

Decision No. 28587

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the application of)	
ERNEST SMITH to sell, and C. H.)	Amended
McCARTY to purchase his co-partner-)	Supplementary
ship interest in an automobile freight)	Application No. 16942.
line operated between Imperial Valley)	
points and Los Angeles Harbor, Cali-)	
fornia.)	

BY THE COMMISSION:

O P I N I O N

C. H. McCarty and Ernest Smith co-partners have petitioned the Railroad Commission for an order approving the sale and transfer by Ernest Smith to C. H. McCarty of an undivided one-half interest in an operating right for the automotive transportation as a highway common carrier of certain classes of property between Imperial Valley and Coachella Valley points and points between Redlands and Los Angeles Harbor, inclusive and C. H. McCarty 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.

The consideration to be paid for the property herein proposed to be transferred is given as \$100.00. Applicants dissolved their co-partnership December 20, 1935 (Exhibit No. 1). According to this document the co-partnership has no other assets and no obligations or liabilities. The transfer of interest is made to vest title in the surviving partner.

A public hearing herein was conducted by Examiner Williams at Los Angeles at which time the amended application

to transfer was substituted for a previous application for an in lieu certificate.

The operating right herein proposed to be transferred was created by Decision No. 23537, dated March 23, 1931, on Application No. 16942, the instant application.

C. H. McCarty 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, 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 for any purpose other than the transfer herein authorized.
2. Applicants McCarty and Smith shall within twenty (20) days after the effective date of the order herein unite with applicant C. H. McCarty in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicants McCarty and Smith withdrawing and applicant C. H. McCarty accepting and establishing such tariffs and all effective supplements thereto.
3. Applicants McCarty and Smith shall within twenty (20) days after the effective date of the order herein withdraw all time schedules filed in their name with the Railroad Commission and applicant C. H. McCarty 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 applicants McCarty and Smith 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 obtained.

5. No vehicle may be operated by applicant C. H. McCarty 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.

6. The authority herein 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 24th day of February, 1936.

W B Harris
Leon Whitely
M J. Cunn
W. H. [unclear]
W. R. [unclear]
COMMISSIONERS.