

**ORIGINAL**

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 of CHARLES F. KOORS, )  
FRED A. KOORS, SNOWD E. LYON, FLOYD C. )  
SEIBERT, and HENRY GAMMEL, co-partners )  
doing business as UNITED TRANSPORTATION )  
COMPANY. )

Case No. 4593

PHIL JACOBSON, for respondent

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by the Commission on its own motion to determine whether or not respondent co-partners, doing business as United Transportation Company, engaged in highway carrier operations over the public highways of this State without first having obtained and without possessing permits authorizing such operations, as required by Section 3 of the Highway Carriers' Act (Stats. 1935, Ch. 223, as amended). It was also an object of the investigation to determine whether, if any such violation had occurred, any applications filed by respondent for permits to operate as such highway carrier, and in particular Applications Nos. 19-12898 and 19-12899 should be denied pursuant to Section 14 $\frac{1}{2}$  of said Act. Public hearing was held before Examiner Gorman at Los Angeles on May 22 and 23, 1941, at which time evidence was received, the matter was submitted, and it is now ready for decision.

Floyd McColl, supervising auditor of the Commission's Truck & Stage Division, testified that the files and records of the Commission under his supervision showed that respondent applied for permits to operate as a radial highway common, highway contract, and city carrier on October 14, 1940, and that permits numbered 19-11822, 19-11823, and 19-11824 to operate as such types of carrier were issued by the Commission on December 2, 1940. These permits were revoked on December 14, 1940, for failure of respondent to keep on deposit continuous adequate insurance. Thereafter, on January 7, 1941, respondent applied for new permits which were issued on January 22, 1941, and assigned numbers 19-12225, 19-12226, and 19-12227. These permits were revoked pursuant to resolution of the Commission on April 14, 1941, also for failure to keep on deposit continuous adequate insurance. On April 25th new applications were received from respondent for the same types of permits and were assigned Nos. 19-12898, 19-12899, and 19-12900. These applications are now pending.

It thus appears that between December 14, 1940, and January 22, 1941, and subsequent to April 14, 1941, respondent did not possess a permit to operate as either a highway contract, radial highway common, or city carrier.

It was stipulated between counsel for the Transportation Department and counsel for respondent (Exhibit No. 1) that respondent rendered service as a highway carrier between December 14, 1940, and January 22, 1941, and from April 14 to May 22, 1941. This transportation was performed for various shippers in Los Angeles and vicinity and it was conceded by respondent that at least after April 14, 1941, it was conducted with full knowledge of its unlawful character.

Charles F. Koors, a co-partner of respondent, testified that his failure to keep adequate insurance on file with the Commission was caused by lack of funds with which to pay premiums when

due, which resulted in the policy being cancelled by the insurance carrier. The policy was subsequently reinstated upon notice after the premium payments had been made. Prior to the receipt of the reinstatement notice, however, the Commission had revoked respondent's permits. The reinstatement notices provided that the reinstatement of the policy would be made retroactive to the date of the cancellation, so that the policy actually continued in effect as a protection against liability. On the other hand, after revocation of the permits at the expiration of the ten-day period following receipt of the cancellation notices, respondent's operations as a highway carrier were conducted without possession of the proper authority therefor. The only method by which respondent could secure such authority was by filing new applications and having new permits issued.

Section 14 $\frac{1}{2}$  of the Highway Carriers' Act provides in part that after the cancellation or revocation of a permit it shall be unlawful for the carrier to conduct operations as such carrier, and that after such cancellation or revocation the Commission may in its discretion either grant or deny the application of such highway carrier for a new permit or permits. Having such discretion to grant new permits, the Commission may, of course, attach conditions thereto. In the light of respondent's knowing and wilful violation of the law in continuing to operate without the possession of permits, especially after being warned that such operations were unlawful, it is our opinion that the granting of the pending applications for permits should be deferred for a period of ten days from the effective date of the order to be made herein, and that in addition respondent should be ordered to cease and desist from operations as a highway carrier unless and until it possesses the necessary authority therefor.

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 days, or both. C.C.P., Section 1218; Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; In re Ball & Hayes, 37 C.R.C. 407; Wermath v. Stamper, 36 C.R.C. 437; Pioneer Express Co. Keller, 33 C.R.C. 371.

It should also be noted that under Section 14 of the Highway Carriers' Act, a person who violates an order 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 not exceeding three months, or by both such fine and imprisonment.

Respondent is cautioned not to undertake to sell, furnish, or provide transportation to be performed by any other carrier on a commission basis or for other consideration during any period when its permit is suspended or subsequent to its revocation unless it shall first obtain a license required by the Motor Transportation Broker Act (Stats. 1935, Ch. 705) for such operations as a broker. It is to be noted that under Section 16 of that Act, one who engages in business as a motor transportation broker without the required license is subject to a fine of not to exceed \$500.00 or to imprisonment in the county jail for a term of not to exceed six months, or to both such fine and imprisonment.

#### ORDER

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

IT IS HEREBY FOUND that respondents Charles F. Koors, Fred A. Koors, Snowd E. Lyon, Floyd C. Scibert, and Henry Gammel, co-partners doing business as United Transportation Company, have engaged in the transportation of property for compensation or hire as a business by means of a motor vehicle or motor vehicles over the public highways of this State as a highway carrier as that term is defined in Section 1(f) of the Highway Carriers' Act (Stats. 1935, Ch. 223, as amended) other than a highway common carrier, as that term is defined in Section 1(g) of said Act, between the 14th day of December, 1940, and the 22nd day of January, 1941, and between the 14th day of April and the 22nd day of May, 1941, without first having obtained and without possessing a permit authorizing such transportation, as required by Section 3 of said Highway Carriers' Act.

IT IS HEREBY ORDERED by reason of said offense that said respondents, doing business as United Transportation Company, shall immediately cease and desist and thereafter abstain from conducting or continuing said highway carrier operations, directly or indirectly, or by any subterfuge or device, unless and until said respondents shall have obtained a permit or permits therefor from this Commission.

IT IS HEREBY FURTHER ORDERED that Applications Nos. 19-12898 and 19-12899 of respondent for permits to operate as a radial highway common carrier and highway contract carrier, respectively, be granted, but that the issuance of said permits be withheld for a period of ten days following the effective date of this order.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Commission shall cause a certified copy of this decision to be served upon Charles F. Koors, Fred A. Koors, Snowd E. Lyon, Floyd C. Scibert, and Henry Gammel, individually, and as co-partners doing business as

United Transportation Company, respondent herein.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 3<sup>rd</sup> day of June, 1941.

Ray L. Ricey  
Justin F. Crocker  
Frank L. Havens  
Richard H. Hays  
COMMISSIONERS