

Decision No. 28758

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ALHAMBRA TRANSFER & STORAGE CO., a corporation, formerly the Alhambra Fuel & Feed Co., a corporation, to sell, and Alford P. Olmstead and Ruel R. Neiger to purchase an auto - mobile freight line operated between Los Angeles and Alhambra, California.

ORIGINAL

) Application No. 19206

In the Matter of the Application of Ruel R. Neiger and Alford P. Olmstead, doing business as Alhambra Storage Company, to sell, and L. R. Kagarise, doing business as Keystone Express System, to purchase an automobile freight line operated between Los Angeles and Alhambra, California.

) Application No. 19207

Alfred P. Olmstead, for Applicants.

Larence B. Martin, for Etta Carter et al.,  
interested parties.

BY THE COMMISSION -

OPINION

The above entitled applications request the approval of two transfers of the operating rights of Alhambra Transfer and Storage Company for the transportation of property by auto truck between Los Angeles and Alhambra. Agreements of sale are contained in each application.

Public hearings thereon were conducted by Examiner Kennedy at Los Angeles.

The operating right was created by operations conducted by Alhambra Feed and Fuel Company prior to May 1, 1917. The corporation changed its name to Alhambra Transfer and Storage Company. The operation was conducted under proper tariffs and time schedules by this corporation until January 1, 1933, when it passed (under agreement, Exhibit "A", application No. 19206), to Alfred P. Olmstead and Ruel R. Neiger.

The transfer was in settlement of indebtedness to the individuals and it was stated to be \$905.68 for a truck, and \$594.32 for the operative right. From January 1st to March 1st, Olmstead and Neiger conducted the operations. On the latter date they passed the operation to L. R. Kagarise under an agreement (Exhibit "A", Application No.19207), by which he agreed to pay \$1500. for the operating right only, to be paid \$25.00 a month through a five year period. Kagarise did not on March 1st, or thereafter, operate the service. He already had a right, acquired by purchase from H. H. Walker (Application No.13970, November 4, 1927), for the transportation of property between Los Angeles and Alhambra, San Gabriel and Arcadia, which gave him service to Alhambra and which he made a part of this general operation under the name Keystone Express System, and later was, by authority, consolidated with his other operations. What he did was to absorb all shipments tendered Alhambra Transfer & Storage Company at Keystone rates and transport them to Alhambra where Olmstead and Neiger, under contract, made pickup and delivery in Alhambra and Monterey Park at a rate of 8 cents per 100 pounds, all the remainder of the rates going to Kagarise. This continued until the hearing (December 14, 1933), and Kagarise expressed no intention of desisting, claiming the rates were identical. However, though the structures are the same, there are variations where the Kagarise rates are lower.

Although Olmstead and Neiger acquired the rights by the agreement of January 1st, and Kagarise by the agreement of March 1st, no application was presented to this Commission until November 23rd, when both applications were presented. While the applications were signed by the principals on March 1st, the applications were verified August 31st. Blame for the delay was assumed by Olmstead who laid it to his own negligence.

The applications show that Olmstead and Neiger agreed to purchase the operating right and truck, the truck being valued at \$905.62. They seek to transfer the right alone for \$1500.00 on payments of \$25.00 monthly. Kagarise testified he had made no payments because the matter had not been presented to the Commission. He did, however, gain the consolidation of the traffic. All interested testified the divided volume was unprofitable.

In addition, minority stockholders of the Alhambra Transfer and Storage Company intervene to question the transfers, particularly that from the corporation to Olmstead and Neiger who represent about 85 percent of stock ownership. Corporation records were produced to show the regularity of the transfer, but this is a phase outside the jurisdiction of this Commission.

We are asked to approve such a double transaction and confirm Kagarise in the exercise of the rights involved. The savor of the whole transaction is not appetizing. Kagarise is an experienced operator under certificate and has acquired many certificates. That he should acquire from two persons, who had not approved title, a right paralleling one owned by him and immediately make the arrangements he did, without even presenting any part for scrutiny of this Commission, indicates gross disregard of his legal duty. He does not seem to have had any interest except in extinguishing a competing service and absorbing its benefits. As for Olmstead and Neiger, they showed equal disregard for their legal duty and cannot expect condonation.

Considering all the facts as contained in the record, the obvious duty of this Commission is to deny both applications. L. R. Kagarise should be ordered to cease and desist the transportation of any shipments

except those properly consigned to Keystone Express System.  
An order with such intent will be made.

ORDER

The above entitled applications having been submitted  
for decision after a public hearing,

IT IS HEREBY ORDERED that Applications Nos.19206 and  
19207 each be denied; and

IT IS HEREBY FURTHER ORDERED that L. R. Kagarise,  
operating as Keystone Express System, immediately cease and  
desist from receiving or transporting shipments consigned  
to or by Alhambra Transfer and Storage Company or Alford P.  
Olmstead and/or Ruel R. Neiger, between Los Angeles and  
Alhambra or Monterey Park.

Dated at San Francisco, California, this 22<sup>d</sup> day  
of January, 1934.

CC Seamy

Leon Whitley

W. H. Lee

W. B. Karpis

W. H. Lee

COMMISSIONERS.