

Decision No. 28763

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation,)
on the Commission's own motion,)
into the operations, rates, charges,)
contracts, and practices, or any)
thereof, of W. L. LYON.)

Case No. 4258.

W. L. LYON, Respondent, in propria persona

H. A. DICKSON, for Board of Equalization, Transportation Tax Division

WAKEFIELD, COMMISSIONER:

O P I N I O N

The Commission heretofore instituted an investigation into the operations of W. L. Lyon for the purpose of determining whether he was operating as a highway carrier.

A public hearing was held on November 9, 1937, at which respondent appeared in propria persona.

Witnesses were called by the Commission and testified that they were farmers living within a comparatively circumscribed radius of respondent's home, and that respondent had hauled sheep, lambs, and hogs for them over the public highways by motor truck, for compensation.

Lyon, testifying in his own behalf, stated that he was a farmer, and operated an alfalfa ranch consisting of 160 acres. He further testified that he hauled only for his neighbors, in order to accommodate them, and insisted that his operations were such as those exempted by the legislature in Section 1 (f) (2), Chapter 223, Statutes of 1935, as amended by Chapter 722, Statutes

of 1937, which excludes from the definition of a highway carrier:

"Any farmer who occasionally transports from the place of production to a warehouse, regular market, place of storage, or place of shipment, the farm products of neighboring farmers, in exchange for like services, or for a cash consideration."

Lyon further testified that in relation to his regular business of farming, his transportation business was casual in nature, and respondent, as well as various shippers, testified that when he was engaged in irrigating or was otherwise too busy on his farm, he often refused to haul livestock for his neighbors.

Where an exemption is claimed from the operations of the Highway Carriers' Act, the Commission must determine each case on its own facts. From the evidence here adduced it appears, and the Commission finds as a fact, that the operations of respondent, during the period covered by the investigation, were not those of a highway carrier, as defined in Section 1 (f) of the Highway Carriers' Act, but, on the contrary, fell within the exempting provisions of subdivision (2) of subsection (f), Section 1, of said Highway Carriers' Act.

O R D E R

A public hearing having been held in the above entitled proceeding, evidence having been received, and the Commission being now fully advised; NOW, THEREFORE, based upon the conclusions and the findings set forth in the preceding opinion:

IT IS HEREBY ORDERED that the above entitled proceeding be and it is hereby dismissed.

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 11th day
of April, 1938.

W. H. ...
Leon ...
Donald R. ...
Ralph ...
Ray L. Allen

Commissioners.