

Decision No. 29536

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
 of WESLEY PERRY, to sell, and  
 CALIFORNIA DELIVERY SERVICE, to  
 purchase an automobile freight  
 line, operated between Los Angeles,  
 California and Whittier, California,  
 with stops at Montebello, California. )

Application No. 21002

BY THE COMMISSION:

ORIGINAL

## O P I N I O N

Wesley Perry, operating under the name and style of Perry Auto Parts Express, has petitioned the Railroad Commission for an order approving the sale and transfer by him to Paul R. Kemp and Jack B. Kemp, a co-partnership operating as the California Delivery Service, of an operating right for the automotive transportation as a highway common carrier of property limited to auto parts and accessories between Los Angeles, Montebello and Whittier via Whittier Blvd. with no service between intermediate points; and Paul R. Kemp and Jack B. Kemp a co-partnership, operating as the California Delivery Service, have 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 \$200. Of this sum \$25 is alleged by the applicant to be the value of the equipment and \$175 is alleged to be the value of the intangibles.

The operating right herein proposed to be transferred was acquired under authority of Decision No. 17674, dated November 29, 1936, on Application No. 13321.

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

Paul R. Kemp and Jack B. Kemp are 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 Wesley Perry shall within twenty (20) days after the effective date of the order herein unite with applicants Paul R. Kemp and Jack B. Kemp in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicant Wesley Perry withdrawing and applicants Paul R. Kemp and Jack B. Kemp accepting and establishing such tariffs and all effective supplements thereto.

3. Applicant Wesley Perry 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 applicants Paul R. Kemp and Jack B. Kemp shall within twenty (20) days after the effective date of the order herein file, in duplicate, in their own names time schedules covering service heretofore given by applicant Wesley Perry which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicant Wesley Perry 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 applicants Paul R. Kemp and Jack B. Kemp unless such vehicle is owned by said applicants or is leased by them 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.

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 the date hereof.

Dated at San Francisco, California, this 13<sup>th</sup> day of February, 1937.

William H. Moore  
Leon A. Whidally  
Francis R. Whidally  
Ray & Carey  
COMMISSIONERS.