

Decision No. 22281

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 R. H. CLARKE and WALTER JOHNSON,  
 co-partners, doing business under the  
 name and style of Oakland-San Rafael  
 Express, to sell, and CONSOLIDATED  
 MOTOR TRANSPORT COMPANY, a corporation,  
 to buy operative rights between Oakland,  
 San Rafael and other points.

} Application  
 } No.16409

ORIGINAL

BY THE COMMISSION -

OPINION and ORDER

R. H. Clarke and Walter Johnson, co-partners, having petitioned the Railroad Commission for an order approving the sale and transfer by them to Consolidated Motor Transport Company, a corporation, of operating right for an automotive service for the transportation of property between Oakland and San Rafael and other points, and Consolidated Motor Transport Company, a corporation, has petitioned 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 declared to be the value of intangibles.

The operating right herein proposed to be transferred was acquired as follows:

By Decision No.10672, dated July 7, 1922, and issued on Application No.7607, R. H. Clarke and F. O. Garrett, co-partners, were authorized to operate an automobile trucking service for the common carriage of milk in cans between Ignacio and dairies in the vicinity of Ignacio on the one hand, and Oakland, Berkeley and Richmond on the other hand via San Rafael, San Rafael-Richmond Ferry and Point Richmond; and for the common carriage of freight, in general, between San Rafael and San Quentin on the one hand, and Richmond, Berkeley and Oakland on the other hand via Richmond-San Rafael Ferry and Point Richmond. Provision No.1 of the

order in Decision No.10672, reads as follows:

1- Nothing herein contained shall be construed as authorizing the transportation of milk or other freight between points, other than those above mentioned, by the establishment of joint rates and through routes or otherwise.

By Decision No.12860, dated November 26, 1923, and issued on Application No.9504 Walter Johnson acquired a one-third interest in the above described operating right. By Decision No.17172, dated July 31, 1926, and issued on Application No.13038, Garrett was authorized to transfer his interest in said right to Johnson.

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 as herein provided.

In recording the transaction on its books of account the purchaser may charge to its fixed capital account not more than the amount expended by the sellers or their predecessors in acquiring the operating right. The balance paid for the operating right must be charged to Account No.315, "Miscellaneous Charges to Income."

Consolidated Motor Transport 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- Applicants Clarke and Johnson shall immediately unite with applicant Consolidated Motor Transport Company in common supplement to the tariffs on file with the Commission covering service given under certificate herein authorized to be transferred, applicants Clarke and Johnson on the one hand withdrawing, and applicant Consolidated Motor Transport Company on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3- Applicants Clarke and Johnson shall immediately withdraw time schedules filed in their names with the Railroad Commission, and applicant Consolidated Motor Transport Company shall immediately file, in duplicate, in its own name time schedules covering service heretofore given by applicants Clarke and Johnson, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicants Clarke and Johnson, 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 Consolidated 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.

6- The order herein shall not be construed by Consolidated Motor Transport Company as authority to link up or join or consolidate the right herein authorized to be transferred with its existing rights.

Dated at San Francisco, California, this 2nd day of April,  
1930.

C. C. Seaver

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W. S. Lott

W. J. Cunn  
COMMISSIONERS.