performed and that orders given by merchants at Lone Pine had been collected at the various points in Los Angeles and moved to Lone Pine and other points. The lowest rate charged was 35 cents per 100 pounds and that only when there was a truckload available, other particular rates being from 50 cents to \$1.50 per 100 pounds, depending upon the quantity and length of haul. Very little back haul was made. Mr. Locke stated that he and his son were now living in Los Angeles and did not intend to continue the operation further and had disposed of one of their trucks. The other truck is now used by the son in contract work with a newspaper to delivery its issues over a large area, including the area involved.

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.

O R D E R

IT IS HEREBY FOUND THAT Sherman Locke, Sr. and Sherman Locke, Jr., individually or as copartners, are operating as a transportation company, as defined in Section 1, (c) of the Auto Truck Transportation Act, Statutes 1917, Chapter 213, as amended, with common carrier status, between fixed termini and over regular routes and public highways, between Los Angeles on the one hand and Lone Pine, Big Pine, Independence and Bishop and points intermediate to Lone Pine and Bishop on the other hand, without having obtained a certificate or certificates of public convenience and necessity or without having any prior operative right for any or all of such operations.

Based upon the Opinion and findings herein,

IT IS HEREBY ORDERED that each and all of the following, to wit: Sherman Locke, Sr. and Sherman Locke, Jr., each individually or as copartners, shall cease and desist, jointly and severally, directly or indirectly, or by any subterfuge or device from continuing any or all of such operations, hereinabove set forth, and more specifically shall cease and desist, jointly and severally, directly or indirectly, or by any subterfuge or device from operating as a common carrier between any or all of the following

points, to wit: between Los Angeles on the one hand and Lone Pine, Big Pine, Independence and Bishop and points intermediate to Lone Pine and Bishop, and shall similarly cease and desist, jointly and severally, from operating as a common carrier between any two or more of the points hereinabove specified and found as being places between which the said Sherman Locke, Sr. and Sherman Locke, Jr., each individually or as copartners, are now operating, unless and until a certificate of public convenience and necessity shall have been obtained from this Commission.

The Secretary of the Commission is directed to cause personal service of a certified copy of this decision to be made upon Sherman Locke, Sr. and Sherman Locke, Jr.

This order shall become effective twenty (20) days after the date of personal service.

Dated at San Francisco, California, this 6 day of May, 1935.

Leon Whitehill

W. B. Brown

W. B. Brown

W. B. Brown

Frank R. Deane

COMMISSIONERS.