

ORIGINAL

DECISION No. 8734.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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In the Matter of the Application of)
G. EPPSON to sell and Western Motor)
Transport Company, a Corporation, to)
purchase and acquire the franchises)
and rights to operate an auto stage)
line.)

Application No. 6161.

Sanborn and Roehl by H. E. Sanborn
for Applicants.
Morrison, Dunne and Brobeck by A. L.
Whittle for San Francisco-Oakland
Terminal Railways, Protestant.
D. J. Hall, City Attorney for City of
Richmond.

BY THE COMMISSION.

O R D E R

G. Eppson and Western Motor Transport Company, a Corporation, have applied to the Railroad Commission for an order authorizing the purchase by Western Motor Transport Company of the operative rights of G. Eppson for the conduct of an automobile stage line for the transportation of passengers as a common carrier between the City of Albany in the county of Alameda and the City of Richmond in the county of Contra Costa.

A public hearing on this application was conducted by Examiner Handford at Richmond and the matter was duly submitted for decision.

Applicants allege that G. Eppson has been operating the stage line proposed to be transferred continuously over the route between Albany and Richmond since February, 1917, such date being prior to May 1, 1917, which was the date specified by the legislature in Chapter 213, Laws of 1917, as that upon

which operators then conducting a transportation company in accordance with the terms of such statutory enactment were not required to secure from the Railroad Commission a certificate of public convenience and necessity and permits from the various political subdivisions through which a route was operated. Chapter 280, Statutes of 1919, amended the provisions of Chapter 213, Statutes of 1917, by making possible the transfers of operative rights theretofore acquired upon the securing from the Railroad Commission of its authority for such transfer. The transfer of the rights and privileges is to be in accordance with the conditions of a bill of sale dated September 23, 1920, a copy of such bill of sale being attached to and forming a part of the application.

The granting of this transfer is opposed by the San Francisco-Oakland Terminal Railways who have filed formal protest in this proceeding, such protest alleging in substance that said protestant is furnishing electric railway transportation service over the same route as is followed by applicant, Eppson, by automobile stages and such route covering the operative rights herein proposed to be transferred. Protestant further alleges that the maintenance of an auto bus service tends to destroy and impair the vested property rights of protestant and that protestant is now and at all times has been able to care for all business offering over the route proposed to be transferred; that this application is alleged by protestant to be a subterfuge on the part of the Western Motor Transport Company, one of the applicants herein, to secure operative rights permitting the extension of operation along and upon Macdonald Avenue west of 23rd Street in the city of Richmond and protestant requests a denial of the application for transfer as herein sought.

At the hearing on this application applicant rested its case on the application as filed. Attorney for protestant, San Francisco-Oakland Terminal Railways, also submitted the matter on the pleadings as set forth in its verified protest. Later protestant, San Francisco-Oakland Terminal Railways, filed with the Commission a petition containing a motion that the Commission defer the formulation of an order and decision in this proceeding until a decision had been reached by the Commission on Applications Numbers 5274, 5361 and 5928^{and} of the order to show cause in Application Number 4587, said proceedings relating to the right of Western Motor Transport Company, applicant herein, to operate locally between Richmond and Oakland and intermediate points under the authority contained in Decision Number 6903, on Application Number 4587, as decided December 5, 1919, and also as to the right of the holder of an operative right to purchase or acquire another operative right and by the combination of the two routes so acquired to institute and establish through service. Protestant further makes the claim that no evidence is before the Commission in this proceeding, other than the verified application, that indicates that applicant, G. Eppson, has at this time or ever did have any operative rights to be transferred. We are of the opinion that the petition and motion of protestant, San Francisco-Oakland Terminal Railways, should be denied and that a decision on this proceeding should issue irrespective of the pendency of decisions on Applications Numbers 5274, 5361 and 5928 and on the order to show cause in Application Number 4587 for the reason that applicants in this proceeding are before the Commission in a matter concerning a transfer of an operative right heretofore made and enjoyed by applicant, Eppson. The motion for dismissal on the basis that no showing has been

made on the part of applicants that applicant, Eppson, was the possessor of the right to operate an automobile stage or that he had operated such stage during the period, as specified in the verified application, and that for such reason there is nothing before the Commission upon which it can base its position that there is an operative right to transfer, will be denied for the reason that applicants submitted this matter on the verified application and protestant, San Francisco-Oakland Terminal Railways, also submitted the matter without producing any proof by witnesses or otherwise as to their contentions that there was no operative right to transfer or nothing before the Commission upon which to base and order authorizing the transfer. The Commission has of record time schedules and tariffs of applicant, Eppson, same having been filed under date of March 23, 1917, and there is no evidence before the Commission or complaint that operation has not been continuously conducted in accordance with time schedules and tariffs lawfully on file.

THE RAILROAD COMMISSION HEREBY approves and authorizes the transfer of the operative rights for the conduct of an automobile stage line as a common carrier of passengers from G. Eppson to Western Motor Transport Company, a Corporation, such operative rights covering the transportation of passengers between Richmond, Contra Costa County, and Albany, Alameda County, subject to the following conditions:

- I - Applicant, G. Eppson, will be required to immediately cancel all tariffs and time schedules now on file with the Railroad Commission in accordance with the provisions of

General Order Number 51 .

- II - Applicant, Western Motor Transport Company, a Corporation, will be required to immediately file tariffs and time schedules with the Railroad Commission in accordance with the provisions of General Order Number 51 or to adopt as its own the tariff and time schedules, as heretofore filed by applicant, G. Eppson; all tariffs and fares to be the same as those heretofore filed with the Railroad Commission by applicant, Eppson.
- III - The rights and privileges, transfer of which are hereby authorized, may not again be transferred or assigned unless the written consent of the Railroad Commission to such transfer or assignment shall have first been secured.
- IV - No vehicle may be operated by applicant, Western Motor Transport Company, a Corporation; under this authority for transfer unless such vehicle is owned by such applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

V - The transfer of the rights and privileges hereinabove authorized, and the cancellation and filing or refiling of the tariffs and time schedules, as hereinabove referred to, shall be accomplished within thirty days from the date of this order.

Dated at San Francisco, California, this 11th day of March, 1921.

Frank P. Wilson
H. C. Condit
James M. Wood
Charles H. Howell

Commissioners.