

Decision No. 23347.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 CALIFORNIA-NEVADA STAGES, INC.
 for authority to issue and sell fifty-
 five (55) shares of its capital stock
 and to purchase and acquire therewith
 the right of C.C.Cochran to operate
 an automobile stage line as a common
 carrier of passengers, baggage and
 express between Sacramento and Marys-
 ville, California, and intermediate
 points, as authorized by the Commission,
 together with certain operative pro-
 perty and assets; and of said C. C.
 Cochran to sell and transfer said pro-
 perty to California-Nevada Stages, Inc.

Application No. 17041

Sanborn, Roehl, Smith and Brookman,
by A. B. Roehl, for applicants.

L. M. Bradshaw and A. S. Hutchinson,
for Sacramento Northern Railway, for protestant.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Railroad Commission is asked to enter its order authorizing C. C. Cochran to sell and transfer certain auto stage operative rights and properties to California-Nevada Stages, Inc. and authorizing the latter to issue \$5,500.00 of common stock in payment for such properties.

The Commission by an ex parte decision, No. 23197, dated December 19, 1930, granted the request of applicant subject to the conditions appearing in the order in such decision. One of the conditions was that the authority granted in such order should not become effective until five days after the date of the order.

On December 24, 1930 the Sacramento Northern Railway filed a petition for rehearing in this matter. In response to such petition the Commission by its order dated December 30, 1930, vacated and set aside its Decision No. 23197 dated December 19, 1930, and set the matter down for hearing.

It appears from the record that C. C. Cochran is engaged in the business of operating an automobile stage line for the transportation of passengers, baggage and express, for compensation, between certain points in the Sacramento Valley, as hereinafter set forth, conducting his operations under the authority granted by the Commission in Decision No. 15013 dated June 6, 1925 in Application No. 10598, and Decision No. 19167 dated December 23, 1927 in Application No. 12474.

Reference to these decisions shows that by Decision No. 15013 C. C. Cochran was granted a certificate of public convenience and necessity to operate an auto stage line as a common carrier of passengers and baggage over and along the Garden Highway via Nicolaus, Wilson School, Tudor, Knights Landing Junction, Oswald and Bogue between Sacramento and all intermediate points between Sacramento and Yuba City, and between Marysville and all intermediate points between Marysville and Sacramento, provided that no local service be rendered between Marysville and Yuba City and no through service between Sacramento and Yuba City or between Sacramento and Marysville. The certificate was granted with the understanding that seventeen miles of the route was owned by Matomas Company of California and the authority granted to operate was made subject to the rights of that corporation as owner of the private road. By Decision No. 19167 dated December 23, 1927 C. C. Cochran was authorized to operate an express service in conjunction with, and

as a part of, his passenger operative rights between Sacramento and Marysville and intermediate points via the Garden City Highway, provided that no local service be given between Marysville and Yuba City nor between Sacramento and Yuba City nor between Sacramento and Marysville; and further, that express parcels shall not exceed a weight of 100 lbs. per unit and that they may be carried only on passenger stages.

The testimony shows that C. C. Cochran has agreed to sell his operative rights, together with two Dodge-Graham 17-passenger automobile stages, to the California-Nevada Stages, Inc., a corporation, in exchange for \$5,500.00 par value of that company's common capital stock. The purchaser is engaged in the operation of automobile stage lines for the transportation of passengers, baggage and express between Sacramento and Marysville and intermediate points via Roseville and Lincoln. The petition contains no request to consolidate any operative rights or to change any of the terms and conditions under which the operative rights were granted to C. C. Cochran.

