

Decision No. 19942

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 FOSTER & PRATHER to sell, and  
 H. KISER to purchase an automobile line  
 (passenger) operated between Tustin  
 and Santa Ana, California.

)  
 )  
 ) Application  
 ) No. 14786  
 )

BY THE COMMISSION -

OPINION and ORDER

**ORIGINAL**

Millard Foster and S. Scott Prather, co-partners, have petitioned the Railroad Commission for an order approving the sale and transfer by them to E. Kiser of an operating right for an automotive passenger stage service between Tustin and Santa Ana, and H. Kiser has asked for authority to purchase and acquire said operating right and to hereafter operate thereunder, the sale and transfer to be in accordance with an agreement, a copy of which 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 \$600, all of which sum is said to represent the value of intangibles.

The operating right herein proposed to be transferred was granted to Foster and Prather, two of the applicants herein, by the Railroad Commission in its Decision No. 5413, dated May 21, 1918, and issued on Application No. 3522. Said Decision No. 5413 authorizes the operation of an automotive passenger stage service between Santa Ana and Tustin, no authority for service to points intermediate between the terminals being granted.

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. Kiser 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 Foster and Prather shall immediately unite with applicant Kiser in common supplement to the tariffs on file with the Commission, applicants Foster and Prather on the one hand withdrawing, and applicant Kiser on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3- Applicants Foster and Prather shall immediately withdraw time schedules filed in their name with the Railroad Commission and applicant Kiser shall immediately file, in duplicate, in his own name time schedules covering service heretofore given by applicants Foster and Prather, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicants Foster and Prather, 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 Kiser 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 29<sup>th</sup> day of June, 1928.

Leon O'Connell  
Chairman  
Paul S. Kautz  
W. J. Lewis  
COMMISSIONERS.