

Decision No. 26995

OFFICE OF THE
RAILROAD COMMISSION

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
U. G. SMITH and I. S. NEWLAN, co-
partners, doing business under the
firm name and style of SMITH AUTOMOBILE
COMPANY, for them to sell, and WESTERN
TRUCK LINES, LTD., a corporation, to
purchase the operative rights and equip-
ment for the automotive transportation
of freight between Bishop and Mammoth,
California, granted under Decision No.
12468 of the Railroad Commission of the
State of California, and extensions
thereof between Mammoth and Crystal
Craig and Tamarack Lodge, granted under
Decision No. 16996, and extensions
thereof between Mammoth and June Lake
and Silver Lake, granted under Decision
No. 17981.

Application No. 19339.

Owen C. Emery for applicant.

Guy S. Alexander and L. B. Larson for
High Sierras Motor Transport, protestant.

BY THE COMMISSION:

OPINION

U. G. Smith and I. S. Newlan, co-partners, doing business as Smith Automobile Company, have petitioned the Railroad Commission for an order approving the sale and transfer by them to Western Truck Lines, Ltd. of operating rights for an automotive service for the transportation of property between Bishop and Mammoth, June Lake and Silver Lake and certain intermediate points, and Western Truck Lines, Ltd. has petitioned for authority to purchase and acquire said operating rights and to hereafter operate thereunder, the sale and transfer to be in accordance with an agreement, a copy of which, marked Exhibit "A", is attached to the application herein and made a part thereof. As the purchaser is executing notes exceeding twelve (12) months in completing the purchase, the statutory fee will be required.

The consideration to be paid for the property herein proposed to be transferred is given as \$1,500.00. Of this sum \$500.00 is declared to be the value of equipment and \$1,000.00 is declared to be the value of intangibles.

Public hearing was conducted by Examiner Geary at Bishop April 5, 1934, and the proceeding having been duly submitted is now ready for an opinion and order.

The operating rights herein proposed to be transferred were created by Decision No. 12458 in Application No. 9223; Decision No. 16996 in Application No. 12956; and Decision No. 17981 in Application No. 13516.

The operations by applicant have been conducted for many years, testimony indicating that they first commenced performing a service about 1916 but the financial results in past years have not been satisfactory. The gross revenue for the year 1933 was \$1,643.18, with actual operating expenses of \$1,421.65 or a profit of \$221.53 without giving any consideration to certain overhead expenses and the return on investment.

The Western Truck Lines, Ltd., to whom applicant desires to sell the franchise and equipment, now operates a certificated freight service between Los Angeles and Bishop and possesses surplus trucks which can meet the public requirements via the added route without the purchase of additional equipment, and it intends to carry on the services without changing the schedules or the rates.

A protest against the granting of the application was made by the High Sierras Transport Company, a fictitious name for a franchise line owned by Alexander and Larson. This protestant operates a passenger and freight line and competes in most of the territory involved in this proceeding. The record, however, shows that the Western Truck Lines, Ltd. has been delivering all of the unrouted freight to the Smith Automobile Company and that therefore no damage will be done to the High Sierras organization. It does

not appear to the Commission that the owner of these properties should be denied the right to sell merely because a competing company objects to a new owner.

There appears satisfactory evidence that the application should be granted and it will be so ordered.

Western Truck Lines, Ltd. is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

ORDER

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

1. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission or any other rate fixing body as a measure of value of said property for rate fixing, or any purpose other than the transfer herein authorized.
2. Applicants U. G. Smith and I. S. Newlan, co-partners, shall within twenty (20) days after the effective date of the order unite with applicant Western Truck Lines, Ltd. in common supplement to the tariffs on file with the Commission covering service given under certificate herein authorized to be transferred, applicants Smith and Newlan on the one hand withdrawing, and applicant Western Truck Lines, Ltd. on the other hand accepting and establishing such tariffs and all effective supplements thereto.
3. Applicants U. G. Smith and I. S. Newlan shall within twenty (20) days after the effective date of the order withdraw time schedules filed in their names with the Railroad Commission, and applicant Western Truck Lines, Ltd. shall within twenty (20) days after the effective date of the order file, in duplicate, in its own name time schedules covering service heretofore given by applicants Smith and Newlan, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the names of applicants Smith and Newlan, or time schedules satisfactory to the Railroad Commission.

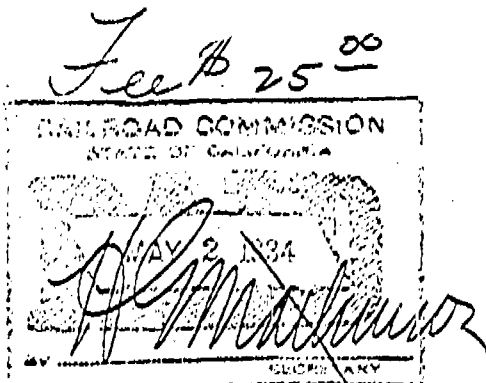
4. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been secured.

5. No vehicle may be operated by applicant Western Truck Lines, Ltd. unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

6. This order shall not become effective until there has been paid to the Railroad Commission the fee required by the Public Utilities Act and the Auto Stage and Truck Transportation Act to be paid on all evidences of indebtedness extending over a period of one year, in this instance the minimum fee of \$25.00.

Dated at San Francisco, California, this 30th day of April, 1934.

C. C. Leary
Leon A. Hill
M. A. Lee
M. B. Lanning
Walter A. Mearns
Commissioners.



Fee # 30867