

questionable carrier operators have become extremely sophisticated and are designed expertly to convey an appearance of legality. It is the investigator conducting a final investigation, then, who must dig beneath the surface of a questionable operation and from the evidence uncovered apply the basic criteria which have been developed through court and Commission proceedings and present these facts to the Commission's enforcement staff. The subterfuges used are varied. However, one scheme commonly used is referred to as a buy-and-sell arrangement, whereby a trucking operator alleges that he is the owner of the commodity being transported by the use of fictitious documents to indicate such ownership, when, in fact, the only profit to be realized from the transaction is compensation for transportation. To assist the Commission in dealing with the buy-and-sell problem, Congress, in 1958, incorporated the primary business test into section 203 (c) of the Interstate Commerce Act.

Another example is a subterfuge employed between the owner of trucking equipment and a shipper, whereby the trucker purportedly leases his equipment to the shipper to be used in private carriage. The lease, on its face, appears valid. However, the investigation frequently reveals that the shipper actually keeps two sets of records. One set is fictitious and is designed to indicate the arrangement to be lawful. However, the second set of records reveals that the truck owners were performing a for-hire transportation service identical to other common carriers.

An example of a railroad granting substantial monetary concessions from its published tariff rates involves the transportation of carload shipments of mixed merchandise for freight forwarders. The offense consists of the acceptance and immediate transportation by the railroad of individual cars containing freight forwarder shipments on each of several days during a week, and then consolidating seven to 10 cars of such shipments on a single shipping document at the end of the week for billing at the lower "battery shipment" freight rate. The carriers' tariffs normally require that all cars constituting a shipment be tendered for transportation on the same day in order to qualify for the "battery shipment" rate.

Many of the schemes and devices used by truck operators are devised in an attempt to take advantage of exemptions contained in part II of the Interstate Commerce Act. One such exemption is contained in section 203(b)(5). This allows a bona fide farm cooperative to engage in transportation on a limited basis for its members and some nonmembers without obtaining operating authority from the Commission. An example of this type of arrangement is where a truck operator, holding no operating authority from the Commission, organizes a cooperative by obtaining permission from a number of farmers to use their names in the formation of the cooperative. The truck operator then provides transportation services to shippers under the claimed exemption. In many instances the farmers never receive any benefit from the association.

The above are but a few of the types of methods utilized by truck operators and shippers to circumvent the requirements of the Interstate Commerce Act and the rules and regulations promulgated by the Commission. Often time-consuming and extensive investigations are required to obtain the necessary evidence to undertake enforcement action. This requires that an investigator locate the critical documents to support enforcement action at the carrier's or shipper's place of business or elsewhere. Often it is necessary to locate and question witnesses and secure statements, which, when pieced together with other documented evidence, reveal the true nature of the transportation operations being conducted.

As the modus operandi of the questionable and unlawful carrier becomes more sophisticated, there has been a reciprocal responsiveness on the part of the Commission's staff. Their skill and the time given over to enforcement work have had to increase as the schemes and devices have become more complicated. The expanded efforts of the Commission in its compliance role have achieved considerable success. As an example, a recent series of cases concluded in U.S. district courts involved carrier payments to sugar receivers for alleged split delivery cartage service which was paid for but not performed. The rebates involved in this illegal scheme amounted to over a half million dollars, and the investigation covered a period of about 2 years. Fines totalling in excess of \$450,000 were imposed against several rail and water carriers, sugar dealers, and cartage operators. Another recent case required about 2 months of investigation and concerned the failure of a rail carrier in the State of Washington to assess demurrage in accordance with the tariff's rules. This case resulted in fines totaling \$90,000 against the shipper (a large steel company) and the carrier.