

ORIGINAL

Decision No. 9126.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

000000

In the Matter of the application of
FRANK J. McSHERRY for an order granting
permission to sell and transfer all his
right, title and interest in auto express
and parcel delivery line operating between
Santa Rosa, Petaluma, Novato, San Rafael,
San Anselmo, Larkspur, Mill Valley and
Sausalito and for permission to discon-
tinue his service, and of SAN RAFAEL
FREIGHT AND TRANSFER CO., to purchase said
right, title and interest and for per-
mission to operate same thereafter.
.....

) Application
) Number 6665.

Sanborn and Roehl by A. B. Roehl for Applicants.
Geary and Geary by D. Geary and E. H. Maggard
for Petaluma and Santa Rosa Railroad Co.,
Protestant.

R. W. Palmer and J. J. Geary for Northwestern
Pacific Railroad Company, Protestant.

Vallandigham and Quackenbush by R. M. Quackenbush
for P. P. Lawson, Protestant.

N. K. Lockwood for American Railway Express Co.

S. S. Knight for Petaluma Poultry Keepers Assn.

C. A. Hussey for Cinnibar Farm Center and Sonoma
County Farm Bureau.

BY THE COMMISSION:

OPINION

Frank J. McSherry and San Rafael Freight and Transfer
Company have petitioned the Railroad Commission for an order
authorizing the transfer of the operative rights held by said
applicant, McSherry, under decision of the Railroad Commission
Number 8422 on Application Number 6551, decided December 8,
1920, to Applicant, San Rafael Freight and Transfer Company.

A public hearing on this application was conducted by
Examiner Handford at Petaluma at which time the matter was sub-

mitted briefs to be filed by interested counsel , the time having elapsed for the filing of briefs without action by interested counsel or request for further time in which to file such documents, the matter is now ready for decision.

The operative rights proposed to be transferred are those acquired by Frank J. McSherry under Decision Number 8422 on Application Number 6531 , as decided December 8, 1920, such decision authorizing the transfer of operative rights formerly granted to Paris P. Lawson by Decision Number 7694 on Application Number 5581 as decided June 8, 1920, such operative rights granting to said Paris P. Lawson the right to conduct an automobile express service as a common carrier of express and light freight between Santa Rosa and Sausalito and intermediate points.

The proposed transfer is to be made in accordance with the provisions of an agreement under date of March 19, 1921, attached to and forming a part of the application in this proceeding.

This application is protested by the Northwestern Pacific Railroad Company, the Petaluma and Santa Rosa Railroad Company and P. P. Lawson.

The protest of the Petaluma and Santa Rosa Railroad Company and the Northwestern Pacific Railroad Company is based on the alleged fact that the original order (Decision Number 7694 on Application Number 5581, as decided June 8, 1920) granted to the first holder of these operative rights, Paris P. Lawson, a certificate in which declaration was made that public convenience and necessity required the operation by said Lawson of an automobile express service as a common carrier of express and light freight between Santa Rosa and Sausalito

and intermediate points and that the opinion preceding the order contained the following paragraphs which established the character of service proposed to be undertaken by Mr. Lawson.

"Witness in behalf of applicant, representing the Petaluma Co-Operative Creamery testified that at the present time it is impossible to ship fresh milk, cream and ice cream from Petaluma to San Anselmo or Mill Valley with any degree of satisfaction to the receivers of the freight for the reason that the train connections were poor and the time consumed too great.

It is not the intention of applicant to change the character of the business being done but rather to place the operations within the law and by tariff publication establish fixed rates to be collected for the service performed which appears to be nothing more nor less than the delivery of newspapers and small packages of merchandise, ice cream and dairy products.

The Northwestern Pacific Railway, Petaluma and Santa Rosa Railway, and the American Railway Express entered appearances but introduced no testimony in opposition to the application, it being the general opinion that Mr. Lawson's service did not sufficiently interfere with any business which was or could be handled by the regularly established transportation companies."

The granting of the approval of transfer is opposed by Paris P. Lawson who alleges that the transfer authorized by this Commission under Decision Number 8422 on Application Number 6351 is not in accordance with the facts supporting such application for the reason that it is alleged by protestant, Lawson, that the entire operative rights between Sausalito and Santa Rosa were not to be disposed of but that the agreement between protestant Lawson and Frank J. McSherry under date of December 1, 1920, was supposed to cover only the operative right between Sausalito and Petaluma and intermediate points, Mr. Lawson to retain the operative rights as granted by

Decision Number 7694 on Application Number 5581, decided June 8, 1920, between Petaluma and Santa Rosa and intermediate points.

