

RHM

Decision No. 19014

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of  
WALTER H. RASIN for an order granting  
permission to sell and transfer right,  
title and interest in an automobile  
freight line operating between  
Monrovia and Los Angeles to L. R.  
Kagarise, and for permission to dis-  
continue the operation 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. 14047.

H. N. Blair, for Applicant.

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

Douglas Brookman, for United Parcel  
Company of L. A., Protestant.

BY THE COMMISSION:

O P I N I O N

Walter H. Rasin 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 Monrovia and Los Angeles, and L. R. Kagarise has applied for authority to purchase and acquire said operative right 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 of Los Angeles, appeared at the hearing, but did not protest the granting of said application.

The record shows that the operative right now owned by Walter H. Rasin was acquired under the following facts and circumstances and the decision of the Railroad Commission as follows, to-wit:

On July 30, 1917, Walter H. Rasin took over a route formerly operated by one T. B. Coosen, Jr. under the belief that the operation was valid and legal. Subsequently, learning that his operations were not in compliance with the statutory law and the rules and regulations of the Railroad Commission, he filed an application, No. 5044, praying for an order of this Commission declaring that public convenience and necessity require the operation by him of an automobile truck line as a common carrier of freight between Los Angeles and Monrovia.

Under Decision No. 7572 dated May 13, 1920, on said application No. 5044, W. H. Rasin was granted a certificate to operate an automobile truck service as a common carrier of freight between Los Angeles and Monrovia with the limitation and provision, however, that such authorization be confined to the transportation of freight between Los Angeles and Monrovia with no right to conduct any intermediate business in either direction or from either terminal. The record shows that no tariff filings were required under the foregoing certificate for the reason that tariffs had been previously filed by Walter H. Rasin on March 13, 1919.

The evidence in this proceeding shows that the sale and transfer is based upon a written option and agreement dated August 8, 1927, introduced in evidence and marked Applicant's

Exhibit 2, whereby Walter H. Rasin agrees to sell, and L. R. Kagarise agrees to buy for a consideration of Twenty Thousand (\$20,000.00) Dollars the operative rights above described, together with one T truck, two White trucks, an adding machine and all equipment used in the business, together with the "good will," trade name and trade rights of the business. Five Hundred (\$500.00) Dollars is to be paid upon the signing of the said agreement; Forty-five Hundred (\$4500.00) Dollars is to be paid upon the approval of the transfer by the Railroad Commission, and the balance in Sixty (60) equal payments of Two Hundred and Fifty (\$250.00) Dollars each, with interest at the rate of seven (7) percent per annum payable semi-annually. The agreement of sale provides for payments which extend beyond a period of one year after the date thereof and in our opinion should be authorized by the Commission.

The evidence shows that the value of the equipment is placed at Ten Thousand (\$10,000.00) Dollars 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 Walter H. Rasin be and he is hereby authorized to sell his property described in the foregoing opinion to L. R. Kagarise who is hereby authorized to purchase the same and execute the agreement referred to in said opinion.

The authority herein granted is subject to the following conditions:

1. The authority herein granted to execute an agreement will become effective when L. R. Kagarise has paid the minimum fee prescribed by the Auto Stage and Truck Transportation Act, on all evidences of indebtedness extending over a period of one year, which fee is Twenty-five (\$25.00) Dollars.
2. Within thirty (30) days after the execution of the agreement authorized herein L. R. Kagarise shall file a certified 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 Walter H. Rasin 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 Walter H. Rasin, 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 Walter H. Rasin, 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 4<sup>th</sup> day of November, 1927.

Emmott  
McLaney  
Leon Whipple  
Thos. D. Powell  
M. A. Linn  
Commissioners.

Fee \$ 25 <sup>00</sup>/<sub>100</sub>

