

Decision No. 19915

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 GEO. WM. SMITH, WILLIAM M. SMITH and
 RALPH B. SMITH, co-partners, to sell,
 and H. F. CALLOWAY to purchase an
 automobile passenger and baggage line
 operated between Etna and Yreka,
 California.

Application
 No.14737

ORIGINAL

BY THE COMMISSION -

OPINION and ORDER

George Wm. Smith, William M. Smith and Ralph B. Smith, co-partners, have applied to the Railroad Commission for an order approving the sale and transfer by them to H. F. Calloway of an operating right for an automotive service for the transportation of passengers and baggage between Etna and Yreka, and H.F.Calloway has asked for authority to purchase and acquire said operating right, the sale and transfer to be in accordance with an agreement, a copy of which, marked Exhibit "A", is attached to the application herein and made a part thereof.

The consideration to be paid for the property herein proposed to be transferred is given as \$2750. Of this sum \$2450 is said to represent the value of equipment and \$300 is declared to be the value of intangibles.

The operating right herein proposed to be transferred covers service for the transportation of passengers and baggage between Yreka and Etna Mills and the intermediate points of Fort Jones and Greenview. It was acquired by the Smith partnership from Geo. Hellmuth, the Railroad Commission approving the transfer in its Decision No.17787, issued on Application No.13380. The Smiths are also operating between Yreka and Orleans and intermediate points, but this service is not involved in the instant proceeding. The records of the Commission show that the Yreka-Etna right proposed to be acquired by applicant Calloway was established by Hellmuth and E.R.Steele through operation prior to May 1, 1917. The original tariff filing by Hellmuth & Steele carried rates for the transportation of passengers, baggage and ex -

press. Hellmuth subsequently acquired the interest of his partner Steele (Decision No.10422 on Application No.7805) and then filed in his own name tariffs showing only passenger and baggage rates. When the Smiths acquired the right, (Decision No.17787), the Commission declared that the right transferred authorized only the transportation of passengers and baggage, the express right having been abandoned by Hellmuth.

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.

H. F. Calloway 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 is hereby 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- Applicants Geo. W., William M. and Ralph B. Smith shall immediately unite with applicant H.F.Calloway in common supplement to the tariffs on file with the Commission, applicants Geo. W., William M. and Ralph B. Smith on the one hand withdrawing, and applicant H.F. Calloway on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3- Applicants Geo. W., William M. and Ralph B. Smith shall immediately withdraw time schedules filed in their names with the Railroad Commission, and applicant H.F.Calloway shall immediately file, in duplicate, in his own name time schedules covering service heretofore given by applicants Geo. W., William M. and Ralph B. Smith, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicants Geo. W., William M. and Ralph B. Smith, 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 calloway 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 22nd day of June
1928.

Leon White

C. Seavey

Wm. D. Quinn

W. J. Carr
COMMISSIONERS.