

Decision No. 23918

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of }  
J. D. & J. W. Maynard to sell and }  
Charles F. Wilcox to purchase an }  
automobile Freight Line operated } Application No. 21280  
between Betabel and San Francisco }  
& Oakland, California. }

BY THE COMMISSION:

O P I N I O N

J. D. and J. W. Maynard, co-partners, have petitioned the Railroad Commission for an order approving the sale and transfer by them to Charles F. Wilcox of an operating right for the automotive transportation as a highway common carrier of property limited to the following commodities: strawberries, raspberries, blackberries; all kinds of vegetables, principally, lettuce, peas and tomatoes; also all kinds of green and dried fruit, including cherries, apricots, peaches, pears, prunes and apples, between Sargent, Betabel, Gilroy, San Martin, Morgan Hill, San Jose, Santa Clara, Sunnyvale, Los Gatos and Campbell and intermediate points and from such points and seven (7) miles on either side of the highways traversed to San Francisco and Oakland, with return movement of empty containers or seed and such articles of merchandise as may be ordered by ranchers and packing plants served by applicants at the points and area herein authorized; and Charles F. Wilcox 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 \$5,000. Of this sum \$3500 is alleged by the applicant to be the value of the equipment and \$1500 is alleged to be the value of the intangibles.

The operating right herein proposed to be transferred was created by Decision No. 26047 dated June 12, 1933 on Application No. 11183 as amended.

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

Charles F. Wilcox 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. Applicants J. D. and J. W. Maynard shall within twenty (20) days after the effective date of the order herein unite with applicant Charles F. Wilcox in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein

authorized to be transferred, applicants J. D. and J. W. Maynard withdrawing and applicant Charles F. Wilcox accepting and establishing such tariffs and all effective supplements thereto.

3. Applicants J. D. and J. W. Maynard shall within twenty (20) days after the effective date of the order herein withdraw all time schedules filed in their name with the Railroad Commission and applicant Charles F. Wilcox 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 applicants J. D. and J. W. Maynard which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicants J. D. and J. W. Maynard 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 Charles F. Wilcox 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 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 1<sup>st</sup> day of July, 1937.

Walter L. Brown  
Dean D. Whitell  
Ray B. Wakefield  
COMMISSIONERS.