

ORIGINALDecision No. 70882

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of ROBERT F.
TAYLOR, an individual, doing bus-
iness as M & T TRANSPORTATION
CO. and DE LYN TRANSPORTATION CO.
and F. L. MARTIN, an individual,
doing business as F. L. MARTIN
TRUCKING CO.)

Case No. 8329

Robert F. Taylor, in propria persona.
Silver, Rosen & Kerr, by Martin J. Rosen,
for F. L. Martin, respondent.
Elinore C. Morgan and Frank J. O'Leary,
for the Commission staff.

O P I N I O N

By its order dated January 11, 1966, the Commission instituted an investigation into the operations, rates and practices of Robert F. Taylor, doing business as M & T Transportation Co. and De Lyn Transportation Co., and F. L. Martin, doing business as F. L. Martin Trucking Co.

A public hearing was held before Examiner Gravelle on March 23, 1966, at Los Angeles.

Respondent Taylor presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 30-4299. Respondent Martin presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 50-3885, and in addition holds a certificate of public convenience and necessity issued by this Commission to operate as a cement carrier. Taylor has a terminal in Los Alamitos, employs four drivers, and operates four tractors and two

sets of cement hoppers. His gross income for the calendar year 1965 was \$99,526.54. Martin has a terminal in Fresno, owns five tractors, three of which are operative, and four sets of cement hoppers. His gross income for the calendar year 1965 was \$121,691.24.

Prior to May 26, 1964 the radial highway common carrier permit pursuant to which respondent Taylor operated allowed the hauling of cement. On said date an amended permit was issued by the Commission which excluded cement as a haulable item. Thereafter on July 30, 1964 respondent Taylor filed Application No. 46890 requesting a permit as a cement contract carrier. By Decision No. 69081, dated May 18, 1965, said application was denied.

On July 26, 1965 a representative of the Field Section of the Commission's Transportation Division called upon Taylor at his place of business to determine whether or not Decision No. 69081 was being complied with. On that date the Commission representative learned from Taylor that he was transporting cement under an oral agreement with Martin. Taylor was receiving the orders for the movement of cement directly from the shippers and was dispatching his own equipment to complete said movement.

On August 5, 1965 the Commission representative again called upon respondent Taylor and "admonished" him that he was violating Section 3621 of the Public Utilities Code, which requires cement contract carriers to have a permit issued by this Commission. The staff representative further advised Taylor that he must have either a cement contract carrier permit or a written lease with Martin in order to transport cement lawfully. He left with Taylor at that time a copy of the Commission's General Order No. 102-B.

Taylor told the staff representative on August 5, 1965 that the oral agreement was being reduced to the form of a written lease.

On August 23, 1965 and again on September 3 and 7, 1965, a second Commission staff representative called upon respondent Taylor at Los Alamitos and checked his records to determine compliance with Decision No. 69081. Said staff representative also called upon respondent Martin and his wife in Fresno on August 31, 1965. Photostatic copies of certain billing documents were made by the staff investigator. They were introduced in evidence as Exhibits Nos. 3, 4 and 5. Said exhibits reflect the movement of cement during the month of August 1965. They are statements from Taylor to Martin upon which payment to Taylor from Martin was based. The actual transportation was accomplished on Taylor's equipment and at his direction. Payment, however, was made by the shipper directly to Martin. Exhibit No. 6 is a copy of the written lease of equipment by which Taylor purports to lease to Martin certain specified trucking equipment. It bears the date of August 1, 1965 in its body, but was signed by Taylor and Martin on August 7, 1965.

Taylor and Martin did not conduct the questioned operations entirely by the letter of the lease. Payment was made in accordance with its terms but the lessor maintained active management and control of the equipment, paid the drivers, fueled the equipment and remained responsible for repairs.

It is the staff contention that the actions of Taylor and Martin constitute an evasion of Public Utilities Code Section 3621 and Decision No. 69081. No question has been raised as to the right of the respondents to avoid the section and the decision. The line between lawful avoidance of the effect of a statute or decision and unlawful evasion is sometimes thin. It is conceivable that a lease

could have been entered into by Taylor and Martin and that operations could have been conducted thereunder which would have lawfully avoided Section 3621 and Decision No. 69081, thereby allowing Taylor to make a livelihood from his investment in equipment. This case reflects a situation in which an individual, having made a large investment in specialized cement hauling equipment, has been precluded from directly engaging in the activity he had contemplated. He then sought to perform said activity indirectly but nevertheless lawfully. The attempt has been a failure. Counsel for Martin has informed the Commission by letter since the submission of this matter that the purported lease has been canceled by Martin and that the transportation under question has ceased.

The Commission staff recommended that the Commission impose a fine of \$1,000 upon respondent Taylor and order each respondent to cease and desist from further unlawful operations or practices.

Counsel for Martin pointed out that leasing, whatever the subject matter of the lease, is fraught with dangers and that respondents here, who were well-meaning amateurs attempting to comply with the law, should not be unduly punished for their failure to draft and comply with a proper leasing document. He argued that leasing will most probably be the subject of future Commission investigation, that errors can be made within the framework of Interstate Commerce Commission regulation where substantial leasing rules are spelled out for the industry, and that it is much more difficult in California where no such rules are presently set forth for our regulated carriers.

Because of the particular facts of this case no fine will be imposed upon respondents. Respondent Taylor already suffers from

the penalty of having invested in specialized cement hauling equipment without having the authority to utilize it.

After consideration the Commission finds that:

1. Respondent Robert F. Taylor operates pursuant to Radial Highway Common Carrier Permit No. 40-4299.
2. Respondent F. L. Martin operates pursuant to Radial Highway Common Carrier Permit No. 50-3885 and a certificate of public convenience and necessity as a cement carrier.
3. The purported lease of August 1, 1965 between respondent Robert F. Taylor and respondent F. L. Martin constituted a device by which respondent Robert F. Taylor evaded Section 3621 of the Public Utilities Code and the effect of Decision No. 69081 in Application No. 46890.

Based upon the foregoing findings of fact, the Commission concludes that respondents violated Section 3621 of the Public Utilities Code and an order of this Commission and that they should be ordered to cease and desist from such violations.

O R D E R

IT IS ORDERED that:

1. Respondent Robert F. Taylor shall cease and desist from transporting cement on the public highways of this State without benefit of authorization to do so from this Commission.
2. Respondents Robert F. Taylor and F. L. Martin shall cease and desist from further unlawful operations or practices.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondents. The

effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 21st day of JUNE, 1966.

Frederick B. Holdcroft
President
John Mitchell
George T. Grover
Augustus
William C. Bennett
Commissioners