

Decision No. 44705

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the)
operations and practices of)
WILLIAM J. TAYLOR, JAMES TAYLOR)
and FLORENCE M. TAYLOR, doing)
business as partners under the)
name of Taylor Freight Lines.)

Case No. 5106

Frank Loughran, for respondent.
Hal F. Wiggins, for Field Division, Public Utilities Commission
of the State of California.

O P I N I O N

Through staff investigation it has been brought to the attention of the Commission that William J. Taylor, James Taylor and Florence M. Taylor, doing business as partners under the name of Taylor Freight Lines, may have operated, or may be operating, as a highway common carrier without having obtained a certificate of public convenience and necessity, and without having possessed or acquired a prior right so to operate, as required by Section 50-3/4 of the Public Utilities Act, between San Francisco, Oakland, Berkeley, Alameda, Richmond, San Leandro and tributary points in the San Francisco Bay area, on the one hand, and Sacramento, North Sacramento, Stockton, Modesto, Livermore, Tracy, Antioch, Manteca, Pittsburg, Lodi, Turlock, Dixon, Fresno, Davis, Vallejo, Woodland, Martinez, and other points tributary thereto, on the other hand, over Highways U.S. 40, 50, 99, 99E and 99W and State Highways 4, 24, 33 and 132, and other public highways within the State of California.

Pursuant to such informal inquiry, and on the Commission's own motion, an investigation was instituted into the operations and practices of said William J. Taylor, James Taylor and Florence M. Taylor for the purpose of determining whether said individuals have

operated, or are operating, as a highway common carrier over regular routes, or between fixed termini, anywhere within the State of California, and more particularly between the points named above, and for the purpose of determining whether said individuals should be ordered to cease and desist from operating as a highway common carrier until they should have obtained authority from this Commission so to do, and for the further purpose of determining whether the permitted rights, or any of them, of said William J. Taylor, James Taylor and Florence M. Taylor doing business as partners under the name of Taylor Freight Lines, should be cancelled, revoked, or suspended.

A public hearing was held in San Francisco before Examiner Gannon on January 25 and 26, 1950, and the matter was submitted on briefs.

It was stipulated by counsel that respondents have engaged in the transportation of property for compensation under permits granted by the Commission in 1947.⁽¹⁾ It was also stipulated that respondents do not hold any certificate of public convenience and necessity and that they have no tariffs on file with the Commission. The Commission's Field Division submitted four exhibits Nos. 4, 5, 6 and 7, respectively.

Exhibit No. 4 is an abstract of the carrier's records covering shipments made during the period October 17, to October 31, 1949, excepting Sundays, and October 22 and 29, 1949. During those eleven working days the record shows 217 shipments ranging in weight from 28 to 17,130 pounds per shipment, from 21 consignors, with 12 persons employing the carrier's services, and 18 paying freight charges. The greatest frequency of service and number of shipments

(1) Highway Contract Carrier Permit No. 1-5625, issued March 27, 1947; Radial Highway Common Carrier Permit No. 1-6161 issued December 1, 1947; City Carrier Permit No. 1-6162 issued December 1, 1947.

was between San Francisco Bay points and Sacramento and Stockton.

Exhibit No. 5 consists of a similar study for January, 1949, and totalled 679 shipments ranging in weight from 13 to 22,233 pounds per shipment from 42 consignors with 26 persons employing the carrier's services and 29 paying freight charges.

Exhibit No. 6, for June 1 to 15, 1948, shows 171 shipments ranging from 36 to 11,900 pounds per shipment from 23 consignors with 17 persons employing the carrier's service and 30 paying freight charges. These three cross-sections represent a total of 1,067 shipments, from 86 consignors with 55 persons employing the carrier's services and 77 paying freight charges. These are the carrier's own records and admissions of performance.

Exhibit No. 7 is a state map showing the principal highways and routes used by Taylor Freight Lines. The destination points embrace areas from Santa Rosa and Woodland, on the north, to Gilroy and Bakersfield on the south.

A transportation representative of the Commission offered three exhibits for the record. Exhibit No. 6 shows that in June 1948 respondent had 30 customers, Exhibit No. 5 shows 29 customers and Exhibit No. 4 indicates 18 customers. True, respondents did reduce the number of their customers, but up to October 1949 they were serving 18, notwithstanding the Commission's representative advised them that, in his opinion, they had too many for a lawful operation.

