

Decision No. 21466.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of Pickwick Stages System, to sell,
and Fred A. Sutherland, to purchase,
that certain automobile passenger
line of the former operated between San
Diego, Julian and Pine Hills, California,
and intermediate points, and that
certain automobile passenger line of the
former operated between San Diego, Santa
Ysabel, Warner's Hot Springs, California,
and intermediate points.

Application
No. 15402.

Libby & Sherwin, by W.A. Sherwin,
for applicants,

Morrison, Hohfeld, Shuman & Clark,
by Forest A. Cobb, for San Diego
Electric Railway Company, Inter-
ested Party.

BY THE COMMISSION:

O P I N I O N

Pickwick Stages System, a corporation, and F.A. Sutherland, have petitioned the Railroad Commission for an order approving the sale and transfer by the former and the purchase and operation by the latter of certain operative rights for the transportation of passengers and express between San Diego and Warner's Hot Springs and between San Diego and Julian and Pine Hills and intermediate points. The consideration for the sale and transfer is the sum of \$100., there being no equipment involved in the transaction.

A public hearing on this application was conducted by Examiner Handford at Los Angeles, the matter was duly submitted and is now ready for decision.

At the hearing the portion of the application requesting approval of the transfer of rights between San Diego, Santa Ysabel and Warner's Hot Springs was withdrawn.

Applicants rely as justification for the granting of this application on the allegation that the service proposed to be transferred is a local service and as such can be more efficiently operated by a local carrier; that the granting of the application

will result in economical operation and the rendition by applicant Sutherland of local service in and about San Diego; and that the interests of both applicants and the public will be best served by the authorization of the requested transfer.

Two public witnesses, business men of Ramona and Julian, testified in behalf of applicants and were of the opinion that the proposed service by applicant Sutherland would be satisfactory to their respective communities.

The operative rights, herein proposed to be transferred, are a portion of the operative rights transferred from Pickwick Stages, Inc. to Pickwick Stages System by this Commission's Decision No. 15674 on Application No. 11694, as decided November 21, 1925.

The Commission does not favor the transfer of portions of a consolidated operating right. In its Decision No. 11202 on Application No. 7803, as decided November 6, 1922 (22 C.R.C. 482-484) the Commission declared:

"The Commission does not look with favor upon an applicant securing a franchise upon a showing that public necessity requires a specific through service and subsequently selling sections of such certificate for substantial amounts, and thereafter rendering a service different than the one their original operative right authorized."

The Commission stated that the proper procedure, "if conditions have changed"

"would be the filing of an application for the modification of their existing operative right and upon a sufficient showing their existing operating right could be amended through an authorization permitting abandonment****".

While the right herein proposed to be transferred was originally granted under an individual proceeding and remained as a separate right for some time, it was by formal order of the Commission (Decision No. 15674 on Application No. 11694) consolidated with other rights, thereby losing its identity as a separate right.

Denying the application of Walter Kielhofer for an order authorizing him to transfer to L.L. Wright and James J. Kershaw

an operating right for a trucking service (23 C.R.C. 114-5)

the Commission says:

*****applicant Kielhofer is attempting by transfer, to create two distinct individual operating rights when only one was originally established through declaration of the Railroad Commission, a proceeding which would clearly be in violation of the provisions of Chapter 213, Statutes 1917, and amendments thereto, in that no greater or different right can be established through transfer than that originally created*****

After an investigation on the Commission's own motion, by Decision No. 15168 (26 C.R.C. 794-5) the Commission revoked an operative right granted to a partnership authorizing a trucking operation between Fresno and Cutler and intermediate points. The partners, Smith and Emich, after the Commission had denied them authority to "split" the operative right (Decision No. 11151, on Application No. 8312; 22 C.R.C. 443, holding in said decision that the operating right originally granted was indivisible), dissolved partnership and proceeded to do the very thing they had been refused permission to do. The investigation and order of revocation followed such unauthorized action.

In Decision No. 16783 on Application No. 11706(28 C.R.C.210), the Commission denied the application of J.R. Martin for authority to transfer an operative right to Adam A. Moore, holding that as Martin had abandoned service over a part of the territory covered by his certificate his right was subject to forfeiture. We quote from this decision:

"An operative right is to be regarded as a distinct entity and as such is indivisible. In granting a certificate the Commission acts upon evidence showing the necessity for service over the entire route, as distinguished from its constituent parts; consequently the obligation rests upon an operator to give continuous and adequate service over the whole route embraced within his certificate until he has been authorized by the Commission to discontinue service over such route or a part of it."

