

Decision No. 23350

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of C. L. FORTIER AND SONS, now FORTIER TRANSPORTATION COMPANY, to have the interest of C.L.Fortier, a former partner therein, now deceased, transferred to Cordelia M. Fortier, his surviving wife, and of G. L. Fortier, W.J.Fortier, C.J. Fortier, C.E. Fortier and Cordelia M. Fortier to have the interest of C.L.Fortier, now deceased, in C.L. Fortier & Sons, now Fortier Transportation Company, transferred of record to the name of Cordelia M. Fortier.

) Application
) No.17159

ORIGINAL

In the Matter of the Application of C.F.MORGAN, doing business under the firm name and style of MORGAN'S AUTO EXPRESS AND FREIGHT LINE, to sell to Fortier Transportation Company, and of FORTIER TRANSPORTATION COMPANY to purchase all the right, title and interest of said C.F.Morgan, in and to an automobile freight and express line operated under the name of MORGAN'S AUTO EXPRESS AND FREIGHT LINE between Fresno, Fowler, Selma, Kingsburg and intermediate points.

) Application
) No.17160

BY THE COMMISSION -

OPINION and ORDER

The above entitled and numbered proceedings petition the Railroad Commission for an order

- 1- Approving the transfer to Cordelia M. Fortier of the one-fifth interest of C. L. Fortier, her deceased husband, in operating rights for a trucking service between Fresno and Reedley, and
- 2- Authorizing said Cordelia M. Fortier and her four sons, G. L., W. J., C.J. and C. E. Fortier, co-partners, to purchase and acquire from C. F. Morgan and operating right for a trucking service between Fresno and Kingsburg and intermediate points.

The two matters will be consolidated for consideration. A public hearing does not appear to be necessary.

It appears from the record that C.L.Fortier and his four sons operated, as a co-partnership, under the name of C.L.Fortier & Sons, the service between Fresno and Reedley. On December 4, 1925, the said C.L. Fortier orally, and in the presence of his partners, gave, transferred and conveyed all his right, title and interest in and to the property, good will and franchise right to said Cordelia M. Fortier. On December 5, 1925, C.L. Fortier, by duly executed grants, conveyed to Cordelia M. Fortier all the real property of which he was possessed.

On the death of
/C. L. Fortier the name of the partnership was changed to that of
Fortier Transportation Company, and the business of said partner-
ship has ever since been conducted under that name, the widow, as
the successor in interest of the said one-fifth interest of
C. L. Fortier in said co-partnership, sharing in the control and
management and expenses and profits of the business of said
co-partnership. Through inadvertence the approval of the
Railroad Commission of the transfer of the husband's interest to
the widow was not heretofore sought.

No consideration is named and as the four sons, as well as
the widow, are joint applicants in this proceeding, there appears
no good reason why the application for the Commission's approval
of the transfer herein sought should not be granted.

The operating right between Fresno and Reedley under which
the Fortiers have been operating was established as follows:

By Decision No.9492, issued on Application No.6670,
C. L. Fortier & Sons (G.L., W.J., C.J. and C.E.),
were authorized to transport freight between Fresno
and Reedley "as proposed by above applicants." The
rate exhibit shows rates between Fresno and Reedley
only, although the application requested authority
to serve intermediate points. By Decision No.15609,
the Fortiers were authorized to acquire from J.R.Proctor
a freight and express right between Fresno, Del Rey
and Parlier and intermediate points, and to consolidate
said right with the Fortier right, the effect of which
was to create a right for the transportation of property
between Fresno and Reedley and intermediate points.
Decision No.15609 also authorized a transfer from
an "old partnership," so-called, to a "new partnership,"
notwithstanding that the original grant of rights
(on Application No.6670), to the Fortiers was to the
full partnership consisting of the father and four sons.

IT IS HEREBY ORDERED that the application of Cordelia
M. Fortier, and G.L., W.J., C.J. and C.E. Fortier, for an order
of the Railroad Commission approving the transfer to her of
the one-fifth interest of C.L. Fortier, her deceased husband,
in the operating rights described in the next preceding paragraph
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- Applicant Cordelia M. Fortier shall immediately unite with the applicant, the existing partnership, in common supplement to the tariffs on file with the Railroad Commission covering service given under certificate, a one-fifth interest in which is herein authorized to be transferred, applicant, the existing partnership, on the one hand withdrawing, and applicant, the new partnership, on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3- Applicant existing partnership shall immediately withdraw time schedules filed in its name with the Railroad Commission, and applicant partnership, including Cordelia M. Fortier, shall immediately file, in duplicate, in its own name, time schedules covering service heretofore given by applicant existing partnership, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant existing partnership, 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 the new partnership, including Cordelia M. Fortier, 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.

By Application No.17160, as amended, Cordelia M. Fortier, G. L. Fortier, W. J. Fortier, C. J. Fortier and C. E. Fortier, co-partners, have petitioned the Railroad Commission for an order approving the purchase and acquisition by them from C. F. Morgan of operating rights for an automotive service for the transportation of property between Fresno and Kingsburg and intermediate points, and C. F. Morgan has petitioned for authority to sell and transfer said operating rights, the partnership to hereafter operate thereunder. The sale and transfer is 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 \$2500. Of this sum \$1750.00 is declared to be the value of equipment and \$750.00 is declared to be the value of intangibles.

The operating right herein proposed to be transferred was established by A. L. Morgan through operation prior to May 1, 1917, as evidenced by C. R. C. No.1, Local Freight Tariff No.1 of Morgan's Auto Freight and Express Line, filed with this Commission on March 6, 1918. By Decision No.21535, dated September 11, 1929, A. L. Morgan was authorized to transfer the right to C. F. Morgan, one of the applicants herein. The tariff establishing the right shows both express and freight rates between Fresno and Kingsburg and intermediate points via Fowler and Selma. The express rates, however, applied only to packages weighing under one hundred (100) pounds, transported apparently on the same vehicle as the freight. Subsequent tariff filings quote only freight rates, bearing out the conclusion that only a freight service was performed. The right herein proposed to be transferred is, then, a right to transport freight only by truck between Fresno and Kingsburg and intermediate points via Fowler and Selma.

Cordelia M. Fortier, G. L. Fortier, W. J. Fortier, C. J. Fortier and C. E. Fortier are 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 Application No.17160 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- Applicant Morgan shall immediately unite with applicants Cordelia M. Fortier, G. L. Fortier, W. J. Fortier, C. J. Fortier and C. E. Fortier in common supplement to the tariffs on file with the Commission covering service given under certificate herein authorized to be transferred, applicant Morgan on the one hand withdrawing, and applicants Cordelia M. Fortier, G.L. Fortier, W. J. Fortier, C. J. Fortier and C.E. Fortier on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3- Applicant Morgan shall immediately withdraw time schedules filed in his name with the Railroad Commission and applicants Cordelia M. Fortier, G. L. Fortier, W. J. Fortier, C. J. Fortier and C. E. Fortier shall immediately file, in duplicate in their own names time schedules covering service heretofore given by applicant Morgan, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant Morgan, 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 applicants Cordelia M. Fortier, G. L. Fortier, W. J. Fortier, C. J. Fortier and C. E. Fortier unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

6- The order herein shall not be construed by the Fortiers as authority to link up, join, merge or consolidate the rights herein authorized to be transferred with other rights now owned by the Fortiers.

Dated at San Francisco, California, this 2nd day of February,
1931.

Cl. Jones
Leon Whitely
W. H. Linn
W. B. Linn
J. G. Stewart
COMMISSIONERS.