

Decision No. 25827.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CHARLES S. LOVE, ARTHUR O. ST. CLAIR, and HARRY MAYO, to sell, and FRANK FOPPIANO to purchase, certain operative rights for the transportation of freight and passengers for compensation between points on inland waters of the State of California.

ORIGINAL

Application No. 18541.

McCutchen, Olney, Mannon & Greene for The River Lines, as their interests may appear.

A. D. Schaffer for applicant Foppiano.

Gwyn H. Baker, for Arthur O. St. Clair, Harry Mayo and Frank Foppiano.

A. O. St. Clair, for vendor applicants.

HARRIS, Commissioner:

O P I N I O N

Charles S. Love, Arthur O. St. Clair and Harry Mayo have petitioned the Railroad Commission for an order approving the sale and transfer by them to Frank Foppiano of an operating right hereinafter described on San Francisco Bay, together with the launch named "Active" of ten (10) tons net register propelled by gas and all equipment thereon; and Frank Foppiano has petitioned for authority to purchase and acquire said operating right and property.

The consideration in cash for the operating right and property herein proposed to be transferred is the sum of Seventeen Hundred Dollars (\$1700.00).

A public hearing was held at San Francisco on March 7, 1933, and the matter submitted.

The operating right herein proposed to be transferred is the operating right of Harry Johnson. The evidence showed that the said Johnson on and prior to August 17, 1923, was operating said launch for the transportation of persons, newspapers and ships' stores between all points including battleships located on that portion of San Francisco Bay lying south of the line drawn between San Pablo Point and Black Point.

Harry Johnson died on November 9, 1931, and thereafter by virtue of court proceedings in the matter of his estate, all of the operating right and property hereinabove described were distributed to said Charles S. Love, Arthur O. St. Clair and Harry Mayo.

The application should be granted, subject to the conditions set forth in the order.

Frank Foppiano 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.

The following form of order is recommended:

O R D E R

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 to be transferred shall never be urged before this Commission or any other public body as a measure of value of said property for rate fixing or any purpose other than the transfer herein authorized.
2. Charles S. Love, Arthur O. St. Clair and Harry Mayo shall cancel all tariffs in name of Johnson Launch Company, and Frank Poppiano shall issue freight, demurrage and passenger tariffs in his own name, said tariffs to contain rates, rules and regulations governing the transportation of ships' stores, newspapers and persons between points on that portion of San Francisco Bay lying south of the line drawn between San Pablo Point and Black Point, not to exceed the rates now shown in tariffs of Johnson Launch Company.
3. The rights and privileges herein authorized to be transferred 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. The authority herein granted will become effective fifteen (15) days after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of April, 1933.

C. J. Sweeney
Leon O'Connell
W. J. Linn
M. B. Harris
W. H. ...
Commissioners.