Of more recent date are decisions of the Commission bearing on the matter of a carrier seeking authorization to divest

itself of the burdens of a common carrier imposed by the terms of a certificate through the leasing of an operating right. The Commission has declared against such action its general declaration being to the effect that a carrier finding any of its burdens irksome should seek authority to abandon the service rather than authority to temporarily shift the burdens to another by a leasing arrangement.

In Application No. 14318, Pickwick Stages System, asked the Commission to issue its order approving a lease by it to A. Harwood of an operating right authorizing the transportation of freight between Willitts and Garberville. In its Decision No. 19412 in this matter denying the application (31 C.R.C. 260) the Commission says:

"Applicant Pickwick Stages System claims that it is primarily an operator of an automotive passenger stage service; that it does not desire to operate a freight carrying service and for these reasons desires to lease that part of its operating right between Willitts and Garberville requiring it to transport property other than express carried on its passenger stages."

"The statements in this matter by Pickwick Stages Company lead to the conclusion that it desires to divest itself of the obligation to carry freight and that being the case it should apply to this Commission to abandon such service."

Pickwick Stages System, in Application No. 14049 sought authority to lease to E.C. Craig an operating right for an automotive passenger and express service between Buellton and Los Olivos. In denying the application (Decision 19530, 31 C.R.C. 410) the Commission stated as follows:

"The Pickwick System undoubtedly has the right to serve all of the above towns, but such right is derived from Decision No. 14464 which effected a consolidation of most of its various existing operative rights between Los Angeles and San Francisco. It is apparent, therefore, that the right which applicant seeks to lease is only a portion of a larger operative right. This Commission has frequently, in matters involving sales, held that an operative right is indivisible. This principle should apply with equal force in cases where a lease of part of a right is sought***** From its own statements we are compelled to conclude

"that it desires to divest itself of its obligation to carry passengers and express over a route which has come to be merely a branch, of its main transportation system, and, accordingly, we feel that it should make application to abandon such right rather than to lease the same. (Decision No. 19412). We are of the opinion that ordinarily the public interest will not be served by permitting a lease of an operative right when the owner obviously desires to divest himself of the burden thereof, yet seeks to preserve his certificate because of possible future value. If the public need requires that the service be continued and another is ready to render such service, his interest therein should not be limited to that of a mere lessee."

And again, in Decision No. 20694 issued on Application No. 14897 (32 C.R.C. 567), in which California Transit Co. sought authorization to lease an operating right for the transportation of passengers and express between Los Banos and Merced, the Commission in denying the application, declared:

"It is obvious that the California Transit Company seeks by this proposed lease to temporarily shift the burden of operating this branch line, which is an important link in its main transportation system, to an inexperienced operator with no financial resources, who may succeed or fail in his undertaking.

"This Commission has heretofore, in other similar proceedings, looked with disfavor upon the policy of authorizing leases of operative rights and has suggested abandonment of service between particular points of operation where the owner of the operative rights feels that the operation is burdensome or unprofitable."

The Commission has heretofore, by its decisions herein referred to, definitely established a policy of regarding an operating right as indivisible and has expressed the opinion that not only does it look with disfavor on efforts to "split" or divide an operative right, either by sale or lease, but will not tolerate attempts to pass to another burdens which may be found by a carrier to be irksome or unprofitable. Relief may be had, and is properly to be sought through the medium of an application to abandon the service which a carrier no longer desires to perform.

To authorize the transfer of the operative rights as herein requested would be contrary to the established policy of this Commission which holds an operative right to be indivisible, and in view of such policy we are of the opinion that the application must be denied in accordance with the following order.

O R D E R

A public hearing having been held on the above-entitled application, the matter having been duly submitted, the Commission being now fully advised and basing its order on the conclusions as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that this application be and the same hereby is denied.

Dated at San Francisco, California, this 19th day of August 1929.

Thos B. Lewis
C. C. Leary
Ernest J. ...
John ...
M. J. ...
COMMISSIONERS.