

Decision No. 27195

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
GEO. WM. SMITH, RALPH B. SMITH and)
WILLIAM M. SMITH to sell, and)
BERNARD C. TUCKER and DONALD A. PARKER) Application No. 19492
to purchase an automobile truck,)
passenger and freight line operated)
between Etna and Somes Bar, California.)

BY THE COMMISSION -

OPINION and ORDER

George Wm. Smith, Ralph B. Smith and William M. Smith, co-partners, have petitioned the Railroad Commission for an order approving the sale and transfer in part^{by}/them to Bernard C. Tucker and Donald A. Parker, copartners, of the operating rights for an automotive service for the transportation of passengers and property between Etna and Orleans and Somes Bar, and Bernard C. Tucker and Donald A. Parker have petitioned for authority to purchase and acquire said operating rights in part 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.

Applicants George Wm., Ralph B. and William M. Smith propose to sell that portion of their right between Etna and Somes Bar only, and to discontinue service between Somes Bar and Orleans, which route is now served by Humboldt Motor Stages, Inc. and with which connections will be maintained by the purchasing partnership. Bernard C. Tucker, one of the purchasing partnership, now operates passenger and freight service between Etna and Gazelle, via Callahan, which service, like the one sought to be transferred, was established prior to May 1, 1917.

The consideration to be paid for the property herein proposed to be transferred is given as \$250.00, which is declared to be the value of intangibles. No equipment is to be transferred.

The operating rights herein proposed to be transferred were created by prescriptive right of C. A. Tyler and by Decision No.17835, dated January 5, 1927.

We are of the opinion that this is a matter in which a public hearing is not necessary and that the application should be granted.

Bernard C. Tucker and Donald A. Parker are 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, 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 George Wm. Smith, Ralph B. Smith and William M. Smith shall within twenty (20) days after the effective date of the order unite with applicants B. C. Tucker and D. A. Parker in common supplement to the tariffs on file with the Commission covering service given under certificate herein authorized to be transferred, applicants George Wm. Smith, Ralph B. Smith and William M. Smith on the one hand withdrawing, and applicants B. C. Tucker and D. A. Parker on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3. Applicants George Wm. Smith, Ralph B. Smith and William M. Smith shall within twenty (20) days after the effective date of the order withdraw time schedules filed in their names with the Railroad Commission, and applicants B. C. Tucker and D. A. Parker shall within twenty (20) days after the effective date of the order file, in duplicate, in their own names time schedules covering service heretofore given by applicants George Wm. Smith, Ralph B. Smith and William M. Smith, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the names of George Wm. Smith, Ralph B. Smith and William M. Smith, 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 applicants B.C.Tucker and D.A.Parker unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

6. The authority granted to sell and transfer the rights and/or property, in part, 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.

IT IS HEREBY FURTHER ORDERED that George Wm. Smith, Ralph B. Smith and William M. Smith, co-partners, be and they are hereby authorized to discontinue all service between Somes Bar and Orleans, provided applicants shall within twenty (20) days from date hereof file with the Commission withdrawal and cancellation of their tariffs and time schedules now on file covering such service.

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

C. L. ...
W. H. ...
W. H. ...
COMMISSIONERS.