

ORIGINAL

Decision No. 20080

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application
of J. D. WEAST to sell, and WARD G.
ALLEN and VERN C. LINVILLE to pur-
chase, an automobile passenger and
freight line operated between Redding,
Shasta County, California, and Bieber,
Lassen County, California, and inter-
mediate points; between Burney,
Shasta County, California, and Cayton,
Shasta County, California, and inter-
mediate points; and between Redding,
Shasta County, California, and a point
on the county road known as Mud Springs,
distant 2½ miles, more or less, south
of Big Bend Hot Springs, where the
county road is, or will be, intersected
by the private road of the Mt. Shasta
Power Corporation leading to Pit 4, sit-
uated on the Pit River, in Section 9,
Township 36 North, Range 1 East, Mount
Diablo Meridian, and intermediate points.)

APPLICATION NO. 14619.

Chenoweth & Leininger, by C. W. Leininger,
for Applicant.

BY THE COMMISSION:

O P I N I O N

By the above entitled application J. D. Weast seeks
authority to sell, and Ward G. Allen and Vern C. Linville, co-
partners, seek authority to purchase, certain certificate
rights of Weast for the transportation of passengers and freight
between Redding and Bieber and intermediate points, between
Burney and Cayton and intermediate points, and between Redding
and a point on the county road known as Mud Springs.

A public hearing herein was conducted by Examiner Wil-
liams at Redding.

The rights possessed by applicant Weast are fixed by the following decisions:

No. 5715 - In the Matter of the Application of J. D. Weast for certificate of public convenience and necessity to operate passenger, freight and express service between Redding, California, and Fall River Mills, California,

No. 10770 - In the Matter of the Application of J. D. Weast for certificate of public convenience and necessity to operate passenger, freight and express service between Fall River Mills, Shasta County, California, and Bieber, Modoc County, California, and intermediate points,

No. 12445 - In the Matter of the Application of S. S. Summers & Son for permission to sell, and J. D. Weast to purchase, a certain automobile stage line operated between Burney and Cayton and intermediate points, California,

each providing for the transportation of passengers, express and freight between termini and intermediate points. In addition to the certificated rights sought to be transferred, applicant also desires to transfer equipment, consisting of two two-ton combination passenger, freight and mail busses, one seven-passenger touring automobile, one two-and-one-half-ton truck, and one one-ton trailer, and miscellaneous equipment and accessories. The entire transaction is covered by an agreement between the parties, attached to the application and marked Exhibit "A".

According to this agreement, the purchasers are to pay to applicant Weast \$31,000, of which \$16,000 covers the cost of equipment and incidental accessories, tires, etc., and \$15,000 covers the value of the rights transferred. This consideration would seem to be excessive and burdensome upon the purchasers, except for the fact that included in the transfer are two mail contracts held by applicant Weast and having two years to run,

which are also transferred to the purchasers. One of these contracts provides for the payment of \$1205.00 monthly for service in transporting United States mail, and, according to the testimony of Mr. Weast, represents the major part of the transaction. The other mail contract earns approximately \$185.00 per month. By the agreement, the income from the larger mail contract is to be paid monthly to Weast for the purpose of extinguishing the debt upon the property. The purchasers, in addition, are agreeing to pay \$5,000 in cash. According to the terms of the agreement, the purchasers, by credit received from the check upon the mail contract alluded to and known as Star Route Contract No. 76,132, will have discharged the \$26,000 balance in about twenty-one months or sooner, and will then have complete title to all the business of applicant Weast. The purchasers will enjoy all the profits of the business from all other sources, except this contract, during the same period, and according to an exhibit filed at the hearing (Exhibit #1), the revenue for the period January 1, 1928, to April 15, 1928, appeared to be ample to extinguish the debt in a much shorter period than contemplated, if purchasers elect to apply it for that purpose, as they testified was their intention. According to this exhibit, the expenses, not including taxes and depreciation for the period stated, amounted to \$4,719.64, and the revenue from all sources, including mail contracts, amounted to \$9,762.32, a profit of \$5,043.18 for three and one-half months, or at the rate of \$1,440.90 per month. In addition to this set-up, applicants Allen and Linville testified that they each intend to drive a truck and receive only a truck-driver's wages during the time the business is being paid for out of its

earnings, and that, in addition, the seller Weast will be removed from the payroll, where he has been receiving \$250.00 per month, and that these economies will enable the business as a whole to earn approximately \$1700.00 per month.

