

Decision No. 28493

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of RALPH W. BAETZ, doing business under the fictitious name and style of BAETZ TRANSFER, and L. R. KAGARISE, doing business under the fictitious name and style of KEYSTONE EXPRESS SYSTEM, for an order permitting the sale by the former and the purchase by the latter of that franchise or operative right for the transportation of freight, baggage and express matter by motor truck between Los Angeles, San Gabriel, Alhambra and intermediate points.

Application No. 19987.

*ORIGINAL*

BY THE COMMISSION:

O P I N I O N

Ralph W. Baetz, doing business under the name and style Baetz Transfer, has petitioned the Railroad Commission for an order approving the sale and transfer by him to L. R. Kagarise, doing business under the name and style Keystone Express System, of an operating right for the automotive transportation as a highway common carrier of property between Los Angeles, San Gabriel and Alhambra and L. R. Kagarise has 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.

Applicants allege that said agreement while in the form of an option has been exercised by applicant L. R. Kagarise within the time limit specified therein and now constitutes a binding agreement of sale and purchase upon the terms specified therein.

The consideration to be paid for the property herein proposed to be transferred is given as \$4500. Of this sum \$100.00 is alleged by the applicant to be the value of the equipment and \$4400.00 is alleged to be the value of the intangibles.

The operating right herein proposed to be transferred is a prescriptive right which was acquired by applicant Baetz by Decision No. 17364, dated September 21, 1926 in Application No. 13152.

Applicant Kagarise having petitioned that the right herein proposed to be acquired be also consolidated with his present operating rights, the matter was set down for a public hearing. During the hearing of the application, and before submission thereof, counsel for both the applicant and protestants agreed and stipulated that if applicant herein would waive that portion of the application requesting consolidation of the operative rights herein involved, the consolidation feature to be renewed later if desired, protest was withdrawn and the hereinabove entitled matter was removed from the calendar for an order without further hearing.

Applicant L. R. Kagarise 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

IT IS HEREBY ORDERED that the above entitled application be, and the same is hereby granted, provided that applicant Kagarise may neither merge nor consolidate the right which he is herein authorized to acquire with any operative right under which applicant is now operating, subject to the following conditions:

1. This order shall not become effective until there has been paid to the Railroad Commission the fee required by the Public Utilities Act to be paid on all evidences of indebtedness extending over a period of one year, in this instance the minimum fee of \$25.00.
2. 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 for any purpose other than the transfer herein authorized.
3. Applicant Baetz shall within twenty (20) days after the effective date of the order herein unite with applicant Kagarise in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicant Baetz withdrawing, and applicant Kagarise accepting and establishing such tariffs and all effective supplements thereto.
4. Applicant Baetz shall within twenty (20) days after the effective date of the order herein withdraw all time schedules filed in his name with the Railroad Commission and applicant Kagarise shall within twenty (20) days after the effective date of the order herein file, in duplicate, in his own name time schedules covering service heretofore given by applicant Baetz, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant Baetz or time schedules satisfactory to the Railroad Commission.
5. 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 obtained.
6. No vehicle may be operated by applicant Kagarise 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.

7. The authority granted to sell and transfer the rights 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 12<sup>th</sup> day of January, 1936.

M. B. Harris

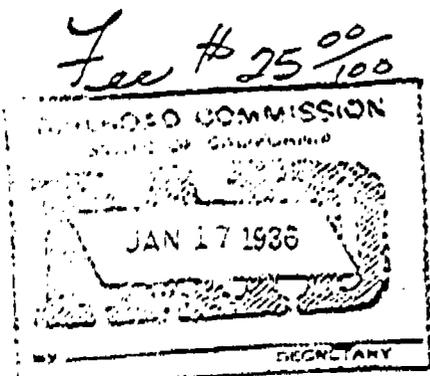
M. A. Cunn

Leon C. Whittell

Walter W. ...

Frank P. Denton

COMMISSIONERS.



Fee # 31832