

Decision No. 14333

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of FRANK C. JOHNSON, doing business under the name of Ojai-Ventura and Los Angeles Express, for permission to sell and transfer to Howard M. Lang the property and business of said Ojai-Ventura and Los Angeles Express, together with the right, franchise or permit to operate an auto truck line for the transportation of property, for compensation, as a common carrier, between Los Angeles, Ventura and Ojai, California, and intermediate points, via Ventura Boulevard and Santa Susana Boulevard; and of said Howard M. Lang to purchase and acquire said property.

**ORIGINAL**

) Application  
) No.14364

BY THE COMMISSION -

OPINION and ORDER

Frank C. Johnson has applied to the Railroad Commission for an order approving the sale and transfer by him to Howard M. Lang of an operating right for the transportation of property between Los Angeles, Ventura and Ojai and intermediate points, and Howard M. Lang has asked for authority to purchase and acquire said operating right and to hereafter operate thereunder.

The consideration to be paid for the property herein proposed to be transferred is declared by applicants to be the sum of \$50,000, of which sum \$9000 is declared to be the value of intangibles, the balance, \$41,000, being declared to be the value of equipment and other tangible property.

The records of the Commission show that the right herein proposed to be transferred was originally established by H. M. Hunt through operation prior to May 1, 1917. In Application No.4470 Hunt applied for a certificate of public convenience and necessity to operate an automotive trucking service for the transportation of freight and express between Ojai, Ventura and Los Angeles and intermediate points. In Decision No.7334, dated

April 3, 1920, issued on this application, the Commission ordered its dismissal, finding that Hunt was operating in good faith prior to May 1, 1917, and subsequent thereto and ordering him to file tariffs and time schedules.

\*\*\*\*"covering the operation of an automobile freight and express line between Ojai, Ventura, Los Angeles and intermediate points."

Hunt, on May 5, 1920, filed tariffs and time schedules showing service for the transportation of freight and express between Ojai, Ventura and Los Angeles. The tariff and time schedules as filed by Hunt were adopted by H. O. Waterman and G. R. Carne to whom he transferred his operating right, the Commission approving the transfer in Decision No.7689, dated June 8, 1920, and issued on Application No.5683. On December 1, 1922, the Commission, by Decision No.11301 issued on Application No.8439, authorized Waterman to transfer his interest in the operating right to Carne and the last named, on May 25, 1923, was authorized to transfer the right to Frank C. Johnson, one of the applicants herein, the Commission approving the transfer in its Decision No.12144 issued on Application No.9057.

In Decision No.18588, dated July 8, 1927, issued in Case No.2299, a complaint by Los Angeles and Oxnard Daily Express, W. O. and H. E. Fleischer, owners, and Los Angeles and Santa Barbara Motor Express Company, incorporated, against Ojai, Ventura and Los Angeles Express, Frank C. Johnson, owner, the Commission says:

"After consideration of all the evidence and exhibits we are of the opinion and find as a fact that defendant and its predecessors were granted a certificate of public convenience and necessity to operate trucks for the transportation of property for compensation between Los Angeles, Ventura and Ojai and the intermediate points; that defendant served the intermediate points via Ventura Boulevard and via the Santa Susana Boulevard, but did not undertake to and did not serve the intermediate territory between Ventura and Los Angeles via the Fillmore Route, and that such action in the past is in effect an abandonment of the route."

We find in this decision an order directing that

\*\*\*\*\*"Ojai-Ventura and Los Angeles Express, Frank C. Johnson, owner, cancel from its tariff all reference to points located between Ventura and Los Angeles via Fillmore and discontinue service at such points,"

and to

"eliminate all reference to Oxnard as an intermediate point and discontinue service to that point."

Approving the transfer of the operating right herein proposed to be transferred the Commission does so with the distinct understanding that the right transferred covers only such service as is found to have been performed by Johnson in Decision No. 18588, and the adoption of tariffs and time schedules ordered herein is based on this understanding.

We are of the opinion that this is a matter in which a public hearing is not necessary and that the application should be granted.

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.

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 Frank C. Johnson shall immediately unite with applicant Howard M. Lang in common supplement to the tariffs on file with the Commission, applicant Johnson on the one hand withdrawing, and applicant Lang on the other hand accepting and establishing such tariffs and all effective supplements thereto.

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

Dated at San Francisco, California, this 6<sup>th</sup> day of February ~~January~~, 1928.

Leon O. Reed  
Ed. Henry  
Frank [unclear]  
John [unclear]  
M. H. [unclear]  
COMMISSIONERS.