

ORIGINAL

Decision No. 43951

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations, rates) and practices of H. SPENCER HOYT, doing) Case No. 5131
business as MONTEREY TRANSFER & STORAGE)
CO.)

Harold J. McCarthy, for the Field Division, Public Utilities Commission.
Marran and Harrah, by Eugene Harrah, for respondent.

O P I N I O N

This proceeding is an investigation instituted on the Commission's own motion for the purpose of determining whether H. Spencer Hoyt, doing business as Monterey Transfer & Storage Co., hereinafter sometimes referred to as respondent, violated Sections 10, 12(a) and 13-5/8 of the Highway Carriers' Act during the months of January and March of 1949. A public hearing was had in this proceeding before Examiner Paul at Monterey at the conclusion of which the matter was submitted.

The order instituting the investigation recites that it appears that respondent is the holder of radial highway common carrier permit No. 27-1440, highway contract permit No. 27-1441 and city carrier permit No. 27-1442 issued by the Public Utilities Commission, and further that said respondent may have violated those sections of the Highway Carriers' Act above referred to in that respondent failed during the period of January, 1949, and March, 1949, to keep records as prescribed by the Commission in Highway Carriers' Tariffs Nos. 2 and 4, to-wit, by failure in freight bills issued in the usual course of business, to set forth point of origin, point of destination, number of

hours required in performing the transportation, proper commodity description, whether the equipment used had a loading area of 70 square feet or less or over 70 square feet, agreed or declared value of the property shipped, shipping instructions and rate quotations signed by the shipper and the carrier prior to the commencement of service, and charges on basis of cents per hundred pounds for shipments moving not over 30 miles.

Evidence concerning discussions with respondent and examinations of his records was presented by a representative of the Commission's field division. This witness testified that he had examined 80 freight bills of respondent covering commodities transported by him, excluding commodities transported within incorporated cities. The witness pointed out, that there were numerous instances, as shown in Exhibit No. 1, in which the distance, the commodity descriptions, the number of men used on local deliveries within 30 miles and other required information was not shown.

A transportation rate expert from the Commission's staff testified concerning the results of an analysis made of the data obtained from respondent's records by the Commission's field division representative. This witness had examined 30 freight bills from a selected total of 80 bills which were examined as being representative of the alleged violations by respondent. In no instance did the 30 freight bills so selected by the witness reveal sufficient information on which a determination of the applicable minimum charges could be made. Various violations were found in those bills. One shipment failed to show the declared value as required by Item 110A of the Highway Carriers' Tariff No. 4, and

one did not show the point of origin as required by Item 155 of that tariff. Nineteen shipments did not show commodity descriptions as required by said Item 155. Twenty-two shipments did not indicate whether the equipment used had a loading area of 70 square feet or less or over 70 square feet as required by Items 155 and 200-C of the Commission's Highway Carriers' Tariff No. 4. This tariff applies to the transportation of used household goods. This witness stated that the shipments which were investigated were strictly local in character, none moving in interstate or foreign commerce.

Respondent, a practicing physician and surgeon in Monterey, acquired the trucking operations from Burtel White, a tenant of respondent's, who sold to respondent when said White became incapacitated to the extent that he could not successfully continue the business. The respondent stated that his reason for acquiring the trucking business from White was to protect respondent's investment in the building which was occupied by said White. Respondent planned to obtain a purchaser of the trucking business with experience in transportation. Counsel for respondent stipulated that the violations charged did occur but were without the knowledge of respondent.

Due to his inexperience in transportation matters, respondent relied upon two former employees of White, a man and a woman, who were retained as employees of respondent following his acquisition of the business. The woman was in charge of the office. She was said to be of outstanding ability, experience and efficiency in the business. The man was less reliable and somewhat inexperienced. The woman employee resigned because of the attitude of some of the shippers. She was replaced by a man who represented to respondent

that he was well experienced in transportation and could be relied upon. Respondent testified that it was during the term of employment of the latter that the numerous violations occurred as alleged. He was subsequently replaced by the experienced employee first above referred to, whereupon billing of shipments and other office details of respondent have been properly conducted according to the testimony of respondent.

Respondent further stated that he desires to sell the business and presently has an agreement in escrow to make such sale to the partnership of Showalter and Torras, operators of the California Van and Storage Company of Carmel.

After full consideration of the evidence both oral and documentary, the Commission is of the opinion and finds that H. Spencer Hoyt, doing business as Monterey Transfer & Storage Co., violated the provisions of Sections 12(a) and 13-5/8 of the Highway Carriers' Act in that he failed during the aforementioned periods to keep records as prescribed by the Commission in its Highway Carriers' Tariffs Nos. 2 and 4, while operating under permits granted by the Commission. The Commission is mindful of respondent's inexperience in the transportation business and his attempt to correct an unlawful situation when its existence was made known to him. Although mitigating in nature, these circumstances do not render respondent entirely excusable.

While respondent's infractions of the Commission's rules and regulations appear to be serious enough to justify a short suspension of his radial permit, we have concluded, on the basis of the entire record, that outright suspension should not be invoked at this time. Instead, respondent should be given an opportunity to demonstrate that he will comply with applicable statutes and with outstanding orders of the Commission. Accordingly, the order

to follow, although imposing a five-day suspension of the radial permit, will also provide that such suspension be stayed for approximately eight months, unless the Commission, within that period, reopens the proceeding and, after notice to respondent and an opportunity to be heard, for good cause deems imposition of the suspension appropriate. Otherwise, the proceeding will automatically terminate at the end of the eight-month period.

O R D E R

Public hearing having been held in the above entitled and numbered proceeding, 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 Radial Highway Common Carrier Permit No. 27-1440, held by H. Spencer Hoyt, doing business as Monterey Transfer & Storage Co., respondent herein, be and it is hereby suspended for a period of five (5) consecutive days; provided, however, that such suspension shall not become effective unless and until, on or before December 15, 1950, the Commission shall have reopened this proceeding for receipt of further evidence, and thereafter, upon notice to respondent and an opportunity to be heard, shall otherwise order.

(2) The Secretary is hereby directed to cause personal service of a certified copy of this decision to be made upon respondent, and this decision shall become effective upon the twentieth day after the date of such service.

Dated at San Francisco, California, this 14th day
of March, 1950.

R. Z. [Signature]

Arthur J. [Signature]

[Signature]

[Signature]

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COMMISSIONERS