

Decision No. 28953

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application)
of O. S. SMITH, doing business as Union)
Truck Service, and T. P. FERGUSON, for)
an order of the Commission transferring)
from O. S. Smith to T. P. Ferguson that)
certain certificate of public convenience)
and necessity originally granted by)
Railroad Commission Decision No. 19088)
and thereafter transferred to O. S. Smith,)
and for permission to said T. P. Ferguson)
to operate the freight service now being)
conducted by said O. S. Smith pursuant to)
the terms of said certificate under the)
rate and time schedules now in effect,)
with certain changes in the time schedule)
as in this application set forth.)

Application No. 20645

BY THE COMMISSION:

ORIGINAL

O P I N I O N

O. S. Smith, doing business as Union Truck Service has petitioned the Railroad Commission for an order approving the sale and transfer by him to T. P. Ferguson of an operating right for the automotive transportation as a highway common carrier of property between Fresno and General Grant National Park and certain intermediate points; and T. P. Ferguson 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 \$1000.00. Of this sum \$500.00 is alleged by the applicant to be the value of the equipment and \$500.00 is alleged to be the value of the intangibles.

The operating right herein proposed to be transferred was created by Decision No. 27269, dated August 13, 1934, in Application No. 19490.

This is not a matter in which a public hearing is necessary. The application will be granted.

T. P. Ferguson 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. Applicant O. S. Smith shall within twenty (20) days after the effective date of the order herein unite with applicant T. P. Ferguson in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicant O. S. Smith withdrawing and applicant T. P. Ferguson accepting and establishing such tariffs and all effective supplements thereto.
3. Applicant O. S. Smith 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 T. P. Ferguson 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 O. S. Smith which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicant O. S. Smith or time schedules satisfactory to the Railroad Commission.

4. The right 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 T. P. Ferguson 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 right 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.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 30th day of June, 1936.

W. B. Lewis

W. A. Lewis

Stanley R. Smith
Commissioners