The evidence in this proceeding and the records of the Commission do not justify the withdrawal of our approval to the proposed transfer. In the case of the protests of the Petaluma and Santa Rosa Railroad Company and Northwestern Pacific Railroad Company, the records show that both protestants were represented at the public hearing on Application Number 5581 held at Santa Rosa on May 26, 1920, and that each of such protestants received a copy of the Commission's Decision Number 7694 granting such application. Protestants were therefore duly notified as to the action of the Commission on Application Number 5581 and, if the order was not in accordance with the contentions of protestants, application for rehearing should have been filed within the time specified by the Commission's Rules of Procedure or the matter should have informally been brought to the Commission's attention.

As regards the protest of Paris P. Lawson: An inspection of the memorandum agreement filed with this Commission as a part of application Number 6351 shows that protestant, Lawson, assigned, transferred and set over to Frank J. McSherry all right, title and interest in the certificate of public convenience granted by this Commission in its Decision Number 7694 on Application Number 5581, such decision authorizing and permitting operation between Santa Rosa, Petaluma, Sausalito and intermediate points. This assignment and transfer was dated December 1, 1920, and was duly acknowledged on the same date before a notary public in the City and County of San Francisco, attestation of the notary public appearing on the document as above referred to. Under these conditions applicant, Frank J. McSherry, was duly authorized by a transfer from Paris P. Lawson, approved by this Commission under date of December 8, 1920, in its Decision Number 8422 on Application Number 6351

to operate an automobile express service as a common carrier of express and light freight between Santa Rosa and Sausalito and intermediate points. No evidence was produced at the hearing by protestants which indicates that applicant, Frank J. McSherry, had violated any of the provisions of the statutory enactment or of the rules or regulations of the Railroad Commission and, he having acquired his operative right after proper authorization by this Commission and having exercised such right in accordance with the requirements of the statutory law and the regulations of this Commission, the contentions of protestants have no status in this proceeding the protests of the Northwestern Pacific Railroad Company and the Petaluma and Santa Rosa Railroad Company being matters to be properly brought before the Commission by formal complaint or petition for reopening of the proceedings in Application Number 5581 and the protest of P. P. Lawson being a matter properly within the jurisdiction of the civil courts in that Mr. Lawson seeks in this proceeding to repudiate a written document signed by himself and authenticated before a notary public. We are of the opinion that our approval of the proposed transfer should issue and that applicant, Frank J. McSherry, should be authorized to transfer to applicant, San Rafael Freight and Transfer Company, such operative rights as he holds under the provisions of Decision Number 8422 on Application Number 6351 as decided December 8, 1921.

O R D E R

A public hearing having been held in the above entitled proceeding, the matter having been duly submitted and now ready for decision ,

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

I - The amount paid for the purchase of this property and operative right shall not be considered as a measure of value of said property or operative right before this Commission or any other authority for rate fixing or for any other purpose other than the transfer herein referred to.

II - That applicant, Frank J. McSherry, will be required to immediately cancel all tariffs and schedules or rates now on file with this Commission, such cancellation to be in accordance with the provisions of General Order No. 51 and other regulations of this Commission.

III - Applicant, San Rafael Freight and Transfer Company, will be required to immediately file its tariff, rates, and schedules or to adopt as its own the tariffs and schedules as heretofore filed with the Railroad Commission by applicant, Frank J. McSherry, all rates as hereafter filed to be in accordance with those now on file with this Commission in the name of Frank J. McSherry.

IV. - The rights and privileges, transfer of which are hereby authorized, may not again be transferred nor assigned, sold or leased or operation thereunder discontinued unless the written consent of the Railroad Commission to such sale, lease, transfer, or assignment or discontinuance or operation will have first been secured.

V - No vehicle may be operated by applicant, San Rafael Freight and Transfer Company, under the provisions of this authorization of transfer unless such vehicle is leased by it for a specified amount on a trip or term basis, the leasing of equipment not to include the service of a driver or operator. All employment of drivers or operators of leased equipment 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 21st
day of June, 1921.

H. B. Brundage
H. W. Loveland

H. A. Brown
Commissioners.