

Decision No- 20114 -

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Motor Service Express to sell and)
S.E. Cowan to purchase an auto)
freight line operated between Los)
Angeles on the one hand, and La)
Habra, Fullerton and Anaheim, on)
the other hand.)

Application No. 14860.

ORIGINAL

BY THE COMMISSION:-

OPINION AND ORDER

Motor Service Express, a corporation, has applied to the Railroad Commission for an order approving the sale and transfer by it to S.E. Cowan of an operating right for an automotive trucking service for the transportation of freight between Los Angeles on the one hand and La Habra, Fullerton and Anaheim, on the other, and S.E. Cowan 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 marked Exhibit "A", 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 \$5000. all of which sum is said to represent the value of intangibles. No equipment is involved. Under the terms of the agreement applicant Cowan is to make payment of \$1000. in cash and the balance is to be paid in monthly installments of \$150.

The operating right herein authorized to be transferred was originally established by Sharp & Son through operation prior to May 1, 1917. The Sharps transferred the right to C.O. Davis, the Commission approving in Decision No. 10467, dated May 16, 1922 and issued on Application No. 7730. See quote from Decision No. 10467:

"The operation at first was not definite and included several points not now served. Applicants, the Sharps, testified that their service is confined to freight transportation from Los Angeles, La Habra, Fullerton and Anaheim and that this is all the right that survives and is to be transferred. O.O. Davis, the purchaser, testified that this operation is all he expects to acquire as a right and all parties, at the suggestion of S.B. Cowan, proprietor of the Triangle-Orange County and Santa Ana Express, stipulated that no other right would ever be claimed. Upon this stipulation protestant withdrew objection to be transfer."

It is to be noted that S.B. Cowan, appeared as protestant in the transfer proceeding and joined in the stipulation as to the extent of the operating right established by the Sharps. In the instant proceeding Cowan is the proposed purchaser of the right. Subsequently O.O. Davis, with the approval of the Commission-(Decision No. 15068 dated June 15, 1925 and issued on Application No. 11192) transferred the right to Fletcher and Tremble; and by Decision No. 15952, dated February 8, 1926 and issued on Application No. 12244 Fletcher and Tremble transferred it to Motor Service Express, one of the applicants herein.

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. It must be understood, however, that the order herein does not authorize S.B. Cowan to link up or join the right herein authorized to be transferred with other rights owned by him nor is it in any way to be construed by Cowan as authorization for any changes in the rates and service now charged and given by Motor Service Express, and that it is not to be construed as a finding or recognition of value by the Commission of the operative right or the alleged good will of the business.

S.B. Cowan 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- Applicant Motor Service Express shall immediately unite with applicant S.B. Cowan in common supplement to the tariffs on file with the Commission, applicant Motor Service Express on the one hand withdrawing, and applicant S.B. Cowan on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3- Applicant Motor Service Express shall immediately withdraw time schedules filed in its name with the Railroad Commission and applicant S.B. Cowan shall immediately file, in duplicate, in his own name time schedules covering service heretofore given by applicant Motor Service Express which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant Motor Service Express 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 S.B. Cowan 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.

6- This order shall not become effective until there has been paid to the Railroad Commission the fee required by the Public Utilities Act and The Auto Stage and Truck Transportation Act to be paid on all evidences of indebtedness extending over a period of one year, in this instance the minimum fee of \$25.00.

Dated at San Francisco, California, this

15th day of August, 1928.

Leon White

Chase

David L. ...

M. J. ...

COMMISSIONERS

Fee \$ 25.00

RECORDS COMMISSION
STATE OF CALIFORNIA

1928

[Signature]

Fee # 25753