

ORIGINALDecision No. 47417

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Investigation into)
 the operations and practices) Case No. 5253
 of M. S. Dodd, doing business)
 as The Dodd Warehouses.)

Boris H. Lakusta and Harold J. McCarthy, for the Field
 Division, Public Utilities Commission.
Marvin Handler, for respondent.
Edward M. Berol, for Highway Transport, Inc.; Willard S.
Johnson, for J. A. Nevis; C. A. Millen, for Valley
 Express Co. and Valley Motor Lines, Inc.; Douglas
Brookman, for Merchants Express Corporation; Reginald L.
Vaughan, for Peoples Express Co., Inter-Urban Express
 Corporation, United Transfer Co., Haslett Warehouse Co.,
 East Bay Drayage and Warehouse Co., Kellogg Express and
 Draying Co., interested parties.

O P I N I O N

This proceeding is an investigation instituted on the
 Commission's own motion into the operations and practices of M. S.
 Dodd, doing business as The Dodd Warehouses, hereinafter sometimes
 referred to as respondent, to determine:

- (1) Whether respondent has operated or is operating as a high-
 way common carrier without prior authority in violation of
 Section 1063 of the Public Utilities Code;
- (2) Whether respondent should be ordered to cease and desist
 from operating as a highway common carrier;
- (3) Whether respondent's permitted rights, or any of them,
 should be canceled, revoked or suspended.

Public hearings were held in 1951 on May 2 and 11, June 11,
 and July 19. A request to file briefs has been withdrawn, and the
 matter is now ready for decision.

Respondent commenced business in San Francisco as a public warehouseman in 1913, and local drayage operations were started in 1918. In 1935 respondent secured a radial highway common carrier permit and a city carrier permit, and in 1940 he secured a contract carrier permit. He has never possessed any certificated or prescriptive highway common carrier rights.

Respondent maintains public warehouses and offices in San Francisco, and has no physical facility in any other city. He serves, on the average, 60 to 80 warehouse accounts and performs intercity drayage services for about 35 of these accounts. He performs such drayage service only for his warehouse accounts, except with respect to two firms with which he has oral contracts, each of which formerly warehoused with him. He solicits warehouse accounts generally, but for his transportation services he solicits only intracity drayage from the general public.

Respondent's drayage department manager testified that the two oral contract accounts were served under the authority of the contract carrier permit, and that all the warehouse accounts were served under the radial highway common carrier permit. Under the latter authority, he stated, respondent holds himself out to render service to any point within 150 miles of San Francisco, and would render such service for any warehouse account provided it was economically feasible for respondent, and was "legally" within respondent's authority as a radial carrier.

In this connection, he testified it was economically feasible to render a daily service from San Francisco to El Cerrito, Albany, Berkeley, Oakland and Alameda, since these points could be reached more quickly by truck than some outlying areas within San Francisco. As to these points, he stated, a local delivery service

is performed, and it became economically impossible to hold the number and frequency of the shipments within his interpretation of the law. As to all other points, Dodd would refuse shipments, he stated, even if a pay load were involved, if he thought the frequency of the movement to a particular point would endanger his rights. He did not state what he thought that frequency could be.

From the foregoing, we conclude that respondent had the specific intent to serve the individual East Bay cities mentioned, from San Francisco, as often as shipments were tendered to those points. An exhibit of record disclosing respondent's operations for 10 working days in 1950 discloses that he transported shipments to Oakland on all 10 days, to Berkeley on five days, to Alameda three days, and to El Cerrito and Albany one day each.

To other points, this witness testified respondent would render service as often as he received a pay load, provided the point was not served too frequently. In that event, or if a pay load was not tendered, another carrier would be used. This testimony does not tally in all respects with the exhibit of respondent's operations referred to, which shows Palo Alto served on five days, San Jose on six days, and San Leandro on five days, with 15, 17 and 5 shipments, respectively, going to these points. Since respondent has the requisite intent to serve these points, his liberal idea of "frequency" will not make the operation lawful. He could have been more liberal in using other carriers.

There was also introduced into evidence herein a study of Professor William A. Spurr of Stanford University. In so far as this proceeding is concerned, Professor Spurr contends that the "San Francisco Trans-Bay Area" (Counties of San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa and Solano) constitutes a single metropolis in an economic sense; that city carriers who originally

operated only in San Francisco were forced to follow the course of population and industry as it spread to the area indicated, and that in serving this enlarged area, these carriers have not gone beyond the local trading area of San Francisco, and as such are still, in reality, city carriers.

This point of view may have merit, but whether it should be used to enlarge the scope of a city carrier's operating authority is a matter which must be decided by the legislature. We are bound by present statutes which limit this authority to political, not economic, boundaries.

Upon full consideration of the record, we find that M. S. Dodd has been operating as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the termini set forth in the ensuing order, without having first obtained from this Commission a certificate of public convenience and necessity, and without possessing a prior operative right therefor, in violation of Section 1063 of said Code.

O R D E R

Public hearings having been held and based upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED that M. S. Dodd, doing business as The Dodd Warehouses, be and he is 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 in Section 213 of the Public Utilities Code) for compensation over the public highways of the State of California, between San Francisco, on the one hand, and El Cerrito, Albany, Berkeley, Oakland, Alameda, San Leandro, Palo Alto and San Jose, on the other hand, unless and until he shall have obtained from this Commission a certificate of public convenience and necessity therefor.

The Secretary is directed to cause a certified copy of this decision to be served upon respondent.

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

Dated at San Francisco California, this 30th day of June, 1952.

[Signature] President
Harold K. Kula
[Signature]
[Signature]

 Commissioners

Commissioner Justus F. Craemer, being necessarily absent, did not participate in the disposition of this proceeding.