

ORIGINAL

Decision No. 27048

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
ZIMMERMAN BROTHERS TRANSFER and STORAGE
COMPANY, a corporation, and L.R. KAGARISE,
doing business as KEYSTONE EXPRESS SYSTEM,
for an order permitting the sale by the
former and the purchase by the latter of
that franchise or operative right for the
transportation of personal property by motor
truck between Los Angeles and Long Beach,
California, and intermediate points.)
Application
No. 19344

Libby & Sherwin, by W. E. Libby, for applicants.

H. J. Bischoff, for Rice Transportation Company and
Motor Freight Terminal Company, Protestants.

E. T. Lucey, for The Atchison, Topeka & Santa Fe
Railway Company, interested party.

C. W. Cornell, for Pacific Electric Railway Company,
Southern Pacific Company and Pacific Motor Transport
Company, Protestants.

Charles A. Bland, for Long Beach Board of Harbor
Commissioners, interested party.

Jesse B. Porter, for Zimmerman Brothers Transfer and
Storage Company, applicant.

John L. Kelly, for Citizens Transfer and Storage
Company, Protestant.

M. A. Casenave, for Citizens Truck Company, Protestant.

M. H. Richards, for Richards Trucking and Warehouse
Company, Protestant.

BY THE COMMISSION -

OPINION and ORDER

Zimmerman Brothers Transfer and Storage Company, a corpor-
ation, has petitioned the Railroad Commission for an order
approving the sale and transfer by it to L. R. Kagarise, doing
business as Keystone Express System, of an operating right for
an automotive service for the transportation of property between

Los Angeles and Long Beach and certain intermediate points, and L. R. Kagarise has petitioned for authority to purchase and acquire said operating right 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.

The consideration to be paid for the property herein proposed to be transferred is given as \$5000.00, which sum is declared to be the value of the operative right only.

Applicant Kagarise also sought the consolidation of the right to be acquired with his consolidated operations under the name of Keystone Express System. He now has authority to serve Long Beach and certain points intermediate to Los Angeles by pickup and delivery but only between such points and those east of Los Angeles. Consolidation of the right to be acquired carried with it practical nullification of the existing restriction. This and other restrictions are now involved in Cases 3437 and 3686, wherein Kagarise has obtained extension of time for the purpose of obtaining a writ of certiorari from the Supreme court. Applicant stipulated that decision in reference to consolidation may remain in abeyance until the final determination of these cases. Upon this basis the Commission will, for present purposes, deny consolidation without prejudice and applicant may revive same by supplementary application when the cases alluded to are finally determined. Applicant's present showing, or further showing, will then be considered.

Protestants sought not only to prevent consolidation but to prevent the transfer of the right on the ground that the Zimmerman Brothers Transfer and Storage Company had violated its operative rights. It was admitted by L. H. Zimmerman that operations had been conducted between Long Beach and Los Angeles harbor points in transporting shipments formerly

handled by a connecting carrier; that it had used trucks of the Adley Company for long periods without filing proper leases with the Commission; that much of the Adley service had been at a division of rates, rather than a lease of the trucks; that contract operations were conducted under the name of Zimmerman Brothers Trucking Company with the same equipment but with separate accounting. He denied that such contract operations were between Los Angeles and Long Beach. Drivers worked for both operations. Much was presented concerning the express contract relationship between the seller and buyer and Keystone Express Company. Analysis of the record results in the conclusion that the Zimmermans were careless and, in some cases, neglectful of their obligations as carriers. This is not a disciplinary proceeding, and what was produced in evidence would not justify revocation nor suspension of the right involved. Nor is there basis in the record for assuming misuse of the right by applicant Kagerise.

The application to transfer will be granted under the usual conditions but with the admonition to the purchaser that the routes shown in Exhibit "B", attached to the application, are not approved by the mere authority to transfer the right. The creator of the right by prescription (before 1917), could not have at least one of the routes shown (Atlantic avenue). No evidence was produced to show that it existed at the time the right was created.

The operating right herein proposed to be transferred was created by Decision No.24865, dated June 13, 1932, on Application No.18152.

A public hearing was held by Examiner Corman at Los Angeles.

L. R. Kagarise 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.

IT IS HEREBY ORDERED that the above entitled application be, and the same is hereby granted as to the transfer of operative right only, 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. Applicant Zimmerman Brothers Transfer and Storage Company shall within twenty (20) days after the effective date of the order unite with applicant L. R. Kagarise in common supplement to the tariffs on file with the Commission covering service given under certificate herein authorized to be transferred, applicant Zimmerman Brothers Transfer and Storage Company on the one hand withdrawing, and applicant L. R. Kagarise on the other hand accepting and establishing such tariffs and all effective supplements thereto.
3. Applicant Zimmerman Brothers Transfer and Storage Company shall within twenty (20) days after the effective date of the order withdraw time schedules filed in its name with the Railroad Commission, and applicant L.R. Kagarise shall within twenty (20) days after the effective date of the order file, in duplicate, in his own name time schedules covering service heretofore given by applicant Zimmerman Brothers Transfer and Storage Company, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant Zimmerman Brothers Transfer and Storage Company, 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.

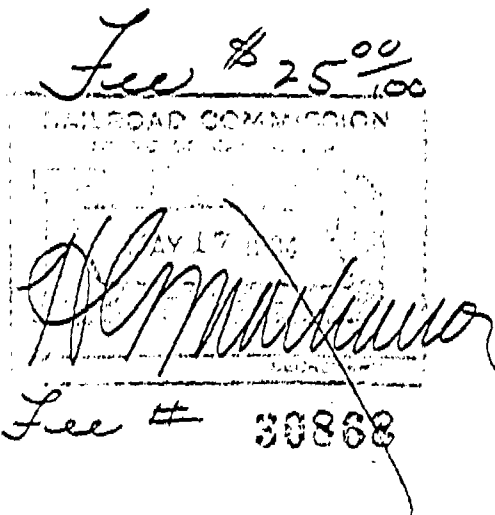
5. No vehicle may be operated by applicant L. R. Kagarise unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

6. The authority granted to sell and transfer the right and/or property shall lapse and be void if the parties hereto shall not have complied with all the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.

7. 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.

IT IS HEREBY FURTHER ORDERED that, in all other respects, the application be denied without prejudice.

Dated at San Francisco, California, this 14th day of May, 1934.



P. C. Seaver
Leon C. Whitwell
W. J. Cunn
M. B. Harris
W. H. C. Harris
COMMISSIONERS.