

**ORIGINAL**Decision No. 60766

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations and  
practices of ALBERT S. FITZ-GERALD,  
doing business as FITZ-GERALD BROS.,  
and into the operations and practices  
of the ARROYO GRANDE TRUCK CO., a  
corporation.

Case No. 6477  
(Amended)

Gordon, Knapp, Gill & Hibbert, by Wyman C. Knapp,  
for Albert S. Fitz-Gerald, doing business as  
Fitz-Gerald Bros.; Herbert C. Grundell, for  
Arroyo Grande Truck Co., respondents.  
Glanz, Russell & Schureman, by Theodore Russell,  
for George C. Smith, Jr., doing business as  
Smith Transportation Company, interested party.  
Martin J. Porter, for the Commission staff.

O P I N I O N

On May 24, 1960, the Commission issued its Order Amending Order Instituting Investigation into the operations and practices of respondent Albert S. Fitz-Gerald, doing business as Fitz-Gerald Bros., and into the operations and practices of respondent Arroyo Grande Truck Co., a corporation, for the purpose of determining:

1. Whether respondent Albert S. Fitz-Gerald violated Section 3737 of the Public Utilities Code by failing to observe the suspension of his permits and his certificate ordered by the Commission in Decision No. 59783 and Decision No. 59829 by having leased all or substantially all of his equipment to respondent Arroyo Grande Truck Co. for the period of time as to which the said suspension orders applied, said leasing arrangement being a device the purpose of which was to evade through subterfuge the aforementioned suspension orders.

2. Whether respondent Arroyo Grande Truck Co. entered into said leasing arrangement for the purpose of assisting and aiding respondent Albert S. Fitz-Gerald in employing said leasing arrangement as a device the purpose of which was to evade through subterfuge the aforementioned suspension orders.

3. What order should be issued by the Commission as the result of the hearing of this matter.

Public hearing herein was held before Examiner Wilson E. Cline on July 7, 1960, at Los Angeles. At the conclusion of the hearing the matter was taken under submission.

Evidence of the Commission Staff

Evidence was introduced by the Commission staff to show that during the period of suspension of the operating rights of Albert S. Fitz-Gerald he leased his motor vehicle equipment to Arroyo Grande Truck Co. Some of the equipment, however, was not used by Arroyo Grande and was actually parked in the yard at the Fitz-Gerald Santa Maria terminal. Arroyo Grande paid one thousand nine hundred and some odd dollars for the use of the leased equipment. Mr. Fitz-Gerald informed the Commission witness that the purpose of the lease was to attempt to have service offered to his customers during the time of suspension and to gain whatever income he could from the lease payments.

The notice of suspension of Mr. Fitz-Gerald's operating rights was posted on the door at the entrance to his premises. Mr. Fitz-Gerald's three salesmen contacted each of his permanent or reoccurring shipping accounts to inform them regarding the reasons for and scope of the suspension.

During the period of suspension Fitz-Gerald continued in his employment one office employee, two mechanics and three

salesmen. Fitz-Gerald's truck drivers, four dispatchers and one shipping clerk were released and employed by Arroyo Grande during the period of suspension. Arroyo Grande paid the social security tax and workmen's compensation and made the withholding tax deductions. The drivers who had formerly been employed by Fitz-Gerald were meshed into Arroyo Grande's operations and were assigned duties on a need basis regardless of whether the equipment to be operated belonged to Fitz-Gerald or Arroyo Grande.

All the drivers of Arroyo Grande were instructed that if upon arrival at a particular point of consignment a bill of lading showed Fitz-Gerald, they were to inform the shipper that Fitz-Gerald's operating authority had been suspended and then offer to handle the shipment on Arroyo Grande trucks. When the offer was accepted they struck out the name Fitz-Gerald and inserted the name of Arroyo Grande.

All of the shipments handled by Arroyo Grande during this period were intermingled and carried on whatever equipment was available so that one could not say whether a particular shipment was one acquired through the arrangement with Fitz-Gerald or not.

Arroyo Grande set up a card for each shipper for accounting purposes on the date of first shipment. During the period of Fitz-Gerald's suspension Arroyo Grande acquired 49 new accounts and 12 continued beyond the period of suspension.

One of the owners and operators of Arroyo Grande informed the Commission staff witness that Arroyo Grande entered into the lease with Fitz-Gerald because he anticipated additional business would be available during the period Fitz-Gerald's operating rights were suspended and Arroyo Grande necessarily would have to have added equipment to handle whatever additional business it would get.

On the equipment which it leased from Fitz-Gerald a cardboard or paper sticker reading, "Leased to Arroyo Grande Trucking Company" was placed, and the large FTS was blanked out with whitewash material.

Neither Fitz-Gerald nor Arroyo Grande has any direct or indirect financial interest in the other carrier. Both concerns were very cooperative in furnishing information to the Commission staff witness during his investigation. Respondents did not attempt to conceal the leasing arrangement or through subterfuge seek to evade the suspension order either during the period of suspension of the operating rights of Albert S. Fitz-Gerald or during the subsequent investigation by the Commission staff.

Decisions Nos. 59788 and 59829 which ordered the suspension of Fitz-Gerald's permits and certificate contained no prohibition against leasing his equipment. Subsequent decisions of this Commission suspending operative rights of other carriers have incorporated a provision prohibiting the leasing of the carrier's equipment during the period of suspension. The Commission takes official notice of the third ordering paragraph of Decision No. 56378 in Case No. 5890, involving another trucking concern whose operative rights were suspended for a period of five days, which reads as follows:

"That J. A. Nevis Trucking Inc., shall make no lease of its equipment during the period of its suspension".

#### Findings and Conclusions

The Commission, having considered the evidence in this proceeding, makes its findings and conclusions as follows:

1. Respondent Albert S. Fitz-Gerald has not violated Section 3737 of the Public Utilities Code by failing to observe the suspension of his permits and his certificate ordered by the Commission in Decision No. 59788 and Decision No. 59829.

2. Respondent Arroyo Grande Truck Co. entered into a leasing arrangement with respondent Albert S. Fitz-Gerald for the purpose of providing itself with added equipment to handle additional business which it anticipated it would obtain during the period of suspension of the operating rights of said Albert S. Fitz-Gerald, and not for the purpose of assisting and aiding said Albert S. Fitz-Gerald in employing said leasing arrangement as a device through which to evade the aforementioned suspension orders.

3. The investigation herein should be discontinued.

O R D E R

Public hearing having been held in the above-entitled matter and the Commission being informed therein; now, therefore, IT IS ORDERED that the investigation herein be discontinued. The effective date of this decision shall be twenty days after the date hereof.

Dated at San Francisco, California, this 20th day of SEPTEMBER, 1960.

[Signature]  
President  
[Signature]  
[Signature]  
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Commissioners