

Decision No. 27748

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
PIONEER EXPRESS COMPANY to sell, and)
JOSEPH A. HENARD and HOMER H. HENARD)
to purchase an automobile freight) Application No. 19810
line operated between San Jose and)
Los Gatos, etc. California.)

BY THE COMMISSION -

O P I N I O N

Pioneer Express Company, a corporation, has petitioned the Railroad Commission for an order approving the sale and transfer by it to Joseph A. Henard and Homer H. Henard, doing business under the firm name and style of San Jose and Los Gatos Express, of an operating right for an automotive service for the transportation of property between San Jose, Campbell, Saratoga and Los Gatos, and Joseph A. Henard and Homer H. Henard have 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 \$10.00, which sum is declared to be the value of intangibles. No equipment is to be transferred.

The operating right herein proposed to be transferred was created by Decision No. 18756, dated August 31, 1927, on Application No. 14006.

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.

Joseph A. Henard and Homer H. Henard 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.

O R D E R

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. Applicant Pioneer Express Company shall within twenty (20) days after the effective date of the order unite with applicants Joseph A. Henard and Homer H. Henard in common supplement to the tariffs on file with the Commission covering service given under certificate herein authorized to be transferred, applicant Pioneer Express Company on the one hand withdrawing, and applicants Joseph A. Henard and Homer H. Henard on the other hand accepting and establishing such tariffs and all effective supplements thereto.
3. Applicant Pioneer Express 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 applicants Joseph A. Henard and Homer H. Henard 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 applicant Pioneer Express Company, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant Pioneer Express 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 applicants Joseph A. Henard and Homer H. Henard 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 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.

Dated at San Francisco, California, this 10th day of February, 1934.

Leon A. Whelan
W. B. Harris
W. B. Harris
W. B. Harris
W. B. Harris
COMMISSIONERS.