

Decision No. 16988

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 GOTTLIEB MATTLY to sell and)
 WALTER BOYD to purchase an undivided)
 one-fourth interest in an automobile) Application
 passenger stage line operating between) No.14835
 Bakersfield and Taft, Kern County,)
 California.)

ORIGINAL

BY THE COMMISSION -

OPINION and ORDER

Gottlieb Mattly has petitioned the Railroad Commission for an order approving the sale and transfer by him to Walter Boyd, his partner, of his one-quarter interest in an operating right for an automotive service for the transportation of passengers and express between Bakersfield and Taft and intermediate points, and Walter Boyd has asked for authority to purchase and acquire the interest of his partner and to hereafter operate the service as sole owner, the sale and transfer to be in accordance with the terms set forth in the application herein, namely, the payment by Boyd to Mattly of the sum of \$2200.

The operating right herein proposed to be transferred covers service for the transportation of passengers and baggage between Bakersfield and Taft and intermediate points via the county highway. This right was established by operation prior to May 1, 1917, as evidenced by Passenger Tariff C.R.C. No.1 of Kitchen, Boyd & Ingalls. This tariff was filed on April 28, 1917, effective April 29, 1917, No express rates are shown in C.R.C. No.1 and they were not published until December 27, 1921, when through the filing of Supplement No.1 to C.R.C. No.8, effective December 29, 1921, express rates were published. The Commission has repeatedly held that operating rights cannot be enlarged by tariff filing, a formal proceeding being necessary. Accordingly the operating right, a one-quarter interest in which is herein

proposed to be transferred, must be considered as a right authorizing only the transportation of passengers and baggage, neither Boyd & Mattly nor any of their predecessors having been authorized to transport express.

The records of the Commission further show in Passenger Tariff C-R-C. No.3, effective February 4, 1918, that "Mr. R. E. Woods has purchased the interests of Mr. W. E. Kitchen." In Decision No.6939, dated December 11, 1919, issued on Application No.5038, the Commission approved the transfer of this operating right to the co-partnership of Carl Ingalls, Walter Boyd and Elmer Kitchen. Thereafter on March 21, 1922, in Decision No.10218 on Application No.7505, the Commission authorized Kitchen to transfer his interest to Boyd & Ingalls. On June 16, 1922, the Commission in Decision No.10593 on Application No.7700 authorized Chris Mattly, father of applicant Gottlieb Mattly, to acquire an undivided one fourth ($\frac{1}{4}$) interest in this operating right, Walter Boyd retaining an undivided three-fourths ($\frac{3}{4}$) interest therein. On December 10, 1926, the Commission, in Decision No.17734 on Application No.13346, authorized Chris Mattly to transfer his undivided one fourth ($\frac{1}{4}$) interest in this operating right to his son, Gottlieb Mattly, one of the applicants herein.

The Commission on April 26, 1927, in Decision No.18280 on Application No.13695, approved and ratified an agreement between California Transit Co., a corporation, and Kern County Transportation Corporation, and Walter Boyd and G. Mattly, co-partners and applicants herein, a copy of such agreement being attached to Application No.13695. Under the terms of this agreement California Transit Co. jointly leased to Kern County Transportation Corporation and Boyd & Mattly, co-partners and applicants herein, an automotive operating right for the transportation of passengers and express between Taft and Greenfield. The leased right is not involved in this proceeding except as to the withdrawal of Gottlieb Mattly as a party to the lease, authority for such withdrawal being hereby 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.

Walter Boyd 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 Boyd & Mattly shall immediately unite with applicant Walter Boyd in common supplement to the tariffs on file with the Commission, applicants Boyd & Mattly on the one hand withdrawing, and applicant Walter Boyd on the other hand accepting and establishing such tariffs, and all effective supplements thereto, save and except tariffs showing express rates, which tariffs are hereby canceled.

3- Applicants Boyd & Mattly shall immediately withdraw time schedules filed in their names with the Railroad Commission and applicant Walter Boyd shall immediately file, in duplicate, in his own name time schedules covering passenger service heretofore given by applicants Boyd & Mattly, which time schedules shall be identical, except as herein noted, with the time schedules now on file with the Railroad Commission in the name of applicants Boyd & Mattly, 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.

