

Decision No. 45215

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the)
 operations and practices of)
 R. R. MacKENZIE and DON MacKENZIE,) Case No. 5214
 doing business as District Trans-)
 portation Co.)

Boris H. Lakusta, for the Field Division, Public
 Utilities Commission; R. R. MacKenzie, for R. R. MacKenzie and
 Don MacKenzie, doing business as District Transportation Co.

O P I N I O N

This proceeding was instituted upon the Commission's own motion to determine whether R. R. MacKenzie and Don MacKenzie partners, doing business as District Transportation Co., hereinafter called respondents, have operated as a highway common carrier over regular routes or between fixed termini anywhere within the State of California, without having obtained a certificate of public convenience and necessity, or having possessed a prior right to so operate, as required by Section 50-3/4 of the Public Utilities Act.

A public hearing was held before Examiner Rogers in Los Angeles on December 5, 1950, and the matter was submitted for decision.

It was stipulated that, since February 20, 1948, respondents have possessed radial highway common carrier and highway contract carrier permits; that they do not possess, and

shipping orders, accounts payable and receivable, for the period June 16 to 25, inclusive, 1950, and the period July 6 to 15, inclusive, 1950, which periods respondent Don MacKenzie said were representative periods in respondents' operations. From the records so received, the witness prepared Exhibit No. 2, in evidence herein, which lists all shipments covered by respondents during the 17 working days included within these periods, and sets forth the consignor, consignee, point of origin, point of destination, commodity, number of shipments, parties who paid the freight charges, parties who engaged respondents, and frequency of service between points. This exhibit shows that, during the period covered by the exhibit, respondents transported 356 shipments, of which 180 were coffee, spices, extracts, coffee-making equipment, tea, glassware, animal feed, malts, frozen foods, bread-making compound, 52 were drugs and drug supplies, and 124 were general commodities including hardware, roller tables, pipe and asphalt dip, iron gear, tires and tubes, outboard motors, batteries, cheese and meats, cable, shoes, plumbing supplies, sheet steel, axles, springs, wheels, chocolate, motorcycles, soda fountain supplies, grease and paint, to list some of the many types of commodities transported by respondents. Exhibit No. 2 also shows the following facts relative to the 356 shipments during the check period:

<u>Origin</u>	<u>Destination</u>	<u>No. of Days Served</u>
Watson	Oxnard	1
Los Angeles	Santa Barbara	12
Los Angeles	Carpinteria	5
Los Angeles	Ojai	3
Los Angeles	Meiners Oaks	1
Los Angeles	Oakview	3
Los Angeles	Santa Paula	10
Los Angeles	Fillmore	6
Los Angeles	Camarillo	1
Los Angeles	Ventura	13
Los Angeles	Montalvo	1
Los Angeles	Saticoy	2
Los Angeles	Oxnard	12
Los Angeles	Hollywood-by-the-Sea	2
Los Angeles	Port Hueneme	9
Los Angeles	Point Mugu	1

Range in weight of shipments - 17 to 18,543 pounds.
 Number of persons who delivered prepaid shipments to respondents during check periods - 21.
 Number of persons to whom collect shipments were directed via respondents during check periods - 32.
 Number of persons who engaged service of respondents during check periods - 45.
 Total number of persons, eliminating duplications, who, during the check periods, delivered prepaid shipments to respondents, to whom collect shipments were delivered by respondents, or who engaged services of respondent - 56.

The assistant warehouse foreman for Karl's Shoe Stores in Los Angeles, one of the parties listed in Exhibit No. 2 as having engaged the services of respondents and having delivered prepaid shipments to them, testified that Karl's Shoe Stores have used respondents only for transporting merchandise between Los Angeles and Santa Barbara, Ventura and Santa Paula, for about four years. He stated that respondents give daily service with delivery the following day, and that the parties have no contract.