The revenue from passenger and freight combined, which is the public utility revenue, amounted to \$4017.24 for the three and one-half months shown in the exhibit, and this is at the rate of \$13,774.28 per year. It was explained by Mr. Wade G. Moores, manager, that the exhibit represents a period less productive of revenue than the summer season, and that the earnings will be greater until the first of December. Assuming this to be a fact, applicants will have \$4011.00 additional earnings to apply upon the purchase price in addition to the \$1205.00 monthly required, if they so elect. This amount will also meet the charge of \$100.00 a month due upon a new vehicle purchased at a cost of \$2475.00 (including the trade-in of the seven-passenger touring car at \$675.00) and the payment of taxes. The equipment, according to the testimony of Mr. Weast, actually cost \$15,746.71, and the details of the cost appear proper and reasonable.

Mr. Weast, testifying in his own behalf, stated that he desired to sell because he is nearly seventy years of age, has been in ill health for over a year, and has other business that requires his time. He further testified that the net income from the business, including mail, has been between \$8,000 and \$10,000 annually; that about 60 per cent of the value of the business transferred is represented by the mail contracts. No real property or leases are involved, but applicants have arranged to house their business and vehicles in a garage

owned by Weast.

The purchasers are young men of considerable experience in the transportation business. Allen has been trucking in Alturas for approximately seven years, and Linville formerly operated a passenger and freight service in partnership with William Frailey, under authority of this Commission, between Alturas and Cedarville. He and Allen have been friends and associates for many years. Before entering into the arrangement for the purchase of Weast's certificate and business, they had an audit of his affairs made through the Bank of Modoc County at Alturas, and this audit, according to their testimony, satisfied them as to the reasonableness of the price and their ability to meet the payments. These applicants presented letters from O. D. Morgan, secretary of Modoc County Development Board, and R. R. Baker, cashier of the Modoc County Bank, giving assurance of their reputableness and credit. According to his testimony, applicant Linville has an apparent present worth, independent of this transaction, of approximately \$3,000, and applicant Allen approximately \$3,500. As both of the men are experienced in mechanical work on vehicles of the sort they are using, they expect to provide for the maintenance of the operation at somewhat less expense than in the past.

Assuming, as seems apparent from the testimony and the contract itself, that the mail contracts, which are non-utility business, are at least 50 per cent of the entire transaction, and as the business appears to be sufficiently prosperous to meet the charges upon it that will be required by the transaction, and in view of the economies offered by the purchasers in their operation of the business, we believe the transaction is not imprudent and will not burden the business or impair its service to the public. For this reason we believe the agreement should be ap-

proved and the transfer authorized.

Ward G. Allen and Vern C. Linville are 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 as to the number of rights which may be given.

O R D E R

J. D. Weast having made application to the Railroad Commission for authority to sell and transfer his certificate rights for the transportation of passengers and freight between Redding and Bieber and intermediate points, between Burney and Cayton and intermediate points, and between Redding and a point on the county road known as Mud Springs, as fixed by certificate granted by Decision No. 5715 on Application No. 3895, dated August 26, 1918, by Decision No. 10770 on Application No. 3019, dated July 25, 1922, and by Decision No. 12445 on Application No. 9235, dated August 2, 1923, to Ward G. Allen and Vern C. Linville, who join in the application, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

IT IS HEREBY ORDERED that the application herein 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 Weast shall immediately withdraw tariff of rates and time schedules on file with this Commission, covering service, certificate for which is herein authorized to be transferred, such withdrawal to be in accordance with the provisions of General Order No.79.

3- Applicants Allen and Linville shall immediately file, in duplicate, their tariff of rates and time schedules covering service heretofore given by applicant Weast, which rates and time schedules shall be identical with the rates and time schedules now on file with the Railroad Commission in the name of applicant Weast, or rates and schedules satisfactory in form and substance to the Railroad Commission.

4- The rights and privileges herein authorized may not be leased, sold, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such lease, sale, transfer, assignment or discontinuance has first been secured.

5- No vehicle may be operated by applicants Allen and Linville under the authority hereby granted unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

6- The authority herein granted shall become effective when Ward G. Allen and Vern C. Linville have paid the minimum fee prescribed by Section 57 of the Public Utilities Act, which fee is \$25.00.

Dated at San Francisco, California, this 2nd day of

August, 1928.

W. J. Seaver

Thos. J. Lewis

M. J. Lewis
COMMISSIONERS.

RAILROAD COMMISSION
STATE OF CALIFORNIA
Filed 25-02
1928
W. J. Seaver
SECRETARY
File No 25858