

Decision No. 20307

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 BERT TILLITT to sell, and PERRY H. GREEN,  
 HUBERT S. GREEN, J. CLARKE SMITH and  
 C. A. FOLETTA to purchase an automobile  
 freight line operated between Los Angeles  
 and San Bernardino, California.

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 ) Application  
 ) No. 15063  
 )

ORIGINAL

BY THE COMMISSION -

OPINION and ORDER

Bert Tillitt has applied to the Railroad Commission for an order approving the sale and transfer by him to a partnership consisting of Perry H. Green, Hubert S. Green, J. Clarke Smith and C. A. Foletta of an operating right for an automotive trucking service between Los Angeles and San Bernardino, and Perry H. Green, Hubert S. Green, J. Clarke Smith and C. A. Foletta have 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, 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 \$14,500. Of this sum \$14,000 is said to represent the value of certain rolling stock and shop equipment, etc., and \$500 is declared to be the value of intangibles.

The operating right herein proposed to be transferred was granted to applicant Tillitt by the Railroad Commission in its Decision No. 13428, dated April 17, 1924, and issued on Application No. 9901. The right was originally established by one C. A. Viall. Describing the right in its Decision No. 13428 approving its transfer to Tillitt, the Commission says:

"Applicant Viall secured the right to operate an automotive truck line between Los Angeles and San Bernardino, not including any intermediate points whatsoever under the provisions of Section 5 of Chapter 213, Statutes of 1917, through operation prior to May 1, 1917, and continuously thereafter."

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.

Perry H. Green, Hubert S. Green, J. Clarke Smith and C. A. Foletta 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 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 Bert Tillitt shall immediately unite with applicants Green, Green, Smith and Foletta in common supplement to the tariffs on file with the Commission, applicant Tillitt on the one hand withdrawing, and applicants Green, Green, Smith and Foletta on the other hand accepting and establishing such tariffs and all effective supplements thereto.
- 3- Applicant Tillitt shall immediately withdraw time schedules filed in his name with the Railroad Commission and applicants Green, Green, Smith and Foletta shall immediately file, in duplicate, in their own names time schedules covering service heretofore given by applicant Tillitt, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant Tillitt, 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 applicants Green, Green, Smith and Foletta 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.

Dated at San Francisco, California, this 9<sup>th</sup> day of  
October, 1928.

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*C. Seamy*  
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*Thos. J. Louette*  
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*M. J. Con*  
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COMMISSIONERS.