The testimony also shows that the operating revenues of C. C. Cochran for 1930 to December 24th amounted to \$7,423.27 and his operating expense to \$5,634.77, leaving a net operating revenue of \$1,788.50. The purchaser, it is of record, can operate the properties at a less cost than C. C. Cochran because of more favorable gasoline and tire contracts, and less terminal and general office expense. The value of the two stages of C. C. Cochran is reported at \$2,500.00, the cost of securing his operative rights at \$3,000.00. In addition he reports an expenditure of \$1,731.09 in attorney's fees and expenses in connection with applications of other operators to extend service in his territory. The \$2,500.

and \$3,000.00 items appear reasonable. We have not sufficient information before us to pass upon the reasonableness of the item of \$1,731.09 representing expenditures for attorney's fees and expenses in connection with applications of other carriers to extend operations into the territory served by C. C. Cochran. The authority herein granted is not to be construed as obligating the Commission in the future to authorize this or any other applicant to issue stock or other securities because of expenditures of the nature of the items apparently included in the \$1,731.09. Ordinarily such expenditures should be charged to operating expenses. This application can be granted without passing on the propriety of issuing stock against the \$1,731.09.

The purchaser is not acquiring any of the current assets of C. C. Cochran or assuming any of his current liabilities.

The Sacramento Northern Railway requests that the application be denied because the consideration to be paid for the properties is unreasonable and that the transfer is not in the public interest. Protestant seems to be of the opinion that if the transaction is consummated California-Nevada Stages, Inc. may shortly appear before the Commission and ask permission to consolidate the C. C. Cochran operative rights with those owned by it and remove the restrictions now applicable to the C. C. Cochran operative rights. Such a procedure would require Sacramento Northern Railway to again defend the adequacy of its service.

We do not know whether the purchaser intends to file an application such as contemplated by protestant. However, C. C. Cochran, if he does not sell his operative rights, could ask the Commission to remove the restrictions applicable to his operative rights and the protestant would be faced by the same issue.

Whether such a proceeding, if filed, is filed by C. C. Cochran or California-Nevada Stages, Inc. is immaterial, so far as this Commission is concerned. In either event the removal of the restrictions would have to be justified by substantially the same statement of facts.

While C. C. Cochran's earning statements show a loss each year, he has fully depreciated his equipment during the last five years, with the result that his 1930 operations show a profit. Moreover, the purchaser can effect certain economies. We find no merit in protestant's contention that the consideration is excessive. The order herein, as did the order in Decision No. 23197, dated December 19, 1930, will not permit the consolidation of any operative rights or modify such rights in any particular.

In making this order 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 thereof 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 properties and the issue of stock, a public hearing having been held before Examiner Fankhauser, and the Commission being of the opinion that the application should be granted, as herein provided, and that the money, property or labor to be procured or paid for through the issue of

the stock is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expense or to income;

IT IS HEREBY ORDERED that C. C. Cochran be, and he hereby is, authorized to sell and transfer to California-Nevada Stages, Inc. his operative rights and equipment referred to in the foregoing opinion, and California-Nevada Stages, Inc. be, and it hereby is, authorized to purchase and acquire said rights and properties and to issue, in the acquisition thereof, not exceeding \$5,500.00 of its common capital stock.

The authority herein granted is subject to the following conditions:

1. The order herein shall not be construed as authorizing any alteration or elimination of the restrictions heretofore imposed on said operating rights, which restrictions are set forth in the description of said operating rights heretofore and herein referred to.
2. C. C. Cochran shall within thirty (30) days from the date hereof cancel tariffs and time schedules on file in his name with the Railroad Commission, and said California-Nevada Stages, Inc., a corporation, shall file in its own name tariffs and time schedules, said time schedules and tariffs to contain the same rates, rules and regulations now maintained by C. C. Cochran, or rates and time schedules satisfactory to the Railroad Commission.
3. 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.

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 California-Nevada Stages, Inc. 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. No authority is hereby granted to California-Nevada Stages, Inc. to consolidate the rights to be acquired from C. C. Cochran with the rights it now owns.
7. California-Nevada Stages, Inc. 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, on or before the 25th day of each month, 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.
8. The authority herein granted will become effective fifteen (15) days from the date hereof. Under such authority no properties may be transferred, nor stock issued.

subsequent to February 28, 1931.

DATED at San Francisco, California, this 2nd day of February
~~Jan~~
~~1931~~, 1931.

Clarence

Leon Whiteley

W. J. Lee

W. B. Davis

Fred G. Stewart

Commissioners.