

ORIGINALDecision No. 42559

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Investigation into the operations
and practices of:

PENINSULA DELIVERY SERVICE, a corporation,)
 JOHN E. DUCKETT (White's Truck Service),)
 RAY RINALDI and LEO STOFFEL (Personal)
 Delivery Service),)
 WILFRED H. WISEMAN (Navajo Trucking Co.),)
 EDWARD V. THORNE (Menlo Trucking Service),)
 HARRY F. HIRSCHHEY and J. H. MURRAY)
 (Murray Drayage),)
 S. V. HORNUNG and JOHN A. KRAHN (Hornung)
 Trucking Service),)
 ✓ FLOYD HEATH and BERTHA FARRELL (Sac's)
 Delivery Service),)

Case No: 4940

operating between San Francisco or East Bay)
 points, on the one hand, and San Jose or)
 intermediate points, on the other.)

Boris H. Lakusta and J. T. Phelps, for the Field Division,
 Public Utilities Commission of the State of California.
Frank Loughran, for Peninsula Delivery Service.
Marquand C. George, for John E. Duckett and Wilfred H.
 Wiseman.
Ray Rinaldi, Edward V. Thorne, Harry F. Hirschhey, J. H.
Murray and John A. Krahn, in propria persona.
Fred W. Bigelow, for Pacific Southwest Railroad Association.
Aaron H. Glickman, for Vincent A. Lamarra and Wayne P.
 Flannagan (Lamarra Trucking Company).
Douglas Brookman, for Merchants Express Corporation.
Berol & Handler, by Marvin Handler, for Highway Transport,
 Inc.
Clair W. MacLeod, for Peninsula Motor Express.
Phil Jacobson, in propria persona.

O P I N I O N

On March 2, 1948, the Commission instituted this
 investigation to determine whether any of the above-named respondents
 should be ordered to cease and desist from operating as a "highway
 common carrier" (Public Utilities Act, Sec. 2-3/4), between San
 Francisco or East Bay points and San Jose or intermediate peninsula
 (1)
 points, until possessed of the requisite certificate of public

(1) Points involved are: San Francisco, Oakland, Alameda, Berkeley,
 Emeryville or Piedmont, on the one hand, and San Jose, or
 points intermediate thereto on Highways U. S. 101 and 101 (Alt.),
 on the other hand.

convenience and necessity. (P.U.A., Sec. 50-3/4.)

During the course of five days of public hearings evidence concerning the several operations was received from members of the Commission's staff, from shippers and receivers of freight and from five of the carriers. (2) Counsel for the Field Division moved to discontinue the investigation with respect to Floyd Heath and Bertha Farrell (Bac's Delivery Service) on the ground that they had been out of business for some time prior to the institution of the proceeding and their permits had been revoked. The motion should be granted.

The sole issue to be determined in connection with the other respondents is whether their operations are those of a "highway common carrier" as defined by Section 2-3/4 of the Public Utilities Act. This question has been before the Commission in a variety of similar cases and the applicable principles are well-established. (See Willis, 42 CRC 406, 423; Woodard, 44 CRC 711, 715; Maloney, 46 CRC 673, 680; Morris, 47 CPUC 267, 273.)

We pass at once to a consideration of the evidence relating to respondents' operations.

Peninsula Delivery Service

This respondent is a corporation. It holds certificates of public convenience and necessity and prescriptive rights authorizing the transportation of general commodities between San Francisco, Palo Alto and intermediate points, subject to weight restrictions

(2) Carrier representatives who testified were: Harry F. Hirschey and John H. Murray (Murray Drayage); Edward V. Thorne (Menlo Trucking Service); John A. Krahn (Hornung Trucking Service); Wilfred H. Wiseman (Navajo Trucking Co.) and John E. Duckett (White's Truck Service).

(3) The issue as to Peninsula Delivery Service is whether this respondent has conducted operations beyond the scope of its certificated or prescriptive rights.

of (a) 100 pounds or less per package between San Francisco, Menlo Park and intermediate points and (b) not to exceed 50 pounds per shipment between Menlo Park and Palo Alto, excluding Menlo Park but including Palo Alto. It also holds a certificated right to transport automotive parts to dealers, garages and service stations between San Francisco, Oakland, San Jose and certain intermediate points (except Mountain View) via U. S. Highway 101 and Bayshore Boulevard, with lateral connections between the two highways at Burlingame, Redwood City, Palo Alto and Sunnyvale. An additional route is authorized between San Francisco, Palo Alto and intermediate points via the Bayshore Highway. The corporation also holds permits authorizing it to conduct operations as a highway contract carrier, a radial highway common carrier and a city carrier. (Highway Carriers' Act, Secs. 1(f), (h), (i), 3; City Carriers' Act, Secs. 1 (f), 3.). Nine trucks are used in the business.

