

Decision No. 23409

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of McMURRAY TRANSPORTATION SERVICE, LTD., a corporation, to sell, and KENNETH GEORGE FITZGERALD, to purchase, an automobile freight line operated between Santa Barbara and Santa Ynez in the County of Santa Barbara, State of California.	} } } } }	Application No. 20912
--	-----------------------	--------------------------

BY THE COMMISSION:

**ORIGINAL**O P I N I O N

McMurray Transportation Service, Ltd., a corporation, has petitioned the Railroad Commission for an order approving the sale and transfer by it to Kenneth G. Fitzgerald, an individual, of an operating right for the automotive transportation as a highway common carrier of property between Santa Barbara and Santa Ynez serving Gaviota, Las Cruces, Buellton, Solvang and Los Olivos as intermediate points and Kenneth G. Fitzgerald 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 \$1,000 which is alleged to be the value of the intangibles.

No equipment is to be transferred.

The operating right herein proposed to be transferred was acquired under authority of Decision No. 25458, dated

December 19, 1932, on Application No. 18512.

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

Kenneth G. Fitzgerald 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 McMurray Transportation Service, Ltd. shall within twenty (20) days after the effective date of the order herein unite with applicant Kenneth G. Fitzgerald in common supplement to the tariffs on file with the Commission, covering the service given under the certificate herein authorized to be transferred, applicant McMurray Transportation Service, Ltd. withdrawing and applicant Kenneth G. Fitzgerald accepting and establishing such tariffs and all effective supplements thereto.
3. Applicant McMurray Transportation Service, Ltd. shall within twenty (20) days after the effective date of the order herein withdraw all time schedules filed in its name with the Railroad Commission and applicant Kenneth G. Fitzgerald 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 McMurray Transportation Service, Ltd. which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicant McMurray Transportation Service, Ltd. 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 Kenneth G. Fitzgerald 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.

7. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter comply with all of the provisions of this Commission's General Order No. 91.

The effective date of this order shall be ten (10) days from the date hereof.

Dated at San Francisco, California, this 18th-day of December, 1936.

M B Davis  
Leon Oubidoux  
Walter Moore  
Frank A. Kenney  
COMMISSIONERS