

Decision No. 19055

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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ORIGINAL

In the Matter of the joint Application)
of FRANK G. MATTHIESSEN for (1) an Order)
authorizing him to sell and transfer cer-)
tain automobile truck operating rights,)
and (2) of L. R. KAGARISE for authority to)
acquire and exercise the same as an exten-)
sion to his existing motor truck operating)
rights, and (3) for an Order authorizing)
the execution of a certain mortgage to)
secure the payment for certain automobile)
equipment.)

Application No. 14166

BY THE COMMISSION:

OPINION AND ORDER

Frank G. Matthiessen has petitioned the Railroad Commission, in an amended application, for an order of the Commission approving the sale and transfer by him to L. R. Kagarise of operating rights for an automotive trucking service between Los Angeles and San Fernando and intermediate points and L. R. Kagarise asks for authority to purchase and acquire said operating rights and to hereafter operate thereunder, the sale and transfer to be in accordance with an agreement of sale, which agreement of sale, marked Exhibit "A", is attached to the application herein and made a part thereof. Applicant Kagarise also asks for authority to execute a chattel mortgage and notes upon the pieces of equipment described in the agreement of sale as security for the unpaid portion of the amount to be paid for the property herein proposed to be transferred.

The consideration to be paid for the property herein proposed to be transferred is given as \$17,500.00, which sum is made up as follows:

(a)	Automotive equipment	\$12,500.00
(b)	Trade fixtures, office furniture, scale and miscellaneous tangible property	1,000.00
(c)	Good will and right to use fictitious name of San Fernando Haulage Company	1,000.00
(d)	Operating rights	<u>3,000.00</u>
	Total	\$17,500.00

Of this sum Five Hundred (\$500.00) Dollars has already been paid upon the agreement that if the execution of said Bill of Sale and Assignment be not approved by this Commission, said sum is to be returned to said Kagarise. Forty-five Hundred (\$4500.00) Dollars additional is to be paid within five (5) days after this Commission shall by its order have approved the proposed transfer. The remainder of said purchase price, to-wit Twelve Thousand Five Hundred (\$12,500) is to be paid in thirty-six (36) monthly installments thereafter, together with interest on said deferred installments payable semi-annually at the rate of seven (7%) per cent per annum.

The rights herein proposed to be transferred were developed from two prescriptive sources one established by I. L. Hamilton and the other by S. C. Fotsch. These rights were added to subsequently by certificates granted by this Commission.

The prescriptive right established for the transportation of freight between Los Angeles, Burbank, Van Nuys and intermediate points by I. L. Hamilton is evidenced by the records of this Commission which disclose that on April 5, 1918, Hamilton filed his C.R.C. No. 1. Under Decision No. 7624, of May 26, 1920, as rendered on Application No. 5625, it was declared that public convenience and necessity required that I. L. Hamilton

" extend his present service from Van Nuys to Owensmouth and that a certificate of public convenience and necessity be, and

the same hereby is granted for the operation of said line between Van Nuys-Owensmouth and intermediate points,"

The intermediate points were, by exhibit attached to the original application, shown to be Zelzah and Marion.

In Application No. 6848, Hamilton petitioned the Commission for an order declaring that public convenience and necessity required his operation as a common carrier of freight between Lankershim and Marion via Universal City and Reseda Avenue. Subsequently in Application No. 6961, Hamilton joined with Matthiessen making application to the Commission for an order authorizing transfer of all of the operating rights of Hamilton to Matthiessen including whatever rights acquired under Application No. 6848. These applications were consolidated for a hearing before Examiner Williams in Los Angeles, and under Decision No. 9303, of July 30, 1921, on Application No. 6848, Hamilton was granted a certificate of public convenience and necessity for

"an automobile service as a common carrier of freight over the following route: From Marion, by way of Reseda Avenue and the Ventura Road to Universal City, thence in Pacoima Avenue to Lankershim, and also from Universal City to Los Angeles, by way of Chuenga Pass; provided however, that such operation between Universal City and Los Angeles shall be restricted and limited to single trucks, carrying not more than two tons, without trailers, or empty trucks being returned to Los Angeles; and provided further that no such operation be made upon any Sunday or legal Holiday, being the route sought in Application No. 6848, and described therein in Exhibit "B", by red lines on map submitted;"

Further under said Decision No. 9303, on Application No. 6961, F. G. Matthiessen was authorized to acquire all of the hereinbefore described operating rights of I. L. Hamilton.

The prescriptive right established for the transportation of freight between Los Angeles, Burbank and San Fernando by S. C. Fotsch as indicated by C.R.C. No. 1 filed by S. C. Fotsch on February 24, 1917, which filing shows rates for the

transportation of freight between Los Angeles, Burbank and San Fernando. Under Decision No. 9378, dated August 18, 1921, on Application No. 7082, S. C. Fotsch and S. H. Riner were authorized to transfer to F.G. Matthiessen their operating right for the transportation of freight

" . . . between Los Angeles and San Fernando serving as intermediate points, Burbank, Roscoe, and Pacoima."

By reference to the prescriptive right established by Fotsch as indicated by his C.R.C. No. 1 on February 24, 1917, it will be seen that the right therein established was between Los Angeles, Burbank and San Fernando, and did not include the points of Roscoe or Pacoima. The withdrawal and adoption notice filed August 23, 1921, in compliance with the order handed down in Decision No. 9378, erred by including the words "Roscoe, Pacoima" and the words "and intermediate points."

We are of the opinion that this is a matter in which a public hearing is not necessary and that the application, both as to the mortgage and notes and transfer of operating rights, should be granted. The purchaser is hereby placed upon notice, however, 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.

IT IS HEREBY ORDERED that the above entitled application be and the same hereby is granted, subject to the following conditions:

1. 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.

2. Applicant F. G. Matthiessen shall immediately unite with applicant L. R. Kagarise in common supplement to the tariffs on file with the Commission, applicant Matthiessen on the one hand withdrawing, and applicant Kagarise on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3. Applicant Matthiessen shall immediately withdraw time schedules filed in his name with the Railroad Commission and applicant Kagarise shall immediately file, in duplicate, in his own name, time schedules covering service heretofore given by applicant Matthiessen, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant Matthiessen or time schedules satisfactory to the Railroad Commission.

4. 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.

5. No vehicle may be operated by applicant 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.

6. The authority herein granted to execute a mortgage is for the purpose of this proceeding only and is granted only insofar as this Commission has jurisdiction under the Auto Stage and Truck Transportation Act and is not intended as an approval of said mortgage as to such other legal requirements to which said mortgage may be subject.

7. No authority is herein conveyed to applicant Kagarise to link up or join or consolidate the rights

herein conveyed with any other rights owned by him.

8. This order shall not become effective until there has been paid to the Railroad Commission the fee required by the Auto Stage and Truck Transportation Act and the Public Utilities Act to be paid on all evidences of indebtedness extending over a period of one year, in this instance the minimum fee of \$25.00.

Dated at San Francisco, California, this ¹⁵ 26 day of

November, 1927.

C. Seaver
Leon Whittell
Thos. D. Lott
Commissioners