The Commission called some seven shipper-witnesses, all of whom, at one time or another, had employed the services of respondents. Some of these had neither written nor verbal contracts. Of

the signed contracts on file, some were incomplete and others were improperly executed. Respondents did not refuse service to any of these shippers. Shipments were made as far north as Eureka and as far south as Bakersfield.

A Commission witness testified that respondents had registered to themselves for the year 1948 two tractors, one truck, and three semi-trailers; and for 1950, two tractors, four trucks and two semi-trailers.

Quarterly reports for comparable periods reflect the following increased revenues:

	<u>Total Income</u>	<u>Net Taxable Income</u> ✓
July, August, September, 1947	\$ 3,406.15	\$ 3,011.88
July, August, September, 1948	12,962.82	12,783.67
July, August, September, 1949	14,057.07	14,035.63

It is contended by respondents that their operations are those of a contract carrier and in support of that contention they cite certain characteristics of the service which might tend to identify it as such. While respondents do not categorically deny the common carriage character of their operations, they did indicate a willingness to comply henceforth, in the conduct of their business, with any requirements which might be imposed by the Commission. As proof of this desire to operate lawfully they refer to occasions on which they cooperated with the Commission's investigator in reviewing their records, accounts and operations, and their attempts to reduce the number of customers in general. Respondents assert that this is a close question, a "borderline case", as to whether their operations as conducted are lawful or unlawful and therefor the Commission should be lenient in finding a solution.

Revising the record, we find ourselves unable to follow the reasoning of respondents. The large number of customers served, the type of equipment used, the wide range of commodities handled, the daily service between San Francisco, Oakland, Berkeley, Alameda and Richmond, on the one hand, and Sacramento, Stockton, Lodi, Modesto and North Sacramento, on the other hand, the regularity of routes used, and the general absence of specialization or restrictiveness of carrier service, considered together, leave no doubt that respondents' operations are those of a highway common carrier.

After full consideration of the record we find that respondents have been, and still are, operating trucks as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act for compensation between fixed termini and over regular routes, as specified in the order following this opinion, without first having obtained from the Commission a certificate of public convenience and necessity authorizing such operation and without possessing any other operating authority permitting respondents so to do. Cessation of the operation will be ordered and a suspension of the appropriate permits imposed by the order which follows.

O R D E R

The above-entitled proceeding being at issue, a hearing having been held, evidence received, the matter duly submitted and briefed, and the Commission being fully advised;

IT IS ORDERED:

(1) That respondents, William J. Taylor, James Taylor and Florence M. Taylor, doing business under the name of Taylor Freight Lines, be, and they are hereby directed and required to cease and desist from operating directly or indirectly, or by any subterfuge

or device, any auto truck as a highway common carrier, as defined by Section 2-3/4 of the Public Utilities Act, for compensation over the public highways of the State of California, between fixed termini and over regular routes, to wit:

" . . . between San Francisco, Oakland, Berkeley, Alameda, Richmond, San Leandro and tributary points in the San Francisco Bay area, on the one hand, and Sacramento, North Sacramento, Stockton, Modesto, Livermore, Tracy, Antioch, Manteca, Pittsburg, Lodi, Turlock, Dixon, Fresno, Davis, Vallejo, Woodland, Martinez, and other points tributary thereto, on the other hand, over highways U. S. 40, 50, 99, 99E, and 99W; State Highways 4, 24, 33, and 132, and other public highways within the State of California; . . ."

unless and until said William J. Taylor, James Taylor and Florence M. Taylor shall have obtained from the Public Utilities Commission a certificate of public convenience and necessity therefor.

(2) That Radial Highway Common Carrier Permit No. 1-6161 and Highway Contract Carrier Permit No. 1-5625, held by respondent, be and they are hereby suspended for a period of five (5) consecutive days, excluding Saturdays, Sundays and holidays, commencing on the effective date of this order.

(3) The Secretary is hereby directed to cause personal service of a certified copy of this decision to be made upon said respondents, and this decision shall become effective upon the twentieth (20th) day after the date of such service.

Dated at San Francisco, California, this 22nd day of August, 1950.

R. J. [Signature]
James J. [Signature]
[Signature]
Harold [Signature]
[Signature]
COMMISSIONERS