

IBM

Decision No. 21505.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 McCLOUD TRANSPORTATION CO.,
 to issue certain shares of its capital
 stock to the original subscribers
 therefor named in its Articles of Incorporation,
 or to their assigns, and certain additional
 shares of said capital stock in exchange
 for assets and properties to be acquired,
 and of McCloud River Railroad Company
 to sell or exchange certain of its
 properties for stock of said McCloud
 Transportation Co.

ORIGINAL

Application No. 15867

Pillsbury, Madison & Sutro, for applicants.

BY THE COMMISSION:

O P I N I O N

In the above entitled matter the Railroad Commission is asked to make its order authorizing McCloud River Railroad Company to sell certain automobile stage operative rights and equipment to McCloud Transportation Co., and authorizing McCloud Transportation Co. to issue \$16,200.00 of stock and to deliver \$15,700.00 thereof to McCloud River Railroad Company in exchange for said automobile stage operative rights and equipment, and \$500.00 thereof to its incorporators, or their assigns.

It appears that McCloud River Railroad Company, in addition to its rail line operations, is, and has been since on or about January 1, 1928, engaged in the operation of an automobile stage line

for the transportation of passengers and baggage between McCloud and Mt. Shasta, having acquired the operative rights permitting such operations, by purchase from M. K. Davis. The operative rights in question permit the transportation of passengers and baggage between McCloud and Mt. Shasta, with no intermediate points, and were established by J. T. B. Davis through operations prior to May 1, 1917 and the filing of tariffs and time schedules. Under authority granted by the Commission the rights were thereafter, in 1922, transferred to M. K. Davis, who then in turn, transferred them to McCloud River Railroad Company pursuant to authority granted by the Commission by Decision No. 19195, dated December 27, 1927, in Application No. 14273.

Reference to Application No. 14273 shows that the consideration paid M.K.Davis was \$4,000.00, and that the properties transferred for this sum consisted of the operative rights and one Studebaker stage. It now appears that since the purchase the railroad company has made expenditures and acquired additional property and equipment consisting of one 22-passenger White auto bus, one 12-passenger White auto bus, garage property for the housing of the three stages and a lot, approximately 30 x 50 feet, adjacent to the railroad shop property at McCloud.

The railroad company now proposes to dispose of its automobile stage business and the properties referred to herein, to a corporation, known as McCloud Transportation Co., which it has caused to be organized for the purpose of acquiring them and thereafter conducting the operations. It alleges, in this connection, that it will be simpler and easier to have such operations carried on by a separate corporation, and its accounting and reports separately prepared and made from those of the railroad company. It further alleges that it believes it will be possible for McCloud Transportation Co. to bid for and obtain, under the Federal Mail Pay Act, mail contracts which cannot be obtained by the railroad company.

The new corporation, McCloud Transportation Co., was organized under the laws of the State of California on or about March 6, 1929 with an authorized capital stock of \$75,000.00, divided into 750 shares of the par value of \$100. each, all common. It proposes, and asks permission, to issue five shares of the aggregate par value of \$500.00 to its incorporators, and to deliver 157 shares of the aggregate par value of \$15,700.00, to the railroad company in exchange for the properties and the rights referred to herein.

Under the circumstances set forth in this proceeding we believe that the application should be granted, as provided in the order following this opinion. In authorizing the transfer of the operative rights, we wish to place the purchaser 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.

ORDER

Application having been made to the Railroad Commission for an order authorizing the transfer of operative rights and properties and the issue of stock, and the Railroad Commission being of the opinion that this is not a matter in which a public hearing is necessary and that the application should be granted, as herein provided, and that the issue of the stock is reasonably required for the purposes specified herein, which purposes are not in whole or in part

reasonably chargeable to operating expense or to income.

IT IS HEREBY ORDERED that McCloud River Railroad Company be, and it hereby is, authorized to transfer, on or before October 1, 1929, to McCloud Transportation Co., in exchange for \$15,700.00 of common capital stock, the operative rights and equipment referred to in the foregoing opinion.

IT IS HEREBY FURTHER ORDERED that McCloud Transportation Co. be, and it hereby is, authorized to acquire and operate such properties and to issue on or before October 1, 1929, \$16,200.00 of its common capital stock and to deliver \$15,700.00 thereof in payment for the rights and properties herein authorized to be transferred and sell \$500.00 thereof at par for cash to its incorporators or their assigns for the purpose of paying organization and incorporation expenses.

IT IS HEREBY FURTHER ORDERED that McCloud River Railroad Company be, and it hereby is, authorized to acquire and hold the \$15,700.00 of stock that McCloud Transportation Co. is herein authorized to issue to it in payment for the operative rights and properties referred to in this application.

The authority herein granted is subject to the following conditions:-

1. The consideration to be paid for the properties herein authorized to be transferred shall never be urged before this Commission or other public body or court as a measure of value thereof for rate fixing or any purpose other than the transfer herein authorized.

2. Applicant McCloud River Railroad Company shall unite immediately with applicant McCloud Transportation Co. in common supplement to the automobile stage tariffs on file with the Commission in the name of McCloud River Railroad Company, applicant McCloud River Railroad Company on the one hand withdrawing and applicant McCloud Transportation Co. on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3. Applicant McCloud River Railroad Company shall withdraw immediately all automobile stage time schedules filed in its name with the Commission, and McCloud Transportation Co. shall file immediately, in duplicate in its own name, time schedules covering the automobile stage service heretofore given by McCloud River Railroad Company, which time schedules shall be identical with those now on file in the name of McCloud River Railroad Company or time schedules satisfactory to the Railroad Commission.

4. The rights and privileges herein authorized to be transferred may not hereafter be sold, leased, assigned, transferred or service thereunder discontinued unless the written consent of the Railroad Commission has first been secured.

5. No vehicle may be operated by McCloud Transportation Co. unless such vehicle is owned by it or is leased under a contract or agreement on a basis satisfactory to the Commission.

6. McCloud Transportation Co. shall keep such record of the issue of the stock herein authorized and of the disposition of the proceeds as will enable it to file within thirty days after such issue a verified report, as required by the Railroad Commission's General Order No. 24, which order insofar as applicable, is made a part of this order.

7. The authority herein granted will become effective upon the date hereof.

DATED at San Francisco, California, this 30th day of August, 1929.

David D. Lewis

Al Stearns

Ernest J. Smith

Leon A. Whelan

M. J. Lee

Commissioners.