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Decision No. 8858

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of CALIFORNIA NATIONAL BANK OF MODESTO, a national banking association, for an order authorizing the transfer to it of a certain franchise by F. A. Deister.

Application No. 6587

In the Matter of the Application of F. A. DEISTER, doing business under the fictitious name of Western Auto Stage Company, and W. E. TRAVIS and J. C. WALLING, for the approval of a certain agreement.

Application No. 6588

Cushing & Cushing, by Erwin E. Richter, for Applicant in Ap. 6587

H. A. Encell and Ernest Walling for Applicant in Ap. 6588

John P. Denehy for the Commissioner of Labor.

H. W. Zagoren for certain wage claimants.

BY THE COMMISSION.

O P I N I O N

In Application No. 6587, the California National Bank of Modesto petitions the Railroad Commission for an order authorizing the transfer to it of certain operative rights of F. A. Deister, operating under the fictitious name of the Western Auto Stage Company on the ground that said F. A. Deister, had on September 23rd, 1920, assigned to applicant said operative rights upon the following conditions embraced within the terms of said assignment:

"To have and to hold the same for the satisfaction of any debts, claims or obligations due said second party or its assigns from me at this time or any advances made me hereafter. And the said party of the first part does hereby appoint the said party of the second part or its assigns, his true

and lawful attorney irrevocable, with power of substitution and revocation, for the use and at the proper costs and charges, to sell and assign said franchise or operative rights to satisfy all demands due said party of the second part or its assigns, in case said action may become necessary to protect and pay said second party for all its right, title and interest in said franchise or operating rights in said order aforesaid."

The operative rights sought to be transferred are those authorized by this Commission in Decision No. 8117 on Application No. 5757, dated September 16, 1920. The operative rights referred to authorized the conduct of an automotive passenger stage service between Oakland and Fresno. This application No. 6587 is not signed by F. A. Deister, the owner of the operative rights, but is signed only by California National Bank of Modesto.

Application No. 6588 is an application of F. A. Deister, doing business under the fictitious name of Western Auto Stage Company to sell and W. E. Travis and J. C. Walling to purchase, acquire and hereafter operate a certain automobile stage line for the transportation of passengers between Oakland and Fresno. The operative rights herein sought to be transferred are those acquired by the applicant Deister in this Commission's Decision No. 8117 on Application 5757, decided September 16, 1920.

A hearing was held before Examiner Satterwhite on Friday, March 11th, 1921, at San Francisco. Said applications were consolidated for the purpose of receiving evidence and decision. The matters were submitted and are now ready for opinion and order.

In the application of the California National Bank of Modesto which is based upon an assignment of operative rights by F. A. Deister, the Commission is of the opinion that said assignment is illegal and void and of no effect under authority of Section 5, Chapter 213, Statutes of 1917, which in part reads as follows:

"Any right, privilege, franchise or permit, held, owned or obtained by any transportation company may be sold, assigned, leased, transferred or inherited as other property, only upon authorization by the Railroad Commission."

Moreover, application No. 6587 did not bear the signature of the owner, said F. A. Deister, of said operative rights which is required by the law of this State. We are therefore of the opinion that this application should be dismissed.

The evidence showed that applicant F. A. Deister had incurred large indebtedness including many labor claims. Travis and Walling, who are applicants in Application No. 6588, testified that if the operative rights involved in this proceeding were transferred to them or cancelled they would voluntarily pay claims against F. A. Deister, not to exceed \$13,100.00.

The matter of the indebtedness of applicant Deister is one over which this Commission has no jurisdiction.

Further testimony indicated that creditors had attached the equipment of Deister and that Deister had been indicted criminally, and had given no service over his route for some time. It appearing that no service has been rendered over the route between Oakland and Fresno by the applicant Deister under his operative rights; and in view of the fact that said service has been abandoned, the Commission will dismiss this application and suspend the operative rights of F. A. Deister indefinitely and until further order of the Commission.

#### O R D E R

Basing its order upon the statements of fact and conclusions contained in the above opinion,

IT IS HEREBY ORDERED that the application of the CALIFORNIA NATIONAL BANK OF MODESTO, No. 6587, be, and the same hereby is dismissed.

Basing its order upon the statements of fact and conclusions contained in the above opinion,

IT IS HEREBY ORDERED that the application of F. A. DEISTER, doing business under the fictitious name of Western Auto Stage Company, and W. E. TRAVIS and J. C. WALLING, No. 6588, be, and the same hereby is denied.

IT IS HEREBY FURTHER ORDERED, that the operative rights of F. A. Deister, doing business under the fictitious name of Western Auto Stage Company, to operate certain automobile stage lines for the transportation of passengers between Oakland, California and Fresno, California, be, and the same hereby is suspended indefinitely and pending further order of the Railroad Commission.

Dated at San Francisco, California, this 14<sup>th</sup> day of April, 1921.

H. A. Loveland

W. E. Travis  
John H. Howell  
Commissioners.