

Decision No. 8588

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

In the Matter of the Application of O.L. Swett and Jose Figeroa for Certificate of Public Convenience and Necessity to operate an automotive truck line for freight service between Oakland and San Jose.)

APPLICATION NO. 4968.

In the Matter of the Application of Jose Figeroa for an order granting permission to transfer and sell all his right, title and interest in and to the Auto Truck Freight Line between Oakland-San Jose and intermediate points, and for permission to discontinue his connection with said service,)
and)

APPLICATION NO. 6293.

Application of O.L. Swett for an order granting permission to purchase said interest in said freight line and to operate the same hereafter.)

- H.H. McPike, for O.L. Swett.
- H.A. Encell, for Oakland-San Jose Transportation Company, Protestant.
- L.N. Bradshaw, for Southern Pacific Company, Protestant.

BY THE COMMISSION:

O P I N I O N

Under date September 17, 1919 O.L. Swett and Jose Figeroa, doing business under the fictitious name of S & F Auto Truck Freight Line, filed Application No. 4968 for a certificate of public convenience and necessity to operate an automotive truck line as a common carrier of freight between Oakland and San Jose.

Under date September 8, 1919, by Application No. 4941, G.F.Nissen and A.C.Woodward, doing business under the fictitious name of the Oakland-San Jose Transportation Company, also filed a petition for a certificate to operate a similar freight service between the same points. The applications were heard jointly before Examiner Handford at Oakland on September 30, 1919, and by Decision No. 6758, dated October 18, 1919, both applicants were granted certificates of public convenience and necessity to operate between the points mentioned.

The Oakland-San Jose Transportation Company, Nissen & Woodward, filed Local Freight & Express Tariff No.1, C.R.C.No.1, on December 30, 1919, commenced operations about that date and have since continued to operate without interruption.

The S & F Auto Truck Freight Line, Swett & Figeroa, filed Freight Tariff No.1, C.R.C.No.1, October 26, 1920 to cover the service commenced on October 18, 1920, which service it is claimed, has been continuous since that date and is now patronized by a large number of shippers.

The certificates issued October 18, 1919, as per Decision No. 6758, to both of these organizations specified no time limit within which the operations were to begin and, therefore, had there been no protest the commencement of service by Swett and Figeroa on October 18, 1920 would have been regular under the authority given.

Under date November 10, 1920, by Application No. 6293, Jose Figeroa made application to the Commission for authority to sell his interest in the freight line to his partner, O. L. Swett, the consideration in the bill of sale being set forth as the sum of \$1.00.

A protest was filed December 1, 1920 by the Oakland-San Jose Transportation Company, A.C. Woodward owner, against the operation by Swett & Figeroa of the service between Oakland and San Jose, and also against the granting of Application No. 6293, wherein Figeroa sought authority to transfer his operative rights to his partner, O.L. Swett. This protest alleged, among other things, that an unreasonable length of time had elapsed before the service was commenced; that the Oakland-San Jose Transportation Company had been in continuous operation since its certificate was granted in 1919; had made a large investment in the business and would be damaged if the competing company were permitted to continue its service; also that O.L. Swett intended to immediately resell the operative rights to other parties, and that the investment of the Oakland-San Jose Transportation Company was in excess of \$20,000.

Under date December 11, 1920, the Commission issued its order citing O.L. Swett and Jose Figeroa to appear and show cause why, by reason of their failure to begin operations within a reasonable time, the certificate granted under date October 18, 1919, by Decision No. 6758, in Application No. 4968, should not be revoked.

Public hearings on these two applications were conducted by Examiner Geary at San Francisco December 23, 1920 and January 13, 1921. The proceedings having been duly submitted are now ready for a decision. Exhibits were filed by applicants showing the revenue and expenses from October 18 to December 31, 1920, as well as a list of some 200 shippers who had given tonnage to the trucks and a number of witnesses were produced - patrons of the auto truck - who testified that they had found the service a necessity and urged

that its continuance be permitted. Applicant, on his own behalf, testified that the certificate was originally secured in good faith, but that the commencement of operations was delayed because of a severe illness to himself and difficulty experienced in securing the necessary finances; that the investment in truck and equipment now amounts to approximately \$2,500., also that much of the tonnage handled is new traffic and, therefore, resulted in no injury to the line operated by A.C. Woodward.

