

LEM

Decision No. 23723.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
FRED A. SUTHERLAND, )  
an individual, to sell, and TANNER )  
MOTOR TOURS, LTD., a corporation, to )  
purchase the sightseeing tour rights )  
of seller in and about San Diego, )  
California. )

**ORIGINAL**

Application No. 17390

BY THE COMMISSION:

OPINION

In the above entitled matter the Railroad Commission is asked to make its order authorizing Fred A. Sutherland to transfer all of his "Sight-seeing" operative rights to Tanner Motor Tours, Ltd., in accordance with the terms of an agreement dated April 28, 1931, a copy of which is filed as Exhibit "B", and authorize the purchaser to issue notes.

The operative rights to be transferred provide for the operation in and about the City of San Diego of automotive sightseeing tour service, reported as follows:

Tour No. 1

Coronado and Tia Juana.

Leaving U. S. Grant Hotel via Ferry to Coronado, Silver Strand, Imperial Beach, Palm City, Nestor, San Ysidro and Tia Juana, allowing one hour stop in Mexico. Returning via Otay Valley, Chula Vista, National City, Destroyer Base and Logan Heights. Round trip, maximum time allowance three hours. Operated daily.

Tour No. 2.

City and Point Loma.

Leaving U.S. Grant Hotel via Balboa Park to Hillcrest and Mission Hills residential districts, thence to Oldtown, Ramona's Marriage Place, Marine Base, San Diego Airports, Naval Training Station, Loma Portal, Theosophical Institute, Bennington Monument, Old Spanish Lighthouse on Pt. Loma. Return trip is made via the Caves and the Esplanade at Sunset Cliffs and Ocean Beach. Round trip, maximum time allowance, three hours. Operated daily.

Tour No. 3

Old Mission and Grossmont.

Leaving U.S. Grant Hotel via Mission Cliff Gardens, Normal Heights, Kensington Grade, Old Mission, La Mesa, thence to Grossmont. Returning via Spring Valley, Lemon Grove, Encanto, Golden Hill Park Playground and Golden Hill residential district. Round trip, maximum time allowance, three hours. Operated daily.

In addition, Fred A. Sutherland has agreed to sell to Tanner Motor Tours, Ltd., his membership in the Gray Line Association, Inc., of Baltimore, Maryland, for the City of San Diego, California, his concessions from all hotels in San Diego, California, for limousine services, insofar as he controls the same, and the goodwill of the vendor, as related to the aforesaid properties.

The price to be paid for the properties is the sum of \$25,000.00. Under the agreement, dated April 28, 1931, providing for the sale and purchase, \$10,000.00 of this amount is payable in cash and the balance is to be evidenced by three promissory notes, each in the amount of \$5,000.00 with interest at seven percent; one note payable on September 1, 1931, one note payable on April 1, 1932 and one note payable on September 1, 1932. Under the agreement the purchaser agrees to secure the payment of the notes to the satisfaction of the seller. The notes payable on September 1, 1931 and April 1, 1932 may be issued under the Commission's General Order No. 44. The note payable September 1, 1932 by its terms will fall due later than twelve months after the date thereof and consequently its issue should be authorized by the Commission by an order in this proceeding. The authority herein granted should not be construed as permitting Tanner Motor Tours, Ltd. to execute any instrument which will be a lien on public utility property to secure the payment of its notes. If the company desires such permission it will

be necessary for it first to file with the Commission a formal application.

It is observed that under the agreement of sale and purchase no physical properties will be transferred to Tanner Motor Tours, Ltd., in exchange for the purchase price of \$25,000.00. In this connection, however, the purchaser agrees that the order of the Commission may provide that the purchase price shall be charged to surplus. Such a charge, we believe, should be made.

It appears to us that the application should be granted. Fred A. Sutherland, in addition to operating these sightseeing tours, is engaged in the passenger stage business and desires to devote his entire time and attention to those operations. The Tanner Motor Tours, Ltd., at present is operating sightseeing tours elsewhere in the state and wishes to purchase the tours of Fred A. Sutherland in order to operate them as a part of its general business, particularly in connection with certain tours now conducted by it between Los Angeles and San Diego. It therefore appears that the transaction as proposed is in the public interest.

In making this order to transfer rights we desire 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 in the number of rights which may be given.

#### ORDER

Fred A. Sutherland and Tanner Motor Tours, Ltd., having applied to the Railroad Commission for an order authorizing the

transfer of operative rights and the issue of a note, and the Railroad Commission being of the opinion that this is not a matter in which a public hearing is necessary, 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 note is reasonably required for the purpose specified herein,

IT IS HEREBY ORDERED that Fred A. Sutherland be, and he hereby is, authorized to transfer to Tanner Motor Tours, Ltd., on or before August 31, 1931, the sightseeing operative rights referred to in the foregoing opinion, such transfer to be made in accordance with the terms of the agreement dated April 28, 1931, and filed in this matter as Exhibit "B", which agreement applicants are hereby authorized to execute.

IT IS HEREBY FURTHER ORDERED that Tanner Motor Tours, Ltd., be, and it hereby is, authorized to issue, on or before August 31, 1931, its unsecured promissory note in the principal amount of \$5,000.00 payable on September 1, 1932, with interest at the rate of seven percent per annum in part payment for said rights.

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

1. Fred A. Sutherland shall within thirty days from the date of the transfer of the operative rights as herein authorized, cancel tariffs and time schedules on file in his name with the Railroad Commission, covering service under the rights herein authorized to be transferred, and said Tanner Motor Tours, Ltd., 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 Fred A. Sutherland, or rates and time schedules satisfactory to the Railroad Commission.

2. 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 determining the value of said properties for any purpose other than the transfer herein authorized.
3. 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.
4. No vehicle may be operated by applicant Tanner Motor Tours, Ltd., 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.
5. No authority is hereby granted to Tanner Motor Tours, Ltd. to consolidate the rights to be acquired from Fred A. Sutherland with the rights it now owns.
6. Tanner Motor Tours, Ltd. shall keep such record of the issue of the note herein authorized and of the disposition of the proceeds as will enable it to file, on or before thirty (30) 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. No authority is hereby given to Tanner Motor Tours, Ltd. to execute any mortgage, deed of trust or other lien to secure the payment of the notes referred to in the

agreement of April 28, 1931.

8. The authority herein granted will become effective when Tanner Motor Tours, Ltd. has paid the minimum fee prescribed by Section 57 of the Public Utilities Act, which fee is Twenty-five (\$25.00) Dollars.
9. As payments are made on the aforesaid purchase price, such payments shall be charged to Account 315, "Miscellaneous charges to income."

DATED at San Francisco, California, this 25th day of May, 1931.

Al Janney  
Leon Whisely  
M. J. ...  
M. B. ...  
Fred G. Stewart  
Commissioners.

Fee # 25 <sup>00</sup>/<sub>100</sub>  
RAILROAD COMMISSION  
STATE OF CALIFORNIA  
MAY 27 1931  
R. J. ...  
Fee # 29111