During the month of October, 1947, the carrier transported 101 shipments of general freight, in addition to automotive parts, ⁽⁴⁾ for 37 shippers between San Francisco and San Jose. During the same month 243 shipments of general freight were handled for 33 shippers between San Francisco and Mountain View. Although the record does not indicate the frequency of these operations, they continued in substantially the same fashion until the service of the order of investigation upon the carrier on March 8, 1948. Approximately 10 of the shippers had written or verbal contracts with the carrier, though the evidence does not disclose the terms of such contracts.

A check of a portion of the carrier's shipping documents

(4) A "shipper" is defined in the Field Division's exhibits introduced in this case as "the person or entity paying freight charge", and the term will be used in that sense throughout this opinion.

for a 10-day period in the first two weeks of February, 1948, revealed that the firm transported 302 shipments for 72 shippers located from San Francisco to San Jose. Frequency of service ranged from one to ten days for various shippers served during the period. The evidence shows that the carrier regularly moved overweight packages and shipments to restricted-weight points, general commodities to uncertificated points and auto parts to both uncertificated points and to consignees other than dealers, garages and service stations.

There is some evidence to the effect that about two weeks after the commencement of this case the carrier claimed to have had outstanding, among the 72 shippers comprising a portion of its clientele at this time, some 25 contracts of which 21 were verbal and 4 were in writing. None of the written contracts was produced nor were the terms of the verbal arrangements described. There is no evidence to indicate when these contracts came into being.

It is not unlawful for a carrier to engage in the transportation of property under more than one type of operative right as long as he does not perform service both as a common carrier and as a highway contract carrier of the same commodities between the same points. (Highway Carriers' Act, Sec. 4.) But a common carrier may not transform itself into a private contract carrier for the obvious purpose of annulling restrictions imposed upon it as a common carrier by an order of this Commission. (Petaluma & S.R.R.Co. v. San Rafael F. & T. Co., 32 CMC 272, 274.) Nor may a certificated highway common carrier use a radial permit for the purpose of conducting regular or frequent service supplemental to that authorized by its certificate, since the certificate defines the scope and fixes the boundaries of the operations which a highway common carrier may

lawfully conduct. (Re Signal Trucking Service, Ltd., et al., 46 CRC 101, 115.)

We find that Peninsula Delivery Service, in the operation of its transportation business between San Francisco and Oakland, on the one hand, and San Jose, on the other hand, and intermediate points, has engaged in the transportation of property as a highway common carrier, as defined by Section 2-3/4 of the Public Utilities Act, in violation of its presently held certificates of public convenience and necessity and prescriptive operative rights and of Section 50-3/4 of the Public Utilities Act, between the following places and in connection with the following classes of property:

1. Packages of general commodities, other than auto parts, over 100 pounds in weight, between San Francisco, on the one hand, and San Mateo and Burlingame, on the other hand.
2. Shipments of general commodities, other than auto parts, in excess of 50 pounds in weight, between San Francisco, on the one hand, and Palo Alto, on the other hand.
3. General commodities, other than auto parts, between San Francisco or Oakland, on the one hand, and San Jose, Santa Clara, Sunnyvale, Moffett Field, Mountain View, Stanford University or San Mateo, on the other hand.
4. Auto parts between San Francisco or Oakland, on the one hand, and San Jose, Mountain View or Los Altos, on the other hand.

Peninsula Delivery Service will be ordered to cease and desist from the transportation of the aforementioned commodities between any of the points which it is not now authorized by its certificates or prescriptive rights to serve, until possessed of the required certificate of public convenience and necessity. Moreover, we believe that the record indicates a singular disregard on the part of this respondent for its obligations as a public utility.

