

20450

Decision No. 20400

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of M. BERNARDO to sell, and SOUTHERN PACIFIC MOTOR TRANSPORT COMPANY to buy, that certain auto stage line now operating between Red Bluff and Chico, California, together with equipment, etc.

Application No. 14974.

ORIGINAL

Ware & Ware, by Allison Ware, for Applicant M. Bernardo, E. J. Foulds and H. W. Hobbs, by H. W. Hobbs, for Applicant Southern Pacific Motor Transport Company, Warren E. Libby, for Pickwick Stages System, Protestant, C. R. Detrick, for Western Pacific Railroad Company, and Sacramento Northern Railway, interested parties.

BY THE COMMISSION:

O P I N I O N

M. Bernardo has petitioned the Railroad Commission for an order approving the sale and transfer by him to Southern Pacific Motor Transport Company of an operating right for the transportation of passengers, baggage and express between Red Bluff and Chico and intermediate points and Southern Pacific Motor Transport Company has asked for authority to purchase and acquire said operative right and to hereafter operate thereunder, the sale and transfer to be in accordance with the terms of an agreement of sale, 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 \$25,000., one-half of which sum is said to represent the value of the equipment, to be purchased, and the balance the value of intangibles.

A public hearing on this application was held before Examiner Gannon at San Francisco, the matter was duly submitted and is now ready

for decision.

The operating right herein proposed to be transferred was granted to applicant Bernardo by Decision No. 20418 of this Commission, dated October 31, 1928, on Application No. 9276.

The granting of the instant application was opposed by Pickwick Stages System who appeared by counsel and filed a written protest praying that the application be dismissed. Such protest is based upon the allegation that the Railroad Commission of California has no authority or jurisdiction to grant a certificate of public convenience and necessity to Southern Pacific Motor Transport Company authorizing it to operate motor busses for the transportation of passengers for compensation, in as much as the capital stock of the latter concern is held entirely by Southern Pacific Company, a foreign corporation; that under the provisions of Section 26 of the Public Utilities Act the Commission is inhibited from granting a certificate to a foreign corporation, and that by this application Southern Pacific Company is attempting by indirection to enter into the motor stage passenger transportation business, through its subsidiary Southern Pacific Motor Transport Company.

This identical question presented itself in Application No. 13775 and was disposed of in our decision No. 20361, dated October 23, 1928.

We there held that

"It is the Southern Pacific Motor Transport Company, a domestic corporation, which makes the application and it is entitled, if authorized by the Commission, to operate as a public utility in this state. No fraud is committed by recognizing the Southern Pacific Motor Transport Company as an entity, separate and distinct, from the owner of its capital stock, neither does such recognition in the instant case result in any injustice to any party to this proceeding."

The motion of protestant that the application be dismissed will be denied.

We are satisfied from a careful consideration of all the facts in this proceeding that the application should be granted.

Southern Pacific Motor Transport Company 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.

O R D E R

A public hearing having been held in the above entitled proceeding, the matter having been duly submitted, and the Commission being fully advised,

IT IS HEREBY ORDERED that protestants' motion for dismissal of this application be, and the same is hereby denied, and

IT IS HEREBY FURTHER ORDERED that the above 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, M. Bernardo, shall immediately unite with applicant, Southern Pacific Transport Company in common supplement to the tariffs on file with the Commission, applicant M. Bernardo on the one hand withdrawing, and applicant Southern Pacific Motor Transport Company on the other hand accepting and establishing such tariffs and all effective supplements thereto.
- 3- Applicant, M. Bernardo, shall immediately withdraw time schedules filed in his name with the Railroad

Commission and applicant Southern Pacific Transport Company shall immediately file, in duplicate, in its own name time schedules covering service heretofore given by applicant M. Bernardo which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of M. Bernardo 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 Southern Pacific Motor Transport Company unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

Dated at San Francisco, California, this 13th day of November, 1928.

W. J. ...

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W. J. ...
Commissioners.