Respondent R. R. MacKenzie testified that the District Transportation Co. was started in 1947, and is a partnership

consisting of R. R. MacKenzie and Don MacKenzie; that respondents tried to keep their activities within 50 miles of Oxnard; that customers offered freight; and that respondents had no regular service to any individual point. He further testified that 95 percent of the freight hauled comes from seven consignors, and that Los Angeles to Goleta is all served via Highway 101. He stated that most business was offered and not solicited because, until 1949, Pacific Freight Lines was the only common carrier serving in the vicinity of these points, and that carrier's rates were 10 percent higher than minimum rates. He stated that respondents did not believe they were acting as a highway common carrier, and that they had rejected business to keep from violating the Public Utilities Act. He further stated that respondents discontinued services as a radial highway common carrier on October 5, 1950, (a copy of the Order Instituting Investigation herein was served on the witness on July 31, 1950); that respondents intend to stay out of business; that the last trip to Los Angeles was two months ago (the hearing herein was on December 5, 1950); that respondents decided to discontinue their radial highway common carrier business before they received notice of the hearing; and that the sole reason respondents decided to give up this type of business was that such business was not profitable. Respondent also stated that he does not want respondents' permits cancelled; that he is presently hauling, by contract, canning fish from Port Hueneme to Monterey; that respondents have two contracts; that these contracts can be terminated without notice by the consignor who is also the

consignee; that there is no liability; that the shipper calls and the respondents agree to haul.

The evidence demonstrates that respondents' services were engaged by 21 persons; that they transported collect shipments to 32 consignees; that the kind of equipment they used was not possessed of unusual features; that they transported a wide variety of commodities, none of which required unusual treatment; that the alleged 50 oral contracts imposed no legal obligation; that there is not a close relationship of respondents with the business or operations of those to whom they render transportation services.

The record shows that respondents' operations do not possess the degree of restrictions or limitations sufficient to constitute contract carriage. We conclude, therefore, that respondents were performing services for the public generally, and, therefore, respondents were not engaged in operations between the points with which we are here concerned as a highway contract carrier.

The record herein shows that respondents performed a service for the public in transporting property between fixed termini; to-wit, between Los Angeles, on the one hand, and Santa Barbara and points intermediate between Los Angeles and Santa Barbara, on the other hand; that said service was performed over regular routes; to-wit, U. S. Highways 101 and 101 Alternate; that such service was frequent, to-wit, 12 out of 17 working days between Los Angeles and Santa Barbara; that such services are not those of a radial highway common carrier. After carefully considering the entire record, the Commission is of the opinion and finds that respondents' operations between Los Angeles, on the one hand, and Santa Barbara and points intermediate between Los Angeles and Santa Barbara, on the other hand, are those of a highway common carrier, as defined by Section 2-3/4 of the Public Utilities Act; that respondents conduct said operations without possessing a prior operative right therefor, and without having obtained a certificate of public convenience and necessity authorizing such operations, in violation of Section 50-3/4 of said Act.

An order will be entered directing respondents to cease and desist from conducting the operations between Los Angeles, on the one hand, and Santa Barbara and intermediate points between Los Angeles and Santa Barbara, on the other hand, herein found to be unlawful, and suspending its permits to

operate as a radial highway common carrier and as a highway contract carrier.

O R D E R

A public hearing having been held in the above-entitled proceeding, evidence having been received and duly considered, the Commission now being fully advised and basing its order upon the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED:

(1) That R. R. MacKenzie and Don MacKenzie, doing business as District Transportation Co., and each of them, be, and they hereby are, directed to cease and desist from operating, directly or indirectly, or by any subterfuge or device, any auto trucks 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, over regular routes or between fixed termini, to-wit: between Los Angeles, on the one hand, and Santa Barbara and intermediate points between Los Angeles and Santa Barbara, on the other hand, unless and until said R. R. MacKenzie and Don MacKenzie shall have obtained from this Commission a certificate of public convenience and necessity therefor.

(2) That Radial Highway Common Carrier Permit No. 56-1078 and Highway Contract Carrier Permit No. 56-1079, heretofore issued to respondents, be, and they hereby are, suspended until for good cause shown, the Commission by supplemental order herein otherwise directs.

The Secretary is hereby directed to cause personal service of a certified copy of this decision to be made upon each respondent.

The effective date of this order shall be forty (40) days after the date of such service.

Dated at San Francisco, California, this 3rd day of January, 1951.

R. B. Anderson
Harold P. Hull
Penelope Pottier

COMMISSIONERS