Its operative rights, as evidenced by its certificates and filed tariffs, are clear. No excuse or justification for its conduct has been offered. In addition, therefore, to requiring respondent to desist from the operations herein found to be unlawful, its certificates and prescriptive operative rights will be suspended for a period of five days.

Harry F. Hirschey and J. H. Murray (Murray Drayage)

From May 16, 1946, to December 31, 1947, Murray and his partner Hirschey operated under highway contract and radial highway common carrier permits between San Francisco, San Jose and intermediate points, using some ten truck units for that service and for local drayage operations in San Francisco conducted under a city carrier's permit. During the month of October, 1947, transportation was performed between San Francisco and various peninsula towns for 26 general commodity shippers. Two San Francisco shippers (grocery firms) were served on five and fifteen separate days, respectively, and the balance on from one to three days during the period.

Hirschey testified that the partnership had verbal contracts with some eleven out of what he considered to be thirteen patrons, without counting consignees of collect shipments as "shippers". He admitted that these so-called contracts were no more than friendly agreements to use his service as long as it was satisfactory to the shippers.

The partnership was dissolved as of January 1, 1948, and Murray and a new partner, Vernon K. Riley, then radically altered the scope of their business. Since the first of the year the carrier has engaged chiefly in pickup and delivery service in San Francisco for an interstate motor carrier. Only two trips were made to San Jose during the two months just prior to the hearings in

this case (which started April 14, 1946), and none to intermediate points.

Inasmuch as the partnership of Hirschey and Murray has been dissolved, no purpose would be served by issuing a cease and desist order at this time were it found unauthorized common carrier operations had been conducted. As to the operations of Murray and his present partner, the record as it now stands does not justify finding that the operations between San Francisco, San Jose and intermediate points require the possession of a certificate of public convenience and necessity.

Wilfred H. Wiseman (Navajo Trucking Co.)

This respondent acquired ownership of Navajo Trucking Company about March, 1947. He operates one Ford truck and holds permits as a highway contract, radial highway common and city carrier. According to exhibits placed in evidence by the Field Division and by Wiseman himself the carrier, during a 10-day representative period in November, 1947, transported 98 shipments of hardware store merchandise in less-than-truckload quantities up to 4,000 pounds for 44 shippers from San Francisco to San Jose. Six of the consignors of these shipments were wholesale firms in San Francisco and one was located in San Jose. The consignees consisted of dealers in such merchandise and included hardware stores, lumber companies and sports goods shops. Shipments moved daily during the period.

Until March, 1948, the transportation described was conducted under loose verbal arrangements, supplemented in some cases by written instructions from consignees to consignors to route shipments via Navajo Trucking Company. Wiseman (or his former

partner) openly solicited business from at least six peninsula consignees and willingly made his services available to San Francisco consignors and peninsula consignees who desired fast daily deliveries.

During the first 25 days in March, 1948, Wiseman transported 117 shipments of hardware (115 shipments from San Francisco and two from San Jose) for nine firms located at Belmont, San Carlos, Menlo Park, Palo Alto, Sunnyvale and San Jose. Frequency of service for the individual shippers ranged from 3 to 16 days. On March 29, 1948, Wiseman stated to a Field Division representative that he had written contracts with seven of the nine shippers, including Community Hardware Company of Palo Alto and Belmont Hardware Company of Belmont, and verbal agreements with three others. At the hearing on May 10, however, Wiseman testified that the agreement with Community Hardware Company had not yet been executed due to the owner's absence in the East during the preceding ten days. All the other written agreements were executed after the filing of the order of investigation in this case.

The only written contract in evidence (with Belmont Hardware Company) was executed, according to Wiseman, on March 23, 1948, two weeks after he was served with the order of investigation. It provides for a minimum tender of 60 tons of unspecified freight per year and contains a clause which relieves the shipper from tendering such minimum tonnage when failure to do so is caused by "strikes, lockouts, acts of God, or in the event of other causes beyond the reasonable control of either party whether or not similar to the causes specified." There are no terms in the contract which indicate that a specialized or unique transportation service is contemplated,

or one that could not as readily be performed by any other carrier. (5)

Counsel for Wiseman and Duckett, in his brief filed on behalf of those respondents, urges the Commission to depart from the concept, announced in 1928 in Re Hiron, 32 CRC 48, 51, that "If the contractor" (consignor) "is not himself the real owner of the goods and does not obligate himself to pay the transportation charges without recourse to others, his part in the transaction is merely that of agent for the real shippers". We believe that concept to be sound and, since the two proceedings are not factually comparable, see no reason to depart from it at this time.

