

Decision No. 28850

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of L. R. KAGARISE, an individual, doing business under the fictitious firm name and style of KEYSTONE EXPRESS SYSTEM, to sell, and KEYSTONE EXPRESS SYSTEM, a corporation, to purchase certain operative rights and automotive equipment, and of KEYSTONE EXPRESS SYSTEM, a corporation, to issue its stock in payment thereof.)

ORIGINAL

Application No. 20580

Athearn, Chandler & Farmer, by Fred G. Athearn,
for applicants.

BY THE COMMISSION:

OPINION AND ORDER

This is an application for an order authorizing L. R. Kagarise to sell and transfer to Keystone Express System, a corporation, all of his operative rights, rolling equipment and other assets, as set forth and described in Exhibits "A", "B" and "C" attached to the application, and authorizing Keystone Express System, a corporation, to purchase said rights, rolling equipment and other assets and to issue in payment ten shares of its common capital stock of the aggregate par value of \$1,000.

It is set forth in the application that L. R. Kagarise, an individual doing business under the firm name and style of Keystone Express System, is, and since June 1, 1916 has been, engaged in the business of conducting an interurban motor truck freight hauling business in Los Angeles County. It appears he has concluded that the business can be conducted more advantageously by a corporate organization and accordingly to that end now proposes to transfer his rights and properties to the applicant corporation in exchange for \$1,000. par value of stock. A copy of the agreement for the transfer is attached to the application herein.

The operative rights which L. R. Kagarise asks permission to transfer are listed in Exhibit "A" as follows:-

- (1) Prescriptive right for the transportation of freight acquired by L.R.Kagarise by virtue of operation prior to and since May 1, 1917, between Los Angeles, El Monte, Covina, Azusa, Pomona, Ontario, Claremont, Cucamonga and intermediate points; excepting only that no service shall be rendered intermediate points between Los Angeles and San Gabriel Boulevard, as recognized and established by Decision No. 19410, dated February 25, 1928, Application No. 13087.
- (2) Certificated right for the transportation of freight between Covina, Azusa and Glendora represented by Decision No. 7524, dated May 3, 1920, Application No. 5343, and also by Decision No. 19182, dated December 23, 1927, Application No. 5343, and also by said Decision No. 19410, Application No. 13087.
- (3) Prescriptive right for the transportation of freight between Los Angeles, Alhambra, San Gabriel, East San Gabriel, Arcadia and intermediate points, acquired by L. R. Kagarise under Decision No. 19012, dated November 4, 1927, Application No. 13970.
- (4) Prescriptive right for the transportation of freight between Los Angeles and Glendale acquired by L.R. Kagarise under Decision No. 19013, dated November 4, 1927, Application No. 14046.
- (5) Certificated rights for the transportation of freight between Los Angeles and Monrovia acquired by L.R. Kagarise under Decision No. 19014, dated November 4, 1927, Application No. 14047.
- (6) Prescriptive rights (commonly known as the San Fernando rights) for the transportation of freight between Los Angeles, Burbank, Van Nuys and intermediate points, acquired by L.R.Kagarise under Decision No. 19055, dated November 26, 1927, Application No. 14166.
- (7) Prescriptive rights for the transportation of freight between Los Angeles and Pasadena and intermediate points acquired by L.R.Kagarise under Decision No. 19095, dated December 2, 1927, Application No. 14221.
- (8) Certificated rights for the transportation of freight acquired by L.R.Kagarise under Decision No. 19410, dated February 25, 1928, Application No. 13087.
- (9) Certificated rights for the transportation of freight acquired by L.R.Kagarise under Decision No. 25546, dated January 16, 1933, Application No. 17383.
- (10) Operative rights for the transportation of freight between Los Angeles and Chino, acquired by L.R.Kagarise under Decision No. 25723, dated March 13, 1933, Application No. 18724.
- (11) Operative rights for the transportation of freight between Los Angeles and Long Beach and intermediate points,

acquired by L.R.Kagarise under Decision No. 27048, dated May 14, 1934, Application No. 19344.

- (12) Operative rights (commonly known as Tolson rights) for the transportation of freight, acquired by L.R.Kagarise under Decision No. 27237, dated July 30, 1934, Application No. 19539.
- (13) All contractual and other rights possessed by L.R. Kagarise pursuant to the terms of and the contract set forth in Application No. 19987 in the operative rights of Ralph W. Baetz, under Decision No. 17364, dated September 21, 1926, Application No. 13152.

In granting this application we are not enlarging or limiting or modifying in any manner whatsoever any operative right which L.R. Kagarise may own.

The Commission has considered this application and is of the opinion that it is not a matter in which a public hearing is necessary and that the requests of applicant should be granted, as herein provided. In making the order the Commission wishes to place Keystone Express System, a corporation, its successors and assigns 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, which monopoly feature, however, may be changed or destroyed at any time by the state, which is not in any respect limited in the number of rights which may be given. The Commission is further of the opinion that the money, property or labor to be procured or paid for through the issue of the ten shares of stock is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses, or to income, therefore,

IT IS HEREBY ORDERED that L. R. Kagarise be, and he hereby is, authorized to sell and transfer to Keystone Express System, a corporation, on or before July 1, 1936, his operative rights, roll-

ing equipment and other assets, as set forth in Exhibits "A", "B" and "C" attached to the application herein, and Keystone Express System, a corporation, be, and it hereby is, authorized to purchase said operative rights, rolling equipment and other assets and to issue, on or before July 1, 1936, in payment, ten shares of its common capital stock of the aggregate par value of \$1,000.00, such sale, transfer and purchase to be in accordance with the agreement by and between said L. R. Kagarise and said Keystone Express System, a copy of which agreement is attached to the application.

The authority herein granted is subject to the following conditions:-

1. The consideration to be paid for the properties 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 properties for rate fixing or any purpose other than the transfer herein authorized.
2. L. R. Kagarise and Keystone Express System, a corporation, shall within twenty(20) days after the effective date of this order, join in common supplement, to be filed in triplicate, to the tariffs on file with the Commission in the name of the transferor, L. R. Kagarise on the one hand withdrawing and Keystone Express System, a corporation, on the other hand accepting and establishing as its own such tariffs and all effective supplements thereto.
3. L. R. Kagarise within twenty(20) days after the effective date of this order shall withdraw immediately time schedules filed in his name with the Railroad Commission and Keystone Express System shall file, in duplicate, in its own name, new time schedules which shall be identical with those now on file by L.R.Kagarise, or time schedules satisfactory to the Commission.

4. The rights and privileges herein authorized to be transferred may not hereafter be sold, leased, transferred nor assigned, nor service thereunder discontinued, increased or changed by Keystone Express System unless the written consent of the Railroad Commission has first been secured.
5. No vehicle may be operated by Keystone Express System under the authority granted, unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.
6. Keystone Express System shall keep such record of the issue of the stock herein authorized as will enable it to file within thirty(30) days thereafter a verified report, as required by the Railroad Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.
7. The authority herein granted to sell and transfer operative rights and properties and to issue stock shall lapse and become 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 times shall be extended by further order of the Commission.
8. The authority herein granted will become effective upon the date hereof.

DATED at San Francisco, California, this 28th day of

May 1936.

M. B. Lewis
Leon A. White
W. J. Quinn
W. H. [unclear]
W. H. [unclear]
Commissioners.