

Decision No. 46210

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the)
 operations and practices of)
 RALPH A. HAGOPIAN, doing business.)
 as Hagco Motor Lines.)

Case No. 5173

Theodore Russell for respondent. H. A. Bischoff and
J. A. Steiger, for Southern California Freight Lines and
 Southern California Freight Lines Express, interested parties.
Harold J. McCarthy for Field Division, Public Utilities Com-
 mission of the State of California.

O P I N I O N

The purpose of this proceeding, which is an investi-
 gation instituted upon the Commission's own motion, is to
 determine:

(1) Whether Ralph A. Hagopian, doing business as Hagco
 Motor Lines, hereinafter called respondent, has operated or
 is operating as a highway common carrier, as defined in
 Section 2-3/4 of the Public Utilities Act, over regular routes
 or between fixed termini, anywhere within the State of Cali-
 fornia, without having obtained a certificate of public conven-
 ience and necessity or having possessed or acquired a prior
 right so to operate, as required by Section 50-3/4 of said Act;

(2) Whether respondent should be ordered to cease and
 desist from operating as a highway common carrier until he
 shall obtain authority so to do; and

(3) Whether the permitted rights, or any of them, held by
 respondent should be cancelled, revoked or suspended.

Public hearings were held before Examiner Rowe at Los Angeles, on April 5, 1950, and on May 15, 1950, and oral and documentary evidence was adduced and the matter was submitted for decision. By stipulation briefs were filed by respondent and by the Commission staff.

The only operating authority held by respondent, granted by this Commission, is under Radial Highway Common Carrier Permit No. 13-2243 and Highway Contract Carrier Permit No. 13-2244. Respondent does not have any authority to operate as a highway common carrier, as defined in the Public Utilities Act.

X Evidence was presented by a staff member of the Commission's field division concerning the results of inspections of respondent's records and of interviews with him. A study of the Commission's exhibits shows that, for the period of March 9 to 18, 1949, 37 persons paid him freight charges, 22 engaged his freight services, and he had 27 consignors. The period April 20 to 29, 1949, shows 39 persons paying him freight charges, 30 engaging his services, and 34 consignors. The period June 1 to 10, 1949, shows 54 persons paying freight charges, 39 engaging his services, and 43 consignors. The period February 1 to 10, 1950, shows 84 persons paying freight charges, 60 persons engaging respondent's services, and 82 consignors.

The weight of these shipments varied from two pounds to 43,070 pounds. The commodities carried during these periods were varied and numerous. This evidence clearly justifies the inference that respondent held himself out to the public as a common carrier of freight.

Respondent quite frankly admits that he has used U. S. Highway 99 as his principal route of travel, not only to Los Angeles, but also to Sacramento, Stockton, Bakersfield, and the San Francisco Bay Area, from El Centro and other Imperial Valley points. He seeks to defend his operation upon the assertion that U. S. Highway 99 is the only practical route of travel between the Imperial Valley and Los Angeles, as well as Bakersfield, Stockton, Sacramento, and San Francisco. In defining a "radial highway common carrier" in Section 1 (h) of the Highway Carriers' Act, as well as in defining a "highway common carrier" in Section 2-3/4 of the Public Utilities Act, the Legislature must be assumed to have had in mind full geographical knowledge of the state. If the only practical manner in which respondent's operations may be carried on, is, as he asserts, under the latter definition, then it is incumbent on him to refrain from such operation until he has procured the required certificate of public convenience and necessity.

Respondent, according to the undisputed evidence, maintains offices and terminals in El Centro and in Los Angeles. He operates on a daily basis between these two cities. These two points are definitely proved to be fixed termini between which he regularly operates. The evidence also is convincing, and it is found that he regularly operates between said termini and the termini San Francisco, Sacramento, Bakersfield, and Stockton.

Aside from his own testimony, which amounted to little more than an admission of the facts of his operations as above described, respondent offered no evidence. Respondent claimed

to have only three written contracts with shippers, and these had been executed, not at his request, but because those three had insisted upon them. Several oral contracts were claimed, but there was no evidence as to their scope or terms.

In view of the frequency and regularity of his operations, and the volume and diversity of the shipments to and from numerous consignees and shippers over a well-defined route, it is obvious, and the Commission finds as a fact, that Ralph A. Hagopian, doing business as Hagco Motor Lines, has operated and is now operating auto trucks as a highway common carrier of freight over a regular route and between fixed termini, hereinabove described, within the State of California, without having obtained a certificate of public convenience and necessity, and without possessing or having acquired any prior right so to operate, as required by Section 50-3/4 of the Public Utilities Act (California Statutes 1915, Chapter 91, as amended).

An order will issue directing Ralph A. Hagopian, doing business as Hagco Motor Lines or otherwise, to cease and desist from such operations until he has obtained and accepted a certificate of public convenience and necessity authorizing such operation. No order will be issued revoking or suspending respondent's permits as above described. The order herein, will, however, contain a proviso permitting operations under a certificate today granted by a decision in Application No. 31398.

O R D E R

Public hearings having been had in the above-entitled proceeding, evidence having been received and duly considered and the matter having been duly submitted, and thereafter by agreement of counsel briefs having been filed and 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 Ralph A. Hagopian, doing business as Hagco Motor Lines, or otherwise, be and he hereby is directed and required to cease and desist and hereafter refrain from conducting, directly or indirectly, or by subterfuge or device, any operation as a highway common carrier (as defined in Section 2-3/4 of the Public Utilities Act) for compensation, over the public highways of the State of California between any point or place in the City of El Centro, or other place in the Imperial Valley, on the one hand, and Los Angeles, San Francisco, Sacramento, Stockton, or Bakersfield, or intermediate points, on the other hand, over U. S. Highway 99, unless and until, and to the extent, he shall have obtained from this Commission a certificate of public convenience and necessity authorizing such operations, provided, however, that nothing contained herein shall require the respondent to cease and desist from any operation authorized in Application No. 31398 and conducted after the acceptance by respondent of the certificate therein granted.

The Secretary of the Commission is directed to cause a certified copy of this decision to be served personally upon the respondent, Ralph A. Hagopian.

The effective date of this order shall be twenty (20) days after the date of such service.

Dated at Los Angeles, California, this 18th day of September, 1954. *J.F.*

R. T. [Signature]
Justin J. [Signature]
Harold [Signature]
[Signature]

COMMISSIONERS