We find from the evidence that respondent Wiseman is transporting property, as a common carrier for compensation, over public highways between fixed termini, over a regular route between San Francisco, San Jose and intermediate points via U. S. Highway 101, serving a portion of the general public, and is operating as a highway common carrier within the meaning of the Public Utilities Act, notwithstanding the attempt to change that status by reducing the number of the shippers served and by entering into written or oral agreements with such shippers. An order will issue directing Wiseman to desist from such operations until he has obtained a certificate of public convenience and necessity therefor.

John E. Duckett (White's Truck Service)

Prior to November 15, 1947, Duckett was engaged in

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- (5) M. J. O'Connell, owner of Belmont Hardware Company and a signatory to the agreement, testified on April 29, 1948, that he never had a written contract with Wiseman (Tr. p. 132) but only a verbal agreement. (Tr. p. 134) Seventy-five per cent of his hardware shipments from San Francisco came by Navajo Trucking Company, he said, and the balance by highway common carrier. There was no difference in the character of service rendered by Wiseman and the highway common carriers, except that the witness thought Wiseman gave a "better" service. (Tr. p. 138.) The discrepancy in the evidence as to this contract was not explained.

subhauling for four carriers, including Otis White, his predecessor, under a radial highway common carrier permit issued April 15, 1946. White held radial highway common and city carrier permits (revoked October 21, 1947, for failure to maintain insurance) and conducted a transportation service between San Francisco, Stockton and Sacramento and between San Francisco, San Jose and intermediate points from a leased terminal shared with two other carriers at 544 Sixth Street, San Francisco.

On October 20, 1947, White published a notice of intention to sell his business on October 27 to Duckett, but, due to financial difficulties, the sale was not consummated until November 15, 1947. In the interim, Duckett continued to serve White's patrons. During a 20-day period in November, 1947, he transported (for his own account after November 15) 116 shipments of electrical, restaurant and plumbing supplies and other general commodities for 52 shippers located from San Francisco to San Jose. The shipments originated with nine consignors in San Francisco and San Jose. Frequency of service ranged from one to eleven days. Both prepaid and collect shipments were handled, sometimes for the same consignor to the same consignee at the same time. Total weight of the shipments transported during this period, in both the Sacramento-Stockton and peninsula operations, was 140,876 pounds, of which 55,691 pounds moved down the peninsula. Generally, the same San Francisco consignors used Duckett's service to both areas. We are not concerned, however, with Duckett's operations between San Francisco, Stockton and Sacramento, except as they may tend to show the general nature of the carrier's over-all activities.

After Duckett acquired White's business he discontinued

serving three or four of the less desirable consignors and, having on December 19, 1947 secured contract and city carrier permits, proceeded to solicit transportation contracts from a number of White's former patrons. By February 2, 1948, there were verbal agreements outstanding, of the same loose character as those previously noted in other portions of this opinion, with eight out of a group of some 40 shippers from San Francisco to San Jose, including four San Francisco consignors and a like number of consignees in four peninsula localities. No written agreements were executed. During the first six weeks of 1948 Duckett operated between San Francisco, San Jose and most of the important intermediate communities on the peninsula on an average of about three times per week. He called regularly for pickups at the establishments of most of his consignors unless advised by them that there were no shipments for that day. He occasionally hauled commodities turned down by certificated carriers and sometimes waived packing or marking requirements in connection with certain types of shipments. Until February 6th he had only one truck which he used in both the Sacramento and peninsula service, generally on alternate days. Thereafter, he operated an additional unit, acquired from a former patron of White's who had attached the vehicle on a claim due from White. Duckett arranged to pay the claim and as a result obtained both the truck and the patron's transportation business.

We do not perceive any essential difference in the operations of this respondent from those of an avowed highway common carrier, even though he occasionally accommodated certain customers with a greater degree of flexibility than might have a certificated carrier.

We find from the record that John E. Duckett is transporting

property, as a common carrier for compensation, over public highways between fixed termini, over a regular route between San Francisco, San Jose and intermediate points via U. S. Highway 101, serving a portion of the general public, and is operating as a highway common carrier within the meaning of the Public Utilities Act, notwithstanding the attempt to change that status by entering into oral agreements with some of the shippers served. Said respondent will be directed to cease and desist from such operations until he has obtained a certificate of public convenience and necessity therefor.

