

Decision No. 27920

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the matter of the Application of  
MABEL E. SMITH for an order of the  
Railroad Commission of the State of  
California approving the transfer to  
her of all rights, title and interest  
in auto truck transportation line,  
including equipment, now of record in  
name of Charles E. Smith.

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)  
) Application No. 19840  
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)

BY THE COMMISSION:

**ORIGINAL**

O P I N I O N

The applicant, Mabel E. Smith seeks approval of the transfer to her, by operation of law, of the certificate of public convenience and necessity which was acquired by her husband, Charles E. Smith, now deceased, pursuant to Decision 18888 dated October 4, 1927 on Application 14087, authorizing the operation of an automobile truck line for the transportation of certain commodities between Los Angeles and Long Beach; and she also seeks approval for the transfer, in similar manner, of the equipment, described in the application, used in conducting this service. From the verified application and from information submitted by applicant it appears that prior to his death Charles E. Smith was engaged in the operation of this line; that on August 14, 1933 he died intestate leaving him surviving his widow, the applicant herein, and five children, all of whom are now of full legal age; and that no probate proceedings were ever filed, although a small sum of money was paid over to applicant by the Security First National Bank of Los Angeles pursuant to the provisions of Sections 630 and 630.5 of the Probate Code.

This operative right was originally granted to Q. C. Allison by Decision No. 7341, dated April 3, 1920, on Application No. 4436. By this certificate Allison was authorized to operate

"\* \* \* as a common carrier of freight between Los Angeles and Long Beach; provided, however, that this authorization extends only to the transportation of automobile supplies and accessories and cigars and tobacco in accordance with the classification set forth in applicant's exhibit attached to and made a part of the application in this proceeding; provided, further, that no authority is hereby conveyed for the transportation of any merchandise between Los Angeles and intermediate points, the authorization granted by this certificate being for through service only between the communities of Los Angeles and Long Beach \* \* \*."

By said Decision No. 18888, the Commission authorized the transfer of this operative right, then conducted under the trade-name of Allison's Auto Express, from Q. C. Allison to Charles E. Smith.

Since this certificate was acquired during the existence of the marriage relation between Smith and applicant herein, it must be presumed to have been community property, and the same is true as to the equipment. This being so, the applicant, upon her husband's death, succeeded to the ownership of the certificate and the equipment pursuant to the terms of Section 201 Probate Code. It is proper that this transfer by operation of law should be recognized by the Commission and that applicant should be authorized to continue operations under this certificate. No public hearing appears to be necessary.

Mabel E. 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

Good cause appearing, IT IS HEREBY ORDERED that pursuant to the transfer by operation of law to applicant Mabel E. Smith of all right, title and interest of her deceased husband Charles E. Smith in and to the certificate of public convenience and necessity heretofore transferred and granted to said Charles E. Smith by Decision No. 13888, dated October 4, 1927, on Application No. 14067, and in and to the equipment described in the application herein, the applicant Mabel E. Smith be and she is hereby authorized to conduct, pursuant to said certificate and subject to its limitations and conditions, the service thereby authorized for the operation of a motor truck line for the transportation of the commodities therein described as a common carrier between Los Angeles and Long Beach, and to use in conducting said service the equipment described in the application herein.

IT IS FURTHER ORDERED that such authority is granted subject to the following terms and conditions:

1. That applicant Mabel E. Smith shall immediately file a supplement to the tariffs on file with the Commission covering service given under said certificate, accepting and establishing such tariffs and all effective supplements thereto.
2. That applicant Mabel E. Smith shall immediately file, in duplicate, in her own name, time schedules covering service heretofore given by said Charles E. Smith, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of said Charles E. Smith, or time schedules satisfactory to the Railroad Commission.
3. 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.
4. No vehicle may be operated by applicant Mabel E. Smith unless such vehicle is owned by said applicant or is

leased by her under a contract or agreement on a  
basis satisfactory to the Railroad Commission.

Dated at San Francisco, California, this 29<sup>th</sup> day of  
April 1935.

Leon Sweeney  
W. J. Linn  
M. B. Harris  
Walter Brown  
Frank R. Brown  
Commissioners