

Decision No. 19278

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAM NEWTON and THOMAS BIGGART, co-partners doing business under the firm name and style of NEWTON & BIGGART, for permission to sell and transfer to JOSEPH WYTHE and R. E. HOERLER, the right, franchise or permit to operate an auto-truck line for the transportation of property, for compensation, and as a common carrier, between San Jose and Hollister, and intermediate points; and of said JOSEPH WYTHE and R. E. HOERLER to purchase and acquire said property.

Application No. 13864.

Sanborn & Roehl, by A. B. Roehl,
for Applicants.

Gwyn H. Baker, for Protestant.

BY THE COMMISSION:

O P I N I O N

Sam Newton and Thomas Biggart, co-partners, have petitioned the Railroad Commission for an order authorizing them to sell and transfer to Joseph Wythe and R. E. Hoerler, and said Joseph Wythe and R. E. Hoerler have petitioned the Railroad Commission for an order authorizing them to purchase and acquire from Sam Newton and Thomas Biggart the right, permit and franchise to operate an auto-truck line between San Jose and Hollister and intermediate points, for the transportation of property for compensation as a common carrier, and to hereafter operate thereunder.

A public hearing on said application was conducted before Examiner Satterwhite at San Jose, the matter was submitted and is now ready for decision.

Highway Transport Company, which operates an auto-truck service for the transportation of property between San Jose and Hollister, appeared in opposition to the granting of said application.

The record shows that said applicants Sam Newton and Thomas Biggart are engaged in the business of operating an auto-truck line for the transportation of property, as a common carrier, between San Jose and Hollister, California, and intermediate points, serving Coyote, Madrone, Morgan Hill, San Martin, Gilroy and San Juan, under and by virtue of the authority of the Railroad Commission contained in its Decision No. 15279, on Application No. 11508, dated August 15, 1925, and Decision No. 16290, on Application No. 12317, dated April 29, 1927.

The evidence in this proceeding shows that the proposed sale and transfer of the above named operative rights is based on a verbal agreement entered into prior to the filing of this application, wherein and whereby applicants Sam Newton and Thomas Biggart have agreed to sell and transfer to said Joseph Wythe and R. E. Hoerler, and said applicants Joseph Wythe and R. E. Hoerler have agreed to purchase and acquire the right, franchise or permit of the former to operate said auto-truck line between San Jose and Hollister and intermediate points for the consideration of Ten (10) Dollars. It further appears that it is the purpose and intent of applicants, Joseph Wythe and R. E. Hoerler to operate the said auto-truck line between San Jose and Hollister and intermediate points, in accordance with the time schedules

The authority herein granted is 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. Applicants Sam Newton and Thomas Biggart 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.
3. Applicants Joseph Wythe and R. E. Hoerler shall immediately file, in duplicate, in their own names, tariff of rates and time schedules covering service heretofore given by Sam Newton and Thomas Biggart, which rates and time schedules shall be identical with the rates and time schedules now on file with the Railroad Commission in the names of Applicants Sam Newton and Thomas Biggart, or rates and schedules satisfactory in form and substance 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 applicants Joseph Wythe and R. E. Hoerler unless such vehicle is owned by said applicant, or is leased by them 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 10th day of January 1928.

Leon Whitehall
Chairman
Thomas B. Barrett
Commissioners.