

Decision No. 90480

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 W. L. CAVANAUGH to sell, and the)
 CITY TRANSIT COMPANY to purchase an) Application No. 15169
 automobile stage line operated be-)
 tween Modesto and Oakdale, California)
 and intermediate points.)

BY THE COMMISSION -

OPINION and ORDER**ORIGINAL**

W. L. Cavanaugh has petitioned the Railroad Commission for an order approving the sale and transfer by him to City Transit Company, a corporation, of an operating right for the transportation of passengers and property between Modesto and Oakdale, and intermediate points, and City Transit Company, a corporation, asks 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 \$3000, all of which sum is said to represent the value of intangibles.

The operating right herein proposed to be transferred was one of many established by the Star Auto Stage Association by operation prior to May 1, 1917. This right authorizes the transportation of passengers, baggage and express, the latter being limited to packages weighing not more than 100 pounds each. C.R.C. No. 1 of Star Auto Stage Association, which established the right herein proposed to be transferred, shows, in addition to the phrase, "and intermediate points," the following fare points: Modesto, Clubhouse, Bald Eagle Ranch, Stony Bridge, Riverbank, Longworth and Oakdale. By Decision No. 7795, dated June 24, 1920, and issued on Application No. 5162, the Railroad Commission approved

the transfer of the above described operating right to George Weisner and E. P. Michaels as individuals, requiring them to file tariffs and schedules covering the operation of automobile stage lines

*****From Modesto to Oakdale over the following route: Modesto to Oakdale, via Mc Henry road, Modesto to Bald Eagle Ranch and via the state highway, Bald Eagle Ranch to Oakdale

or to adopt the tariffs of Star Auto Stage Association covering said route.

On January 15, 1921, Weisner and Michaels filed a tariff quoting rates for passengers, baggage and express between Modesto and Oakdale and Bald Eagle Ranch, Riverbank and Longworth, without authority eliminating the restriction of 100 pounds on express shipments. By Decision No.15178, dated July 14, 1925, and issued on Application No.11362, the Commission authorized Weisner and Michaels to transfer their interests in the operating right to John S. Zuckerman, and the latter, in compliance with the Commission's order, adopted the Weisner and Michaels tariff and time schedule.

By Decision No.19317, dated February 6, 1928, and issued on Application No.14300 the Commission authorized Zuckerman to transfer the operating right to applicant Cavanaugh, the order providing "that the 100-lb. limitation on express be restored by proper tariff supplement."

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.

City Transit Company, a corporation, 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 W. L. Cavanaugh shall immediately unite with applicant City Transit Company in common supplement to the tariffs on file with the Commission, applicant Cavanaugh on the one hand withdrawing, and applicant City Transit Company on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3- Applicant Cavanaugh shall immediately withdraw time schedules filed in his name with the Railroad Commission and applicant City Transit Company shall immediately file, in duplicate, in its own name time schedules covering service heretofore given by applicant Cavanaugh, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant Cavanaugh 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 City Transit 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 16th day of November, 1922.

COMMISSIONERS.