

ORIGINAL

Decision No. 42886

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations and )  
practices of FRED B. HAMILTON (Servall )  
Transportation Service) )

Case No. 5003

- Hal F. Wiggins, for Field Division, California Public Utilities Commission
- G. Fred Skaff, for Fred B. Hamilton, respondent
- Douglas Brookman, for Merchants Express Corporation
- Aaron H. Glickman, for Vincent H. Lamarra and De Wayne P. Flanigan (Lamarra Trucking Service) and Security Truck Lines
- Fred N. Bigelow, for Pacific Southwest Railroad Association
- Reginald L. Vaughan, for Clark Bros. Motor Transport, Inc.
- Bertram S. Silver and Edward M. Berol, for Highway Transport, Inc.
- Wayne F. Maloney, for Peninsula Motor Express
- Larry M. Fites and Frank M. Chandler, for Truck Owners' Association

O P I N I O N

This investigation was instituted March 8, 1949, on the Commission's own motion, to determine whether respondent Hamilton had been operating as a highway common carrier, without the required certificate or prior right (Public Utilities Act, Sections 2 3/4, 50 3/4), between San Francisco and various communities to the south as far as Salinas and Monterey Peninsula points. <sup>(1)</sup> Another issue raised by the order is whether the radial highway common, highway

(1) The various points stated in the investigation order are summarized as follows:

- (a) San Francisco, San Jose and intermediate points, via U. S. Highways 101 and By Pass 101;
- (b) San Francisco and San Jose, on the one hand, and Salinas, on the other, and intermediate points, via U. S. Highways 101 and By Pass 101;
- (c) San Francisco, on the one hand, and Santa Cruz, Watsonville and Monterey, on the other, and intermediate points, via U. S. Highways 101 and By Pass 101, and State Highways 1, 17, 152 and 156;
- (d) San Jose, on the one hand, and Los Gatos, Santa Cruz, Watsonville, Salinas and Gilroy, on the other, and intermediate points, via U. S. Highway 101 and State Highways 1, 17, 152 and 156.

contract and city carrier permits held by respondent should be revoked or suspended. It was established at the hearing, however, that respondent's permits had been revoked on April 21, 1949, for failure to maintain continuously on deposit with the Commission the liability insurance protection required by statute. (Highway Carriers Act, Sections 5, 6, 7.) The question of revocation or suspension of permits is therefore moot.

Public hearings were held before Examiner Gregory at San Francisco on April 28 and May 4, 1949. Evidence relative to respondent's operations was presented by members of the Commission's staff and by one of the interveners, Pacific Southwest Railroad Association. Six highway carriers, operating in the areas covered by the investigation, also appeared as interveners in support of the investigatory proceeding, but, aside from asking an occasional question of the witnesses, took no active part in the case.

Evidence concerning respondent's transportation activities consisted chiefly of a factual stipulation between counsel for the Field Division and respondent and his counsel; several exhibits indicating the number, variety and frequency of shipments handled by respondent during three test periods in the latter part of 1948, and testimony of representatives of four consignors located in San Francisco. The latter had used respondent's services, generally at their customers' request, on both prepaid and collect shipments of less-than-truckload freight moving daily and destined to numerous points in the territory in question. The evidence, summarized, established that respondent first secured permits from the Commission on March 8, 1948; that between March 8, 1948, and April 26, 1949, he operated five stake trucks for compensation over public highways in California between the points mentioned in the order of investiga-

tion and, in addition, between San Francisco and Hollister; that, during the periods of October 4-8, November 22-26 and December 6-10, 1948, he transported 825 shipments of a wide variety of general commodities originating with 64 consignors on which freight charges were paid by 262 different persons or firms; that, in the performance of the foregoing transportation, respondent maintained a daily, five-days-per-week, Monday-through-Friday service over regular routes between San Francisco, San Jose and intermediate points, with an equivalent or lesser service between other points indicated in the order; that, as of January, 1949, respondent had executed twenty-five written transportation contracts with that number of his patrons, located from San Francisco to Santa Cruz; that each of the contracts so executed is identical in verbiage with the others, with the exception of the name of the shipper, the date, the commodity, the approximate tonnage and the points to be served; that there is no evidence of record from which the missing terms of the contracts can be ascertained, since only the mimeographed form of agreement used by respondent is in evidence.

Respondent testified that he had received a gross revenue of \$12,000 during the year of his operations, that he did not solicit business because shippers came to him when they could not get the service they wanted from other carriers, and that his operations between April 21 and 26, 1949, following revocation of his permits, were conducted in the belief that his insurance had been reinstated and that he was continuously covered. He did not, however, personally check with the Commission following receipt of a notice regarding termination of his insurance, but left such matters to his broker.

We find from the evidence that respondent, during the

period from March 8, 1948, to and including April 26, 1949, transported property, as a common carrier for compensation, over public highways in California between fixed termini and over regular routes as set forth in the order instituting investigation herein (and as shown in Footnote No. 1 above), and also between San Francisco and Hollister; that in the conduct of said transportation business respondent has served a substantial portion of the general public and has been operating as a highway common carrier, within the meaning of the Public Utilities Act, without having possessed a certificate of public convenience and necessity or prior right authorizing such operations as required by said act. Respondent will accordingly be ordered to cease and desist from such operations.

O R D E R

Public hearing having been had in the above entitled and numbered proceeding, evidence having been received and considered, the matter 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,

IT IS ORDERED:

1. That Fred B. Hamilton, doing business as Servall Transportation Service, be and he 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 any point or place in the State of California and any other point or place in said state, and particularly between any of the following points and places, without first

having obtained from the Public Utilities Commission of the State of California a certificate of public convenience and necessity authorizing such operations:

- (a) Between San Francisco, on the one hand, and San Jose, on the other hand, or between either of said points and any intermediate point, or between any intermediate points;
- (b) Between San Francisco and San Jose, on the one hand, and Salinas, on the other hand, or between any of said points and any intermediate point, including Hollister, or between any intermediate points;
- (c) Between San Francisco, on the one hand, and Santa Cruz, Watsonville, Monterey, Pacific Grove and Carmel, on the other hand, or between any of said points and any intermediate point, or between any intermediate points;
- (d) Between San Jose, on the one hand, and Los Gatos, Santa Cruz, Watsonville, Salinas, and Gilroy, on the other hand, or between any of said points and any intermediate point, or between any intermediate points.

2. That the Secretary of the Public Utilities Commission shall cause a certified copy of this decision to be personally served upon respondent, Fred B. Hamilton, whose address is 1139 17th Avenue, Redwood City, California, and shall also cause certified copies of this decision to be mailed to the District Attorneys of the Counties of San Francisco, San Mateo, Santa Clara, San Benito, Santa Cruz and Monterey, and to the Department of Motor Vehicles and the California Highway Patrol, at Sacramento.

This order shall be effective 20 days after service thereof upon respondent.

Dated at San Francisco, California, this 17<sup>th</sup> day of May, 1949.

R. F. Johnson  
Justus J. Calver  
Charles J. Miller

Commissioners