

Decision No. 20697

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of FRED A. SUTHERLAND for a certificate of public convenience and necessity to re-route part of his present San Diego to San Ysidro and United States-Mexico border by re-routing between the United States-Mexican border via a new Highway.

**ORIGINAL**

Application No. 15222.

Warren E. Libby, for Applicant.

BY THE COMMISSION:

O P I N I O N

Fred A. Sutherland, doing business under the name of Sutherland's Tiajuana Stages, has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the re-routing of a portion of his present service between San Diego and San Ysidro, California, formerly known as Tiajuana, California, and the intermediate points of National City, Chula Vista, Otay and Palm City by routing a portion of said service between Chula Vista and San Ysidro via a new highway between the packing plant at Chula Vista and San Ysidro, as shown and delineated on the map marked "Exhibit A" attached to said application.

A public hearing on this application was conducted before Examiner Satterwhite at San Diego, the matter was submitted and is now ready for decision.

Applicant proposes to operate his stages over and along said new route in accordance with the time schedule marked "Exhibit B" attached to said application and to operate certain time schedules in accordance with applicant's Exhibit 2 under the tariff, rules and regulations of applicant now on file with this Commission. Applicant proposes to operate in said service Packol coaches now owned and operated by him in his present service and to add any necessary equipment in the operation of the proposed re-routed service.

There was no opposition to the granting of said application.

Applicant is the owner and operator of an automobile stage line between San Diego and San Ysidro, California, formerly known as Tiajuana, California, and the intermediate points of National City, Chula Vista, Otay and Palm City. Also from Coronado to Imperial Beach and Palm City and from Chula Vista to Aztec City and from San Diego to other outlying points. The route now followed by applicant between San Diego and San Ysidro and way points was authorized and is described in Decision No. 16466, on Application No. 11708, dated April 12, 1926.

Applicant testified in his own behalf and called other witnesses in support of his application. A petition was offered at the hearing by applicant signed by a large number of residents at Chula Vista, Otay and other points along the route requesting authorization of the proposed re-routed service on the basis that it will afford a direct service between Chula

Vista and the State border and way points and will shorten the walking distance to transportation by at least one mile for numerous patrons of said applicant.

The evidence shows that there has just recently been constructed a new highway extending from the packing plant at Chula Vista to a point just north of the boundary line of the United States and Mexico which connects with the present Tiajuana Boulevard. It was shown that applicant is now maintaining and offering more service between Chula Vista and Tiajuana on the present highway than is required by the public and that by using some of his existing schedules between San Diego and San Ysidro over the new highway applicant will serve better and more adequately the more thickly populated sections on Highland Avenue in National City, also the entire City of Chula Vista, including the territory lying between Chula Vista and Otay as well as the City of Otay, and the eastern portion of San Ysidro. It appears that this new highway has eliminated a dangerous curve for public traffic through San Ysidro.

After a careful consideration of all the evidence in this proceeding, we are of the opinion that the application should be granted.

Fred A. Sutherland 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 submitted, and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by Fred A. Sutherland, doing business under the name of Sutherland's Tiajuana Stages of an automotive service for the transportation of passengers and express between San Diego and San Ysidro, California, formerly Tiajuana, California, and intermediate points, via National City, Chula Vista, Otay and Palm City, via Chula Vista and San Ysidro and intermediate points over the new highway between the packing plant at Chula Vista and San Ysidro, as shown and delineated on map marked "Exhibit A" attached to application.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted for the operation of the proposed service hereinabove described, not as a separate right, but as part of applicant's present passenger and express operative rights between San Diego and San Ysidro and waypoints, subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.
2. Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from the date hereof, tariff of rates and

time schedules, such tariff of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty (60) days from the date hereof.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
4. No vehicle may be operated by applicant herein 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.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 21<sup>st</sup> day of

January, 1929.

Thos D. Lott  
C. S. Seaver  
Edward J. ...  
Leon ...  
Commissioners