Edward V. Thorne (Menlo Trucking Service)

This respondent, since April 18, 1947, has been operating on the peninsula and elsewhere under radial highway common and city carrier permits with a one- and one-half ton truck based at his home in Menlo Park. During the month of October, 1947, according to an exhibit prepared by the Field Division, he transported 64 shipments of uncrated furniture, fabrics, notions, hardware and other small-lot merchandise for 25 patrons between San Francisco, Palo Alto, Menlo Park, Redwood City, Belmont, San Mateo and Burlingame. During this period he also handled seven single shipments between various intermediate peninsula points, including one movement between Mountain View and Menlo Park and one between San Bruno and Menlo Park. The bulk of the peninsula traffic, however, moved between San Francisco and Menlo Park.

During the month of February, 1948, Thorne transported 80 shipments of general freight for 25 shippers along the peninsula. He also hauled isolated shipments between intermediate peninsula points. The bulk of this traffic likewise moved between San Francisco and

Menlo Park.

An exhibit introduced by respondent covering the period from June 5, 1947, to March 29, 1948, representing about ninety per cent of transportation performed in excess of 5 miles from Menlo Park between other than peninsula points, indicates that 20 shipments of uncrated furniture, office equipment, hardware and a few other items were handled for some 14 shippers located in East Bay cities, Los Gatos and the Monterey Peninsula. Respondent also has handled shipments to or from Marin County, Half Moon Bay and Costa Mesa, the latter point being in Orange County, some 450 miles distant from Menlo Park. In addition, he has accepted baggage shipments from individuals in the vicinity of Menlo Park, Atherton and Palo Alto.

The evidence shows that this respondent is engaged primarily in an on-call trucking operation available to patrons at any time on request. He makes no regular calls for pickups. He handles certain commodities, such as furniture and breakable articles, without crating and renders an expedited service on short notice to isolated localities. Though the Field Division's exhibits relating to Thorne's peninsula operations indicate a service frequency in October, 1947, of 10 days between San Francisco and Menlo Park for one customer and of 8 days between those points during February for three, the balance of the patrons were served but once or twice during each of those months.

The evidence of record fails to establish that in the conduct of his transportation service, either between peninsula points or elsewhere, Thorne has been operating between fixed points or over regular routes as a highway common carrier within the meaning of the Public Utilities Act. The investigation as to this respondent will

accordingly be discontinued.

S. V. Hornung and John A. Krahn (Hornung's Trucking Service)

In March, 1946, Hornung and Krahn formed a partnership to continue transportation operations previously conducted by Hornung as an individual between San Francisco and San Jose under permits issued by the Commission. On March 25, 1947, the Commission issued radial, contract and city carrier permits to the two partners. Krahn, before his association with Hornung, had been employed as a truck driver for Savage Transportation Company and for Wayne F. Maloney. Maloney's unauthorized highway common carrier operations down the peninsula prior to 1947 were halted by a cease and desist order issued in the latter part of 1946. Hornung and Krahn thereafter acquired a number of Maloney's customers and that business, added to their own and augmented by post-war increases in the flow of goods, required the addition of four more trucks. Krahn testified, incidentally, that the transportation service rendered by respondents during this period closely resembled Maloney's.

Between May, 1946, and the early part of December, 1947, the partners had outstanding with their patrons twenty-nine written and thirteen oral agreements. A check of their operations for a 10-day period in November, 1947, which Krahn testified represented a fair cross-section of the business during that time, showed that no less than 114 consignors and consignees, or 72 more than the number of contract patrons, were served between San Francisco, San Jose and intermediate points, some on daily basis and others less frequently. Although a fairly wide list of general commodities was handled, the bulk of the traffic consisted of paint, hardware, cleaning compounds and music-store supplies in less-than-truckload lots.

