

Decision No. 27198

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of the )  
ESTATE OF FRED SUTHERLAND, DECEASED, )  
to sell and of SUTHERLAND STAGES, INC., )  
a corporation, to purchase an automobile )  
(passenger and express line) operated )  
between the City of San Diego, California, )  
and Port of San Ysidro, California, inter- )  
national boundary. )

Application No. 19481

In the Matter of the Application of )  
SUTHERLAND STAGES, INC., )  
a corporation, for a permit authorizing )  
it to sell and issue its securities. )

Application No. 19495

Arthur F. H. Wright, for the Estate of  
Fred A. Sutherland, Deceased.  
Hunter M. Muir, for Sutherland Stages, Inc.

BY THE COMMISSION:

O P I N I O N

In Application No. 19481, as amended, J. W. Fisher, as administrator of the Estate of Fred A. Sutherland, Deceased, asks permission to transfer certain auto stage operating rights and properties to Edward Hale and Edward Hale asks permission to transfer the same to Sutherland Stages, Inc., a corporation.

In Application No. 19495, Sutherland Stages, Inc. asks permission to issue 150 shares of its capital stock of the par value of \$100.00 each and the total par value of \$15,000.00.

The operating rights proposed to be transferred permit the transportation of passengers and express by auto stages between San Diego and the boundary line between the United States and Mexico near San Ysidro. Such rights were created by Fred A. Sutherland by operation prior to May 1, 1917, and were enlarged

by reason of the authority granted by the Commission in Decision No. 20697, dated January 21, 1929, in Application No. 15222.

The physical properties to be transferred include six parlor buses and miscellaneous garage equipment and office furniture and fixtures, as shown in some detail in a statement filed with the Commission on July 2, 1934.

It appears that following the death of Fred A. Sutherland, the business was continued by J. W. Fisher as administrator. Recently, under a probate sale made in the estate and confirmed by an order, dated April 27, 1934, by the Superior Court in and for the County of San Diego, the operating right and certain properties were bid in by Edward Hale, who, it is reported, purchased the same for the purpose of transferring them to a new corporation to be formed.

The new corporation, Sutherland Stages, Inc., one of the applicants herein, thereafter was organized under the laws of the State of California on or about May 23, 1934, with an authorized capital stock of \$15,000.00, divided into 150 shares of the par value of \$100.00 each, all shares being of one class.

Mr. Hunter M. Muir, secretary and counsel for applicant corporation, in his letter of June 29, 1934 and received by the Commission on July 2, 1934, reports that the corporation plans to issue at this time only \$7,500.00 of common stock. The original cost of the properties which the corporation intends to acquire is reported at \$65,500.00 and the present value thereof at \$7,500.00.

We have considered the two applications and will at this time authorize the transfers and authorize Sutherland Stages, Inc. to issue \$7,500.00 of stock. Its request to issue \$7,500.00 additional stock will be dismissed without prejudice to

a new application should said applicant decide to file one in the future. In making such an order, we wish to place Sutherland Stages, Inc. upon notice that operating 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

Applications having been made to the Railroad Commission for an order authorizing the transfer of auto stage operating rights and properties and the issue of \$15,000.00 of stock, as indicated in the foregoing opinion, and the Commission being of the opinion that these are not matters in which public hearings are necessary, that the applications should be granted subject to the provisions of this order, that the issue of \$7,500.00 of stock is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expense or to income, and that the request so far as it involves the issue of the remaining \$7,500.00 of stock should be dismissed without prejudice,

IT IS HEREBY ORDERED, that J. W. Fisher, as administrator of the estate of Fred A. Sutherland, Deceased, be, and he hereby is, authorized to transfer the operating rights and properties referred to in the foregoing opinion to Edward Hale, and Edward Hale be, and he hereby is, authorized to transfer such rights and properties to Sutherland Stages, Inc., a corporation.

IT IS HEREBY FURTHER ORDERED, that Sutherland Stages, Inc. be, and it hereby is, authorized to issue, on or before October 31, 1934, not exceeding \$7,500.00 of common stock in payment for the rights and properties herein authorized to be transferred to said Sutherland Stages, Inc.

IT IS HEREBY FURTHER ORDERED, that Application No. 19495, insofar as it involves the issue of the remaining \$7,500.00 of stock be, and it hereby is, dismissed without prejudice.

IT IS HEREBY FURTHER ORDERED, that the authority herein granted is 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 J. W. Fisher, administrator of the Estate of Fred A. Sutherland, Deceased, shall within twenty (20) days after the effective date of the order unite with applicant Sutherland Stages, Inc. in common supplement, to be filed in triplicate, to the tariffs on file with the Commission covering service given under certificate herein authorized to be transferred, applicant J. W. Fisher, administrator of the Estate of Fred A. Sutherland, Deceased, on the one hand withdrawing, and applicant Sutherland Stages, Inc. on the other hand accepting and establishing such tariffs and <sup>effective</sup> all/supplements thereto.

3. Applicant J. W. Fisher, administrator of the Estate of Fred A. Sutherland, Deceased, shall within twenty (20) days after the effective date of the order withdraw time schedules filed in his name with the Railroad Commission and applicant Sutherland

Stages, Inc. 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 applicant J. W. Fisher, administrator of the Estate of Fred A. Sutherland, Deceased, which time schedules shall be identical with the time schedules heretofore filed with the Railroad Commission by Fred A. Sutherland, 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 Sutherland Stages, Inc. 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. Sutherland Stages, Inc. shall keep such record of the issue of the stock herein authorized as will enable it to file, within thirty (30) days thereafter, a verified report such as is required by the terms of the Railroad Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.

7. The authority herein granted will become effective fifteen (15) days after the date hereof.

DATED at San Francisco, California, this 10th day of July, 1934.

Leon A. Whiskey

W. J. Carr

W. B. Harris

Commissioners.