

Decision No. 28655

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION, a banking and
trust corporation, to sell and
BESSIE I. BAKER, to purchase an
automobile freight line operated
between various points within the
State of California.

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}
} Application No. 20345.
}

ORIGINAL

BY THE COMMISSION:

OPINION

In this matter applicant, Bank of America National Trust and Savings Association, as executor of the last will and testament of C. Fred Baker, deceased, has applied to the Commission for authority to transfer to applicant, Bessie I. Baker, and the latter has applied for permission to purchase and acquire an operative right for the transportation of household goods and furniture between Bakersfield and points north thereof to and including San Francisco and Oakland and to points south of Bakersfield to and including Los Angeles.

This appears to be a matter in which no public hearing is required.

The operative right herein sought to be transferred was based upon operations conducted by C. Fred Baker in good faith on and prior to the effective date of Chapter 213, Statutes of 1917. The extent of his operative right was recognized and declared by the Commission in Decision No. 26993, dated April 30, 1934, in Application 18656.

C. Fred Baker died at Bakersfield June 26, 1935 leaving surviving him as legatee his widow the applicant

Bessie I. Baker. By the terms of his last will and testament, which was dated October 10, 1925, the residue of his property was bequeathed to Bessie I. Baker. This included the business which had been conducted under the name of Baker's Transfer and Storage, consisting of trucks, warehouse and transfer equipment. The will authorized and directed the executor to take over, manage and direct such business on behalf of the residuary legatee, Bessie I. Baker "until such time as in its judgment and discretion it may negotiate a sale of said business for and on account of" said legatee. Thus it appears that the will imposed upon the executor a duty to sell the business and distribute the proceeds to the residuary legatee. Subsequent to the execution of this will and on or about July 7, 1928 C. Fred Baker executed and delivered to the applicant, Bessie I. Baker three bills of sale, all of which were acknowledged July 7, 1928 and were recorded in the office of the county recorder of Kern County July 9, 1935. By one of these instruments C. Fred Baker assigned and transferred to said Bessie I. Baker as her separate property "the good will of the business being conducted under the name of the Baker's Transfer and Storage, the office furniture, equipment and supplies, books, accounts, records, stationery and supplies, desks, chairs, safe and office furniture and accounts receivable of said firm, together with all accounts or monies due and owing the Baker's Transfer and Storage." One of the other two instruments transferred to applicant Bessie I. Baker a warehouse building situated upon the Santa Fe right of way in Bakersfield, while the third transferred the ground lease for this warehouse. None provided for the transfer of the operative rights.

Following the execution of these instruments the applicant Bessie I. Baker permitted her husband, C. Fred

Baker to carry on and conduct in his own name the transfer business as the business of the community. No application was ever made to this Commission during the lifetime of C. Fred Baker for permission to transfer the business or any of its assets to Bessie I. Baker.

Following the death of C. Fred Baker the applicant, Bank of America National Trust and Savings Association was duly appointed executor of his last will and testament. In view of the provisions of the will directing the executor to manage, take over and direct the business on behalf of the widow, Bessie I. Baker until such time as the executor in its judgment and discretion may negotiate a sale, the executor undertook to sell in the course of probate the operative right and business to Bessie I. Baker. Both the executor and Bessie I. Baker now seek the approval of the Commission for the transfer of the operative right pursuant to this sale. In our opinion the application should be granted.

Bessie. I. Baker 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 operating right 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 operating right for rate fixing, or for any purpose other than the transfer herein authorized.

2. Applicant Bank of America National Trust and Savings Association as executor of the will of C. Fred Baker shall within twenty (20) days after the effective date of the order herein unite with applicant Bessie I. Baker in common supplement to the tariffs on file with the Commission, covering service given under the operating right herein authorized to be transferred, applicant Bank of America National Trust and Savings Association as executor withdrawing and applicant Bessie I. Baker accepting and establishing such tariffs and all effective supplements thereto.

3. Applicant Bank of America National Trust and Savings Association as executor shall within twenty (20) days after the effective date of the order herein withdraw all time schedules filed in the name of C. Fred Baker with the Railroad Commission and applicant Bessie I. Baker shall within twenty (20) days after the effective date of the order herein file, in duplicate, in her own name time schedules covering service heretofore given by applicant C. Fred Baker which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicant C. Fred Baker 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 Bessie I. Baker 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.

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 23rd day
of March, 1936.

M. B. Harris

Leon A. Whittell

W. A. Carr

William H. ...

Francis R. ...

COMMISSIONERS.