

Decision No. 19796.**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of Mrs. F. C. Williams for a certificate of public convenience and necessity to operate automobile freight and express service between Bakersfield, Shafter, Wasco and intermediate points.	) ) ) ) ) ) )	Application No. 14353.
In the Matter of the Application of A. C. Coolbaugh to sell operative rights be- tween Bakersfield, Shafter and Wasco to California Highway Express.	) ) ) ) )	Application No. 14487.
In the Matter of the investigation into the service, practices and operation of A. C. Coolbaugh operating auto service be- tween Bakersfield, Shafter and Wasco.	) ) ) ) )	Case No. 2513.

J. T. Lilley, for Mrs. F.C. Williams, Applicant.

Alfred Siemon; Osborn & Burum, by Walter Osborn;  
and J. H. Hardy for California Highway  
Express and A. C. Coolbaugh, Applicants.Cyril C. Haworth and Earl C. Cook, for Kern  
County Transportation Company, Protestant.Earl C. Cook and E. M. Burner, for Bakersfield  
Wasco Stage Line, Interested Party.

Paul Derkum, for Derkum Stage Lines, Protestant.

Edward Stern, for American Railway Express,  
Protestant.

BY THE COMMISSION:

OPINION

Public hearings on the above entitled application No. 14353 were held in Bakersfield before Examiner Rowell on February 16, 1928 and March 28, 1928.

The California Highway Express appeared at the earlier hearing to protest the application, claiming to hold an operative right between Bakersfield and Wasco by right of purchase from one A. C. Coolbaugh. Evidence was introduced to show that Coolbaugh had not been operating over his route for several months and the Commission upon its own motion issued an order investigating the operations of Coolbaugh which order was heard on March 28th together with Application No. 14487 of A. C. Coolbaugh and California Highway Express for permission to transfer such operative right from one to the other. By agreement the three matters were consolidated for the receiving of evidence and decision.

The application to transfer will first be considered. This operative right for the transportation of freight between Bakersfield and Wasco was acquired by A. C. Coolbaugh from J. J. Kimbrell on July 3, 1926, set forth in Decision No. 17097. Coolbaugh has not himself operated since about the 12th day of November, 1927, such operations having been conducted subsequently by the California Highway Express. The latter claims to have been operating under a contract or option to purchase, which purchase was consummated on March 7, 1928, and on which date the two parties made application to this Commission to sanction such transfer. We are convinced, however, that at the time the California Highway Express assumed control of this freight line the assignor, Coolbaugh, had abandoned his operative right and that he at no time since has personally or by agent legally performed such operations.

That violation of duty was not in any way cured by the resumption of service on the part of the California Highway

Express. Coolbaugh admitted that his trucks were repossessed by the legal owner and that he was unable to procure others. The California Highway Express, it appears, actually paid \$35. to Coolbaugh on or about the 12th day of November, 1927, but it was not claimed that any sale was made at that time. The California Highway Express explained that it was merely conducting a test operation to determine whether the line could be made profitable and did not so determine until March 7, 1928, the date on which the parties entered into their contract of sale and filed their application to transfer said certificate. During the interim the California Highway Express was under no duty to continue such operations and was uncertain whether it would do so. After ceasing to operate Coolbaugh had no further interest, financial or otherwise, in the business. Coolbaugh is guilty of abandoning his operations, and the California Highway Express also is guilty of operating over such route without having first secured a certificate from this Commission. The application to transfer will be denied, and both Coolbaugh and the California Highway Express ordered to cease operations.

The proposed service of Mrs. Williams between Bakersfield and Wasco by way of Rosedale, Rio Bravo and Shafter is for the transportation of freight of all classes. At the hearing, however, she amended her application to provide for a minimum shipment of forty pounds. Three existing carriers who have express rights in connection with passenger stages protested the application. E. M. Burner, having an express right up to 150 pounds, serves all points on applicant's route; Paul Derkum with right up to 100 pounds serves Bakersfield, Rosedale and

Rio Bravo, and the Kern County Transportation Company with express right up to 75 pounds serves Bakersfield and Wasco. The Bakersfield-Los Angeles Fast Freight Company serves Bakersfield and Wasco, but did not appear at the hearing.

It appears, and we find as a fact, that the territory in which the applicant proposes to operate has now adequate express transportation in connection with passenger stages. We further find that there is a need for a special freight service in addition to the existing express service, the demand coming largely from merchants in Shafter and Wasco who have been using the unauthorized service of the California Highway Express, as mentioned above, and who represent that their needs require some motor freight transportation service. Several merchants testified that they received frequent shipments by truck from Bakersfield of 400 or 500 pounds each and that the existing rail service does not adequately meet their particular needs. The applicant at one time operated a motor freight service over this same route, having disposed of her operative right because of ill health. She owns and will operate a two ton truck. She proposes to operate on the daily schedules and to charge at the rates set forth in the exhibits filed with her application. The minimum charge for any single shipment will be fifty cents.

Mrs. F. C. Williams 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.

ORDER

A public hearing having been held on the above entitled proceedings, the matters being duly submitted and now being ready for decision, and basing its order upon the conclusion and findings contained in the foregoing opinion,

IT IS HEREBY ORDERED that Application No. 14487 of A. C. Coolbaugh to transfer the certificate to operate as a common carrier between Bakersfield and Wasco granted by Decision No. 17097 to the California Highway Express, be and the same is hereby denied, and

IT IS HEREBY ORDERED that the said operative right granted to A. C. Coolbaugh by Decision No. 17907 be and the same hereby is revoked and that said A. C. Coolbaugh and the said California Highway Express discontinue further operations under said certificate, and

IT IS HEREBY FURTHER ORDERED that the rates and time schedules on file with the Railroad Commission in the name of A. C. Coolbaugh be and the same are hereby cancelled.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby further finds that public convenience and necessity

requires the operation of Mrs. F. C. Williams of a motor transportation service between Bakersfield and Wasco and intermediate points, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same hereby is granted to the said Mrs. F. C. Williams to operate a motor transportation service as a common carrier of property between Bakersfield and Wasco and intermediate points by way of Roseville, Rio Bravo, and Shafter, provided that said certificate shall be subject to the following conditions:

1. Applicant shall file her written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.
2. Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty (60) days from the date hereof.
3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by her 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 23<sup>rd</sup>  
day of May, 1928.

Leon Whitwell

C. Deane

Edward J. ...

Paul J. ...

M. H. ...

Commissioners.