

Decision No. 39775

BEFORE THE PUBLIC UTILITIES 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)
CLARENCE J. SLOCUM)

Case No. 4824

ORIGINAL

JOHN M. GREGORY, for Field Division, Transportation
Department,
DAVID MELINKOFF, for respondent.

O P I N I O N

The Commission, having instituted an investigation on its own motion into the operations of respondent, Clarence J. Slocum, held a public hearing at Los Angeles before Examiner Gannon on June 24, 1946. The sole issue involved is whether or not respondent is operating as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, without possessing a prior right to conduct such operations or without having first obtained from the Commission a certificate of public convenience and necessity authorizing such operations, as required by Section 50-3/4 of the Public Utilities Act.

The facts, as developed by the testimony of witnesses, are essentially as follows: Respondent, for some years last past, has been delivering motion picture films, advertising matter and other motion picture theater supplies from the film exchanges in Los Angeles to theaters in various communities in, and adjoining, said city. He picks up films and advertising matter at the exchange in Los Angeles and returns used films to the exchange. In addition to this service he delivers programs, parts of motion picture machines, obtains substitute films when those ordered are not available, provides rolls of tickets and performs many other duties, all of which contribute to the convenience of the theater

operators. He is furnished a key to each theater for the purpose of making deliveries and pickups at any time during the day or night hours.

Respondent testified that he delivers to 12 theaters outside the city of Los Angeles, which are operated by 6 owners, and to 18 theaters within the city limits, also operated by 6 owners. He has rendered this service continuously over a period of years. Since 1936 he has possessed highway contract carrier and city carrier permits granted by this Commission. The record shows that the transportation contracts are verbal in nature, all of them of several years standing. In some instances his customers compensate him for extra services performed, but this is on a gratuitous basis.

It is urged by respondent that his operations are those of a contract carrier and in support of that contention he cites certain characteristics of the service which tend to identify it as a contract carrier service. He testified that he maintains no office except at his home, operates only one truck, and employs no outside help. He is, however, assisted by his wife in delivering the films. He has only a limited number of customers and declines to solicit or accept additional business even though the offer to transport films and accessories may come from a theater in close proximity to one he is presently serving. The only exception is in cases where one of his present customers opens a new theater, in which case he would accept the business of such theater.

Seven witnesses were called by the Transportation Department of the Commission, all of whom were using the service of respondent by virtue of a verbal contract. There was no variance in their testimony as to the essential facts. Without exception, they have used the service of respondent for eight years or more, upon an arrangement agreed on in advance. The

charge is on a weekly basis of five dollars regardless of the volume of films delivered or the distance traversed in making deliveries. There is no time limit as to the duration of the contracts, and they are terminable at the option of either party.

The evidence shows that respondent conducts a personalized and individual service for a few selected customers and does not hold himself out to transport the commodities in question for all who could utilize his services.

This record does not justify a finding that respondent is operating as a highway common carrier in violation of the applicable provisions of the Public Utilities Act. The order instituting investigation will therefore be dismissed.

O R D E R

Based upon the conclusions and findings expressed in the foregoing opinion, and good cause appearing,

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

Dated at San Francisco, California, this
23rd day of December, 1946.

Harold J. Kula
Justus F. Cramer
Francis B. ...
W. H. Powell
A. J. ...
Commissioners