Shortly after Krahn became associated with Hornung he began to suspect that the firm's transportation business was not all it should have been from the standpoint of compliance with law. A rift developed between the two men which resulted in a complete break in their association on December 31, 1947.⁽⁶⁾ Before this, Krahn applied for contract, radial and city permits in his own name and received them on February 10, 1948. In the meantime, before the final break with Hornung, Krahn informed his patrons, including those holding contracts, that after acquiring the business in his own name he would no longer transport collect shipments for those with whom he did not have a contract. He also set about negotiating revised contracts which contained a provision obligating the shipper to tender a minimum tonnage per month or to pay the charges in lieu thereof, and which also specified that he would perform service "as a contract carrier and not as a common carrier." The agreements executed prior to December 31, 1947, twenty-four of which were produced at the hearing, did not contain such provisions and, although Krahn considered them to be effective contracts, their revision was deemed necessary in order to bring the operation within legal bounds. Six of the revised agreements were produced at the hearing and as to the other twenty-four Krahn testified that he was attempting as rapidly as possible to change them to the new type. In addition, he reduced the number of trucks used from five to two.

As a result of Krahn's efforts the complexion of the operation was substantially altered by the time he secured his permits on February 10, 1948. Instead of the 114 shippers served during the period prior to dissolution of the partnership there were now 37 (chiefly paint firms and music stores), of whom 33 were being served

(6) Hornung, according to Krahn, thereafter secured employment as a driver for another trucking firm and has not been otherwise engaged in independent transportation.

under written and four under oral agreements. Krahn testified that he expected to negotiate written contracts with at least three of the four patrons served under oral agreements. All shippers, whether consignor or consignee, were under an obligation to pay freight charges. No new customers were added between February 10⁽⁷⁾ and May 10, when his case was submitted. A check of his operations during a 12-day period from February 27 to March 12, 1948, showing transportation for 31 shippers, substantially corroborates Krahn's testimony concerning the results of his efforts to place the operation, to the extent of his understanding, within the limitations he thought existed in connection with private contract transportation.

The evidence of record establishes that the operations of this carrier prior to the end of 1947 were those of a highway common carrier and as such were conducted without proper authority. Since the beginning of 1948, Krahn has revised the operation by reducing the number of shippers served, the amount of equipment employed and by executing new contracts with most of his shippers. Despite this, the operation is regular and frequent between fixed termini and serves a substantial part of the public. Such an operation may not be performed without a certificate of public convenience and necessity. Hence its discontinuance will be required unless or until such a certificate is obtained.

(7) The case was finally submitted on May 11, 1948. Due to late filing of the transcript and extensions of time the brief for two of the respondents was not received until August 31 and the time for filing answering briefs (none was filed) expired 10 days later.

Ray Rinaldi and Leo Stoffel (Personal Delivery Service)

These respondents have been operating a transportation service, as partners, between San Francisco, Palo Alto and intermediate points under radial highway common and highway contract carrier permits issued August 3, 1947⁽⁸⁾. Two 1½ ton trucks were employed in the business. The firm openly solicited business from the general public between San Francisco, Palo Alto and all peninsula points by means of paid advertisements in the classified sections of both the San Mateo County and Palo Alto telephone directories. Freight bills issued by the carrier bore the notation "Daily trips between San Francisco and Palo Alto." Regular daily pickup service was maintained at the establishments of the consignors.

A check of the carrier's operations for a representative 10-day period in October, 1947, revealed that 462 shipments of a wide assortment of general commodities were handled for 107 patrons located all the way from San Francisco to Palo Alto. In addition, shipments moved between localities intermediate to the terminal points. A similar check for a 10-day period in February, 1948, showed transportation of 506 shipments of the same type for 113 customers. Shipments during the October period originated with 64 consignors and in the February period with 82 consignors.

Rinaldi claimed to have one written contract and 26 oral agreements with his patrons. The written contract was not produced. The oral agreements were described by the shippers as mere working arrangements under which no obligations were assumed.

(8) Stoffel's name is erroneously spelled "Stoeffel" in the order instituting investigation and exhibits. On September 20, 1948, Stoffel's name was cancelled from the permits and they are now held by Rinaldi, doing business as Personal Delivery Service.

We find from the evidence that Ray Rinaldi and Leo Stoffel have been transporting property, as a common carrier for compensation, over the public highways between fixed termini and over a regular route between San Francisco, Palo Alto and intermediate points via U. S. Highway 101, serving a substantial portion of the general public, and have been operating as a highway common carrier within the meaning of the Public Utilities Act. Both individuals will be ordered to cease and desist from such operations.

