

Decision No. 27250

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
(1) Burt W. Smith doing business
under the firm name and style of
Almaden Stages for certificate of
public convenience and necessity to
operate (2) General passenger, freight
and express service as a common carrier
between Stage Depot, 25 S. Market St.,
to Almaden, via Willow Glen.

Application No. 19454

ORIGINAL

BY THE COMMISSION:

O P I N I O N

Burt W. Smith has made application for a certificate of public convenience and necessity to establish and operate automotive service for the transportation of persons and/or property between San Jose and New Almaden and intermediate points, and by amendment, Twin Creeks, by diversion "on call". No service is maintained between termini except that of San Jose Railroads between San Jose and Willow Glen. To avoid conflict San Jose Railroads proposed certain restrictions protecting its service and applicant advises the Commission through Arthur J. Saxe, his counsel, that the restrictions proposed are acceptable. As rail service has been abandoned between termini and applicant is ready and able to provide automotive service, as restricted, a public hearing is not necessary and the application will be granted.

Burt W. Smith 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.

O R D E R

Burt W. Smith having made application to the Railroad Commission for a certificate of public convenience and necessity to operate automotive service between San Jose and New Almaden and intermediate points, serving Twin Creeks by diversion "on call,"

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
HEREBY DECLARES that public convenience and necessity requires the establishment of automotive service for the transportation of passengers and property (including freight) between San Jose and New Almaden and intermediate points, over and along the following route:

"25 South Market St. to San Fernando St; west on San Fernando St. to Almaden Ave; south on Almaden Ave. to Grant St; west on Grant St. to Prevost St; south on Prevost St. to Willow St; east on Willow St. (200 feet) to Minnesota Ave; south and west on Minnesota Ave. to Northern Road; south on Northern Road to Willow Glen Way; west on Willow Glen Way to Juanita Ave; south on Juanita Ave. to Pine Ave; west on Pine Ave. to Lincoln Ave; south on Lincoln Ave. to Almaden Road; south on Almaden Road to the town of New Almaden and the resort of Twin Creeks."

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same hereby is granted Burt W. Smith therefor, subject to the following restrictions:

"(a) No operation by the applicant over Almaden Avenue and Almaden Road, between the intersection of Grant Street and Almaden Avenue and the intersection of Almaden Road and Lincoln Avenue.

"(b) No operation over that portion of route designated by applicant as Route 2, between Lincoln Avenue and Pine Avenue to Juanita Avenue and Willow Glen Way via Lincoln Avenue to intersection of Lincoln Avenue and Willow Glen Way, and thence via Willow Glen Way. San Jose Railroads would not object if the route between these points was via Pine Avenue from intersection of Lincoln Avenue and Pine Avenue to Juanita Avenue and thence via Juanita Avenue to intersection of Juanita Avenue and Willow Glen Way.

(c) Applicant shall not be permitted to carry any local passengers between a point on Minnesota Avenue where Goodyear Avenue extended would meet Minnesota Avenue, on the one hand, and the Stage Depot, 25 South Market Street, San Jose, on the other hand, and intermediate thereto."

and subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than ten days' notice to the Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted.
3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five (5) days' notice to the Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
5. No vehicle may be operated by applicant herein 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.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 6th day of August, 1934.

C. C. Leary
Leon O. O'Leary
W. J. Ann
M. B. Harris
M. H. [Signature]
COMMISSIONERS.