

Decision No. 25759.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Benjamin S. Goldberg to) Application
approve the sale and transfer of) No. 18706.
the operating rights formerly)
owned by Goldberg and Spann.)

BY THE COMMISSION:

ORIGINAL

OPINION and ORDER

Benjamin S. Goldberg has petitioned the Railroad Commission for an order approving the sale and transfer of operating rights heretofore held by A.G. Spann and Benjamin S. Goldberg, as co-partners, for an automotive service for the transportation of property between Los Angeles and Alhambra, South Pasadena, Montrose and Tujunga.

Applicant Goldberg alleges that the sale and transfer were accomplished July 20, 1929, according to the agreement, marked Exhibit "A" and attached to the application, and is now fully paid but that applicant was advised that, due to the Commission's ruling in *Here v. Gilboy* (31 C.R.C. 556), approval of the transfer by the Commission was not required. The consideration paid for the property was \$6,000.00. The application is made only on behalf of Benjamin S. Goldberg who has filed his affidavit showing that he has made efforts to ascertain the address of A.G. Spann, but has been unable to do so, and hence Spann cannot be made a party to the instant application.

The operating rights herein proposed to be transferred were created by Decision No. 21381, dated July 19, 1929, on Application No. 15800.

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.

Benjamin S. Goldberg 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. Applicant Benjamin S. Goldberg shall immediately file a tariff, in triplicate, covering service given under certificate herein authorized to be transferred, which shall be identical with the tariff filed by A.G. Spann and Benjamin S. Goldberg.
3. Applicant Benjamin S. Goldberg shall immediately file, in duplicate, in his own name time schedules covering service heretofore given by A.G. Spann and Benjamin S. Goldberg, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of A.G. Spann and Benjamin S. Goldberg 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 Benjamin S. Goldberg unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that all tariffs and time schedules heretofore filed by A.G. Spann and Benjamin S. Goldberg be and they are hereby canceled.

Dated at San Francisco, California, this 20th day of March 1933.

C. L. Leary
Leon Cowley
W. H. Lee
M. B. Harris

COMMISSIONERS.