ORDER

Public hearing having been had in the above-entitled and numbered proceeding, evidence as to each of the respondents named therein having been separately received and duly considered, the brief on behalf of respondents Wiseman and Duckett having been considered, the several matters having been submitted for decision, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion with respect to the several respondents;

IT IS ORDERED:

(1) That Peninsula Delivery Service, a corporation, be and it is hereby directed to cease and desist and hereafter refrain from conducting, directly or indirectly or by any subterfuge or device, any operation as a highway common carrier as defined by Section 2-3/4 of the Public Utilities Act, between any points, or over any route, or with respect to any class, shipment or package of property it is not now authorized by its certificates of public convenience and necessity and lawfully filed tariffs to serve. Respondent's presently effective certificates of public

convenience and necessity and tariffs, as appearing in the files of this Commission, are hereby referred to and are by this reference incorporated herein for the specific purpose of defining and limiting the scope of the highway common carrier service which may lawfully be performed by Peninsula Delivery Service, and such service may not be hereafter extended unless and until said Peninsula Delivery Service shall have first obtained from the Commission a certificate of public convenience and necessity under the provisions of Section 50-3/4 of the Public Utilities Act.

IT IS FURTHER ORDERED that all operative rights of Peninsula Delivery Service as a highway common carrier, represented by presently effective certificates of public convenience and necessity and tariff publications, be and they are hereby suspended for a period of five days from and after the effective date of this decision, and said Peninsula Delivery Service is hereby directed to give notice of such suspension, coincident with the commencement thereof, by a tariff filing satisfactory to the Commission.

(2) That Wilfred M. Wiseman, doing business as Navajo Trucking Company, and Ray Rinaldi and Lee Stoffel, individually or as copartners, doing business as Personal Delivery Service, be and each of them is hereby directed to cease and desist and hereafter refrain from conducting, directly or indirectly or by any subterfuge or device, any operation as a highway common carrier, as defined by Section 2-3/4 of the Public Utilities Act, over any public highway between San Francisco and Palo Alto, between said termini, between said termini and intermediate points and between any intermediate points, unless and until they shall have secured from the Commission a certificate of public convenience and necessity authorizing such operation.

(3) That John E. Duckett, doing business as White's Truck Service, and S. V. Hornung and John A. Krahn be and each of them is hereby directed to cease and desist and hereafter refrain from conducting, directly or indirectly or by any subterfuge or device, any operation as a highway common carrier, as defined by Section 2-3/4 of the Public Utilities Act, over any public highway between San Francisco and San Jose, between said termini, between said termini and intermediate points and between any intermediate points, unless and until they shall have obtained from the Commission a certificate of public convenience and necessity authorizing such operation.

(4) That the investigation herein with respect to Harry F. Hirschey, J. H. Murray (and, to the extent that he may be involved, with respect to Vernon K. Riley), and Edward V. Thorne, be and it is hereby discontinued.

(5) That the motion of counsel for the Field Division to dismiss this proceeding with respect to Floyd Heath and Bertha Farrell, doing business as Bac's Delivery Service, be and it is hereby granted and said proceeding is hereby dismissed as to each of said two respondents.

(6) That the Secretary of the Public Utilities Commission shall cause a certified copy of this decision to be personally served upon respondents Peninsula Delivery Service, Wilfred H. Wiseman, John E. Duckett, S. V. Hornung, John A. Krahn, Ray Rinaldi and Leo Stoffel, and to be served, either personally or by registered mail, upon respondents Harry F. Hirschey, J. H. Murray, Edward V. Thorne, Floyd Heath and Bertha Farrell, and also upon Vernon K. Riley; and shall also cause certified copies of this decision to be mailed to the District Attorneys of the City and County of San

Francisco and the Counties of San Mateo and Santa Clara and to the Department of Motor Vehicles and the California Highway Patrol, at Sacramento.

With respect to the several respondents Peninsula Delivery Service, Wiseman, Duckett, ^{Hornung, Krahn}/Rinaldi and Stoffel, this order shall be effective, as to any particular one of said named respondents, on the 20th day after service thereof upon such particular respondent, and as to the other respondents shall be effective 20 days after the date hereof.

Dated at San Francisco, California, this 24th day of February, 1949.

R. F. [Signature]
Justice D. [Signature]
[Signature]

COMMISSIONERS