

Decision No. 20397.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
J. Hills Wythe, R.E. Hoerler, and Wm. )  
G. Wahl to enter into a copartnership )  
in the operation of an Automobile ) Application  
freight line operated between San Jose ) No. 15139.  
Hollister, and intermediate points )  
within the State of California. )

BY THE COMMISSION:-

**ORIGINAL**

OPINION and ORDER

J. Hills Wythe and R.E. Hoerler, copartners, have petitioned the Railroad Commission for an order approving the sale and transfer by them to Wm. G. Wahl of a one-third interest in an operating right for the transportation of property between San Jose and Hollister and intermediate points, and Wm. G. Wahl has asked for authority to purchase and acquire said one-third interest in said operating right.

The consideration to be paid for the property herein proposed to be transferred is given as the nominal sum of \$10.00.

The operating right, a one-third interest in which is herein proposed to be transferred was originally granted by the Railroad Commission to E.C. Heskett in its Decision No. 7539, dated May 3, 1920, on Application No. 5461. Heskett, on Application No. 5790, was authorized to transfer the right to William E. Bledsoe, and the latter transferred it to Newton & Ayers on authority granted on Application No. 7806. Laverty acquired the right from Newton & Ayers, the Commission approving the transfer in its Decision No. 12498 on Application No. 9288. Laverty, with the approval of the Commission (Decision No. 15279, dated August 15, 1925, and issued on Application No. 11508) transferred the right to Newton & Biggart, and the latter, by Decision No. 19298, dated January 10, 1928, and issued on

Application No. 13864, were authorized to transfer it to Wythe and Hoerler.

The original right granted to Heskett authorized service only between San Jose and Hollister. Authority to serve intermediate points was not granted. Heskett, however, filed tariffs showing service to intermediate points, and his tariffs were adopted by the successive owners of the right. To legalize the service to intermediate points Newton & Biggart applied for a certificate of public convenience and necessity to serve such points and by Decision No. 18290, dated April 29, 1927 and issued on Application No. 12317 the Commission authorized them to:

"continue operation of a freight motor truck service between San Jose and Hollister and intermediate points\*\*\*"

said intermediate points being on the route between:

"San Jose and Hollister, via Coyote, Madrone, Morgan Hill, San Martin, Gilroy and San Juan, including pickup and delivery within one mile of the route or of the main business center of all points served."

Wythe and Hoerler, therefore, have the right to serve between San Jose and Hollister and intermediate points, as outlined 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.

Wythe, Hoerler and Wahl 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-Applicants Wythe and Hoerler shall immediately unite with applicants Wythe, Hoerler and Wahl in common supplement to the tariffs on file with the Commission, applicants Wythe and Hoerler on the one hand withdrawing, and applicants Wythe, Hoerler and Wahl on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3-Applicants Wythe and Hoerler shall immediately withdraw time schedules filed in their names with the Railroad Commission and applicants Wythe, Hoerler and Wahl shall immediately file, in duplicate, in their own names time schedules covering service heretofore given by applicants Wythe, and Hoerler which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicants Wythe and Hoerler 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 Wythe, Hoerler and Wahl 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-No authority is herein conveyed to Wythe, Hoerler and Wahl to link up, join or consolidate the right herein described with other rights now owned by them.

Dated at San Francisco, California, this 29<sup>th</sup> day of

October, 1928.

Leon Whitall

Clarence

Ernest

Thos. D. ...

M. P. ...

COMMISSIONERS