Testimony of applicant Swett was to the effect that he had no intention of transferring the certificate to outside parties, but was organizing a corporation, in which he would own practically all of the stock to which the operative rights secured by Decision No. 6758 would be transferred. It was further shown that the Oakland-San Jose Transportation Company has not a total investment of \$20,000., but that the value of their automobiles and equipment is very much less.

Protestant, Southern Pacific Company, presented exhibits giving the tonnage handled between Oakland and San Jose, also the schedule of its freight trains, and presented a number of petitions from merchants and individuals located at San Leandro, Hayward, Niles and Milpitas, who protested the operations of the S & F Auto Freight Line. Many of the signers of these petitions objecting to a continuance of operation by O.L. Swett were shown to be actual patrons of the Swett line and, therefore, evidently were not consistent in signing the petitions.

The order in the original proceeding set no time within which the service was to commence and no doubt there was unusual delay in this situation, but the conditions have not materially changed.

After a careful consideration of all the evidence in this proceeding, we are of the opinion that no good purpose would be served by the annulment of the certificate granted to O.L. Swett and Jose Figeroa October 18, 1919 by Decision No. 6758, and further find that the service inaugurated by this partnership on October 18, 1920 was in good faith; that a substantial investment has been made in the enterprise and that, therefore, the certificate should be continued in force. We are also of the opinion that no substantial reasons have been given why Jose Figeroa should not be permitted to transfer his rights in the operating certificate to O.L. Swett.

ORDER

The Railroad Commission hereby declares that public convenience and necessity require the operation of the S & F Auto Truck Line, Swett and Figeroa, between Oakland and San Jose and that the certificate issued October 18, 1919 by Decision No. 6758 should be continued in effect.

By Application No. 6293, filed by Jose Figeroa and O.L. Swett under date November 10, 1920, authority is sought to transfer and sell certain operative rights and privileges for the conduct of an automotive freight service between Oakland, San Jose and intermediate points, the applicant, Jose Figeroa, desiring to sell and the applicant, O.L. Swett, desiring to purchase and thereafter operate said service.

The conditions under which the proposed transfer is to be made are incorporated in a copy of agreement, made a part of the application in this proceeding, and the rights and privileges herein sought to be transferred are those acquired by applicants, Jose Figeroa and O.L. Swett, by reason of certificate of public convenience and necessity granted by the Railroad Commission in its Decision No. 4968, decided October 18, 1919.

The agreement, which is a part of this proceeding, sets forth \$1.00 as the amount to be paid for applicant Jose Figeroa's share of these operative rights.

The Commission does not herein pass upon the value of any properties involved in this proceeding, nor may the purchase price be considered as a basis for rate-making purposes either by this Commission or any other regulatory body.

IT IS HEREBY ORDERED that this application be and the same is hereby granted, subject to the following conditions:

1st- That the amount paid for the purchase of these operative rights, or for any property involved, shall not be considered as a measure of value of said operative rights or property before this Commission or any other regulatory body for rate fixing or any other purpose than the transfer herein referred to.

2nd- That the applicants, Jose Figeroa and O.L. Swett, operating under the firm name of S & F Auto Truck Freight Line, will be required to immediately cancel their tariff of rates in accordance with the provisions of General Order No. 51 and other regulations of the Railroad Commission.

3rd- That the applicant, O.L. Swett, operating under the firm name of S & F Auto Truck Freight Line, will be required to immediately file a tariff of rates, in duplicate, or to adopt as

his own the tariff heretofore filed by the applicants, Swett and Figeroa, operating under the firm name of S & F Auto Truck Freight Line, such rates to be identical with those now on file with the Railroad Commission by Swett and Figeroa. Such tariff or adoption of tariff must be in accordance with Rule 13 of General Order No.51 of the Railroad Commission.

4th- The rights and privileges hereby authorized to be transferred must not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

5th- No vehicle may be operated by the applicant, O.L. Swett, operating under the firm name of S & F Auto Truck Freight Line, unless such vehicle is owned by him or is leased by him for a specified amount on a trip or term basis, the leasing of equipment not to include the services of a driver or operator. All employment of drivers or operators of leased cars shall be made on the basis of a contract by which the driver or operator shall bear the relation of an employee to the transportation company.

Dated at San Francisco, California, this 26th day of January, 1921.

H. J. Loveland
Frank W. Wynn
H. H. Blanding
Erving Martin
Commissioners.