

Decision No. 19012

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of)	
H. E. WALKER to sell and transfer)	
and L. R. Kagarise to purchase auto-)	
mobile freight line operated between)	Application No. 13970.
Los Angeles, Alhambra, San Gabriel,)	
East San Gabriel, Arcadia and in-)	
termediate points.)	

H. N. Blair, for Applicant.

H. J. Bischoff, for Motor Service
Express, Protestant.

Douglas Brookman, for United Parcel
Co. of Los Angeles, Protestant.

BY THE COMMISSION:

O P I N I O N

H. E. Walker has petitioned the Railroad Commission for an order approving the sale and transfer by him to L. R. Kagarise of an auto truck service for the transportation of freight between Los Angeles, Alhambra, San Gabriel, East San Gabriel, Arcadia and intermediate points, and L. R. Kagarise has applied for authority to purchase and acquire said operative rights and to hereafter operate thereunder.

A public hearing on this application was conducted before Examiner Satterwhite at Los Angeles, the matter was submitted and is now ready for decision.

H. J. Bischoff, representing the Motor Service Express, and Douglas Brookman, representing United Parcel Company of Los Angeles, appeared at the hearing, but did not protest the granting of said amended application.

At the hearing the application was amended, eliminating therefrom the proposal by L. R. Kagarise to link up or consolidate the operative rights proposed to be transferred with the existing operative rights now owned by L. R. Kagarise.

The record shows that the operative rights now owned by H. E. Walker proposed to be transferred by him were established and acquired under and by virtue of the following prescriptive rights and decisions of the Railroad Commission, particularly described as follows, to-wit:

A prescriptive right established by one L. A. Bell by reason of operations conducted prior to May 1, 1917, as evidenced by the records of the Railroad Commission and an acceptance on April 24, 1919, of C.R.C. No. 1 of L. A. Bell, showing rates for transportation of merchandise between Los Angeles, Alhambra, San Gabriel and East San Gabriel.

Under Decision No. 7044, dated January 17, 1920, on Application No. 5252 L. A. Bell was authorized to sell a one-half interest in his operating right for the transportation of freight between Los Angeles and Alhambra, San Gabriel and East San Gabriel to L. W. Barlow.

Under Decision No. 7623, dated May 26, 1920, on Application No. 5573, a certificate of public convenience and necessity was granted to the co-partnership of Bell and Barlow for the transportation of freight between Los Angeles and Arcadia and intermediate points. This right was granted as a separate right.

Under Decision No. 8532, dated January 10, 1921, on Application No. 6456, L. A. Bell sold his entire interest in the operating right for the transportation of freight between Los Angeles, Alhambra, San Gabriel and Arcadia and intermediate points to L. W. Barlow.

Under Decision No. 8983, dated May 20, 1921, on Application No. 6800, L. W. Barlow was authorized to sell his entire interest, as above set forth, to E. L. Barlow and J. L. Oldham.

Under Decision No. 10732, dated July 20, 1922, on Application No. 7794, J. L. Oldham acquired the full ownership of this operating right and E. L. Barlow withdrew from the firm- J. L. Oldham at the same time transferring a one-half interest in said operating right to C. E. Oldham.

Under Decision No. 12100, dated May 18, 1923, on Application No. 9012, E. H. Walker, Lewis L. Walker and Ralph L. Walker, a copartnership, were authorized to acquire the operating rights of J. L. Oldham and C. E. Oldham.

Under Decision No. 14525, dated February 2, 1925, on Application No. 10794, E. H. Walker became sole owner by acquisition of the hereinabove mentioned operating rights of his co-partners Lewis L. Walker and Ralph L. Walker.

The evidence shows that the sale and transfer is based upon a written agreement attached to the application, whereby E. H. Walker agrees to sell and L. R. Kagarise agrees to buy for a consideration of Fifty-five Hundred (\$5500.00) Dollars the operative rights above described, together with one 3-ton autotruck. Five hundred (\$500.00) Dollars is to be paid upon the approval of the transfer by this Commission and the balance in equal monthly payments of Two Hundred and Eight and Thirty-three Hundredths (\$208.33) Dollars, with interest at the rate of seven (7) percent per annum to be evidenced by the delivery and execution of a promissory note by L. R. Kagarise. The agreement of sale provides for the issue of a note payable at more than one year after date. In our opinion the issue of the note should be authorized by the Commission.

The value of the auto truck is placed at \$3000.00 and the remainder of the purchase price is based upon the "good will" of the business.

The purchaser is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given. The Commission at the early stages of the development of this kind of transportation should be extremely careful not to lend encouragement to the idea that these rights possess a substantial element of value, either for rate fixing or capitalization.

We are of the opinion, after consideration of the evidence herein, that the application should be granted.

O R D E R

A public hearing having been held in the above entitled application, the matter having been duly submitted, and being now ready for decision,

IT IS HEREBY ORDERED that H. E. WALKER be, and he is hereby authorized to sell the properties described in the foregoing opinion to L. R. Kagarise who is hereby authorized to purchase the same and issue the promissory note referred to in said opinion.

The authority herein granted is subject to the following conditions:

1. The authority herein granted to issue a note will become effective when L. R. Kagarise has paid the minimum fee prescribed by the Auto Stage and Truck Transportation Act, which fee is twenty-five dollars (\$25.00).
2. Within thirty (30) days after the issue of the note authorized herein L. R. Kagarise shall file a copy thereof with the Commission.
3. The order herein shall not be construed as in any way authorizing L. R. Kagarise to link up or merge the operating rights herein authorized to be transferred with the existing operating rights of L. R. Kagarise.
4. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission or any other rate fixing body as a measure of value of said property for rate fixing, or any purpose other than the transfer herein authorized.
5. Applicant, H. H. Walker, shall immediately withdraw tariff of rates and time schedules on file with the Commission covering service, certificate for which is herein authorized to be transferred. Such withdrawal to be in accordance with the provisions of General Order No. 51.
6. Applicant, L. R. Kagarise, shall immediately file, in duplicate, in his own name, tariff of rates and time schedules covering service heretofore given by H. H. Walker, which rates and time schedules shall be identical with the rates and time schedules now on file with the Railroad Commission in the name of applicant, H. H. Walker, or rates and schedules satisfactory in form and substance to the Railroad Commission.
7. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been secured.
8. No vehicle may be operated by applicant, L. R. Kagarise, unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

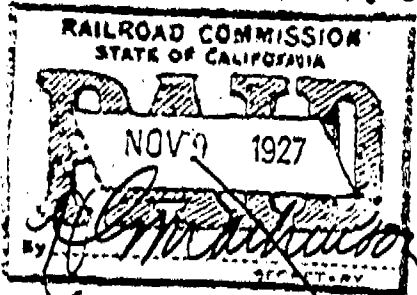
The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 4th day

of November, 1927.

Ernest West
Osseamy
Leon White
David Carter
M. J. Lee
Commissioners.

Fee \$15⁰⁰/₁₀₀



Fee # 24612