

Decision No. 19013

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
 JAMES LITTLE for an order granting
 permission to sell and transfer right,
 title and interest in an automobile
 freight line operating between Glen-
 dale and Los Angeles and intermediate
 points to L. R. Kagarise, and for
 permission to discontinue the oper-
 ation of the same, also
 Application of L. R. KAGARISE for an
 order granting permission to purchase
 said line and to operate the same
 thereafter.

ORIGINAL

) Application No. 14046.

E. N. Blair, for Applicant.

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

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

BY THE COMMISSION:

O P I N I O N

James Little 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 Glendale and Los Angeles, 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.

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

The record shows that the operative right now owned by James Little was established and acquired under and by virtue of the following prescriptive right and decisions of the Railroad Commission, particularly described as follows, to-wit:

A prescriptive right for the transportation of freight and hand baggage between Glendale and Los Angeles was established by the co-partnership of Claude B. Robinson and W. H. Robinson by reason of their operation prior to May 1, 1917, and the filing of tariffs, covering this operation, with the California Railroad Commission on August 11, 1916.

Under Decision No. 10421, dated May 5, 1922, on Application No. 7796, the copartnership of C. B. Robinson and W. H. Robinson was authorized to transfer its operating right between Glendale and Los Angeles to James Little.

Under Decision No. 12025, dated May 3, 1923, on Application No. 8950, James Little was authorized to transfer an undivided one third interest in his operating right between Glendale and Los Angeles to C. H. King.

Under Decision No. 13940, dated August 20, 1924, on Application No. 10369, James Little was authorized to reacquire sole ownership of the operating right between Glendale and Los Angeles.

The evidence shows that the sale and transfer is based upon a written agreement under date of August 19, 1927, introduced in evidence at the hearing marked Applicant's Exhibit No. 1, whereby James Little agrees to sell and L. R. Kagarise agrees to buy for a consideration of Five Thousand (\$5000.00) Dollars the operative right above described, together with the "good will",

trade name and trade rights of said transportation business. Twenty-five Hundred (\$2500.00) Dollars was paid in cash at the signing of said agreement and the balance of Twenty-five Hundred (\$2500.00) Dollars is to be paid upon the approval of the transfer by the Railroad Commission. The record shows that the purchase price is based primarily upon the "good will" of the business and no particular value was stated as to the operative rights proposed to be transferred.

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

IT IS HEREBY ORDERED that James Little be and he is hereby authorized to sell the property described in the foregoing opinion to L. R. Kagarise, who is hereby authorized to purchase the same.

The authority herein granted is subject to the following conditions:

1. The order herein shall not be construed as in any way authorizing L. R. Kagarise to link up or merge the operating right herein authorized to be transferred with the existing operating rights of L. R. Kagarise.

2. 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.
3. Applicant James Little 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.
4. Applicant L. R. Kagarise shall immediately file, in duplicate, in his own name, tariff of rates and time schedules covering service heretofore given by James Little, 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 James Little, or rates and schedules satisfactory in form and substance to the Railroad Commission.
5. 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.
6. No vehicle may be operated by applicant L. R. Kagarise unless such vehicle is owned by said applicant or is leased 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.

James Little
James Little
Leon White
Paul Patton
M. J. C.
 Commissioners.