

Decision No. 38263

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,) Case No. 4301.
and practices, or any thereof, of)
C. C. PETERSON.)

NAT BROWN, for respondent.

BY THE COMMISSION:

O P I N I O N

This investigation was instituted on the Commission's own motion to determine whether the operations of respondent C. C. Peterson are in violation of the Public Utilities Act or the Highway Carriers' Act, and particularly whether respondent is engaged in operation as a highway carrier other than a highway common carrier without a permit from the Commission. Public hearing was held before Examiner Elder at Stockton and San Francisco, evidence was received, and the matter duly submitted. It is now ready for decision.

The record shows that respondent formerly held a permit as a radial highway common carrier, which was revoked April 4, 1937. On June 29, 1938, respondent filed an application for a permit as a highway contract carrier, which was never issued as respondent failed to deposit any public liability and property damage protection with the Commission. The application was cancelled for that reason prior to the institution of this proceeding. In the application respondent alleged that he had been engaged in business as a highway

contract carrier since November 1, 1937.

Evidence was received from Robert R. Smith, John Von Husen, William Erwin, John T. Peterson, and Jerry Brosky. From their testimony it appears that respondent had solicited hauling from them or from companies they represented for the San Joaquin Trucking Company; that they had given him hauling to perform by truck and otherwise dealt with him and with him alone as representing San Joaquin Trucking Company during the previous two or three years. Checks for such hauling during the months of November and December, 1937, were introduced in evidence. Such checks were payable to San Joaquin Trucking Company and were endorsed "San Joaquin Trucking Company by C. C. Peterson."

Clarence G. Dow, auditor for Stockton Savings and Loan Bank, testified that an account of San Joaquin Trucking Company was opened in that bank by Fred Howe in 1937. In November of that year Howe brought respondent into the bank and gave him authority to sign for San Joaquin Trucking Company, and thereafter all checks were signed or endorsed by respondent. Howe's name was never removed from the account nor his authority rescinded.

Thomas E. Powelson, a truck operator, testified that he had known respondent and had worked for him at various times since 1935. In 1937, prior to November 1st, he was working in the trucking business for Fred Howe with whom respondent was also associated. Between November 1 and November 10, 1937, Howe left the business and as he left he told Powelson that respondent was taking over the business. Thereafter Powelson worked for respondent who did business as San Joaquin Trucking Company, and Powelson looked to him for his compensation.

Fred Howe testified that prior to November, 1937, he was engaged in the trucking business in Stockton under the name of San Joaquin Trucking Company and in that name had a bank account in the Stockton Savings and Loan Bank. He employed respondent in that business. About November 1, 1937, he moved to Lindsay and entered the trucking business there under the name of Howe Bros. In settlement of an indebtedness he owed respondent, he turned over to the latter the bank account and some accounts receivable. Howe stated that at that time he turned the bank account over to respondent and would have withdrawn his name therefrom but the bank would not permit him to do so until all outstanding checks were cleared.

From the foregoing evidence we conclude that respondent, since November 1, 1937, has been engaged in operation as a highway carrier, as that term is defined in Section 1 of the Highway Carriers' Act, other than a highway common carrier, without a permit from the Railroad Commission, in violation of that section. 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, the Public Utilities Act, the Highway Carriers' Act, and the City Carriers' 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 days, or both. C.C.P. Sec. 1218.

Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; In re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stamper, 36 C.R.C. 438; Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 79 of the Public Utilities Act, a person who violates an order of the Commission is guilty of a misdemeanor and is punishable in the same manner. Similarly, under Section 14 of the Highway Carriers' Act, any person, or any director, officer, agent, or employee of a corporation who violates any of the provisions of this act, or of any operating permit issued thereunder to any highway carrier, or any order, rule, or regulation of the Commission, is guilty of a misdemeanor and is punishable by a fine not exceeding \$500.00, or by imprisonment in the County Jail for not exceeding three months, or by both fine and imprisonment.

O R D E R

Public hearing having been held in the above entitled proceeding, evidence having been received, the matter duly submitted, and the Commission now being fully advised:

IT IS HEREBY FOUND that respondent C. C. Peterson, since November 1, 1937, has been engaged in the transportation of property for compensation or hire as a business over the public highways of this State by motor vehicle as a highway carrier (as that term is defined in Section 1(f) of the Highway Carriers' Act) other than a highway common carrier (as that term is defined in Section 1(g) of said act), without first having secured from the Railroad Commission a

permit authorizing such operation, in violation of Section 3 of the Highway Carriers' Act.

IT IS HEREBY ORDERED that respondent C. C. Peterson shall cease and desist from any and all such operation as a radial highway common carrier or a highway contract carrier, as those terms are defined in Section 1, subsections (h) and (i), respectively, of said act, unless and until he shall have obtained from the Railroad Commission a permit authorizing such operation.

This order shall become effective on the thirtieth day after the date hereof.

Dated at San Francisco, California, this 14th day of February, 1939.

Robert H. Brown
Frank A. Brown
Ray H. Riley
H. H. Baker
Justice J. C. Cramer
Commissioners.